



PROPORTIONALITY BETWEEN OWNERSHIP AND CONTROL IN EU LISTED COMPANIES:
EXTERNAL STUDY COMMISSIONED BY THE EUROPEAN COMMISSION

**PROPORTIONALITY BETWEEN OWNERSHIP AND CONTROL
IN EU LISTED COMPANIES:**

COMPARATIVE LEGAL STUDY

EXHIBIT C (PART I)

LEGAL STUDY FOR EACH JURISDICTION

SHEARMAN & STERLING_{LLP}

TABLE OF CONTENTS

	<u>Page</u>
Belgium	3
Denmark	61
Germany	94
Estonia	133
Greece	170
Spain	196
France	238
Ireland	280
Italy	320



PROPORTIONALITY BETWEEN OWNERSHIP AND CONTROL IN EU LISTED COMPANIES:
EXTERNAL STUDY COMMISSIONED BY THE EUROPEAN COMMISSION

PROPORTIONALITY BETWEEN OWNERSHIP AND CONTROL IN EU LISTED COMPANIES:

COMPARATIVE LEGAL STUDY

BELGIUM



Louizalaan 99 Av. Louise • B-1050 Brussel/Bruxelles • Tel.: +32.2.543.31.00 • Fax: +32.2.543.31.01 •
brussels@eubelius.com
President Kennedypark 37 • B-8500 Kortrijk • Tel.: +32.56.23.51.11 • Fax: +32.56.22.62.23 •
kortrijk@eubelius.com
Cockerillkaai 18 • B-2000 Antwerpen • Tel.: +32.3.260.86.70 • Fax: +32.3.260.86.71 • antwerp@eubelius.com

Reviewed by:

Christoph van der Elst

Professor of law and management, CCL - Tilburg University
Professor of commercial law and corporate governance, FLI - Ghent University and ECGI research associate

MULTIPLE VOTING RIGHTS SHARES

1) Is this CEM available?

In the present state of Belgian company law, it is not possible to issue Multiple Voting Rights Shares. This follows from Art. 541 of the Belgian Company Code (hereafter “CC”), which basically reflects the principle “one share – one vote”: shares of equal value have an equal number of voting rights; if they do not represent the same fraction of the capital (in the *Société Anonyme/Naamloze Vennootschap* (hereafter “SA”) shares can have a different nominal or fractional value), the share with the smallest nominal or fraction value represents one vote; parts of votes are disregarded (Art. 541 CC).

This rule dates back to the special powers Royal Decree No. 26 of 31 October 1934 and it has been well established ever since (there being no real exceptions to this rule). Recently, however, a bill was proposed by members of Parliament who envisage the introduction of the possibility of issuing Multiple Voting Rights Shares. The pending proposal will probably be amended in the light of a study commissioned by the competent Parliamentary committee. This study recommends both an optional system of Multiple Voting Rights Shares and a general system of time-based Multiple Voting Rights based on shareholder loyalty (largely comparable to the French regime). Please note that it remains to be seen whether this proposal will actually become Law.

Parl. Doc. (50) 2414/001, (51) 0427/001 and 0621/001.

Short form answer:

<input checked="" type="checkbox"/> No (Clear Situation)	Evolving Situation: Proposed bill aims at the introduction of Multiple Voting Rights Shares
----------------------------------------------------------	---------------------------------------------------------------------------------------------

2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.

First of all, please note that in Belgium matters of company law are exclusively governed by Federal Rules.

Art. 541 CC sets forth that shares of equal value each confer one vote. If shares are not of equal value, or if their value has not been expressed, they each, by force of law, confer a number of votes “pro rata” to the part of the capital which they represent, provided that the share which represents the lowest amount qualifies for one vote; fractions of votes are disregarded (save in one exceptional case). This Rule dates back to the Royal Decree No. 26 of 31 October 1934.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	Art. 541 Company Code
------------------------------------------	--------------------------------------------------	-----------------------

Other questions not applicable.

NON-VOTING SHARES

1) Is this CEM available?

Under Belgian law, it is only possible to issue Non-Voting Preference Shares (Arts. 476 and 480-482 CC). On the contrary, it is not possible to issue ordinary Non-Voting Shares (without preference). This follows, albeit indirectly, from the legal rules governing the issuance of Non-Voting Shares in general. The holders of Non-Voting Shares are, by force of law, entitled to a preferential dividend and to a distribution of any surplus profits not less than that distributed to the holders of voting shares as well as to a preferential right to repayment of their capital contribution, increased where appropriate by the issue premium, and to a distribution of any liquidation surplus not less than that distributed to the holders of voting shares (Art. 480, 2° and 3° CC). Since Non-Voting Shares necessarily carry special cash-flow rights, Non-Voting Shares without preference are excluded altogether.

Short form answer:

<input checked="" type="checkbox"/> No (Clear Situation)

2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.

Since the Law of 18 July 1991, the capital of the SA may be represented by shares without voting rights (Art. 476 CC). However, as Non-Voting Shares must always carry special cash-flow rights, ordinary Non-Voting Shares without preference are excluded. Indeed, Non-Voting Shares must give the right to a preferential and, subject to any contrary provision of the articles, transferable dividend and to a distribution of any surplus profits not less than that of the profit surplus for the voting shares (Art. 480, 2° CC), as well as a preferential right to repayment of their capital contribution, increased where appropriate by the issue premium, and to a distribution of any liquidation surplus not less than that distributed to the holders of voting shares (Art. 480, 3° CC).

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	Art. 480, 2°-3° CC
------------------------------------------	--------------------------------------------------	--------------------

Other questions not applicable.

NON-VOTING PREFERENCE SHARES

1) Is this CEM available?

One-third of the capital of the SA may be represented by Non-Voting Preference Shares (Arts. 476 CC and 480-482 CC, introduced by the Law of 18 July 1991). Non-Voting Preference Shares can be issued as a result of a capital increase or by way of conversion of existing voting shares.

Non-Voting Preference Shares must give the right to a preferential and, subject to any contrary provision of the articles, transferable dividend and to a distribution of any surplus profits not less than that distributed to the holders of voting shares (Art. 480, 2° CC), as well as to a preferential right to repayment of their capital contribution, increased where appropriate by the issue premium, and to a distribution of any liquidation surplus not less than that distributed to the holders of voting shares (Art. 480, 3° CC).

Profit-Sharing Certificates are also available.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	Non-Voting Preference Shares and Profit-Sharing Certificates
-----------------------------------------------------------	--------------------------------------------------------------

2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.

a) Non-Voting Preference Shares

Pursuant to Art. 476 CC, the capital of the SA may be represented by Non-Voting Shares, which, by force of law, must carry special cash-flow rights to compensate for the absence of voting rights. They must give the right to a preferential and, subject to any contrary provision of the articles, a transferable dividend and to a distribution of any surplus profits not less than that distributed to the holders of voting shares (Art. 480, 2° CC), as well as to a preferential right to repayment of their capital contribution, increased where appropriate by the issue premium, and to a distribution of any liquidation surplus not less than that distributed to the holders of voting shares (Art. 480, 3° CC).

b) Profit-Sharing Certificates

Pursuant to Art. 483 CC, Profit-Sharing Certificates (which do not represent the company's capital) may also be issued by the SA. The articles of association determine the rights attached to them.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	Arts. 476 and 480-482 CC (Non-Voting Preference Shares) Art. 483 CC (Profit-Sharing Certificates)
------------------------------------------	--------------------------------------------------	------------------------------------------------------------------------------------------------------

3) If this CEM is available, is it subject to any restrictions?

a) Non-Voting Preference Shares

Non-Voting Preference Shares may not represent more than one-third of the company's capital (Art. 480, 1° CC).

Notwithstanding any contrary provisions in the articles of incorporation, the holders of Non-Voting Preference Shares shall nevertheless have voting rights in the following instances:

- when any of the conditions imposed by Art. 480 CC is not or is no longer satisfied, provided that if Art. 480, 1° CC (one-third threshold) is not satisfied, the accretion of the voting right shall exclude application of Art. 480, 2° and 3° CC (i.e. the special cash-flow rights);
- the instance referred to in Art. 560 CC (i.e. alteration of the mutual relationships between the rights of the different categories of securities: a proposed modification of the rights of a category of securities shall only be approved if each category fulfils certain quorum and majority requirements, namely: 50% of the securities within that category is present or represented and the proposal is approved by three quarters of the votes cast. Each category of securities shall have the right to vote on the proposal, even those securities to which normally no voting rights are attached (Art. 560, Sec. 4 CC). This procedure can be applied by the general meeting of shareholders, even in the event that the articles of incorporation have excluded the applicability of Article 560 CC;
- if the general meeting of shareholders must make a determination in respect of an exclusion of or restriction on pre-emption rights, the authorization of the Board Directors to increase the capital whilst excluding or restricting pre-emption rights, the reduction of the company's capital, the change of its purpose, the conversion of the company or the winding up, merger or division of the company;
- if, for whatever reason, the preferential and transferable dividends are not made payable in full over three consecutive financial years, until such time as such arrears of dividends have been paid in full (Art. 481, 1°-4° CC).

b) Profit-Sharing Certificates

The question has been raised whether or not the strict regulation of Non-Voting Preference Shares serves any purpose, since Profit-Sharing Certificates are a much more flexible alternative. Profit-Sharing Certificates do not represent the company's capital. The articles of incorporation determine the rights attached to them (Art. 483 CC).

Profit-Sharing Certificates only confer voting rights if the articles of incorporation grant them such voting rights. Even when that is the case, it must be noted that the legislator has provided restrictions on the total voting power of holders of Profit-Sharing Certificates, namely a maximum of half of the voting rights attached to capital shares (Art. 542 CC). It should be noted that Profit-Sharing Certificates give the right to vote in a certain number of legally determined events, even when the articles of incorporation have not granted any voting rights (Arts. 559, 560 and 781 CC, i.e. in case of a change of the company's purpose or form, or alteration of the mutual relationships between the rights of the different categories of securities).

Profit-Sharing Certificates can be issued for consideration in cash or in kind. In publicly held companies, the consideration in cash to be paid for such Profit-Sharing Certificates must be paid up immediately (Art. 484 CC). The rules and restrictions under Articles 620 et seq. CC with regard to the acquisition by the company of its own shares are equally applicable to Profit-Sharing Certificates.

Profit-Sharing Certificates are not allowed to be traded before the tenth day after the deposit of the company's second annual accounts since their issuance, i.e., usually since incorporation (Art. 508 CC). This prohibition also applies for Profit-Sharing Certificates to bearer, which, as a result of this restriction, must be kept in the company safe until such period has expired (Art. 508 CC). The legislator's idea was that profit-sharing certificates should prove their value before being sold; the profit prospect must first be realistically assessed. On the other hand, the legislator has condoned the transfer of the Profit-Sharing Certificates within the two-year period, only if such transfer takes place by private or notarial deed. A transfer that takes place within the above-mentioned period without fulfilling these formalities will be considered to be null and void. The nullity intends to protect the purchaser; therefore, only the purchaser will be able to invoke it (Art. 508 CC). Moreover, this time restriction does not apply to Profit-Sharing Certificates issued for a consideration in cash in publicly held companies (Art. 509 CC). As mentioned above, Article 484 CC requires such certificates to be immediately paid up and in turn they can be transferred immediately.

Short form answer (the short form answer, which is different for each CEM, has exceptionally been split up between the various CEMs):

<input checked="" type="checkbox"/> Maximum percentage of Non-Voting Preference Shares	One-third of the company's capital (Art.480, 1° CC).
<input checked="" type="checkbox"/> Reinstatement of voting rights in certain circumstances	<ul style="list-style-type: none"> - If any of the conditions imposed by Art. 480 CC is not or no longer satisfied (Art. 481, 1° CC). - In case of a decision to be made by the general meeting regarding alteration of the mutual relationships between the rights of the different categories of securities (Art. 481, 2° CC). - In case of a decision to be made by a general meeting regarding the exclusion of or restriction on pre-emption rights, the authorization of the board of directors to increase the capital whilst excluding or restricting pre-emption rights, the reduction of the company's capital, the change of its purpose or form or the winding up, merger or division of the company (Art. 481, 3° CC). - If, for whatever reason, the preferential and transferable dividends are not made payable in full over three consecutive financial years, until such time as such arrears of dividends have been paid in full (Art. 481, 4° CC).

<input checked="" type="checkbox"/> Maximum percentage of Profit-Sharing Certificates	No limit on number of Profit-Sharing Certificates, but restrictions on the total voting power of Profit-Sharing Certificates in case the articles of incorporation grant them voting rights: Profit-Sharing Certificates may never give the right to cast more than one vote per security. In the aggregate, no more votes may be conferred than one half of the number vested in the joint capital shares; they may not be counted at voting for more than two-thirds of the number of votes cast for the capital shares (Art. 542 CC).
<input checked="" type="checkbox"/> Reinstatement of voting rights in certain circumstances	In case of a decision to be made by the general meeting on the change of the company's purpose (Art. 559 CC) or form (Art. 781 CC), or on the alteration of the mutual relationships between the rights of the different categories of securities (Art. 560 CC), Profit-Sharing Certificates give the right to vote, even when the articles of incorporation have not granted any voting rights.
<input type="checkbox"/> Application of a Breakthrough Rule	Draft bill implementing the Takeover Directive opts out of the Breakthrough Rule of Art. 11 Takeover Directive; no other Breakthrough Rule is applicable.

<p><input checked="" type="checkbox"/> Others: consideration in cash to be paid up immediately; in turn, Profit-Sharing Certificates will be immediately transferable</p>	<p>In publicly held companies, if a consideration in cash is to be paid for Profit-Sharing Certificates, this consideration must be paid up immediately (Art. 484 CC).</p> <p>In turn, these Profit-Sharing Certificates in publicly held companies for which a consideration in cash is to be paid are allowed to be traded immediately (Art. 509 CC), whereas normally Profit-Sharing Certificates are not allowed to be traded before the tenth day after the deposit of the company's second annual accounts since their issuance, i.e., usually since incorporation (Art. 508 CC), although the legislator has condoned the transfer of Profit-Sharing Certificates within the above-mentioned period, if such transfer takes place by private or notarial deed.</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

4) Who decides whether this CEM should be implemented, and under what conditions?

Non-Voting Preference Shares can be issued as a result of a capital increase or by way of conversion of existing voting shares.

In the event of an issuance of Non-Voting Preference Shares as a result of conversion of existing voting shares, the general meeting must determine, in accordance with the provisions for amendment of the articles of incorporation, the maximum number of shares to be converted and the conversion terms. However, the articles of incorporation may also authorize the board of directors to determine the maximum number of shares to be converted and to adopt the conversion terms. A conversion offer must be made simultaneously to all shareholders 'pro rata' to their share in the capital of the company. Such offer must mention the period during which conversion is possible. Such period must be fixed by the board of directors and must be at least one month. The conversion offer must be published in the Belgian Official Journal and in a nationally distributed newspaper and in a newspaper of the region where the company has its seat. If all shares are registered shares, the shareholders may be notified thereof by registered mail (Art. 482 CC).

An increase of the issued capital necessarily entails an alteration of the articles of incorporation (Art. 581, Sec. 1 CC). This, in turn requires a qualified majority decision by the general meeting of shareholders (Art. 558 CC).

A proposal for amendment of the articles can only be validly deliberated upon or accepted if the shareholders present or represented, represent at least half of the issued capital (and provided that specific mention of the proposed amendments has been made in the convening notice). In addition, an amendment shall be adopted only if it has obtained three quarters of the votes cast. If the quorum requirement is not satisfied, a new convening notice is required, addressed to all the shareholders, those who were present and those who were not, in which case the new meeting may deliberate and validly resolve, irrespective of the part of the capital represented by the shareholders present at such second meeting. A three-quarter majority, however, is still required in order for the resolution to pass. Please note that even more stringent quorum or majority requirements can be laid down in the articles of incorporation (Art. 558, Sec. 1 CC). For the calculation of the quorum and the required majority, the shares whose voting rights are suspended and the non-voting shares may not be taken into account, except in those instances where the company code itself expressly provides otherwise (Arts. 481 and 554 CC).

Nonetheless, within certain limits the articles of incorporation can also authorize the board of directors to increase the capital - through the issuance of any type of shares (including Non-Voting Preference Shares), convertible bonds and warrants - without the previous intervention of the general meeting of shareholders (the so-called “authorized capital”: Arts. 603–608 CC).

In this regard the law requires that the articles of incorporation expressly grant the board of directors such power to increase the capital, and determine the maximum amount of such authorized capital increase, which for companies making or having made an offer of their securities to the public, may not exceed the amount of the existing capital (Art. 603, Sec. 1 in fine CC). The power to increase the capital must be exercised by the board within 5 years from the date such power was granted. If the board of directors has not fully exhausted its authority within such time frame, the general meeting must modify the articles of incorporation in order to prolong the powers of the board for another period of five years (Art. 604, Sec. 1 CC). When proposing an alteration of the articles of incorporation with the view of obtaining such authorization, the board must specify under which circumstances it intends to use the authorized capital and for which purposes (Art. 604, Sec. 2 CC).

It must be noted that in the event of a public takeover bid, the board may exercise its power to increase the capital, provided that such authority was granted less than 3 years before the takeover bid and specifically in order to be used in case of such takeover bid. Moreover, the capital may not be increased by more than 10% (Art. 607 CC; Art. 8 R.D.. of 8 November 1989). Please note that this balance of power is not affected by the pending draft bill implementing the Takeover Directive, which indeed opts out of the Neutrality Rule of Art. 9 Takeover Directive.

It must be noted as well that the board will not be able to use its power to increase the capital, if the consideration used in order to subscribe such capital increase would consist of mainly contributions in kind and the candidate subscriber, solely or together with affiliated companies, owns already 10 per cent of the voting rights in the SA (Art. 606, 1° CC). In principle, the board cannot increase the capital by incorporating reserved profits in the capital, unless the articles of incorporation provide otherwise (Art. 605, 3° CC).

In case of a capital increase, the same formalities and publication requirements as at the time of incorporation have to be observed, as well as the same legal requirements regarding the payment of considerations per issued share (Art. 586 CC). Similarly, a special bank account must be opened in the name of the company for the minimum considerations to be paid in cash (Art. 600 CC), and an auditing control by an auditor is required for considerations in kind. In companies which have a statutory auditor (*‘commissaire/commissaris’*), the auditor himself is permitted to draw up the report (Art. 602 CC).

An SA that decides to increase its capital by way of a public appeal on the capital markets, can choose between a direct or indirect capital increase. In this latter case, the company will first decide to increase the capital, and subsequently invite the public to subscribe (Art. 590 CC). The conditions of issuance can determine that the capital increase will take place for the subscribed amount, even if the planned amount has not yet been fully subscribed (Art. 584 CC). It must be noted that public subscription is subject to the supervision of the Banking, Finance and Insurance Commission and the publicity requirements developed and sanctioned by this commission. Public subscription is much more common in the event of a capital increase than in the event of incorporation. This allowed the Banking, Finance and Insurance Commission to develop extensive jurisprudence regarding disruption of the capital market and misleading information.

A second way to increase the capital by making a public appeal to the capital markets, is to have the capital increase directly subscribed by banks or financial institutions, which will subsequently offer the newly subscribed shares to the public. Such fixed purchases can take place with or without the limitation of rights of pre-emption (Art. 597 CC).

In the SA, the new shares issued in the framework of a capital increase and representing considerations in cash must first be offered to the existing shareholders (Art. 592, Sec. 1 CC): they have rights of pre-emption. The number of pre-emption rights given to each existing shareholder to subscribe to the capital increase is proportional with his share in the capital before increase. In this way the balance of power in the company remains unchanged, provided that each shareholder exercises his rights of pre-emption. As for the procedure to be followed if the company wishes to increase the capital while limiting or excluding the exercise of any pre-emption right, a distinction must be made between a capital increase within the limits of the authorized capital (Art. 605, 1° and 2° CC) and a normal capital increase decided by the general meeting (Arts. 596 et seq. CC). In the first hypothesis, the possibility for the board of directors to limit or prevent the exercise of rights of pre-emption must be expressly provided for in the articles of incorporation. In the latter case such decision must be taken by the majority required for alteration of the articles of incorporation. In both instances, the procedure is aimed at providing shareholders with sufficient and correct information, verified by a statutory auditor, regarding the issue price and the issue premium (Arts. 596, Sec. 2 and 603, Sec. 3 CC).

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the Board of Directors	<input checked="" type="checkbox"/> Upon authorization of the shareholders	
<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input checked="" type="checkbox"/> Quorum: 1/2 (at first call) of the issued capital and nil (second call) <input checked="" type="checkbox"/> Majority: 3/4 of the votes cast	<p>If the shareholders may authorize the Board or the Chairman or GM to implement the CEM:</p> <input checked="" type="checkbox"/> For how long would the authorization be valid (maximum duration): 5 years as from publication of amended articles (Art. 604 CC). <input checked="" type="checkbox"/> If a tender offer is filed on the company wishing to implement the CEM, between the authorization and the actual implementation, would the authorization need to be renewed? No, the Board of Directors may exercise its power to increase the capital, subject to certain conditions and provided that such authority was granted less than three years before the takeover bid and specifically in order to be used in case of such takeover bid (Art. 607, Sec. 2, 2° CC).

Specific conditions:

<p>Specific requirements when deciding to implement the CEM:</p> <input checked="" type="checkbox"/> Special report to shareholders, prepared by: Board of Directors in case of exclusion of or restriction on pre-emption rights upon issuance of Non-Voting Preference Shares (in case of	<p>Specific rights of minority shareholders when the CEM is implemented:</p> <input checked="" type="checkbox"/> Other: Pre-emption rights: in case of capital increase by means of considerations in cash, new shares must first be offered to existing shareholders 'pro rata' with their share in the
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>capital increase by means of considerations in cash) and always in case of capital increase by means of considerations in kind</p> <p><input checked="" type="checkbox"/> Statutory auditors need to be involved as follows:</p> <p>Special report to shareholders in case of considerations in kind and in case of exclusion of or restriction on pre-emption rights (in case of considerations in cash)</p> <p><input checked="" type="checkbox"/> Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.):</p> <ul style="list-style-type: none"> - the amended articles must be filed with the clerk's office of the court of commerce and be published in the Belgian Official Journal - the decision of the general meeting of shareholders to exclude or restrict pre-emption rights, as well as the reports that have to be drawn up in case of exclusion of or restriction on pre-emption rights or in case of considerations in kind must also be filed with the clerk's office of the court of commerce. 	<p>capital before increase (Art. 592, Sec. 1 CC).</p> <p>The general meeting of shareholders can only exclude or restrict the exercise of pre-emption rights by the majority required for alteration of the articles of incorporation; the possibility for the board of directors to exclude or restrict the exercise of pre-emption rights within the framework of the authorized capital must be expressly provided for in the articles of incorporation.</p> <p>If convertible bonds or warrants have previously been issued, the holders of such securities can request the conversion into shares and participate in the new issue of Non-Voting Preference Shares, provided the old shareholders have this right (Arts. 491 and 501 CC).</p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

5) Are there ongoing disclosure requirements regarding such CEM?

At least once every year, the state of the company's capital must be filed for deposit with the National Bank of Belgium, together with the annual accounts. Therein, mention must be made of *inter alia* the list of the shareholders who have not paid up their shares in full and the amount still due by them (Art. 479 CC). This requirement applies to all shares, irrespective of their voting rights.

For the purpose of application of the Transparency Law, which regulates the notification of major shareholdings in companies incorporated under Belgian law, Non-Voting Preference Shares are at present considered as equivalent to ordinary voting shares (Art. 1, §1, Sec. 4 Law of 2 March 1989, introduced by the Law of 18 July 1991, but subject to change due to the pending implementation of the Transparency Directive). As a result, the shareholding structure will also reflect the voting power in those (rare) cases in which Non-Voting Preference Shares nonetheless grant the right to vote (see above). To this end, the normal thresholds for notification (see below) are calculated as if Non-Voting Shares grant voting rights.

Please note that the draft bill implementing the Transparency Directive extends the disclosure obligation contained in Art. 15 Transparency Directive to Non-Voting Preference Shares and to Profit-sharing Certificates (although this is not imposed by the Transparency Directive). Therefore, in the future listed companies will probably have to disclose updates of the declared total number of Non-Voting Shares and to Profit-sharing Certificates if it has changed since the previous month. The notification obligation under the Transparency Directive, on the other hand, will probably only be extended to Profit-sharing Certificates and not to Non-Voting Preference Shares. However, in the event that they would obtain voting rights in a way that is durable and not limited to specific items of the agenda, but rather comparable to the voting power of ordinary shares (i.e. in the instances referred to in Art. 481, 1° or 4° CC) they will nonetheless be treated as voting securities.

In addition, the aforementioned draft bill implementing the Transparency Directive provides that the information mentioned Art. 10 Takeover Directive must be mentioned in the (consolidated) Annual

Report as well as in a separate Explanatory Report (hereafter referred to as ‘the Article 10 Report’), both of which must be presented to the annual meeting of shareholders by the Board of Directors.

Short form answer:

<input checked="" type="checkbox"/> Yes	<p>The following disclosure requirements apply:</p> <ul style="list-style-type: none"> - Filing of AoA; - Publication in a Legal Gazette; - Auditors’ Report; - Specific Filings: decision of the general meeting of shareholders to exclude or restrict pre-emption rights, as well as the reports that have to be drawn up in case of exclusion of or restriction on pre-emption rights or in case of considerations in kind are to be filed with the clerk’s office of the court of commerce; - Information to Shareholders: special report by the Board of Directors as well as Auditor’s Report are to be mentioned in the agenda and to be made available to shareholders; - Admission documentation: prospectus obligation in case of public subscription (to be considered as an initial disclosure requirement); - Annual Reports: the Annual Report must contain information on the capital structure and of the different classes of shares. In addition, the explanatory notes to the annual accounts must contain information on the ownership structure as of the closing date of the accounts, as it appears from the notifications received under the Transparency Law; - Article 10 Report; - Special Reports: the company must disclose updates of the declared total number of shares and voting rights if there are changes since the previous month. Please note that the pending draft bill implementing the Transparency Directive extends the disclosure obligation contained in Art. 15 Transparency Directive to Non-Voting Preference Shares and to Profit-sharing Certificates; - Website: The Belgian Corporate Governance Code (‘Code Lippens’), which strictly speaking contains Non-Binding Rules only, recommends that the company (listed on the stock exchange) should disclose in its Corporate Governance Charter its shareholding and control structure (Provision 8.4). Arguably, this includes a description of its capital structure as well. The Corporate Governance Charter should be updated as often as needed to reflect the company’s corporate governance at any time and be made available on the company’s website specifying the date of the most recent update (Provision 9.3).
-----------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

6) When a CEM is implemented, on what substantive grounds may such decision be challenged?

A decision of the general meeting of shareholders can be declared null and void on formal grounds or because of flaws in the decision itself (Art. 64 CC).

Any formal irregularity will lead to the annulment of the decision to issue Non-Voting Preference Shares, if the petitioner can show that the irregularity had an influence on the outcome of the decision process (Art. 64, 1° CC). In case of fraud (Art. 64, 2° CC), and in all other cases mentioned in the Company Code (Art. 64, 5° CC), which includes the absence of written reports required by *inter alia* Arts. 596, 602 and 604 CC), there is no need of proof that the irregularity had an influence on the outcome of the decision process.

Any decision of the general meeting will also be declared null and void in case of misuse of power or in case of acting without power (Art. 64, 3° CC). These nullity grounds must be interpreted as a

‘residual category,’ containing all material irregularities, in addition to those provided by Article 64, 1°, 2°, 4° and 5° CC, which are a result of the violation of the law or the articles of incorporation. ‘Misuse of power’ can be defined as any circumstance in which the power of a representative body or the power of a majority at the general meeting, is being used to sacrifice the interest of the company for private interests which are outside the company structure. This covers both the abuses of a majority as well as a minority position. ‘Acting without power’ includes decisions which no representative body in the company has the authority to take (e.g., forcing the shareholders to transfer their shares), decisions which were made in violation of the power of other representative bodies in the company, more specifically, the exclusive powers of the board of directors, decisions made in violation of certain legal or statutory majority requirements or in violation of statutory clauses (e.g., regarding the division of profits).

Unlike for the nullity of decisions of the general meeting of shareholders, the law does not explicitly provide for a similar framework for the nullity of decisions of the Board of Directors. Eminent Belgian authors like J. Ronse argued that for the board of directors the application of similar rules can be defended.

A decision made by the Board of Directors upon authorization of the general meeting of shareholders will be declared null and void if it violates the law or the articles of incorporation, if it exceeds the limits of the authorization or if it is found to be against the corporate interest. The concept of corporate interest is generally defined rather broadly so as to include not only the shareholders collectively, but other constituencies (such as the employees, creditors, suppliers, etc.) as well.

Short form answer:

<input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the management.	<input checked="" type="checkbox"/> The decision to implement the CEM is against the interest of the shareholders.
<input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the majority shareholders.	<input checked="" type="checkbox"/> The decision to implement the CEM is against the corporate interest (defined as being distinct from the sole interest of shareholders).
	<input checked="" type="checkbox"/> Such grounds are alternative.

Although the abovementioned grounds are not always distinguished in practice (since the Law is articulated in a somewhat different manner) and to our understanding cannot always be distinguished (e.g., a decision taken in the sole interest of the management or majority shareholders will presumably at the same time be against the corporate interest, whether or not defined as being distinct from the sole interest of the shareholders), these grounds are probably alternative rather than cumulative.

PYRAMID STRUCTURES

1) Is this CEM available?

In Belgium, the use of Pyramid Structures has been widespread since 1934, when the legislator introduced both the principle “one share – one vote” (Royal Decree No. 26 of 31 October 1934, presently Art. 541 CC) and the prohibition of universal banks (Royal Decree No. 2). This resulted in the creation of holding companies. Until recently, holding companies of a certain size were subject to a periodic control of the Banking and Finance Commission which was very similar to the control exercised over banks (Royal Decree No. 64 of 10 November 1967, abolished as of 1 June 2003 by the Law of 2 August 2002). Holding companies subject to such control had to notify their activity to the Banking and Finance Commission. They were supervised by the Commission through an auditor selected in mutual agreement between the company and the Commission, for renewable periods of three years. If in the opinion of the Banking and Finance Commission, the annual accounts of the holding company did not give a fair view of its financial situation, the Commission had the right to make certain recommendations in this regard. If such recommendations were not implemented by the envisaged holding company, the Commission had the right to make such recommendations public.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)

2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.

The possibility to implement Pyramid Structures follows from the general principle of contractual freedom and is encouraged by the principle “one share – one vote”, which plays a pivotal role in Belgian company law (Art. 541 CC). In order to determine the existence of power of control, any indirect voting power through a subsidiary company is added to the direct voting power as (grand)parent company (Art. 7 CC).

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	Arts. 7 and 541 CC
<input checked="" type="checkbox"/> General Principle		As there is no Legal Rule which directly or indirectly prohibits Pyramid Structures, there is no reason why the use of this CEM should not be allowed (General Principle of contractual freedom).

3) If this CEM is available, is it subject to any restrictions?

There are no Legal Rules which restrict the use of Pyramid Structures. As mentioned above, the Royal Decree No. 64 of 10 November 1967, which made holding companies of a certain size subject to a periodic control of the Banking and Finance Commission similar to the control exercised over banks, was abolished as of 1 June 2003 by the Law of 2 August 2002.

It should be mentioned that real group law, governing the establishment, organization, functioning and liability of company groups in specific, does not exist in Belgium (cf. ‘Konzernrecht’ in Germany). The existence of groups of companies, however, was to a certain extent acknowledged by the Law of 18 July 1991, which extended certain obligations to affiliated companies (e.g., the prohibition on acquisition by the company of its own shares) and, accordingly, introduced a definition of the concepts of parent and subsidiary companies into Belgian company law (Arts. 5-14 CC). Subsequent legislation continued this trend. Most importantly, the Law of 13 April 1995 introduced a procedure for intra-group conflicts of interest (Art. 524 CC), the scope of which remains the subject of uncertainty and controversy, even after substantial modification by the Law of 2 August 2002. Apart from these issues, group law in Belgium is largely limited to questions as to whether or not the holding company can be nominated as a director in the subsidiary and how the holding company shall be represented in the board, or, when the holding company may be liable as a ‘*de facto director*’ after bankruptcy of its subsidiary (Art. 530 CC).

Short form answer:

<input checked="" type="checkbox"/> Application of a Breakthrough Rule	Draft bill implementing the Takeover Directive opts out of the Breakthrough Rule of Art. 11 Takeover Directive; no other Breakthrough Rule is applicable.
<input checked="" type="checkbox"/> Others: Procedure for intra-group conflicts of interest (Art. 524 CC), which is not applicable in the direct relationship between a listed company and its subsidiary but to all decisions or actions of a listed company concerning <i>inter alia</i> the relationship between a subsidiary of the listed company and a company affiliated with such subsidiary other than a subsidiary of that subsidiary.	Board decision in the listed company on the basis of a Special Report drafted by a committee of three independent directors, assisted by an independent expert designated by such committee (i) describing the nature of the envisaged decision or action, (ii) assessing the financial consequences for the company and its shareholders, (iii) estimating its financial impact and (iv) determining whether it is likely to cause a disadvantage to the company which is manifestly illegitimate in light of the company’s general business policy. Also Special Auditors’ Report to be drawn up and excerpts from the board minutes and the reports to be mentioned in the Annual Report.

4) Who decides whether this CEM should be implemented, and under what conditions?

The “bottom-up” implementation of a Pyramid Structure (i.e. through the creation of a parent or holding company) usually implies a decision of (or rather, an agreement between) the controlling shareholders outside of the general meeting, by virtue of which the shares in the company concerned are used as consideration in kind for the creation of a new legal entity; thus, in exchange for shares in the newly established control vehicle. The incorporation of the new legal entity necessitates, of course, certain formalities and publication requirements to be fulfilled. However, these do not concern the company that is subject to control.

The “top-down” implementation of a Pyramid Structure (i.e. through the creation of a subsidiary) usually implies an autonomous decision by the Board of Directors to set up a subsidiary. The incorporation of the new legal entity necessitates of course certain formalities and publication requirements to be fulfilled. However, these do not concern the controlling company.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the Board of Directors	<input checked="" type="checkbox"/> Autonomous decision
<input checked="" type="checkbox"/> Other: Decision by (controlling) shareholders individually	

Specific conditions:

None.

5) Are there ongoing disclosure requirements regarding such CEM?

The “bottom-up” implementation of a Pyramid Structure may trigger application of the Transparency Law (Law of 2 March 1989, subject to change due to the pending implementation of the Transparency Directive), which regulates the notification of the identity of the major shareholders in companies incorporated under Belgian law.

Each ownership, purchase or transfer of securities to which at least 5 per cent, or multiple thereof, of all existing voting rights in a listed company are attached, must be notified. Lower threshold percentages may be determined in the articles of incorporation of the company (with a minimum of 3 per cent and multiples of 3 per cent), but these do not override the legal thresholds. All persons who hold or pass a 5 per cent threshold percentage, solely or in concert with others (as defined in Art. 7 Transparency Decree), must notify this to the Banking, Finance and Insurance Commission and to the company listed on the stock exchange itself within two working days. The company must then, ultimately on the next working day, publish this notification. In addition, the company must mention in the explanatory notes to the annual accounts, in the section on the status of the capital, its shareholding structure as of the closing date of the accounts, as it appears from the notifications received.

If a shareholder does not disclose the ownership or the acquisition or transfer of securities at least 20 days before a general meeting, he loses that part of the voting rights attached to the securities which gave rise to the disclosure obligation. This is the main sanction which, however, does not apply with regard to securities obtained by way of exercising a right of pre-emption by way of inheritance, merger, division, liquidation or public offer (Art. 545 CC). In addition, the president of the commercial court can, among others, order the forced sale of the securities acquired in violation of the duty of notification (Art. 516 CC). Please note that Art. 515 CC provides that the obligations under the transparency legislation can be extended by the articles of incorporation to non-listed companies as well.

In addition, it should be mentioned that the Belgian Corporate Governance Code (‘Code Lippens’), which, strictly speaking, contains Non-Binding Rules only, recommends that the company should disclose in its Corporate Governance Charter the identity of its major shareholders, with a description of their voting rights and special control rights, and, if they act in concert, a description of the key elements of existing shareholders’ agreements. The company should also disclose other direct and indirect relationships between the company and major shareholders (Provision 8.5). This Corporate Governance Charter should be updated as often as needed to reflect the company's corporate governance at any time and be made available on the company's website specifying the date of the most recent update (Provision 9.3).

Short form answer:

<input checked="" type="checkbox"/> Yes	<p><input checked="" type="checkbox"/> Disclosure to be made on a yearly basis: the company must mention in the explanatory notes to the annual accounts its ownership structure as of the closing date of the accounts, as it appears from the notifications received under the Transparency Law.</p> <p><input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place: any reaching or crossing of the threshold percentage in both directions (as a result of the acquisition or transfer of securities, whether or not on the basis of an agreement to act in concert in respect of such acquisition or transfer of securities) of ownership of securities to which at least 5 per cent, or multiple thereof, of all existing voting rights in a company are attached, must be notified to the Banking, Finance and Insurance Commission and to the company itself within two working days. The company must then, ultimately on the next working day, publish this notification. Lower threshold percentages may be determined in the articles (with a minimum of 3 per cent and multiples of 3 per cent). All persons who hold or pass a 5 per cent threshold percentage, solely or in concert with others, must notify this fact. Please note that this disclosure requirement is subject to change due to the pending implementation of the Transparency Directive.</p> <p><input checked="" type="checkbox"/> The following disclosure requirements apply:</p> <ul style="list-style-type: none"> - Specific notifications, - Annual Reports: no specific disclosure in the Annual Report. However, the explanatory notes to the annual accounts must include (in the section on the state of the capital) a description of the shareholding structure as of the closing date of the accounts, as it appears from the notifications received under the Transparency Law, - Website.
-----------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

6) When a CEM is implemented, on what substantive grounds may such decision be challenged?

There appear to be no substantive grounds on which the “bottom-up” implementation of Pyramid Structures can be challenged successfully, as setting up a parent company does not involve a decision of the representative bodies of the company.

An autonomous decision by the board of directors to implement a Pyramid Structure “top-down” (i.e. by setting up a subsidiary) will be declared null and void if it is found to be against the corporate interest. The concept of corporate interest is generally defined rather broadly so as to include not only the shareholders collectively, but other constituencies (such as the employees, creditors, suppliers, etc.) as well. It is the interest of the company that prevails, but the court will of course - in considering its decision as to a violation of the interest of the company - take into account which kind of interest resulted in setting up a subsidiary in the first place.

Short form answer:

<input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the management.	<input checked="" type="checkbox"/> The decision to implement the CEM is against the interest of the shareholders.
<input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the majority shareholders.	<input checked="" type="checkbox"/> The decision to implement the CEM is against the corporate interest (defined as being distinct from the sole interest of shareholders).

Unlike for the nullity of decisions of the general meeting of shareholders, the law does not explicitly provide for a similar framework for the nullity of decisions of the board of directors. Eminent Belgian authors like J. Ronse argued that for the board of directors the application of similar rules can be defended.

PRIORITY SHARES

1) Is this CEM available?

Priority Shares are strictly limited in scope in Belgium. Some mechanisms are available, for instance, granting a certain class of shares the right - whether in the articles of incorporation or in a Shareholders' Agreement - to propose specific candidates for appointment to the Board of Directors. However, the final decision must always remain with the general meeting of shareholders as a whole; in other words, the 'minority' shareholders may be granted the right to propose one, two or three candidates of their own liking, from whom the general meeting as a whole will choose. For example, two candidates are proposed for each vacant position: in that way, the general meeting retains a real freedom of choice in the appointment of the directors. Since the (exclusive) powers of the general meeting may not be restricted, a right to directly appoint board members or to veto a certain decision taken at the general meeting would probably be invalid (and thus not enforceable). Only a very limited number of Belgian listed companies make use of this kind of Priority Shares.

Short form answer:

<input checked="" type="checkbox"/> Yes	Priority Shares are strictly limited in scope and occurrence.
-----------------------------------------	---------------------------------------------------------------

2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.

Priority Shares aim to restrict the powers of the general meeting of shareholders. This is only authorized insofar as the law allows such restrictions.

According to Art. 531 CC, the general meeting of shareholders shall have the most extensive powers to perform or ratify the company's transactions. Notwithstanding this provision, the Law of 6 March 1973 implementing the First EC Company Law Directive has granted the residual authority within the company to the Board of Directors (Art. 522, §1, Sec. 1 CC), leaving the general meeting only its exclusive powers. Moreover, any limitations to this residual authority inserted in the articles of incorporation cannot be invoked against third parties. This means that if the Board of Directors exceeds its powers, as limited in the articles of incorporation, the company will be deemed to be validly represented and bound by the act of the Board (Art. 522, §1, Sec. 2 CC). Only internally, the directors could be held liable for violating the articles of incorporation (Art. 528 CC).

The most important tasks which are reserved for the general meeting of shareholders are: approval of the annual accounts; general discharge of directors and statutory auditors or otherwise instituting of the '*actio mandati*'; decision on the distribution of a dividend over the financial year; appointment, dismissal and remuneration of directors and statutory auditors; amendment of the articles of incorporation (including the company's purpose, form, dissolution, merger, division); capital increase and reduction (including through issuance of convertible bonds and warrants); authorization for acquisition by the company of its own shares and other similar transactions.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	Art. 531 CC
<input checked="" type="checkbox"/> Court Decisions	<input checked="" type="checkbox"/> Lower Court Case Law	Comm. Court Brussels 13 December 1984, R.P.S. 1985, 122: two candidates must be proposed for each vacant position, so that the majority retains a real freedom of choice in

		the appointment of the directors. Decisive Ruling/Insufficiently Tested Situation (but general expectation that it would be substantially likely to be upheld by Highest Court Case Law).
--	--	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

3) If this CEM is available, is it subject to any restrictions?

Arguably, Priority Shares can only be allowed insofar as the (exclusive) powers of the general meeting are not (unduly) constrained. For instance, priority shares may allow its holders to propose the designation of directors, but not to appoint them directly. Since the exclusive powers of the GMS may not be restricted, a Right to Veto a certain decision taken at the GMS would probably also be invalid (and thus not enforceable).

Short form answer:

<input checked="" type="checkbox"/> Loss of the specific rights granted to the Priority Shares in certain circumstances	Priority Shares may not restrict the (exclusive) powers of the general meeting.
Application of a Breakthrough Rule	Draft bill implementing the Takeover Directive, opts out of the Breakthrough Rule of Art. 11 Takeover Directive; no other Breakthrough Rule is applicable.

4) Who decides whether this CEM should be implemented, and under what conditions?

In order to achieve a guaranteed representation of a certain (minority) shareholder or group of shareholders on the Board of Directors, the articles of association may introduce classes of shares, each of which may propose one, two or three candidates of their own liking for a determined number of vacant positions, from whom the general meeting as a whole will choose. In that way, the majority retains a real freedom of choice in the appointment of the directors. Similar provisions can be contained in Shareholders' Agreements (see below). Cumulative voting is an alternative mechanism that can be used in order to obtain a proportionate representation of minority shareholders in the Board of Directors.

An amendment of the articles of association in this respect requires a qualified majority decision by the general meeting of shareholders (Art. 558 CC). A proposal for amendment of the articles can only be validly deliberated upon or accepted if the shareholders, present or represented, represent at least half of the issued capital (and provided that specific mention of the proposed amendments has been made in the convening notice). In addition, an amendment shall be adopted only if it has obtained three quarters of the votes cast. If the quorum requirement is not satisfied, a new convening notice is required, addressed to all the shareholders, those who were present and those who were not, in which case the new meeting may deliberate and validly resolve, irrespective of the part of the capital represented by the shareholders present at such second meeting. A three-quarter majority, however, is still required in order for the resolution to pass. Please note that even more stringent quorum or majority requirements can be laid down in the articles of association (Art. 558, Sec. 1 CC). For the calculation of the quorum and the required majority, the shares whose voting rights are suspended and the non-voting shares may not be taken into account, except in those instances where the company code itself expressly provides otherwise (Arts. 481 and 554 CC).

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input checked="" type="checkbox"/> Quorum: 1/2 (at first call) of the issued capital and nil (second call) <input checked="" type="checkbox"/> Majority: 3/4 of the votes cast	
-------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

Specific conditions:

<p>Specific requirements when deciding to implement the CEM:</p> <p><input checked="" type="checkbox"/> Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.):</p> <p>- the amended articles must be filed with the clerk’s office of the court of commerce and be published in the Belgian Official Journal.</p>

5) Are there ongoing disclosure requirements regarding such CEM?

Please note that Art. 10.1 Takeover Directive has not yet been implemented in Belgium (nor is this covered by the pending draft bill implementing the Takeover Directive).

However, the draft bill implementing the Transparency Directive, which is also still pending, provides that the information mentioned in Art. 10.1, sub a) and d) Takeover Directive must be mentioned in the (consolidated) Annual Report as well as in a separate Explanatory Report, both of which must be presented to the annual meeting of shareholders by the Board of Directors. In addition, the draft bill implementing the Transparency Directive requires listed companies to disclose updates of the declared total number of shares and voting rights (as well as per category) if it has changed since the previous month (Art. 15 Transparency Directive) and to disclose without delay any changes in the rights, conditions and guarantees relating to the different types of (derivative) securities (Art. 16 Transparency Directive).

The Belgian Corporate Governance Code (‘Code Lippens’), which strictly speaking contains Non-Binding Rules only, recommends that the company (listed on the stock exchange) should disclose in its Corporate Governance Charter *inter alia* the identity of its major shareholders, with a description of their voting rights and special control rights, and, if they act in concert, a description of the key elements of existing Shareholders’ Agreements. The company should also disclose any other direct and indirect relationships between the company and major shareholders (Provision 8.5). The Corporate Governance Charter should be updated as often as needed to reflect the company’s corporate governance at any time and it should be made available on the company’s website specifying the date of the most recent update (Provision 9.3).

Short form answer:

<input checked="" type="checkbox"/> Yes	<p><input checked="" type="checkbox"/> Disclosure to be made on a yearly basis: the pending draft bill implementing the Transparency Directive provides that the information mentioned in Art. 10.1, sub a) and d) Takeover Directive must be mentioned in the (consolidated) Annual Report as well as in a separate Explanatory Report, both of which must be presented to the annual GMS.</p> <p><input checked="" type="checkbox"/> Disclosure to be made on a permanent basis: the Corporate Governance Charter, (“Code Lippens”) which should be updated as often as needed to reflect the company’s corporate governance at any time and be made available on the company’s website specifying the date of the most recent update, should disclose the identity of the company’s major shareholders, with a description of their voting rights and special control rights (Non-Binding Rules).</p>
-----------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

	<input checked="" type="checkbox"/> The following disclosure requirements apply: <ul style="list-style-type: none"> - Filing of articles of association, - Publication in a Legal Gazette, - Annual Reports: the Annual Report must contain information on the capital structure and on the different classes of shares as well as on the holders of any securities with special control rights and a description of those rights, - Article 10 Report, - Special Reports: the company must disclose updates of the declared total number of shares and voting rights if there are changes since the previous month and must immediately disclose any changes in the conditions, rights and guarantees relating to the different types of (derivative) securities, - Website.
--	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

6) When a CEM is implemented, on what substantive grounds may such decision be challenged?

A decision of the general meeting of shareholders can be declared null and void on formal grounds or because of flaws in the decision itself (Art. 64 CC).

Any formal irregularity will lead to the annulment of the decision to issue Non-Voting Preference Shares, if the petitioner can show that the irregularity had an influence on the outcome of the decision process (Art. 64, 1° CC). In case of fraud (Art. 64, 2° CC), and in all other cases mentioned in the Company Code (Art. 64, 5° CC), which includes the absence of written reports when required by law, there is no need of proof that the irregularity had an influence on the outcome of the decision process.

Any decision of the general meeting will also be declared null and void in case of misuse of power or in case of acting without power (Art. 64, 3° CC). These nullity grounds must be interpreted as a “residual category”, containing all material irregularities, in addition to those provided by Article 64, 1°, 2°, 4° and 5° CC, which are a result of the violation of the law or the Articles of association. ‘Misuse of power’ can be defined as any circumstance in which the power of a representative body or the power of a majority at the general meeting, is being used to sacrifice the interest of the company for private interests which are outside the company structure. This covers both the abuses of a majority as well as a minority position. ‘Acting without power’ includes decisions which no representative body in the company has the authority to take (e.g., forcing the shareholders to transfer their shares), decisions which were made in violation of the power of other representative bodies in the company, more specifically, the exclusive powers of the board of directors, decisions made in violation of certain legal or statutory majority requirements or in violation of statutory clauses (e.g., regarding the division of profits).

Short form answer:

<input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the management. <input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the majority shareholders.	<input checked="" type="checkbox"/> The decision to implement the CEM is against the interest of the shareholders. <input checked="" type="checkbox"/> The decision to implement the CEM is against the corporate interest (defined as being distinct from the sole interest of shareholders).
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Although the abovementioned grounds are not always distinguished in practice (since the Law is articulated in a somewhat different manner) and to our understanding cannot always be distinguished (e.g., a decision taken in the sole interest of the management or majority shareholders will presumably

at the same time be against the corporate interest, whether or not defined as being distinct from the sole interest of the shareholders), these grounds are probably alternative rather than cumulative. It is the interest of the company that prevails, but the court will of course - in considering its decision as to the violation of the interest of the company - take into account which kind of interest resulted in creating Priority Shares in the first place.

DEPOSITARY CERTIFICATES

1) **Is this CEM available?**

Depositary Certificates were introduced in Belgium by the Law of 15 July 1998 (Art. 503 CC). In addition, the Law of 2 May 2002 introduced the (private) foundation with a view to facilitating the issuance of Depositary Certificates, although other legal entities can be used as well to function as a so-called ‘administration office’ (i.e. for issuing the Depositary Certificates and executing the votes and exercising the membership rights attached to the securities, while committing itself to transfer the dividends attached to the securities to the holders of the Depositary Certificates).

This technique is not frequently used in practice, although it can be an effective defensive measure against hostile takeover bids (see below). It is not common for Depositary Certificates to be traded on the stock market since this CEM is generally implemented only by some (controlling) shareholders i.e. without the cooperation of the company (see below). Depositary Certificates are sometimes used in combination with other CEMs such as Pyramid Structures (whereby Depositary Certificates are issued in exchange for the shares of the holding company in order to provide an additional safeguard against the scattering of the controlling block of shares).

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)

2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.**

Pursuant to Art. 503 CC, Depositary Certificates with regard to the securities (shares, profit-sharing certificates, convertible bonds and warrants) of an SA can be issued, with or without the cooperation of the company, by a legal person which remains in or receives the (legal) possession of the securities to which these Depositary Certificates relate and which commits itself to transfer the (economic) revenue from these securities to the holders of the Depositary Certificates. The administration office shall exercise all (membership) rights attached to these securities, including the voting rights. As a rule, the administration office cannot transfer the securities. No transfer is allowed, however, if the company concerned has made an offer of its securities to the public. Provided the ‘administration terms’ (i.e. the contract between the administration office and the holders of the certificates) do not provide otherwise, the Depositary Certificates can be exchanged for the shares, profit-sharing certificates, convertible bonds or warrants to which they relate. Any clauses stipulating the non-exchangeability may be (where previously they had to be) limited to a certain period of time. Notwithstanding any provision to the contrary, the holders of Depositary Certificates can obtain their underlying securities (and thus their voting rights) again if the administration office does not fulfill its obligation *vis-à-vis* the holders or if their interests are seriously being neglected.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	Art. 503 CC
------------------------------------------	--------------------------------------------------	-------------

3) **If this CEM is available, is it subject to any restrictions?**

As a rule, the administration office shall exercise the voting rights attached to the underlying securities (Art. 503, §1, Sec. 2 CC). It should be noted, however, that the Depositary Certificates can be exchanged again for the underlying securities if the ‘administration terms’ do not provide

otherwise. In addition, and notwithstanding any provision to the contrary, the holders of Depositary Certificates can obtain the exchange of their Depositary Certificates for the underlying securities in case the administration office does not fulfill its obligation *vis-à-vis* the holders or if their interests are seriously being neglected (Art. 503, §1, Sec. 6 CC).

Short form answer:

<input checked="" type="checkbox"/> Grant of voting rights to the holder of the Depositary Certificates in certain circumstances	<p>- the Depositary Certificates can be converted back into the underlying securities at the request of their holders if the 'administration terms' do not provide otherwise (Art. 503, §1, Sec. 6 CC).</p> <p>- in addition and notwithstanding any provision to the contrary, the holders of Depositary Certificates can obtain the conversion if the 'administration office' does not fulfill its obligation <i>vis-à-vis</i> the holders of Depositary Certificates or if their interests are seriously being neglected (Art. 503, §1, Sec. 6 CC).</p>
<input type="checkbox"/> Application of a Breakthrough Rule	<p>Draft bill implementing the Takeover Directive, opts out of the Breakthrough Rule of Art. 11 Takeover Directive; no other Breakthrough Rule is applicable.</p>

4) Who decides whether this CEM should be implemented, and under what conditions?

Depositary Certificates can be issued with or, more frequently, without the cooperation of the company. Indeed, the implementation of this CEM usually implies a decision of (or rather, an agreement between) the controlling shareholders outside of the general meeting of shareholders, by virtue of which the shares they hold in the company are exchanged for Depositary Certificates issued by the newly established legal entity (usually a foundation). The incorporation of this special purpose vehicle necessitates, of course, certain formalities and publication requirements to be fulfilled. However, these do not concern the company subject to control.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the Board of Directors	<input checked="" type="checkbox"/> Autonomous decision
<input checked="" type="checkbox"/> Other: Decision by (controlling) shareholders individually	

Specific conditions:

None.

5) Are there ongoing disclosure requirements regarding such CEM?

First of all, please note that Art. 10.1, sub f) Takeover Directive, insofar as it concerns the issuance of Depositary Certificates with the cooperation of the company, has not yet been implemented in Belgium (nor is this covered by the pending draft bill implementing the Takeover Directive). However, the draft bill implementing the Transparency Directive, which is also still pending, provides that this information must be mentioned in the (consolidated) Annual Report as well as in a separate Explanatory Report, both of which must be presented to the annual meeting of shareholders by the Board of Directors.

As mentioned above, the draft bill implementing the Transparency Directive requires listed companies to disclose updates of the declared total number of shares and voting rights (as well as per category) if it has changed since the previous month (Art. 15 Transparency Directive). This disclosure obligation applies also to Depositary Certificates that have been admitted to trading on a regulated market.

The implementation of Depositary Certificates may trigger application of the Transparency Law (Law of 2 March 1989, subject to change due to the pending implementation of the Transparency Directive), which regulates the notification of the identity of the major shareholdings in companies incorporated under Belgian law.

Each ownership, purchase or transfer of securities to which at least 5 per cent, or multiple thereof, of all existing voting rights in a company are attached, must be notified. Lower threshold percentages may be determined in the articles of incorporation of the company (with a minimum of 3 per cent and multiples of 3 per cent), but these do not override the legal thresholds. All persons who hold or pass a 5 per cent threshold percentage, solely or in concert with others (as defined in Art. 7 Transparency Decree), must notify this to the Banking, Finance and Insurance Commission and to the company listed on the stock exchange itself within two working days. The company must then, ultimately on the next working day, publish this notification. In addition, the company must mention in the notes to the annual accounts, in the section on the status of the capital, its shareholders structure as of the closing date of the accounts, as it appears from the notifications received.

If a shareholder does not disclose the ownership or the acquisition or transfer of securities at least 20 days before a general meeting, he loses that part of the voting rights attached to the securities which gave rise to the disclosure obligation. This is the main sanction, which, however, does not apply with regard to securities obtained by way of exercising a right of pre-emption, by way of inheritance, merger, division, liquidation or public offer (Art. 545 CC). In addition, the president of the commercial court can, among others, order the forced sale of the securities acquired in violation of the duty of notification (Art. 516 CC).

In addition, it should be mentioned that the Belgian Corporate Governance Code ('Code Lippens'), which, strictly speaking, contains Non-Binding Rules only, recommends that the company should disclose in its Corporate Governance Charter the identity of its major shareholders, with a description of their voting rights and special control rights, and, if they act in concert, a description of the key elements of existing shareholders' agreements. The company should also disclose other direct and indirect relationships between the company and major shareholders (Provision 8.5). The Corporate Governance Charter should be updated as often as needed to reflect the company's corporate governance at any time and it should be made available on the company's website specifying the date of the most recent update (Provision 9.3).

Short form answer:

<input checked="" type="checkbox"/> Yes	<p><input checked="" type="checkbox"/> Disclosure to be made on a yearly basis: the company must mention in the explanatory notes to the annual accounts, its ownership structure as of the closing date of the accounts, as it appears from the notifications received under the Transparency Law. In addition, please note that the pending draft bill implementing the Transparency Directive provides that the information mentioned in Art. 10.1, sub f) Takeover Directive must be mentioned in the (consolidated) Annual Report as well as in a separate Explanatory Report, both of which must be presented to the annual GMS.</p> <p><input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place: any reaching or crossing of the threshold percentage in both directions (as a result of the acquisition or transfer of securities, whether or not on the basis of an agreement to act in concert in respect of such acquisition or transfer of securities) of ownership of securities to which at least 5 per cent, or multiple thereof, of all existing voting rights in a company are attached, must be notified to the Banking, Finance and Insurance Commission and to the company itself within two working days. The company must then, ultimately on the next working day, publish this notification. Lower threshold percentages may be determined in the articles of incorporation of the company (with a minimum of 3 per cent and</p>
-----------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

	<p>multiples of 3 per cent). All persons who hold or pass a 5 per cent threshold percentage, solely or in concert with others, must notify this fact. Please note that this disclosure requirement is subject to change due to the pending implementation of the Transparency Directive. In particular, the relevant disclosure obligation will in the future also apply to Depositary Certificates that have been admitted to trading on a regulated market, whereas at present notification is only required in case of an acquisition or disposal of shares (as well as profit-sharing certificates, convertible bonds, warrants or options).</p> <p><input checked="" type="checkbox"/> Disclosure to be made on a permanent basis: the Corporate Governance Charter ('Code Lippens'), which should be updated as often as needed to reflect the company's corporate governance at any time and be made available on the company's website specifying the date of the most recent update, should disclose the identity of the company's major shareholders, with a description of their voting rights and special control rights as well as any direct and indirect relationships between the company and major shareholders (Non-Binding Rules)</p> <p><input checked="" type="checkbox"/> The following disclosure requirements apply:</p> <ul style="list-style-type: none"> - Specific Notifications: only required if the CEM involves an acquisition or disposal of shares, - Annual Reports, - Article 10 Report, - Special Reports: the company must disclose updates of the declared total number of Depositary Certificates admitted to trading on a regulated market if it has changed since the previous month and must immediately disclose any changes in the conditions, rights and guarantees relating to the different types of (derivative) securities, - Website.
--	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

6) When a CEM is implemented, on what substantive grounds may such decision be challenged?

Since Depositary Certificates can be issued without any intervention of the representative bodies of the company, there appear to be no grounds on which the implementation of this CEM can be challenged successfully.

A decision by the board of directors to issue Depositary Certificates (i.e. with the cooperation of the company) will be declared null and void if it is found to be against the corporate interest. The concept of corporate interest is generally defined rather broadly so as to include not only the shareholders collectively, but other constituencies (such as the employees, creditors, suppliers, etc.) as well. It is the interest of the company that prevails, but the court will of course - in considering its decision as to a violation of the interest of the company - take into account which kind of interest resulted in issuing Depositary Certificates in the first place.

Short form answer:

<p><input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the management.</p> <p><input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the majority shareholders.</p>	<p><input checked="" type="checkbox"/> The decision to implement the CEM is against the interest of the shareholders.</p> <p><input checked="" type="checkbox"/> The decision to implement the CEM is against the corporate interest (defined as being distinct from the sole interest of shareholders).</p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Although the abovementioned grounds are not always distinguished in practice (since the Law is articulated in a somewhat different manner) and to our understanding cannot always be distinguished (e.g., a decision taken in the sole interest of the management or majority shareholders will presumably at the same time be against the corporate interest, whether or not defined as being distinct from the sole interest of the shareholders), these grounds are probably alternative rather than cumulative.

VOTING RIGHT CEILINGS

1) Is this CEM available?

Voting Right Ceilings are allowed in the SA but have almost disappeared since the Law of 18 July 1991 made it merely optional to introduce this CEM in the articles of incorporation. Before the Law of 18 July 1991, Voting Rights Ceilings were mandatory. In addition, the Law of 13 April 1995 made it entirely free for the articles of incorporation to determine the threshold above which shareholders, irrespective of the number of voting shares they hold, are prohibited from voting. Art. 544 CC presently states that the articles may limit the number of votes at the disposal of each shareholder at the general meeting, provided such limitation shall apply to each shareholder without distinguishing between the securities for which he participates at the voting.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)

2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.

Art. 544 CC sets forth that the articles of incorporation of the SA may limit the number of votes at the disposal of each shareholder at the general meeting, provided such limitation shall apply to each shareholder without distinguishing between the securities for which he participates at the voting.

The Voting Right Ceiling is no longer mandatory (since the Law of 18 July 1991), but it can be introduced by the articles of incorporation, which are free to determine the actual threshold (since the Law of 13 April 1995) provided that it applies to all securities without distinction.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	Art. 544 CC
------------------------------------------	--------------------------------------------------	-------------

3) If this CEM is available, is it subject to any restrictions?

As a rule, the general meeting of shareholders is free to determine the actual threshold of the Voting Right Ceiling in the articles of incorporation. However, any limitation of the number of votes must apply to each shareholder without distinguishing between the securities for which he participates at the voting (Art. 544 CC). In other words, the Voting Restriction may not relate to any 'quality' of the shares or their holders, but instead must apply to all shareholders equally, irrespective of the securities with which they participate at the vote.

Short form answer:

Application of a Breakthrough Rule	Draft bill implementing the Takeover Directive, opts out of the Breakthrough Rule of Art. 11 Takeover Directive; no other Breakthrough Rule is applicable.
<input checked="" type="checkbox"/> Others: principle of equality	Any limitation of the number of votes at the disposal of each shareholder at the general meeting must apply to each shareholder without distinguishing between the securities for which he participates at the voting (Art. 544 CC).

4) Who decides whether this CEM should be implemented, and under what conditions?

The general meeting of shareholders decides, in accordance with the provisions for amendment of the articles of incorporation. Accordingly, a proposal to implement a Voting Right Ceiling can only be validly deliberated upon or accepted if the shareholders, present or represented, represent at least half of the issued capital (and provided that specific mention of the proposed amendments to the articles has been made in the convening notice). In addition, an amendment shall be adopted only if it has obtained three quarters of the votes cast. If the quorum requirement is not satisfied, a new convening notice is required, addressed to all the shareholders, those who were present and those who were not, in which case the new meeting may deliberate and validly resolve, irrespective of the part of the capital represented by the shareholders present at such second meeting. A three-quarter majority, however, is still required in order for the resolution to pass (Art. 558 CC). Even more stringent quorum or majority requirements can be laid down in the articles of incorporation.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input checked="" type="checkbox"/> Quorum: 1/2 (at first call) of the issued capital and nil (second call) <input checked="" type="checkbox"/> Majority: 3/4 of the votes cast
-------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Specific conditions:

<p>Specific requirements when deciding to implement the CEM:</p> <input checked="" type="checkbox"/> Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.): - the amended articles must be filed with the clerk's office of the court of commerce and be published in the Belgian Official Journal.

5) Are there ongoing disclosure requirements regarding such CEM?

Please note that Art. 10.1, sub f) Takeover Directive has not yet been implemented in Belgium (nor is this covered by the pending draft bill implementing the Takeover Directive). However, the draft bill implementing the Transparency Directive, which is also still pending, provides that this information must be mentioned in the (consolidated) Annual Report as well as in a separate Explanatory Report, both of which must be presented to the annual meeting of shareholders by the Board of Directors.

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> The following disclosure requirements apply: - Filing of articles of association, - Publication in a Legal Gazette, - Annual Report, - Article 10 Report, - Special Reports: the company must disclose updates of the declared total number of shares and voting rights if it has changed since the previous month and must immediately disclose any changes in the rights, conditions and guarantees relating to the different types of (derivative) securities. Please note that this disclosure requirement may still be subject to change due to the pending implementation of the Transparency Directive.
-----------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

6) When a CEM is implemented, on what substantive grounds may such decision be challenged?

Any decision of the general meeting of shareholders will be declared null and void in case of misuse of power or in case of acting without power (Art. 64, 3° CC). These nullity grounds must be interpreted as a ‘residual category,’ containing all material irregularities, in addition to those provided by Art. 64, 1°, 2°, 4° and 5° CC, which are a result of the violation of the law or the articles of incorporation. Misuse of power can be defined as any circumstance in which the power of the general meeting or the power of a majority at the general meeting is being used to sacrifice the interest of the company for private interests which are outside the company structure. This covers both the abuses of a majority as well as of a minority position. Acting without power includes decisions which no representative body in the company has the authority to take (e.g., forcing the shareholders to transfer their shares), decisions which are made in violation of the power of other representative bodies in the company, more specifically, the exclusive powers of the board of directors, decisions made in violation of certain legal or statutory majority requirements or in violation of statutory clauses (e.g., regarding the division of profits).

Besides flaws in the decision itself, any formal irregularity attached to the decision of the general meeting of shareholders to introduce a Voting Right Ceiling into the articles of incorporation can also lead to the annulment of the decision, provided the petitioner can show that the irregularity has had an influence on the outcome of the decision process (Art. 64, 1° CC). In case of fraud (Art. 64, 2° CC) and in all other cases explicitly mentioned in the Company Code (Art. 64, 5° CC), there is, however, no need of proof that the irregularity had an influence on the outcome of the decision process.

Short form answer:

<p><input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the management.</p> <p><input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the majority shareholders.</p>	<p><input checked="" type="checkbox"/> The decision to implement the CEM is against the interest of the shareholders.</p> <p><input checked="" type="checkbox"/> The decision to implement the CEM is against the corporate interest (defined as being distinct from the sole interest of shareholders).</p> <p><input checked="" type="checkbox"/> Such grounds are alternative.</p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Although the abovementioned grounds are not always distinguished in practice (since the Law is articulated in a somewhat different manner) and to our understanding cannot always be distinguished (e.g., a decision taken in the sole interest of the management or majority shareholders will presumably at the same time be against the corporate interest, whether or not defined as being distinct from the sole interest of the shareholders), these grounds are probably alternative rather than cumulative. It is the interest of the company that prevails, but the court will of course - in considering its decision as to a violation of the interest of the company - take into account which kind of interest resulted in introducing a Voting Right Ceiling in the first place.

Having said this, it is very hard to imagine cases whereby the introduction of a ceiling would be annulled due to the reasons mentioned in the short form answer (e.g., how can a ceiling be in the sole interest of the incumbent majority shareholders, when the ceiling is applicable on his stake too?).

OWNERSHIP CEILINGS

1) **Is this CEM available?**

It must be noted that Ownership Ceilings are highly unusual as they are to a certain extent at odds with the nature of the SA, which fundamentally serves as a device for collecting the financial means necessary for the activities of the business undertaking, irrespective of the shareholders' identity or number. Nonetheless, the possibility to implement this type of CEM follows from the general principle of freedom of contract.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)

2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.**

It follows from the general principle of contractual freedom that the articles of incorporation may impose a restriction prohibiting investors from taking a participation in the company above a certain threshold. A possible sanction on crossing this ownership threshold could be the suspension of voting rights attached to the shares held in excess of the threshold (cfr. the rules on Cross-Shareholdings). Such a clause could also be stipulated in a Shareholders' Agreement.

Short form answer:

<input checked="" type="checkbox"/> General Principle	The freedom of contract implies that the articles of association or a Shareholders' Agreement can impose a restriction prohibiting investors from taking a participation in the company above a certain threshold.
-------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

3) **If this CEM is available, is it subject to any restrictions?**

There appear to be no significant restrictions.

Short form answer:

Application of a Breakthrough Rule	Draft bill implementing the Takeover Directive, opts out of the Breakthrough Rule of Art. 11 Takeover Directive; no other Breakthrough Rule is applicable.
------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------

4) **Who decides whether this CEM should be implemented, and under what conditions?**

The general meeting of shareholders decides in accordance with the provisions for amendment of the articles of incorporation. Accordingly, a proposal to implement an Ownership Ceiling can only be validly deliberated upon or accepted if the shareholders, present or represented, represent at least half of the issued capital (and provided that specific mention of the proposed amendments to the articles has been made in the convening notice). In addition, an amendment shall be adopted only if it has obtained three quarters of the votes cast. If the quorum requirement is not satisfied, a new convening notice is required, addressed to all the shareholders, those who were present and those who were not, in which case the new meeting may deliberate and validly resolve, irrespective of the part of the capital represented by the shareholders present at such second meeting. A three-quarter majority,

however, is still required in order for the resolution to pass (Art. 558 CC). Even more stringent quorum or majority requirements can be laid down in the articles of incorporation.

If this CEM should be implemented in a Shareholders' Agreement, the individual shareholders who are a party to this agreement shall decide without any intervention from a representative body of the SA.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input checked="" type="checkbox"/> Quorum: 1/2 (at first call) of the issued capital and nil (second call) <input checked="" type="checkbox"/> Majority: 3/4 of the votes cast
<input checked="" type="checkbox"/> Other: Decision by (controlling) shareholders individually	

Specific conditions:

Specific requirements when deciding to implement the CEM: <input checked="" type="checkbox"/> Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.): - the amended articles must be filed with the clerk's office of the court of commerce and be published in the Belgian Official Journal.

5) Are there ongoing disclosure requirements regarding such CEM?

Please note that Art. 10.1, sub b) Takeover Directive has not yet been implemented in Belgium (nor is this covered by the pending draft bill implementing the Takeover Directive). However, the draft bill implementing the Transparency Directive, which is also still pending, provides that this information must be mentioned in the (consolidated) Annual Report as well as in a separate Explanatory Report, both of which must be presented to the annual meeting of shareholders by the Board of Directors.

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> The following disclosure requirements apply: - Filing of articles of association, - Publication in a Legal Gazette, - Annual Report, - Article 10 Report.
-----------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

6) When a CEM is implemented, on what substantive grounds may such decision be challenged?

Any decision of the general meeting of shareholders will be declared null and void in case of misuse of power or acting without power (Art. 64, 3° CC). These nullity grounds must be interpreted as a 'residual category,' containing all material irregularities, in addition to those provided by Art. 64, 1°, 2°, 4° and 5° CC, which are a result of the violation of the law or the articles of incorporation. Misuse of power can be defined as any circumstance in which the power of the general meeting or the power of a majority at the general meeting is being used to sacrifice the interest of the company for private interests which are outside the company structure. This covers both the abuses of a majority as well as of a minority position. Acting without power includes decisions which no representative body in

the company has the authority to take (e.g., forcing the shareholders to transfer their shares), decisions which are made in violation of the power of other representative bodies in the company, more specifically, the exclusive powers of the board of directors, decisions made in violation of certain legal or statutory majority requirements or in violation of statutory clauses (e.g., regarding the division of profits).

Besides flaws in the decision itself, any formal irregularity attached to the decision of the general meeting of shareholders to introduce an Ownership Ceiling into the articles of incorporation will also lead to the annulment of the decision, provided the petitioner can show that the irregularity has had an influence on the outcome of the decision process (Art. 64, 1° CC). In case of fraud (Art. 64, 2° CC) and in all other cases explicitly mentioned in the Company Code (Art. 64, 5° CC), there is, however, no need of proof that the irregularity had an influence on the outcome of the decision process.

Short form answer:

<input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the management	<input checked="" type="checkbox"/> The decision to implement the CEM is against the interest of the shareholders
<input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the majority shareholders	<input checked="" type="checkbox"/> The decision to implement the CEM is against the corporate interest (defined as being distinct from the sole interest of shareholders)
	<input checked="" type="checkbox"/> Such grounds are alternative.

Although the abovementioned grounds are not always distinguished in practice (since the Law is articulated in a somewhat different manner) and to our understanding cannot always be distinguished (e.g., a decision taken in the sole interest of the management or majority shareholders will normally at the same time be against the corporate interest, whether or not defined as being distinct from the sole interest of the shareholders), these grounds are probably alternative rather than cumulative. It is the interest of the company that prevails, but the court will of course - in considering its decision as to a violation of the interest of the company - take into account which kind of interest resulted in introducing an Ownership Ceiling in the first place.

SUPERMAJORITY PROVISIONS

1) Is this CEM available?

The Belgian Company Code requires a supermajority decision of the general meeting of shareholders to approve certain important corporate changes, such as an amendment of the articles of incorporation (Art. 558 CC), a change of the company's purpose (Art. 559 CC) or form (Art. 781 CC) or an alteration of the mutual relationships between the rights of the different existing categories of securities (Art. 560 CC). The articles of incorporation may strengthen the legal quorum and supermajority requirements or impose a supermajority vote for other decisions as well (e.g. the appointment of directors; however, a special quorum or majority requirement for the dismissal of directors would contravene the so-called '*ad nutum*' revocable character of their mandate). Again, this follows from the general principle of contractual freedom.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)

2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.

The freedom of contract implies that the articles of incorporation may as a rule impose new or strengthen existing quorum and supermajority requirements for decisions of the general meeting of shareholders. This is confirmed by Art. 558, Sec. 1 CC, pursuant to which the general meeting has the right to make amendments to the articles of incorporation "unless otherwise provided."

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	Art. 558, Sec. 1 CC
<input checked="" type="checkbox"/> General Principle		The freedom of contract implies that the articles of incorporation can impose or strengthen quorum and supermajority requirements for decisions of the general meeting of shareholders.

3) If this CEM is available, is it subject to any restrictions?

There appear to be no significant restrictions, besides the fact that a special quorum or majority requirement for the dismissal of directors would contravene the so-called '*ad nutum*' revocable character of their mandate.¹

For sake of completeness, it should also be noted that if a decision specifically affects the rights of a shareholder (as opposed to an entire class of shareholders), such shareholder must consent to this decision. Indeed, if certain rights are granted by the articles to individual shareholders, they should be treated as third parties in this respect (the so-called 'acquired rights' doctrine).²

¹ Cass. 13 April 1989, T.R.V., 1989, 321.

² Cass. 5 June 1947, Pas., 1947, I, 240.

Short form answer:

<input checked="" type="checkbox"/> Supermajority Provisions may only be used for certain types of decisions.	Supermajority Provisions may not be used for the dismissal of directors (as this would contravene the so-called ‘ <i>ad nutum</i> ’ revocable character of their mandate).
<input type="checkbox"/> Application of a Breakthrough Rule	Draft bill implementing the Takeover Directive, opts out of the Breakthrough Rule of Art. 11 Takeover Directive; no other Breakthrough Rule is applicable.
<input checked="" type="checkbox"/> Others: Specific Shareholder Consent	The ‘acquired rights’ doctrine holds that if a decision of the general meeting of shareholders specifically affects the rights of a shareholder individually (as opposed to an entire class of shareholders), such shareholder must consent to this decision.

4) Who decides whether this CEM should be implemented, and under what conditions?

The general meeting of shareholders decides in accordance with the provisions for amendment of the articles of incorporation. Accordingly, a proposal to implement Supermajority Provisions can only be validly deliberated upon or accepted if the shareholders, present or represented, represent at least half of the issued capital (and provided that specific mention of the proposed amendments to the articles has been made in the convening notice). In addition, an amendment shall be adopted only if it has obtained three quarters of the votes cast. If the quorum requirement is not satisfied, a new convening notice is required, addressed to all the shareholders, those who were present and those who were not, in which case the new meeting may deliberate and validly resolve, irrespective of the part of the capital represented by the shareholders present at such second meeting. A three-quarter majority, however, is still required in order for the resolution to pass (Art. 558 CC). Please note, however, that even more stringent quorum or majority requirements can be laid down in the articles of incorporation.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input checked="" type="checkbox"/> Quorum: 1/2 (at first call) of the issued capital and nil (second call) <input checked="" type="checkbox"/> Majority: 3/4 of the votes cast
-------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Specific conditions:

Specific requirements when deciding to implement the CEM: <input checked="" type="checkbox"/> Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.): - the amended articles must be filed with the clerk’s office of the court of commerce and be published in the Belgian Official Journal.

5) Are there ongoing disclosure requirements regarding such CEM?

Please note that Art. 10.1, sub h) Takeover Directive has not yet been implemented in Belgium (nor is this covered by the pending draft bill implementing the Takeover Directive). However, the draft bill

implementing the Transparency Directive, which is also still pending, provides that this information must be mentioned in the (consolidated) Annual Report as well as in a separate Explanatory Report, both of which must be presented to the annual meeting of shareholders by the Board of Directors.

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> The following disclosure requirements apply: <ul style="list-style-type: none"> - Filing of articles of association, - Publication in a Legal Gazette, - Annual Report, - Article 10 Report.
-----------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

6) When a CEM is implemented, on what substantive grounds may such decision be challenged?

Any decision of the general meeting of shareholders will be declared null and void in case of misuse of power or acting without power (Art. 64, 3° CC). These nullity grounds must be interpreted as a ‘residual category,’ containing all material irregularities, in addition to those provided by Art. 64, 1°, 2°, 4° and 5° CC, which are a result of the violation of the law or the articles of incorporation. Misuse of power can be defined as any circumstance in which the power of the general meeting or the power of a majority at the general meeting is being used to sacrifice the interest of the company for private interests which are outside the company structure. This covers both the abuses of a majority as well as of a minority position. Acting without power includes decisions which no representative body in the company has the authority to take (e.g., forcing the shareholders to transfer their shares), decisions which are made in violation of the power of other representative bodies in the company (more specifically, the exclusive powers of the board of directors), decisions made in violation of certain legal or statutory majority requirements or in violation of statutory clauses (e.g., regarding the division of profits).

Besides flaws in the decision itself, any formal irregularity attached to the decision of the general meeting of shareholders to introduce Supermajority Provisions into the articles of incorporation will also lead to the annulment of the decision, provided the petitioner can show that the irregularity has had an influence on the outcome of the decision process (Art. 64, 1° CC). In case of fraud (Art. 64, 2° CC) and in all other cases explicitly mentioned in the Company Code (Art. 64, 5° CC), there is, however, no need of proof that the irregularity had an influence on the outcome of the decision process.

Short form answer:

<input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the management. <input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the majority shareholders.	<input checked="" type="checkbox"/> The decision to implement the CEM is against the interest of the shareholders. <input checked="" type="checkbox"/> The decision to implement the CEM is against the corporate interest (defined as being distinct from the sole interest of shareholders). <input checked="" type="checkbox"/> Such grounds are alternative.
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Although the abovementioned grounds are not always distinguished in practice (since the Law is articulated in a somewhat different manner) and to our understanding cannot always be distinguished (e.g., a decision taken in the sole interest of the management or majority shareholders will normally at the same time be against the corporate interest, whether or not defined as being distinct from the sole interest of the shareholders), these grounds are probably alternative rather than cumulative. It is the interest of the company that prevails, but the court will of course - in considering its decision as to a violation of the interest of the company - take into account which kind of interest resulted in introducing a Supermajority Provision in the first place.

GOLDEN SHARES

1) Is this CEM available?

Golden Shares, conferring special rights to federal or local governments or government controlled vehicles, sometimes occur in Belgian privatized companies. In this regard, it should be noted that they have been upheld by the European Court of Justice in the light of the free movement of capital (Art. 56 EC-Treaty) in the only case that has been brought before it so far.³

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)

2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.

Golden Shares are typically found in specific laws or regulations dealing with privatized companies or industries and/or in the privatized company's articles of incorporation. They may enable the government to block takeovers and share transfers, limit voting rights, and/or veto management decisions.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule
<input checked="" type="checkbox"/> Court Decisions	ECJ

3) If this CEM is available, is it subject to any restrictions?

Provided that there is a specific legal basis for the implementation of Golden Shares, there seem to be no significant restrictions (besides, of course, those resulting from Art. 56 EC-Treaty and the jurisprudence of the ECJ).

Short form answer:

Application of a Breakthrough Rule	Draft bill implementing the Takeover Directive, opts out of the Breakthrough Rule of Art. 11 Takeover Directive; no other Breakthrough Rule is applicable.
------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------

4) Who decides whether this CEM should be implemented, and under what conditions?

Generally, Golden Shares will be introduced by Law or Regulation. If Golden Shares are to be established in the articles of incorporation, this will require a qualified majority decision by the general meeting of shareholders (Art. 558 CC). As a rule, a proposal for amendment of the articles can only be validly deliberated upon or accepted if the shareholders, present or represented, represent at least half of the issued capital (and provided that specific mention of the proposed amendments has been made in the convening notice). In addition, an amendment shall be adopted only if it has obtained three quarters of the votes cast. If the quorum requirement is not satisfied, a new convening notice is required, addressed to all the shareholders, those who were present and those who were not,

³ E.C.J. C-503/99, 4 June 2002, Commission/Belgium, Jur. 2002, I-4809.

in which case the new meeting may deliberate and validly resolve, irrespective of the part of the capital represented by the shareholders present at such second meeting. A three-quarter majority, however, is still required in order for the resolution to pass.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input checked="" type="checkbox"/> Quorum: 1/2 (at first call) of the issued capital and nil (second call). <input checked="" type="checkbox"/> Majority: 3/4 of the votes cast, if the Golden Shares are established in the Articles of association.
<input checked="" type="checkbox"/> Other: Laws/ Administrative Rules	

Specific conditions:

<p>Specific requirements when deciding to implement the CEM:</p> <input checked="" type="checkbox"/> Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.): - the amended articles must be filed with the clerk’s office of the court of commerce and be published in the Belgian Official Journal

5) Are there ongoing disclosure requirements regarding such CEM?

Please note that Art. 10.1, sub d) Takeover Directive has not yet been implemented in Belgium (nor is this covered by the pending draft bill implementing the Takeover Directive). However, the draft bill implementing the Transparency Directive, which is also still pending, provide that this information must be mentioned in the (consolidated) Annual Report as well as in a separate Explanatory Report, both of which must be presented to the annual meeting of shareholders by the Board of Directors.

The Belgian Corporate Governance Code (‘Code Lippens’), which strictly speaking contains Non-Binding Rules only, recommends that the company should disclose in its Corporate Governance Charter *inter alia* the identity of its major shareholders, with a description of their voting rights and special control rights, and, if they act in concert, a description of the key elements of existing Shareholders’ Agreements. The company should also disclose any other direct and indirect relationships between the company and major shareholders (Provision 8.5). The Corporate Governance Charter should be updated as often as needed to reflect the company’s corporate governance at any time and it should be made available on the company’s website specifying the date of the most recent update (Provision 9.3).

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure to be made on a yearly basis: the pending draft bill implementing the Transparency Directive provides that the information mentioned in Art. 10.1, sub d) Takeover Directive must be mentioned in the (consolidated) Annual Report as well as in a separate Explanatory Report, both of which must be presented to the annual GMS <input checked="" type="checkbox"/> Disclosure to be made on a permanent basis: the Corporate Governance Charter, which should be updated as often as needed to reflect the company’s corporate governance at any time and be made available on the company’s website specifying the date of the most recent update, should disclose the identity of the company’s major shareholders, with a description of their voting rights and special control rights (Non-Binding Rules).
-----------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

	<input checked="" type="checkbox"/> The following disclosure requirements apply: <ul style="list-style-type: none"> - Filing of articles of association, - Publication in a Legal Gazette, - Annual Report, - Article 10 Report, - Website.
--	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

6) When a CEM is implemented, on what substantive grounds may such decision be challenged?

Provided that there is a specific legal basis, the creation of Golden Shares can presumably not successfully be challenged as abusive; i.e. as contrary to the interests of the (minority) shareholders or the company. On one occasion, the Golden Shares of the Belgian State in the *Société de distribution du gaz SA* and in the *Société nationale de transport par canalisations SA* have been challenged by the European Commission as contrary to the free movement of capital (Art. 56 EC-Treaty), but they were subsequently upheld by the European Court of Justice as justified by overriding requirements of the general interest (the safeguarding of energy supplies in the event of a crisis).⁴

⁴ E.C.J. 4 June 2002, C-503/99, Commission/Belgium, Jur. 2002, I-4809.

PARTNERSHIPS LIMITED BY SHARES

1) Is this CEM available?

The Partnership Limited by Shares, defined as the partnership entered into by one or more jointly and severally liable partners, called managing or working partners, with one or more sleeping partners who have the capacity of shareholders and who commit themselves to make only a fixed contribution (Art. 654 CC), is sometimes used as a CEM, as it offers an ideal mix of the interesting characteristics of the SA and of the Ordinary Limited Partnership.

Indeed, the incorporation, the shares and the capital of the Partnership Limited by Shares are, like other topics not covered by Book IX of the Company Code on Partnership Limited by Shares, governed by the same rules as those that are applicable to the SA (Art. 657 CC). This implies the possibility of issuing shares which can be quoted on the stock exchange. Because of this great similarity between the SA and the Partnership Limited by Shares, the EC Company Law Directives have often been applied to the Partnership Limited by Shares.

The most interesting aspect of the Partnership Limited by Shares, however, is the organization of its management. Although the managing or working partner in the Partnership Limited by Shares is subject to unlimited liability for the debts of the partnership (Art. 654 CC), this unlimited liability can, to a certain extent, be avoided by appointing a limited liability company as working partner (e.g., an SPRL). In that case the working partner, as such, undergoes the rule of unlimited liability, but the partners in the working partner enjoy limited liability. It should be noted that the physical person who under Belgian law must be appointed as so-called ‘permanent representative’ of such legal person-director among its shareholders, directors or employees and who will be charged with the execution of the task of director in the name and on account of the legal person enjoys limited liability as well (Art. 61, §2, Sec. 3 CC). In addition, while enjoying the same residual authority as the directors in the SA, the managing partner is not subject to the same regime of dismissal at will by the general meeting of shareholders. Indeed, the managing partner must be appointed in the articles of incorporation. As a result, his dismissal is impossible without the extraordinary majority required for an alteration of the articles of incorporation (Art. 658, Sec. 1 CC). In addition, his dismissal by the general meeting can be made subject to legitimate reasons. Moreover, and unless the articles of incorporation provide otherwise, dealings that affect the interests of the partnership with regard to third parties or amend the articles of incorporation (including the dismissal of the managing partner) shall not be performed or ratified by the general meeting other than with the consent of the managing partner(s) (Art. 659 CC).

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)

2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.

The Partnership Limited by Shares is governed by Book IX of the Company Code (Arts. 654-660 CC), whereby Art. 657 CC refers to the Rules for the SA for all topics not covered. The possibility to use this company form as a CEM follows from the general principle of contractual freedom.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	Arts. 654-660 CC, whereby Art. 657 CC refers to the Rules for the SA for all topics not covered.
------------------------------------------	--------------------------------------------------	--------------------------------------------------------------------------------------------------

3) If this CEM is available, is it subject to any restrictions?

There appear to be no significant restrictions on the use of this CEM, other than those that may follow from the Legal Rules applicable to the Partnership Limited by Shares (see above) and to the conversion of the SA into such Partnership Limited by Shares (see below).

Short form answer:

<input type="checkbox"/> Application of a Breakthrough Rule	Draft bill implementing the Takeover Directive, opts out of the Breakthrough Rule of Art. 11 Takeover Directive; no other Breakthrough Rule is applicable
-------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------

4) Who decides whether this CEM should be implemented, and under what conditions?

The setting up of a parent Partnership Limited by Shares (instead of a regular holding company) usually implies a decision of (or rather, an agreement between) the controlling shareholders outside of the general meeting of shareholders, by virtue of which the shares in the company concerned are used as consideration in kind for the creation of the Partnership Limited by Shares, thus in exchange for shares in the newly established control vehicle. The incorporation of the Partnership Limited by Shares necessitates, of course, certain formalities and publication requirements to be fulfilled. However, these do not concern the company subject to control.

The conversion of an existing SA into a Partnership Limited by Shares, on the other hand, requires the special procedure for change of the company form to be followed (Art. 781 CC).

Before the conversion is resolved by the general meeting of shareholders, a statement of assets and liabilities must be made, which may not have been adopted more than 3 months before and which must mention the negative difference between the net-assets and the capital, if any (Art. 776 CC). The statutory auditor must then report on such statement and state in particular whether the value of the net-assets was overestimated (Art. 777 CC). The proposal for conversion must be clarified by the Board of Directors in a special report, which - together with the statement of assets and liabilities - must be mentioned in the agenda for the general meeting of shareholders which is to decide on the conversion (Art. 778 CC). A copy of such reports and a draft of the amendment of the articles must be appended to the convening notice and be sent forthwith to the persons who satisfy the formalities required under the articles for admission to the general meeting of shareholders (Art. 779 CC). The decision of the general meeting of shareholders will be null and void if the various reports required under the aforementioned provisions are lacking (Art. 780 jo. 64, 5° CC).

The decision by the general meeting of shareholders, in turn, requires a qualified majority (Art. 781 CC) that is somewhat different from the qualified majority for an ordinary alteration of the articles of association (Art. 558 CC). The relevant rules, which are rather complex, can be summarized as follows:

- Firstly, a proposal for conversion can only be validly deliberated upon or accepted if the shareholders, present or represented, represent not only at least half of the issued capital but also at least half of the total number of Profit-Sharing Certificates (if any). If the quorum requirement is not satisfied, a new convening notice is required, addressed to all the shareholders, those who were present and those who were not. Still, this new meeting will have to satisfy the same quorum requirement as upon the first call.

- Secondly, a proposal shall be adopted only if it has obtained at least 80% (instead of the usual 75%) of the votes cast. In the event of conversion, Profit-Sharing Certificates also give the right to vote, even when the articles of association have not granted them any voting rights. However, the general restrictions on the total voting power of Profit-Sharing Certificates apply: (i) Profit-Sharing

Certificates may not give the right to cast more than one vote per security, notwithstanding any provisions to the contrary; (ii) in the aggregate, no more votes may be conferred than one half of the number vested in the joint capital shares; (iii) they may not be counted at voting for more than two-thirds of the number of votes cast for the capital shares (Art. 542 CC).

- Thirdly, if different categories of securities exist and the conversion gives rise to an alteration of the mutual relationships between their rights, Art. 560 CC has to be observed (whereby the abovementioned special quorum and majority requirements have to be fulfilled within each category).

- Finally, on conversion into a Partnership Limited by Shares, the consent of the partners who are designated as general partners is always required.

Please note that even more stringent quorum or majority requirements can be laid down in the articles of association (Art. 781, §1, Sec. 1 CC).

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input checked="" type="checkbox"/> Quorum: 1/2 of the issued capital and of the total number of PSCs <input checked="" type="checkbox"/> Majority: 4/5 of the votes cast (PSCs included) besides consent of the partners who are designated as general partners.
<input checked="" type="checkbox"/> Other: Decision by (controlling) shareholders individually	

Specific conditions:

<p>Specific requirements when deciding to implement the CEM:</p> <input checked="" type="checkbox"/> Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.): - a statement of assets and liabilities and a special Auditors' Report and Board Report must be drawn up and be made available to the shareholders; - the amended articles must be filed with the clerk's office of the court of commerce and be published in the Belgian Official Journal

5) Are there ongoing disclosure requirements regarding such CEM?

The setting up of a parent Partnership Limited by Shares may trigger application of the Transparency Law (Law of 2 March 1989, subject to change due to the pending implementation of the Transparency Directive), which regulates the notification of major shareholdings in companies incorporated under Belgian law.

Each ownership, purchase or transfer of securities, to which at least 5 per cent, or multiple thereof, of all existing voting rights in a company are attached, must be notified. Lower threshold percentages may be determined in the articles of incorporation of the company (with a minimum of 3 per cent and multiples of 3 per cent), but these do not override the legal thresholds. All persons who hold or pass a 5 per cent threshold percentage, solely or in concert with others (as defined in Art. 7 Transparency Decree), must notify this to the Banking, Finance and Insurance Commission and to the company listed on the stock exchange itself within two working days. The company must then, ultimately on the next working day, publish this notification. In addition, the company must mention in the notes to

the annual accounts, in the section on the status of the capital, its shareholders structure as of the closing date of the accounts, as it appears from the notifications received.

If a shareholder does not disclose the ownership or the acquisition or transfer of securities at least 20 days before a general meeting, he loses that part of the voting rights attached to the securities which gave rise to the disclosure obligation. This is the main sanction, which, however, does not apply with regard to securities obtained by way of exercising a right of pre-emption, by way of inheritance, merger, division, liquidation or public offer (Art. 545 CC). In addition, the president of the commercial court can, among others, order the forced sale of the securities acquired in violation of the duty of notification (Art. 516 CC). Please note that Art. 515 CC provides that the obligations under the transparency legislation can be extended by the articles of incorporation to non-listed companies as well.

In addition, it should be mentioned that the Belgian Corporate Governance Code ('Code Lippens'), which, strictly speaking, contains Non-Binding Rules only, recommends that the company should disclose in its Corporate Governance Charter *inter alia* the identity of its major shareholders, with a description of their voting rights and special control rights, and, if they act in concert, a description of the key elements of existing shareholders' agreements. The company should also disclose other direct and indirect relationships between the company and major shareholders (Provision 8.5). The Corporate Governance Charter should be updated as often as needed to reflect the company's corporate governance at any time and it should be made available on the company's website specifying the date of the most recent update (Provision 9.3).

Short form answer:

<input checked="" type="checkbox"/> Yes	<p><input checked="" type="checkbox"/> Disclosure to be made on a yearly basis: the company must mention in the explanatory notes to the annual accounts, its ownership structure as of the closing date of the accounts, as it appears from the notifications received under the Transparency Law.</p> <p><input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place: any reaching or crossing of threshold percentage in both directions (as a result of the acquisition or transfer of securities, whether or not on the basis of an agreement to act in concert in respect of such acquisition or transfer of securities) of ownership of securities to which at least 5 per cent, or multiple thereof, of all existing voting rights in a company are attached, must be notified to the Banking, Finance and Insurance Commission and to the company itself within two working days. The company must then, ultimately on the next working day, publish this notification. Lower threshold percentages may be determined in the articles of incorporation of the company (with a minimum of 3 per cent and multiples of 3 per cent). All persons who hold or pass a 5 per cent threshold percentage, solely or in concert with others, must notify this.</p> <p><input checked="" type="checkbox"/> The following disclosure requirements apply:</p> <ul style="list-style-type: none"> - Filing of articles of association, - Publication in a Legal Gazette, - Auditors' Report, - Specific Notifications, - Information to shareholders - Annual Reports, - Article 10 Report, - Special Reports: the company must disclose updates of the declared total number of shares and voting rights if it has changed since the previous month and must immediately
-----------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

	disclose any changes in the rights, conditions and guarantees relating to the different types of (derivative) securities. Please note that this disclosure requirement may still be subject to change due to the pending implementation of the Transparency Directive, - Website.
--	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

6) When a CEM is implemented, on what substantive grounds may such decision be challenged?

Since a Partnership Limited by Shares can be set up without any intervention of the representative bodies of the SA, there appear to be no grounds on which the implementation of this CEM can be challenged successfully.

As far as conversion into a Partnership Limited by Shares is concerned, any decision of the general meeting of shareholders will be declared null and void in case of misuse of power or in case of acting without power (Art. 64, 3° CC). These nullity grounds must be interpreted as a “residual category,” containing all material irregularities, in addition to those provided by Art. 64, 1°, 2°, 4° and 5° CC, which are a result of the violation of the law or the Articles of association. Misuse of power can be defined as any circumstance in which the power of the general meeting or the power of a majority at the general meeting is being used to sacrifice the interest of the company for private interests which are outside the company structure. This covers both the abuses of a majority as well as of a minority position. Acting without power includes decisions which no representative body in the company has the authority to take (e.g., forcing the shareholders to transfer their shares), decisions which are made in violation of the power of other representative bodies in the company, more specifically, the exclusive powers of the board of directors, decisions made in violation of certain legal or statutory majority requirements or in violation of statutory clauses (e.g., regarding the division of profits).

Besides flaws in the decision itself, any formal irregularity attached to the decision of the general meeting of shareholders to introduce a Voting Right Ceiling into the Articles of association can also lead to the annulment of the decision, provided the petitioner can show that the irregularity has had an influence on the outcome of the decision process (Art. 64, 1° CC). In case of fraud (Art. 64, 2° CC) and in all other cases explicitly mentioned in the Company Code (Art. 64, 5° CC), there is, however, no need of proof that the irregularity had an influence on the outcome of the decision process.

Short form answer:

<input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the management. <input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the majority shareholders.	<input checked="" type="checkbox"/> The decision to implement the CEM is against the interest of the shareholders. <input checked="" type="checkbox"/> The decision to implement the CEM is against the corporate interest (defined as being distinct from the sole interest of shareholders).
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Although the abovementioned grounds are not always distinguished in practice (since the Law is articulated in a somewhat different manner) and to our understanding cannot always be distinguished (e.g., a decision taken in the sole interest of the management or majority shareholders will presumably at the same time be against the corporate interest, whether or not defined as being distinct from the sole interest of the shareholders), these grounds are probably alternative rather than cumulative. It is the interest of the company that prevails, but the court will of course - in considering its decision as to a violation of the interest of the company - take into account which kind of interest resulted in conversion into a Partnership Limited by Shares in the first place.

CROSS-SHAREHOLDINGS

1) **Is this CEM available?**

Cross-Shareholdings are allowed in Belgium, but only within certain limits.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)

2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.**

The Belgian legislator has regulated Cross-Shareholdings between related companies (Control Cross-Shareholdings) and Cross-Shareholdings between unrelated companies (Basic Cross-Shareholdings) differently (Arts. 631 and. 632 CC respectively). Companies are considered to be related, if they are the parent or subsidiary of another company. A company is assumed to be a parent company if such company has a decisive influence, either on the appointment of the majority of the members of the board of directors, or on the orientation of the business of the other company (Art. 5, §1 CC). Art. 631 CC is only applicable in case the parent company is a (Belgian) SA; Art. 632, on the other hand, is only applicable when one of the companies is an SA having its real seat in Belgium.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	Arts. 631-632 CC
------------------------------------------	--------------------------------------------------	------------------

3) **If this CEM is available, is it subject to any restrictions?**

a) Control Cross-Shareholdings

As a rule, direct subsidiaries and indirect subsidiaries (i.e. subsidiaries which are controlled by the parent company through other (direct) subsidiaries) can never hold shares or other securities to which more than 10% of all existing voting rights in the parent company are attached. In order to calculate the threshold of 10%, it does not suffice, however, to take into account the shares owned by the (direct and indirect) subsidiaries. Art. 631, §1 CC also includes the shares of the parent company held by other ‘affiliated’ companies (i.e. companies in which the parent company holds more than 10% of the votes, without such company falling under the definition of ‘subsidiary’) and by subsidiaries of such affiliated companies. In addition, to these holdings must be added the shares held by the parent company in itself and the shares held by third parties acting in their own name for the account of one of the parties mentioned above. The voting rights vested in the securities held by the related companies and by the subsidiaries are suspended, not only the votes which exceed the 10% threshold. In addition, securities held in excess of the 10% threshold must be disposed of within a period of one year after the threshold was reached (Art. 631, §3 CC).

Moreover, Direct Control Cross-Shareholdings are to be treated as an acquisition of treasury shares under Belgian law (with the corresponding obligations, such as a 10% limit to the right to purchase its own shares, the requirement that the repurchase be authorized by the GMS, etc.). Indeed, pursuant to Art. 627 CC, direct subsidiaries (in which the parent directly holds control within the meaning of Art. 5, §2, 1°, 2° and 4° CC) as well as third parties acting in their own name but for the account of the direct subsidiary, may only hold shares and profit-sharing certificates jointly with the parent company

under the conditions of Arts. 620-623 CC (acquisition of treasury shares), with some minor exceptions (all authorized under the Second EC Company Law Directive, except for the requirement of establishing a reserve unavailable for distribution among the liabilities if the treasury shares are included among the assets shown in the balance sheet, which is due to an omission). For sake of completeness, it should be noted that this restriction does not apply if the shares or profit-sharing certificates of the parent company are held by a subsidiary which, as a professional securities broker, is a stockbroking firm or a credit institution (Art. 627, sec. 2 CC).

As far as Indirect Control Cross-Shareholdings are concerned, Belgium has opted not to subject them to the same rules as Direct Control Cross-Shareholdings (except for the suspension of voting rights vested in all shares of the parent held by the subsidiaries).

b) Basis Cross-Shareholdings

As a rule, mutual participations between unaffiliated companies, which are not regulated by the Second EC Company Law Directive, are limited to 10% of the voting rights that exist in the other company. This means that only one company can hold more than 10% of the voting rights in the other company. To the shares that are directly held by one of the companies must be added the shares held by third parties acting for the account of these companies as well as the shares held by subsidiary undertakings of these companies. The voting rights attached to securities held in violation of the 10% threshold (i.e., above the 10% threshold) are suspended; in addition, these securities must be disposed of within a period of one year (Art. 632, §4 CC).

Short form answer:

<input checked="" type="checkbox"/> The percentage of Cross-Shareholding is limited	10% threshold both for Cross-Shareholdings between related companies and between unrelated companies (but calculated differently); Sanction: - suspension of voting rights vested in all shares of the parent held by the related and subsidiary companies for Cross-Shareholdings between related companies; - suspension of voting rights attached to securities held above the 10% threshold for Cross-Shareholdings between unrelated companies; -in both instances, securities held in excess of the 10 per cent threshold must be disposed of within a period of one year after the threshold was reached.
<input type="checkbox"/> Application of a Breakthrough Rule	Draft bill implementing the Takeover Directive, opts out of the Breakthrough Rule of Art. 11 Takeover Directive; no other Breakthrough Rule is applicable.

4) Who decides whether this CEM should be implemented, and under what conditions?

The decision to acquire or dispose of Cross-Shareholdings, whether in related or unrelated companies, is usually made by the Board of Directors. According to Art. 627 CC, Direct Control Cross-Shareholdings are to be treated as an acquisition of treasury shares and thus require prior authorization by the GMS under the conditions of Art. 620 CC (with some minor exceptions). No further specific conditions apply, apart from notification requirements (see below).

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the Board of Directors	<input checked="" type="checkbox"/> Autonomous decision
------------------------------------------------------------------------	---------------------------------------------------------

Specific conditions:

None.

5) Are there ongoing disclosure requirements regarding such CEM?**a) Control Cross-Shareholdings**

The computation of the 10% threshold requires a permanent flow of information to the parent company from the subsidiaries and from the other related companies. Information about the number of shares held by a subsidiary must be provided by the subsidiary within two days after the moment it is informed it has become a subsidiary of an SA. From then on, all transactions concerning the voting securities of the parent must be notified by the subsidiary to the parent undertaking. In the explanatory notes to the annual accounts, each company concerned is required to mention the structure of the ownership of its shares, as it appears from the notifications it has received (Art. 631, §2, Sec. 3 CC). No such information obligation is provided for the other affiliated companies. Here the parent company must take the initiative; from its accounts and balance sheet it can deduct in which companies it holds a participation to which, in all likelihood, more than 10% of the voting rights are attached. It is then up to the parent company to ensure that the rules regarding the limitation of Cross-Shareholdings are complied with, or that the applicable sanctions are imposed.

b) Basic Cross-Shareholdings

For Cross-Shareholdings between unrelated companies as well, a disclosure obligation has been introduced; every company (directly or indirectly) holding or no longer holding more than 10 per cent of the voting rights in another company must notify this to the other company (provided this has not already been done pursuant to the Transparency Law), stating the number of shares and profit-sharing certificates held and the number of voting rights attached to them. As a result, the company receiving the notification may not acquire a participation of more than 10 per cent of the voting rights in the other company (Art. 632, §2 CC).

In addition, it should be noted that the Belgian Corporate Governance Code ('Code Lippens'), which, strictly speaking, contains Non-Binding Rules only, recommends that the company (listed on the stock exchange) should disclose in its Corporate Governance Charter *inter alia* its shareholding and control structure and any Cross-Shareholdings exceeding 5% of the shareholdings or voting rights, insofar as it is aware of them, and as soon as it has received the relevant information (Provision 8.4). The Corporate Governance Charter should be updated as often as needed to reflect the company's corporate governance at any time and it should be made available on the company's website specifying the date of the most recent update (Provision 9.3).

As mentioned above, the draft bill implementing the Transparency Directive requires listed companies to disclose updates of the declared total number of shares and voting rights (as well as per category) if it has changed since the previous month (Art. 15 Transparency Directive).

Short form answer:

<input checked="" type="checkbox"/> Yes	<p><input checked="" type="checkbox"/> Disclosure to be made on a yearly basis: each company must mention in the explanatory notes to the annual accounts the structure of its shareholdings, as it appears from the notifications it has received in respect of Cross-Shareholdings (Arts. 631, §2, Sec. 3 and 632, §2 Sec. 6 CC).</p> <p><input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place: All information about the number and the nature of the shares held by a subsidiary must be provided to the parent within two days (i) after the moment it is informed it has become a subsidiary of an SA, and (ii) after each subsequent transaction concerning the voting securities of the parent (Art. 631, §2, Sec. 1-2 CC); each unaffiliated company (directly or indirectly) holding (no longer) more than 10 per cent of the voting rights in another company must notify this to the other company, stating the number of shares and profit-sharing certificates held and the number of voting rights attached to them (Art. 632, §2 CC).</p> <p><input checked="" type="checkbox"/> Disclosure to be made on a permanent basis: the Corporate Governance Charter, which should be updated as often as needed to reflect the company's corporate governance at any time and be made available on the company's website specifying the date of the most recent update, should disclose any Cross-Shareholdings exceeding 5% of the shareholdings or voting rights, insofar as it is aware of them, and as soon as it has received the relevant information (Non-Binding Rules).</p> <p><input checked="" type="checkbox"/> The following disclosure requirements apply:</p> <ul style="list-style-type: none"> - Specific Notifications, - Annual Reports, - Special Reports: the company must disclose updates of the declared total number of shares and voting rights if there are changes since the previous month and must disclose without delay any changes in the rights, conditions and guarantees relating to the different types of (derivative) securities. Please note that this disclosure requirement may still be subject to change due to the pending implementation of the Transparency Directive, - Website.
-----------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

6) When a CEM is implemented, on what substantive grounds may such decision be challenged?

Any decision of the Board of Directors will be declared null and void if it violates the law or the articles of incorporation or if it is judged to be against the corporate interest. The concept of corporate interest is generally defined rather broadly so as to include not only the shareholders collectively, but other constituencies (such as the employees, creditors, suppliers, etc.) as well. It is the interest of the company that prevails, but the court will of course - in considering its decision as to a violation of the interest of the company - take into account which kind of interest resulted in taking Cross-shareholdings in the first place.

Short form answer:

<input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the management	<input checked="" type="checkbox"/> The decision to implement the CEM is against the interest of the shareholders
<input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the majority shareholders	<input checked="" type="checkbox"/> The decision to implement the CEM is against the corporate interest (defined as being distinct from the sole interest of shareholders)

These grounds are probably alternative rather than cumulative. Although the law does not explicitly provide for a framework for the nullity of decisions of the board of directors similar to the rules for the nullity of decisions of the general meeting of shareholders (Art. 64 CC), eminent Belgian authors like J. Ronse argued that for the board of directors the application of similar rules can be defended.

SHAREHOLDERS' AGREEMENTS

1) Is this CEM available?

The validity of (voting arrangements in) Shareholders' Agreements was within certain limits explicitly recognized by the Law of 18 July 1991 (Art. 551 CC), after first having been upheld by Highest Court Case Law. (Cass. 13 April 1989, T.R.V. 1989, 321, note M. Wyckaert; R.C.J.B. 1991, 214, note J.M. Nelissen Grade).

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)

2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.

Art. 551 CC explicitly recognizes the validity of voting arrangements between shareholders agreed upon outside the general meeting. Such voting agreements must be limited in time and always be justified by the interest of the company. Voting agreements will be null and void, however, if they are in violation of the company code or contrary to the interests of the company, if the shareholder agrees to vote in accordance with the instructions of the company, its organs or of a subsidiary undertaking of the company or one of its organs, or if the shareholder agrees to vote in favor of proposals made by such companies or organs. Votes expressed in accordance with a voting agreement which is null and void, are struck with nullity as well. The decision of the general meeting concerned will be annulled, unless it is clear that these votes did not affect the decision of the general meeting. In this respect, it should be noted that the prescription period for an action for annulment is limited to six months as from the vote.

Art. 510 CC, on the other hand, which regulates contractual transfer restrictions, provides that non-transferability clauses in (*inter alia*) Shareholders' Agreements must be limited in time and always be justified by the interest of the company. If, however, the transfer restrictions result from clauses providing for a right of approval or pre-emption, the application of such clauses may not result in the non-transferability being extended by more than six months from the date of the request for approval or the invitation to exercise the pre-emption right. Shareholder Agreements which violate the limitations of this provision are considered null and void (Art. 551, §2 CC).

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	Arts. 510 and 551 CC
<input checked="" type="checkbox"/> Highest Court Decisions	Cass. 13 April 1989, T.R.V. 1989	

3) If this CEM is available, is it subject to any restrictions?

a) Voting arrangements

Voting agreements must be limited in time and always be motivated by the interest of the company. Although the Law of 13 April 1995 abolished the requirement imposing a maximum duration of 5 years, this term is still largely adhered to in practice (for standstill agreements as well: see below), although in practice one sometimes encounters terms of 10-15 years. Voting agreements will be null and void if they are in violation of the company code (e.g., the dismissal at will of directors) or contrary to the interests of the company (at any time, thus not merely at the moment of execution of

the agreement but arguably also if the agreement should subsequently become contrary to the company's interests), if the shareholder agrees to vote in accordance with the instructions of the company, its organs or of a subsidiary undertaking of the company or one of its organs, or if the shareholder agrees to vote in favor of proposals made by such companies or organs.

b) Share transfer restrictions

Transfer restrictions of shares must be limited in time and always be justified by the interest of the company. Here a distinction should be made: for standstill agreements also, a maximum duration of 5 years is usually advised (see above). If the transfer restriction results from a clause providing for a right of approval or pre-emption, the law provides that the application of such clauses may not result in the non-transferability being extended by more than six months from the date of the request for approval or the invitation to exercise the pre-emption right. If said clauses provide for a period of more than six months, such period shall *'eo ipso'* be reduced to six months. Shareholders' Agreements which violate the (other) limitations of this provision are considered null and void (Art. 551, §2 CC).

In the present state of Belgian Law, however, rights of approval or pre-emption may not be enforceable after a takeover bid has been announced:

- First, from the time when the company receives a notification from the Banking, Finance and Insurance Commission that it has been notified of a public takeover bid for the securities of the company, if there is a refusal of approval or exercise of pre-emption rights, a proposal to the shareholders must be made within five days after the right to accept the bid has lapsed, for the acquisition of their securities by one or more persons in respect of whom approval has been given or with regard to whom pre-emption rights have not been exercised, at a price at least equal to the price of the bid or counter bid (Art. 511 CC).

- Second, approval clauses in the articles of association or in a public deed for the issue of convertible bonds or warrants may, notwithstanding Arts. 510-511 CC, be invoked by the board of directors of a company against the offeror insofar as a refusal of approval is justified by a consistent and non-discriminatory application of the rules for approval adopted by the board of directors of which it has informed the Banking, Finance and Insurance Commission prior to the date of receipt of a notification of a takeover bid (Art. 512 CC).

In addition, subject to certain conditions (such as, notably, the payment of a control premium), a mandatory takeover bid has to be launched if shareholders acting alone or 'in concert' (defined so as to include certain Shareholders' Agreements) acquire securities which confer them control over a public company. Unlike the takeover legislation in e.g. France or the United Kingdom, Belgian Takeover Law (R.D. of 8 November 1989) at present still uses, as a criteria, the concept of 'control' (i.e. the fact of having a decisive influence on the appointment of the majority of the board of directors or on the policy decisions of the company), and not a certain takeover percentage of capital and/or voting rights. Alternatively, a procedure of maintenance of the quotation price during at least fifteen days must be followed (Art. 41 R.D. of 8 November 1989). It should be noted that the R.D. of 8 November 1989 is subject to change due to the implementation of the Takeover Directive. In particular, the pending draft bill proposes to introduce a 30% threshold for a mandatory takeover bid and to abolish the requirement of a control premium.

Short form answer:

<input checked="" type="checkbox"/> Application of a Breakthrough Rule	<p>Draft bill implementing the Takeover Directive, opts out of the Breakthrough Rule of Art. 11 Takeover Directive; however, other Breakthrough Rules exist in the present state of Belgian Law:</p> <p>In the event of a public takeover bid, the shareholders can as a rule transfer their shares to the bidder, notwithstanding a refusal of approval</p>
------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

	<p>or an exercise of pre-emption rights by the board of directors (Arts. 511-512 CC).</p> <ul style="list-style-type: none"> - Only when the board succeeds in having a counter offer launched by a white knight at the same price, the acceptance clause will have its effect because the shareholders will then have to withdraw their acceptance of the first offer (Art. 511 CC). - The only way to safeguard the full effect of an acceptance clause, even in the event of a takeover bid, consists in depositing <i>in tempore non suspecto</i> (this is, before there is even the slightest rumor of a takeover bid) the permanent and nondiscriminatory conditions of acceptance with the Banking, Finance and Insurance Commission, provided the approval requirement is inserted in the articles of association or in the conditions of issuance of debentures or subscription rights (Art. 512 CC).
<p><input checked="" type="checkbox"/> Mandatory Takeover Bid</p>	<p>Evolving Situation: a mandatory takeover bid has to be launched if shareholders acting alone or ‘in concert’ (defined so as to include certain Shareholders’ Agreements) acquire securities which confer them control over a public company against payment of a control premium (Art. 41 R.D.. of 8 November 1989, subject to change due to the implementation of the Takeover Directive).</p>
<p><input checked="" type="checkbox"/> Others: mainly time limitation for voting agreements and contractual share transfer restrictions</p>	<ul style="list-style-type: none"> - Shareholders’ Agreements (both voting agreements and share transfer restrictions) must be limited in time and always be motivated by the interest of the company. - Voting agreements are null and void if they are in violation of the company code or contrary to the interests of the company, if the shareholder commits himself to vote in accordance with the directives of the company, its organs or of a subsidiary of the company or one of its organs, or if the shareholder commits himself to vote in favor of proposals made by such companies or organs. - Transfer restrictions resulting from a clause of approval or pre-emption may not last longer than six months from the date of the request for approval or the invitation to exercise the pre-emption right.

4) Who decides whether this CEM should be implemented, and under what conditions?

A Shareholders’ Agreement is usually entered into by the (controlling) shareholders individually without any intervention from a representative body of the SA. As such, no specific conditions apply.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Other: Decision by (controlling) shareholders outside the general meeting

Specific conditions:

None.

5) Are there ongoing disclosure requirements regarding such CEM?

The implementation of a Shareholders' Agreement may trigger application of the Transparency Law (Law of 2 March 1989, subject to change due to the pending implementation of the Transparency Directive), which regulates the notification of major shareholdings in companies incorporated under Belgian law.

Indeed, each ownership, purchase or transfer of securities to which at least 5 per cent, or multiple thereof, of all existing voting rights in a company are attached, must be notified. Lower threshold percentages may be determined in the articles of incorporation of the company (with a minimum of 3 per cent and multiples of 3 per cent), but these do not override the legal thresholds. All persons who hold or pass a 5 per cent threshold percentage, solely or in concert with others (as defined in Art. 7 Transparency Decree to as to include Shareholders' Agreements), must notify this to the Banking, Finance and Insurance Commission and to the company listed on the stock exchange itself within two working days. The company must then, ultimately on the next working day, publish this notification. In addition, the company must mention in the notes to the annual accounts, in the section on the status of the capital, its shareholders structure as of the closing date of the accounts, as it appears from the notifications received. As a result, existence of a Shareholders' Agreement in companies listed on the stock exchange will usually be public. In this regard, please note that Art. 515 CC provides that the obligations under the Transparency Law can be extended by the articles of incorporation to non-listed companies as well.

The actual content of Shareholders' Agreements, on the other hand, will most of the time remain confidential. In this regard, please note that Art. 10.1, sub g) Takeover Directive has not yet been implemented in Belgium (nor is this covered by the pending draft bill implementing the Takeover Directive). However, the draft bill implementing the Transparency Directive, which is also still pending, provides that this information must be mentioned in the (consolidated) Annual Report as well as in a separate Explanatory Report, both of which must be presented to the annual meeting of shareholders by the Board of Directors.

In this respect, it should also be mentioned that the Belgian Corporate Governance Code ('Code Lippens'), which strictly speaking contains Non-Binding Rules only, recommends that the company should disclose in its Corporate Governance Charter *inter alia* a description of the key elements of existing Shareholders' Agreements (Provision 8.5). The Corporate Governance Charter should be updated as often as needed to reflect the company's corporate governance at any time and it should be made available on the company's website specifying the date of the most recent update (Provision 9.3).

The implementation of a Shareholders' Agreement may also trigger application of a disclosure obligation under the Takeover Law (Art. 38 R.D.. of 8 November 1989, to be modified substantially by the new bill implementing the Takeover Directive).

Each securities transaction which could result in the change of control of a public company organized and existing under Belgian law must be notified to the Banking, Finance and Insurance Commission, at least 5 working-days before such transaction will take place. The duty to disclose is applicable to

all persons who alone or in cooperation with others want to acquire control. Acquisition of control by parties acting in ‘mutual agreement’ (as defined in Art. 2, §1, 5° R.D.). Systematic purchases on the stock exchange, which will lead to the acquisition of the control, fall under the disclosure obligation. Public offers, however, do not, since the public offer-procedure should contain sufficient guarantees for the information and the equal treatment of the shareholders (Art. 38, Sec. 3, 1° R.D. of 8 November 1989). Transactions regarding newly issued securities, e.g., as a result of a capital increase, may also lead to a change in control and will also be subject to the disclosure obligation. If, however, the capital increase was decided by a general meeting of shareholders or is the result of the exercise of the right of conversion or of warrants, no prior disclosure is required (Art. 38, Sec. 3, 2° R.D. of 8 November 1989). Finally, it must be noted that the disclosure obligation must be complied with, whether or not a control premium was paid by the transferee.

Short form answer:

<input checked="" type="checkbox"/> Yes	<p><input checked="" type="checkbox"/> Disclosure to be made on a yearly basis: the company must mention in the explanatory notes to the annual accounts, its ownership structure as of the closing date of the accounts, as it appears from the notifications received under the Transparency Law.</p> <p><input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place: any reaching or crossing of threshold percentage in both directions (as a result of the acquisition or transfer of securities, whether or not on the basis of an agreement to act in concert in respect of such acquisition or transfer of securities) of ownership of securities to which at least 5 per cent, or multiple thereof, of all existing voting rights in a company are attached, must be notified to the Banking, Finance and Insurance Commission and to the company itself within two working days. The company must then, ultimately on the next working day, publish this notification. Lower threshold percentages may be determined in the articles of incorporation of the company (with a minimum of 3 per cent and multiples of 3 per cent). All persons who hold or pass a 5 per cent threshold percentage, solely or in concert with others, must notify this.</p> <p>Any transaction which could result in the change of control of a public company, must be notified to the Banking, Finance and Insurance Commission, at least 5 working-day before such transaction will take place. The duty to disclose is applicable to all persons who alone or in cooperation with others want to acquire control. Acquisition of control by parties acting in ‘mutual agreement’ (as defined in Art. 2, §1, 5° R.D. of 8 November 1989 so as to include certain Shareholders’ Agreements) is considered to be identical to the acquisition of control by an individual.</p> <p><input checked="" type="checkbox"/> Disclosure to be made on a permanent basis: the Corporate Governance Charter, which should be updated as often as needed to reflect the company’s corporate governance at any time and be made available on the company’s website specifying the date of the most recent update, should disclose <i>inter alia</i> a description of the key elements of existing Shareholders’ Agreements (Non-Binding Rules)</p> <p><input checked="" type="checkbox"/> The following disclosure requirements apply:</p> <ul style="list-style-type: none"> - Specific Notifications, - Admission Documentation (prospectus in case of mandatory takeover bid), - Annual Reports, - Article 10 Report, - Website.
-----------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

6) When a CEM is implemented, on what substantive grounds may such decision be challenged?

Shareholders' Agreements which violate the Company Code (including the limitations of Arts. 510 and 551 CC) are, by law, considered null and void (Art. 551, §2 CC). As mentioned above, Shareholders' Agreements must *inter alia* always be motivated by the interest of the company. Shareholders' Agreements which are or become at any time contrary to the company's interests, are therefore struck with nullity.

In addition, votes expressed in accordance with a voting agreement which is null and void, are struck with nullity as well. The decision of the general meeting concerned will be annulled, unless it is clear that these votes did not affect the decision of the general meeting. In this respect, it should be noted that the prescription period for an action for annulment is limited to six months as from the vote.

Short form answer:

<input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the management.	<input checked="" type="checkbox"/> The decision to implement the CEM is against the interest of the shareholders.
<input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the majority shareholders.	<input checked="" type="checkbox"/> The decision to implement the CEM is against the corporate interest (defined as being distinct from the sole interest of shareholders).

Although the abovementioned grounds are not always distinguished in practice (since the Law is articulated in a somewhat different manner) and to our understanding cannot always be distinguished (e.g., a decision taken in the sole interest of the management or majority shareholders will presumably at the same time be against the corporate interest, whether or not defined as being distinct from the sole interest of the shareholders), these grounds are probably alternative rather than cumulative. It is the interest of the company that prevails, but the court will of course - in considering its decision as to a violation of the interest of the company - take into account which kind of interest resulted in the Shareholders' Agreement in the first place.

B – GENERAL BACKGROUND QUESTIONS**1) What are the rules for board elections? How many corporate votes are required to appoint or remove corporate directors?**

The following rules apply for the appointment and dismissal of members of the Board of Directors. In principle, during the life of the corporation, they are appointed (and dismissed) by the general meeting of shareholders on the basis of a simple majority (hence a candidate will be elected where there are more votes cast "yes" by shareholders than "no", whereby abstentions or blank vote are disregarded), unless the articles provide for more stringent rules. The term for which a director is appointed must be fixed at the time of appointment provided that the length of their mandate may never exceed six years (Art. 518, §3 CC). All directors, however, are always eligible for re-election, no matter how long they have held office previously (Art. 520 CC).

The directors may be removed from office at any time, even during the term for which they were appointed, by a simple majority vote of the general meeting (the so-called 'termination at will or *ad nutum*, i.e. without cause, notice or indemnity; see Art. 518, §3 CC). In the SA, this *ad nutum* – rule has the power of imperative law. Any provisions in the articles of incorporation which deviate from this rule (e.g., by requiring a quorum or supermajority) are therefore to be considered null and void. The *ad nutum* revocable character of the mandate to act as a director also implies that one cannot fulfill the office of a director as an employee, for the single reason that labor law provides for considerable protection against unilateral and immediate dismissal. There is, however, another reason why a director, in this capacity, cannot be considered to be an employee, namely, the lack of the exercise of permanent authority over such director (such exercise of authority is considered to be one of the conditions of a labor relationship under Belgian labor law and distinguishes an employee from a self-employed person): the general meeting, which normally convenes only once a year, is not able to exercise such permanent authority. This does not mean, however, that a director cannot, at the same time be an employee of the company. Please note that he must then hold a different position in the company which is clearly distinct from the task of director, in the exercise of which he is under the authority of another company organ, such as, for example, the board of directors.

Notwithstanding this '*ad nutum*' rule, directors may in principle only be removed from office if their revocation is an item on the agenda. Indeed, issues not mentioned in the agenda cannot be discussed or decided upon by the general meeting, unless it concerns one of the powers which the general meeting can exercise *de plano* or 'as such' (e.g., for the annual general meeting, the approval of the annual accounts and the decision regarding the general discharge of the directors). Decisions taken without prior notification in the agenda are invalid, except in the event that failure to take an immediate decision would bring the existence of the company in danger. The appointment and dismissal of directors is not a power which the ordinary general meeting can exercise *de plano*, i.e., without prior notification of the shareholders, by placing the issue on the agenda and by publishing a convening notice in a national newspaper. Nonetheless, it is generally accepted that an exception applies for the dismissal of directors upon discovery of serious shortcomings which first appear at the general meeting.

The general meeting may be convened by the Board of Directors or by the statutory auditors, if any; the same must be convened at the request of (minority) shareholders representing one-fifth of the company's capital (Art. 532 CC). The invitation to the general meeting must contain the agenda for the meeting (Art. 533, first section CC). In publicly held companies, the agenda must also contain the proposals of the decisions, as contemplated by the Board of Directors (Art. 533, last section CC).

If there is a vacancy on the board (e.g. if one of the three directors leaves the company or dies), the two 'survivors' may fill the vacancy in anticipation of endorsement of the co-option of the director so appointed at the next ordinary general meeting for the continuation of the mandate of the director who left or died (Art. 519 CC). The articles of incorporation may provide for a different ruling in this matter.

Although the directors are in principle appointed by the general meeting of shareholders, candidates for election are proposed by the Board of Directors, in accordance with existing procedures for nomination if any. Indeed, the articles of incorporation may provide that the minority shareholders shall be represented on the Board of Directors as well. Here it must be noted that the final decision must always remain with the general meeting of shareholders as a whole; in other words, the minority shareholders will be granted the right to propose one, two or three candidates of their own liking, from which the general meeting as a whole will choose. For example, two candidates are proposed for each vacant position: in that way, the majority retains a real freedom of choice in the appointment of the directors.² Cumulative voting is an alternative mechanism that can be implemented to obtain a proportionate representation of minority shareholders in the Board of Directors.

In addition, it should be noted that the Belgian Corporate Governance Code ('Code Lippens') recommends that the company (listed on the stock exchange) should draw up stringent and transparent appointment and evaluation procedures and selection criteria for board members. It should also set up a specialized Nomination Committee which should recommend suitable candidates for nomination by the Board of Directors (Provision 4.1 et seq.).

In the SA, the faculty exists, since the Law of 2 August 2002, to set up an 'Executive Committee' ('directiecomité'/'comité de direction') if this has been provided for in the articles of incorporation. The detailed arrangements with regard to its functioning and competences and with regard to the appointment, dismissal, remuneration and term of office of its members can be determined by the articles of incorporation or, alternatively, can be left for the Board of Directors to decide upon (Art. 524 bis CC). For other aspects (e.g., liability, conflicts of interest, etc.), the members of the Executive Committee are to a large extent subject to similar rules as directors. In fact, this creates the possibility for an SA to adopt a dual board structure, whereby the Board of Directors can transfer virtually all its management (and the corresponding representation) powers to the Executive Committee, except for matters related to general business policy and strategy and those powers which are expressly reserved for the Board of Directors by the Company Code, and where after the Board of Directors becomes charged with the supervision of the performance by the Executive Committee of its management tasks. It should be noted, however, that Art. 524bis CC only mandates that the Executive Committee be composed of at least two members who do not have to be (but can be) directors. It is therefore necessarily a collegiate board to which the rules governing representative bodies are applicable (Art. 524bis, Sec. 2 jo. 63 CC), but it is left for the articles or the Board of Directors to decide whether or not to adopt a full-fledged two tier structure (in which members of the Executive Committee cannot at the same time be directors). At present, a unitary structure (Board of Directors only) is still most commonly used in Belgium. At least, the Board of Directors is rarely complemented by a full-fledged Executive Committee within the meaning of Art. 524bis CC (dual structure).

Finally, it should be noted that the abovementioned *ad nutum* rule does not apply to members of the Executive Committee. Indeed, the appointment, dismissal and term of office of members of the Executive Committee can be determined by the articles of incorporation and otherwise by the Board of Directors (Art. 524bis CC). In addition, since the Board of Directors is able to exercise permanent authority over them, it is generally accepted that, as such, members of the Executive Committee can be employees.

² Comm. Court Brussels 13 December 1984, R.P.S. 1985, 122.

Short form answer:

<p><input checked="" type="checkbox"/> Majority required for board election: 1/2+1 (unless articles provide for more stringent rules). For board removal: 1/2+1 (articles may not provide for more stringent rules). Quorum required for shareholders' meetings proceeding with the election or removal of board members: no quorum required.</p>	<p><input checked="" type="checkbox"/> Board members may be revoked during any shareholders' meeting, but as a rule only if dismissal is on the agenda. Such meeting must be convened at the request of shareholders representing one-fifth of the company's capital (Art. 532 CC).</p> <p><input checked="" type="checkbox"/> Board members may always be removed</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<input checked="" type="checkbox"/> Specific mechanisms (such as cumulative voting) authorize minority shareholders to be represented at the board: cumulative voting is not mandatory but can be authorized in the articles.	without cause and without notice and without indemnity.
<input type="checkbox"/> Electronic voting is authorized: no, but note that the articles may permit all shareholders to vote by letter, by means of a form containing the information mentioned in the articles (Art. 550 CC).	<input checked="" type="checkbox"/> Minority shareholders are entitled to require a general meeting of shareholders to be convened: Such meeting must be convened at the request of shareholders representing together one-fifth of the company's capital (Art. 532 CC). <input checked="" type="checkbox"/> Proxy solicitation is authorized: Arts. 548-549 CC. The person soliciting the proxies has no access to the names and addresses of shareholders. However, this information can be deducted from share register, which is accessible for the shareholders. This information relates only to nominative shares.

2) What shareholders' decisions require a vote from more than a simple majority?

The Belgian Company Code requires a supermajority decision of the general meeting of shareholders to approve any alteration of the articles of incorporation (Art. 558 CC). Certain alterations of the articles of incorporation have been regulated in a more detailed way because of their importance, for instance a capital increase (Art. 581 CC) or reduction (Art. 612 CC), a share buy-back (Art. 620 CC), a merger (Arts. 699 and 712 CC) or division (Arts. 736 and 751 CC), a change of the company's object (Art. 559 CC) or form (Art. 781 CC) or an alteration of the mutual relationships between the rights of the different existing categories of securities (Art. 560 CC). A sale of (substantially) all of the company's assets may sometimes necessitate a change of the corporate purpose to the extent that the company becomes a mere holding company, thus requiring a quorum and special majority to be observed in the shareholders' vote.

As mentioned above, on the basis of the general principle of contractual freedom the articles of incorporation may strengthen the legal quorum and supermajority requirements or impose a supermajority for other decisions as well (e.g. the appointment of directors; please note, however, that a special quorum or majority requirement for the dismissal of directors would contravene the *ad nutum* revocable character of their mandate).

In case of a simple majority vote, a proposal will be adopted where there are more votes cast "yes" by shareholders than "no", whereby abstentions or blank votes are disregarded. Whenever a certain proposal requires a qualified majority in order to be approved, this implies that shareholders present or represented at the general meeting who either abstain from the vote or cast a blank vote are counted as voting "no."

Short form answer:

<input checked="" type="checkbox"/> All changes in bylaws / articles of associations (Art. 558 CC)	<input checked="" type="checkbox"/> Change of nationality of the company (Art. 781 CC)
<input checked="" type="checkbox"/> Issuance of shares / bonds / other financial instruments: issuance of shares, convertible bonds or warrants requires same quorum and majority as a simple amendment of the articles, or possibly even as a change of the mutual	<input checked="" type="checkbox"/> Change of corporate purpose (Art. 559 CC) <input checked="" type="checkbox"/> Sale of all or substantially all the assets (Art. 559 CC)

<p>relationships between the rights of the different categories of securities (Art. 581 CC, with reference to Arts. 558 and 560 CC resp.)</p> <p><input checked="" type="checkbox"/> Mergers / acquisitions of the company by a third party: merger (Arts. 699 and 712 CC) or division (Arts. 736 and 751 CC)</p>	
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--



PROPORTIONALITY BETWEEN OWNERSHIP AND CONTROL IN EU LISTED COMPANIES:
EXTERNAL STUDY COMMISSIONED BY THE EUROPEAN COMMISSION

**PROPORTIONALITY BETWEEN OWNERSHIP AND CONTROL
IN EU LISTED COMPANIES:**

COMPARATIVE LEGAL STUDY

DENMARK

ACCURA
Advokataktieselskab

Thomas Weincke, Attorney-at-law

Tuborg Boulevard 1
DK-2900 Hellerup
Tel +45 3945 2800
Fax +45 3945 2801

Reviewed by:

Mette Neville

Professor of law, ph.d., Department of Law
The Aarhus School of Business, University of Aarhus
Fuglesangs Alle 4
DK- 8210 Århus V

MULTIPLE VOTING RIGHTS SHARES

1) Is this CEM available?

Yes, multiple voting rights shares are permitted by section 67 (1) of *Aktieselskabsloven* (the Danish Companies Act, No. 649 as of 15 June 2006) (hereafter referred to as the “DCA”), with a maximum multiple voting right of 10 times the votes per unit of par value as compared to the shares with the least number of votes per unit of par value, cf. section 67 (1) of the DCA. Companies are not required to use multiple voting rights shares.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	Maximum of 10 times the votes per unit of par value as compared to the shares with the least number of votes per unit of par value.
-----------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------

2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.

The specific Rule which allows multiple voting rights is section 67 (1) of the DCA.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	Permitted by section 67 (1) of DCA with a maximum of 10 times the votes per unit of par value as compared to the shares with the least number of votes per unit of par value. It is not required that the company issues multiple voting rights shares, but if it does the above limitation is binding. The distinction between Federal and State Rules is never relevant in Denmark.
------------------------------------------	--------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

3) If this CEM is available, is it subject to any restrictions?

Multiple voting rights are permitted by the DCA, i.e. Law. In order to use multiple voting rights shares must be divided into classes, with each class of shares holding different voting rights. A class of shares can, as a maximum, hold a multiple voting right of 10 times the votes per unit of par value as compared to the voting rights held by the class of shares with the least voting rights per unit of par value.

If the company is not incorporated with different classes of shares, provisions regarding different classes of shares can be entered into the articles of association subsequently subject to a qualified majority decision by the general meeting of shareholders.

It is important to note that multiple voting rights only have an effect on decisions that only requires a simple majority by the general meeting. The DCA section 78 and 79 (amendments of the articles of association) requires a qualified majority of both the votes cast and the capital with voting rights represented at the general meeting.

The Equality principle shall be complied with.

Short form answer:

<input checked="" type="checkbox"/> Maximum number of votes per share	The maximum of votes per unit of par value as compared to the shares with the least number of votes per unit of par value is 10.
-----------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------

<input checked="" type="checkbox"/> Application of a Breakthrough Rule	Subject to a qualified majority (2/3 of votes cast as well as of voting share capital represented at the general meeting) decision by the general meeting, the shareholders may establish an arrangement whereby any special rights connected with any shares are suspended if a tender offer is pending, cf. section 81 (d) of the DCA.
------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

4) Who decides whether this CEM should be implemented, and under what conditions?

The implementation of the CEM in the articles of association requires that the shares be divided into different classes of shares. According to Section 17 of the DCA all shares enjoy equal rights. The articles of association may provide that a company shall have more than one share class, in which event the articles of association shall state the differences between the share classes, the size of each share class as well as any restrictions in respect of pre-emption rights for new shares on an increase of the share capital.

Dividing existing shares into separate classes, resulting in a changed legal relationship among the shareholders requires approval of 2/3 of the votes cast as well as of the voting share capital represented at the general meeting and the consent of those shareholders whose legal rights are prejudiced. If the company already has different share classes and a subsequent change of the relative legal position of such classes is suggested, the implementation thereof requires approval at the general meeting of at least 2/3 of the share class whose legal position is to be diminished. If the CEM is proposed in connection with a subsequent proposal for capital increase, and the multiple voting rights are offered to the existing shareholders, the CEM can be adopted with a majority of 2/3 of the votes cast as well as the voting share capital represented at the general meeting. If the multiple voting rights are offered to the new shareholders (new issued shares) the adoption thereof will – if the decision is in the best interest of the company – most likely require a majority of 2/3 of the votes cast and 2/3 of the voting share capital represented at the general meeting.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders.	<p>Quorum: none</p> <p><input checked="" type="checkbox"/> Majority: 2/3 of the votes cast as well as of the voting share capital represented at the general meeting + depending on the situation: all – or if already share classes 2/3 of the voting share capital (whose legal rights are prejudiced) represented at the general meeting.</p>	<p>If the shareholders may authorize the Board or the Chairman or GM to implement the CEM:</p> <p><input checked="" type="checkbox"/> For how long would the authorization be valid (maximum duration): 5 years and it has to be published in the articles of association.</p> <p>The GM can authorize the Board of Directors to increase the share capital by issuing new shares. In connection with the authorization the General Meeting decides if the new issued shares are to be a new class of shares with fewer voting rights. So it is not the Board who decides to implement the CEM, but only to increase the</p>
--------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

		capital. <input checked="" type="checkbox"/> If a tender offer is filed on the company wishing to implement the CEM, between the authorization and the actual implementation, would the authorization need to be renewed? Only if specifically decided by the general meeting.
--	--	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Specific conditions: None.

5) Are there ongoing disclosure requirements regarding such CEM?

There are no specific ongoing disclosure requirements regarding such CEM. The CEM must be adopted in the publicly available articles of association. The shares comprised by the CEM will be subject to the same ordinary flagging rules as other shares, cf. below:

1. The CEM, but not the holders of the shares, must be adopted in the publicly available articles of association,
2. Any shareholder who possesses more than 5% of the votes and/or more than 5% of the issued share capital must give notice hereof to the issuer and the Stock Exchange immediately after any threshold is reached, cf. section 29 of *Værdipapirhandelsloven* (the Danish Securities Trading Act hereafter referred to as the "DSTA"). Notice must also be given to the issuer and the Stock Exchange, whenever thresholds with an interval of 5% between 10 and 100% and 1/3 and 2/3 of the share capital or voting rights are reached. The identity of major shareholders whose share possessions exceed the above thresholds are included in the publicly available annual reports.

Short form answer:

<input checked="" type="checkbox"/> No	No specific requirements, but the CEM must be adopted in the publicly available articles of association. The shares comprised by the CEM will be subject to ordinary flagging obligations on large shareholdings.
----------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

6) When a CEM is implemented, on what substantive grounds may such decision be challenged?

According to section 80 of DCA, the general meeting may not make any decision which clearly is suitable to give certain shareholders undue rights or advantages at the expense of other shareholders or the company itself.

Short form answer:

<input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the majority shareholders.	<input checked="" type="checkbox"/> The decision to implement the CEM is against the interest of the shareholders, or <input checked="" type="checkbox"/> The decision to implement the CEM is against the corporate interest (defined as being distinct from the sole interest of shareholders).
-----------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

The grounds are alternative.

NON-VOTING SHARES

1) **Is this CEM available?**

Non-Voting shares cannot be issued, cf. section 67 (1) of the DCA.

However, as an exemption, shares issued before 1/1 1974 could be issued as non-voting shares, and they would still operate as non-voting-shares. If a company issues bonus shares by transferring, for example, amounts that may be distributed as dividend to the share capital, the bonus shares that are linked to a non-voting share can be a non-voting share.

Short form answer:

<input checked="" type="checkbox"/> No (Clear Situation)	Non-Voting shares cannot be issued, cf. the section 67 (1) of the DCA.
----------------------------------------------------------	------------------------------------------------------------------------

2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.**

Non-Voting shares cannot be issued, cf. section 67 (1) of the DCA.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	Non-Voting shares cannot be issued, cf. section 67 (1) of the DCA.
------------------------------------------	--------------------------------------------------	--------------------------------------------------------------------

Other questions not applicable.

NON-VOTING PREFERENCE SHARES

1) **Is this CEM available?**

Non-Voting shares can not be issued, cf. section 67 (1) of the DCA.

However, as an exemption shares issued before 1/1 1974 could be issued as non-voting shares, and they would still be non-voting-shares. If a company issues bonus shares by transferring, for example, amounts that may be distributed as dividend to the share capital, the bonus shares that are linked to a non-voting share will be a non-voting share.

Short form answer:

<input checked="" type="checkbox"/> No (Clear Situation)	Non-Voting shares cannot be issued, cf. section 67 (1) of the DCA.
----------------------------------------------------------	--------------------------------------------------------------------

2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.**

Non-Voting shares are prohibited by law, cf. section 67 (1) of the DCA.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	Non-Voting shares cannot be issued, cf. section 67 (1) of the DCA.
------------------------------------------	--------------------------------------------------	--------------------------------------------------------------------

Other questions not applicable.

PYRAMID STRUCTURES

1) Is this CEM available?

The CEM is available. Individuals as well as companies can control a corporation which in turn holds a controlling interest in another corporation (and such structure may be repeated an indefinite number of times).

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)

2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.

Section 2 of the DCA and the definition of a group of companies set forth therein implies that a company may own and control other corporations which – if control as defined in the DCA is obtained – would then become subsidiaries. There are no rules prohibiting individuals or companies from holding controlling interest in another corporation which in turn holds a controlling interest in yet another corporation etc. The Danish Take-Over Rules pursuant to the DSTA provide that not only direct acquisition of a controlling interest (representing more than 1/3 of the voting right) in a listed company, but also that indirect acquisitions can trigger a mandatory bid obligation for the shares not being directly or indirectly controlled. Accordingly, change of ownership of a controlling interest in a company which in turn holds a controlling interest in the listed company may trigger mandatory bid obligation.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	Danish law (DCA section 2) recognizes this CEM. No prohibition against this CEM. Structure often seen.
<input checked="" type="checkbox"/> Stock Exchange Rules	<input checked="" type="checkbox"/> Binding Rule	Under the Danish Take-Over Rules, acquisition of indirect control may also trigger mandatory bid obligation on the person/company having obtained indirect control of a listed company.

3) If this CEM is available, is it subject to any restrictions?

There are no restrictions to the use of this CEM, except that the object clause in the articles of association of the controlling company must include the business purpose of the controlled company.

Short form answer:

<input checked="" type="checkbox"/> Application of a Breakthrough Rule	The shareholders may in accordance with section 81 (c) with a 2/3 majority of votes cast and 2/3 of the voting share capital represented decide that the general meeting shall approve any steps of the company which may hinder a pending tender offer for the shares in the company, except for a decision to analyze other offers.
------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

4) Who decides whether this CEM should be implemented, and under what conditions?

If the objects clause in the articles of association includes the business purpose in the controlled company, the board of directors can as the main role decide the actual subscription of shares in or acquisition of a controlling interest in another corporation.

Acquisition of a controlling interest in other corporations does not in itself require the involvement of the general meeting. If, however, the objects clause in the articles of association does not include the business purpose of the controlled company, the amendment of the objects clause requires adoption by the general meeting by at least 2/3 of the votes cast and 2/3 of the voting share capital represented at the general meeting.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the Chairman or the General Manager	<input checked="" type="checkbox"/> Autonomous decision (rare cases) <input checked="" type="checkbox"/> Upon authorization of the Board <input type="checkbox"/> Upon authorization of the shareholders
<input checked="" type="checkbox"/> Decision by the Board of Directors	<input checked="" type="checkbox"/> Autonomous decision: <input checked="" type="checkbox"/> Upon authorization of the shareholders
<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input checked="" type="checkbox"/> Quorum: none <input checked="" type="checkbox"/> Majority: Acquisition of a controlling interest in another corporation does not as a point of departure require a decision by the general meeting. If the object clause in the articles of association does not include the business purpose of the controlled company the amendment of the object clause would require adoption by the GMS by at least 2/3 of the votes cast and 2/3 of the voting share capital represented at the general meeting.

Specific conditions: Must be included in the objects of the company's articles of association.

<p>Specific requirements when deciding to implement the CEM:</p> <input checked="" type="checkbox"/> Special report to shareholders, prepared by: If payment for a controlling interest is paid (in whole or partly) with new shares in the buyer, such shares being issued in connection with a directed capital increase, a valuation report of the contribution in kind shall be made and disclosed to the shareholders. <input checked="" type="checkbox"/> Statutory auditors need to be involved as follows: If payment for a controlling interest is paid (in whole or partly) with new shares in the buyer being issued in connection with a capital increase, a valuation report of the contribution in kind shall be made and disclosed to the shareholders. Often the valuation report is made by statutory auditors. <input checked="" type="checkbox"/> Specific disclosure requirements (such as	<p>Specific rights of minority shareholders when the CEM is implemented:</p> <input checked="" type="checkbox"/> Right to require a minority buy-out if a shareholder possesses 9/10 or more of the issued share capital and the voting rights, any minority shareholder may require that such majority shareholder buys the shares owned by the minority shareholder. A shareholder that possesses 9/10 or more of the issued share capital and the voting rights can also demand to buy out the minority shareholder. This squeeze out mechanism is often used in connection with a takeover.
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>specific filings, disclosures in annual reports, etc.): Flagging procedures for shareholders possessing 5% or more of the voting rights or the issued share capital in a company, cf. below under 5).</p> <p><input checked="" type="checkbox"/> Specific information or consultation of employees, workers' committees, unions or other employees' representatives: EC directives on information and consultation are implemented in Danish Law. National collective agreements may impose additional obligations. Also, if a company has employee representatives on the board, they will be informed as are other board members.</p>	
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

5) Are there ongoing disclosure requirements regarding such CEM?

Any shareholder who possesses more than 5% of the votes and/or more than 5% of the issued share capital must give notice hereof to the issuer and the Stock Exchange immediately after any threshold is reached, cf. section 29 of the DSTA. Notice must also be given to the issuer and the Stock Exchange, whenever thresholds with an interval of 5% between 10 and 100 % and 1/3 and 2/3 of the share capital or voting rights are reached. The identity of major shareholders whose share possessions exceeds the above thresholds are included in the publicly available annual reports.

Short form answer:

<input checked="" type="checkbox"/> No	No specific disclosure obligations related to the CEM. Subject to ordinary flagging obligations with respect to large shareholdings.
----------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------

6) When a CEM is implemented, on what substantive grounds may such decision be challenged?

If the CEM is implemented by the general meeting, the decision to implement the CEM may not clearly be suitable to give certain shareholders undue rights or advantages at the expense of other shareholders or the company itself, cf. section 80 of the DCA.

If the CEM is not a general meeting decision, the board of directors, or the management are not entitled to enter into transactions which are clearly likely to confer upon certain shareholders or others an undue advantage over other shareholders or over the company, cf. section 63 of the DCA. Shareholders who are of the opinion that the CEM has inflicted damage on the company or a shareholder may pursue such claim against the management and the board of directors (under directors and officers liability) arguing that said persons have acted or omitted to act in a way that is negligent, cf. section 140 of the DCA.

Short form answer:

<input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the majority shareholders	<input checked="" type="checkbox"/> The decision to implement the CEM is against the interest of the shareholders, or <input checked="" type="checkbox"/> The decision to implement the CEM is against the corporate interest (defined as being distinct from the sole interest of shareholders).
----------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

The grounds are alternative.

PRIORITY SHARES

1) Is this CEM available?

Priority shares can be issued. Section 17 of the DCA provides the basic principle that equal rights shall attach to all shares of a company. The articles of association may provide that a company shall have more than one share class, in which event the articles of association shall state the differences between the share classes, the size of each share class and any restrictions in respect of pre-emption rights of subscription for new shares in connection with an increase of the share capital. Therefore the company (general meeting) can grant one shareholder or a group of shareholders some specific powers of decision.

In Exhibit I, a wide range of decision powers from a right to appoint a member to the board are identified, to a right to veto a decision taken by the general meeting. As the freedom of contract is limited by the provisions in the DCA and fundamental company law principles, the question of whether the CEM is available cannot be answered. A right to veto a decision taken by the general meeting can probably not be granted, as the shareholders' right to make decisions concerning the company shall be exercised at the general meeting according to section 65 of the DCA. Shareholder democracy is a fundamental company law principle. But there is nothing that denies a shareholder the right to appoint a board member at the general meeting, cf. section 49 of the DCA.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)

2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.

Section 17 of the DCA provides that equal rights shall attach to all shares of a company. The articles of association may provide that a company shall have more than one share class, in which event the articles of association shall state the differences between the share classes, the size of each share class as well as any restrictions in respect of pre-emption rights for subscription of new shares in connection with an increase of the share capital. Thus it is possible for the company (general meeting) to grant one shareholder or a group of shareholders some specific powers of decision.

In Exhibit I, you mention a wide range of decision powers from a right to appoint a member to the board, to a right to veto a decision taken by the general meeting. As the freedom of contract is limited by the provisions in the DCA and fundamental company law principles, this question cannot be answered in general. A right to veto a decision taken by the general meeting can probably not be granted, as the shareholders' right to make decisions concerning the company shall be exercised at the general meeting according to section 65 of the DCA. Shareholder democracy is a fundamental company law principle. But there is nothing that denies a shareholder the right to appoint a board member at the general meeting, cf. section 49 of the DCA, but more than 50% of the board members must be appointed by the shareholders of the GMS. The board has the exclusive right to appoint the director.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	Section 17 of the DCA.
------------------------------------------	--------------------------------------------------	------------------------

3) If this CEM is available, is it subject to any restrictions?

The freedom of contract is limited by the provisions in the DCA and fundamental company law principles. No right may be granted that conflict with such principles. The following restrictions also apply: the majority of directors must be designated by the shareholders, Priority Shares may not grant

a veto right on decisions which require the approval of the GMS, the majority of directors must be independent from the largest shareholders (only a non-binding recommendation in the Danish Corporate Governance Code) and Priority Shares may not restrict the exclusive powers of the GMS.

Short form answer:

<input checked="" type="checkbox"/> Application of a Breakthrough Rule	The shareholders may decide (with majority of 2/3 of votes cast and 2/3 of the voting share capital represented at the general meeting) that special rights related to certain shares are suspended if a tender offer is pending, cf. section 81(d) of the DCA.
<input checked="" type="checkbox"/> Others	As the freedom of contract is limited by the provisions in the DCA and fundamental company law principles, no right may be granted that conflicts with such principles.

4) Who decides whether this CEM should be implemented, and under what conditions?

Priority Share rights incorporated in the articles of association which result in a change in the legal relationship between the existing shareholders are only valid if the shareholders whose legal rights are prejudiced give their consent, cf. the basic equal right principle in section 17 of the DCA. If the company has several classes of shares, a subsequent amendment of the articles of association which may result in a change in the legal relationship between such classes may be made if the shareholders holding at least 2/3 of the part of the class of shares represented at the general meeting whose legal rights are prejudiced, give their consent, cf. section 79 (3) of the DCA. If the CEM is proposed in connection with a subsequent proposal for capital increase subscribed by non-existing shareholders, the implementation will probably only require 2/3 of the votes cast and 2/3 of the voting share capital represented at the general meeting, if the CEM is in the interest of the company.

If the CEM is a consent clause, cf., section 79 (2) of the DCA (company's consent to transfer of shares), and it applies to all existing shareholders, it can be implemented at the general meeting with 9/10 of the votes cast and 9/10 of the voting share capital represented at the general meeting.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input type="checkbox"/> Quorum <input checked="" type="checkbox"/> Majority: It depends on the situation. From all shareholders to 2/3 of the votes cast and 2/3 of the voting share capital represented at the general meeting.	If the shareholders may authorize the Board or the Chairman or GM to implement the CEM: <input checked="" type="checkbox"/> For how long would the authorization be valid (maximum duration): If in connection with a capital increase (new shares) up to 5 years. The GM can authorize the Board of Directors to increase the share capital by issuing new shares. In connection with the authorization – which has to be published in the articles of association – the General Meeting decides if the new issued shares are to
-------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

		be a new class of shares (priority shares). So it is not the Board who decides to implement the CEM, but the shareholders at the GM.
--	--	--------------------------------------------------------------------------------------------------------------------------------------

Specific conditions:

Specific rights of minority shareholders when the CEM is implemented:

Right to require a minority buy-out: If the CEM is one of the CEMs that are mentioned in section 79 (2), for example a consent clause that applies to all shareholders (implementation requires a majority of 9/10 of votes cast and voting rights represented), a shareholder who at the general meeting objects to a section 79 majority adoption of changes to the articles of association can require that the issuer redeem his shares, cf. section 81 (a) of the DCA. Such claim must be made within 4 weeks from the date of the general meeting.

5) Are there ongoing disclosure requirements regarding such CEM?

The CEM shall appear from the articles of association that are publicly available. Furthermore, holders of the Priority Shares are subject to ordinary flagging requirements as other shareholders. Any shareholder who possesses more than 5% of the votes and/or more than 5% of the issued share capital must give notice hereof to the issuer and the Stock Exchange immediately after any threshold is reached, cf. section 29 of the DSTA. Notice must also be given to the issuer and the Stock Exchange, whenever thresholds with an interval of 5% between 10 and 100% and 1/3 and 2/3 of the share capital or voting rights are reached. The identity of major shareholders whose share possessions exceed the above thresholds are included in the publicly available annual reports.

Short form answer:

<input checked="" type="checkbox"/> No	But The CEM must be adopted in the publicly available articles of association. Shares comprised by the CEM are subject to ordinary flagging obligations of large shareholdings.
----------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

6) When a CEM is implemented, on what substantive grounds may such decision be challenged?

According to section 80 of DCA, the general meeting may not make any decision which clearly is suitable to give certain shareholders undue rights or advantages at the expense of other shareholders or the company itself. According to section 81 (a) of the DCA, a shareholder who at the general meeting objects to the adoption of a CEM that is mentioned in section 79 (2) of the DCA can require that the company redeem his shares.

Short form answer:

<input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the majority shareholders	<input checked="" type="checkbox"/> The decision to implement the CEM is against the interest of the shareholders, or <input checked="" type="checkbox"/> The decision to implement the CEM is against the corporate interest (defined as being distinct from the sole interest of shareholders). <input checked="" type="checkbox"/> Such grounds are alternative.
----------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

DEPOSITARY CERTIFICATES

1) **Is this CEM available?**

Yes, but not used so far in Denmark. This CEM would most likely be comprised by (included in) the definition of securities, cf. section 2 of the DSTA.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	Not used so far.
-----------------------------------------------------------	------------------

2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.**

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	Because no specific prohibitions in the DSTA.
------------------------------------------	--------------------------------------------------	-----------------------------------------------

3) **If this CEM is available, is it subject to any restrictions?**

No specific restrictions except that trademark law and name rights of the issuer of the underlying shares may restrict a shareholder's marketing and offering of the CEM if there are references to the issuer and shares in the issuer and the issuer has not consented to such use.

4) **Who decides whether this CEM should be implemented, and under what conditions?**

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the Board of Directors	<input checked="" type="checkbox"/> Autonomous decision
------------------------------------------------------------------------	---------------------------------------------------------

Specific conditions:

<p>Specific requirements when deciding to implement the CEM:</p> <p><input checked="" type="checkbox"/> Statutory auditors need to be involved as follows: Statement in the prospectus that they have reviewed the prospectus</p> <p><input checked="" type="checkbox"/> Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.): If the CEM in itself is listed: Prospectus requirements</p> <p><input checked="" type="checkbox"/> Specific authorization from Regulatory Authority, Stock Exchange, Government Authorities: Approval of prospectus by Finanstilsynet (Danish regulator)</p>

5) **Are there ongoing disclosure requirements regarding such CEM?**

Short form answer:

<input checked="" type="checkbox"/> No	The ordinary flagging obligations on large shareholdings will relate to the underlying shares.
----------------------------------------	------------------------------------------------------------------------------------------------

- 6) When a CEM is implemented, on what substantive grounds may such decision be challenged?

Not available.

VOTING RIGHT CEILINGS

1) Is this CEM available?

Allowed by section 79 (2)((4)) of the DCA.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)

2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.

Allowed by section 79 (2)((4)) of the DCA.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	Section 79 (2) ((4)) of the DCA
------------------------------------------	--------------------------------------------------	---------------------------------

3) If this CEM is available, is it subject to any restrictions?

There is no limit to the extent of how low a voting right ceiling can be set. However, as shares according to the DCA must be issued with voting rights, a voting right ceiling providing certain shares with *de facto* no voting rights, would most likely be deemed invalid by Danish courts.

Short form answer:

<input checked="" type="checkbox"/> Application of a Breakthrough Rule	The shareholders may decide at a general meeting that special rights connected with certain shares are suspended if a tender offer is pending, cf. section 81d (1) of the DCA.
<input checked="" type="checkbox"/> Others	Cf. narrative answer

4) Who decides whether this CEM should be implemented, and under what conditions?

If the CEM is implemented in the articles of association, the company must come into existence holding such provisions; otherwise, such provisions may only be entered into the articles of association at a general meeting. The proposal to adopt into the articles of association provisions regarding Voting Right Ceilings that applies to all existing shareholders must be agreed upon by at least 9/10 of the votes cast and 9/10 of the voting share capital represented at the general meeting, cf. section 79 (2) of the DCA. If only applicable to certain existing shareholders, consent from all such shareholders would be required under the basic equal right principle laid down in section 17 of the DCA.

Shareholders who have opposed the alterations of the articles of association (cf. section 79 (2) of the DCA) at the general meeting may demand that the company redeem their shares if such demand is put forward in writing within four weeks after the holding of the general meeting, cf. section 81 (a) of the DCA.

If the CEM is proposed in connection with a subsequent proposal for capital increase and the Voting Right Ceiling is only supposed to apply to the new issued shares (new share class), the decision requires 2/3 of the votes cast and 2/3 of the voting share capital represented at the general meeting.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input type="checkbox"/> Quorum: <input checked="" type="checkbox"/> Majority: If it applies to all shareholders 9/10 of the votes cast at the general meeting, and 9/10 of the voting share capital represented at the general meeting. If only applicable to certain existing shareholders, consent from such shareholders would also be required. If the CEM is proposed in connection with a subsequent proposal for capital increase and the Voting Right Ceiling is only supposed to apply to the new issued shares (new share class), the decision requires 2/3 of the votes cast and 2/3 of the voting share capital represented at the general meeting.
-------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Specific conditions:

Specific rights of minority shareholders when the CEM is implemented:	
<input checked="" type="checkbox"/> Right to require a minority buy-out: According to section 81 (a) of the DCA, shareholders who at the general meeting objects to the adoption of the CEM that applies to all shareholders can require that the company redeem their shares.	

5) Are there ongoing disclosure requirements regarding such CEM?

As the CEM shall appear from the articles of association, the CEM is disclosed and publicly available. Otherwise, subject to the ordinary flagging obligations on large shareholdings. Any shareholder who possesses more than 5% of the votes and/or more than 5% of the issued share capital must give notice hereof to the issuer and the Stock Exchange immediately after any threshold is reached, cf. section 29 of the DSTA. Notice must also be given to the issuer and the Stock Exchange, whenever thresholds with an interval of 5% between 10 and 100% and 1/3 and 2/3 of the share capital or voting rights are reached. The identity of major shareholders whose share possessions exceed the above thresholds are included in the publicly available annual reports.

Short form answer:

<input checked="" type="checkbox"/> No	But the CEM must be adopted in the publicly available articles of association. There are no additional disclosure obligations apart from the ordinary flagging obligations in respect of large shareholdings.
----------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

6) When a CEM is implemented, on what substantive grounds may such decision be challenged?

According to section 80 of DCA, the general meeting may not make any decision which clearly is suitable to give certain shareholders undue rights or advantages at the expense of other shareholders or the company itself. If the CEM applies to all existing shareholders, cf. section 79 (2), shareholders who at the general meeting object to the adoption of the CEM can, according to section 81 (a) of the DCA, require that the company redeem their shares.

Short form answer:

<input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the majority shareholders	<input checked="" type="checkbox"/> The decision to implement the CEM is against the interest of the shareholders, or <input checked="" type="checkbox"/> The decision to implement the CEM is against the corporate interest (defined as being distinct from the sole interest of shareholders). <input checked="" type="checkbox"/> Such grounds are alternative.
----------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

OWNERSHIP CEILINGS

1) **Is this CEM available?**

Allowed by section 79 (2)((2)) of the DCA.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)

2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.**

Allowed by section 79 (2)((2)) of the DCA.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	Section 79 (2) ((2)) of the DCA.
------------------------------------------	--------------------------------------------------	----------------------------------

3) **If this CEM is available, is it subject to any restrictions?**

No.

Short form answer:

<input checked="" type="checkbox"/> Application of a Breakthrough Rule	Subject to a qualified majority decision (2/3 of the votes cast and 2/3 of the voting share capital represented at the general meeting), the shareholder's may establish an arrangement whereby any special rights connected with any shares are suspended if a tender offer is pending, cf. section 81 (d) of the DCA.
------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

4) **Who decides whether this CEM should be implemented, and under what conditions?**

If this CEM is implemented in the articles of association, the company must either come into existence holding such provisions, or, such provisions may only be adopted into the articles of association subsequently at a general meeting. The proposal to enter provisions into the articles of association regarding ownership ceilings which apply to all shareholders must be agreed upon by 9/10 of the votes cast and 9/10 of the voting share capital represented at the general meeting, cf. section 79 (2) of the DCA. If only applicable to certain existing shareholders, consent from all such shareholders would also be required, cf. the basic equal right principle in section 17 of the DCA.

If the CEM is proposed in connection with a subsequent proposal for capital increase and the Ownership Ceiling is only supposed to apply to the new issued shares (new share class) the decision requires 2/3 of the votes cast and 2/3 of the voting share capital represented at the general meeting.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input checked="" type="checkbox"/> Quorum: none <input checked="" type="checkbox"/> Majority: If the CEM applies to all shareholders, 9/10 of the votes cast and 9/10 of the voting share capital represented at the general meeting. If the CEM shall only apply to certain existing shareholders, such shareholders
-------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

	<p>need to consent.</p> <p>If the CEM is proposed in connection with a subsequent proposal for capital increase and the Ownership Ceiling is only supposed to apply to the new issued shares (new share class), the decision requires 2/3 of the votes cast and 2/3 of the voting share capital represented at the general meeting.</p>
--	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Specific conditions:

<p>Specific rights of minority shareholders when the CEM is implemented:</p> <p><input checked="" type="checkbox"/> Right to require a minority buy-out : According to section 81 (a) of the DCA shareholders who at the general meeting objects to the adoption of the CEM that applies to all shareholders, cf. section 79 (2) of the DCA, can require that the company redeem their shares.</p>

5) Are there ongoing disclosure requirements regarding such CEM?

As the ownership ceiling shall appear from the articles of association, this CEM is disclosed and publicly available from the Danish Companies & Commerce Agency. Otherwise the shares are subject to ordinary flagging obligations.

Short form answer:

<input checked="" type="checkbox"/> No	The CEM must be adopted in the publicly available articles of association. There are no additional disclosure obligations except for the ordinary flagging obligations of large shareholdings.
----------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

6) When a CEM is implemented, on what substantive grounds may such decision be challenged?

According to section 80 of DCA, the general meeting may not make any decision which clearly is suitable to give certain shareholders undue rights or advantage at the expense of other shareholders or the company itself. According to section 81 (a) the shareholders who at the general meeting object to the adoption of the CEM can require that the company redeems their shares.

Short form answer:

<p><input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the majority shareholders.</p>	<p><input checked="" type="checkbox"/> The decision to implement the CEM is against the interest of the shareholders; or</p> <p><input checked="" type="checkbox"/> The decision to implement the CEM is against the corporate interest (defined as being distinct from the sole interest of shareholders).</p> <p><input checked="" type="checkbox"/> Such grounds are alternative.</p>
------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

SUPERMAJORITY PROVISIONS

1) **Is this CEM available?**

Yes, this CEM may be entered into a company's articles of association, cf. section 77 of the DCA.

The DCA already provides for a requirement of supermajority of 9/10 of the votes cast and 9/10 of the voting share capital represented at the general meeting deciding on the proposed alterations to the articles of association that, for example, restrict the transferability of voting rights (ownership ceilings, voting right ceilings and so forth).

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	Section 77 (2) of the DCA.
-----------------------------------------------------------	----------------------------

2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.**

Allowed by section 77 of the DCA.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	Section 77 of the DCA.
------------------------------------------	--------------------------------------------------	------------------------

3) **If this CEM is available, is it subject to any restrictions?**

No.

Short form answer:

<input checked="" type="checkbox"/> Application of a Breakthrough Rule	The shareholders may decide at a general meeting that special rights related to certain shares are suspended if a tender offer is pending, cf. section 81 (d) of the DCA.
------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------

4) **Who decides whether this CEM should be implemented, and under what conditions?**

If the CEM is implemented in the articles of association the company must either come into existence holding such provisions, or such provisions may only be adopted into the articles of association at a general meeting.

The proposal to enter the CEM into the articles of association must be agreed upon by 2/3 of the votes cast and of the voting share capital represented at the general meeting.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	Quorum: none <input checked="" type="checkbox"/> Majority: 2/3 of the votes cast and of the voting share capital represented at the general meeting.
-------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------

Specific conditions: None

5) **Are there ongoing disclosure requirements regarding such CEM?**

The CEM shall be disclosed in the publicly available articles of association.

Short form answer:

<input checked="" type="checkbox"/> No	But the CEM shall appear from the publicly available articles of association.
----------------------------------------	-------------------------------------------------------------------------------

6) **When a CEM is implemented, on what substantive grounds may such decision be challenged?**

According to section 80 of DCA, the general meeting may not make any decision which clearly is suitable to give certain shareholders undue rights or advantage at the expense of other shareholders or the company itself.

Short form answer:

<input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the majority shareholders.	<input checked="" type="checkbox"/> The decision to implement the CEM is against the interest of the shareholders, or <input checked="" type="checkbox"/> The decision to implement the CEM is against the corporate interest (defined as being distinct from the sole interest of shareholders). <input checked="" type="checkbox"/> Such grounds are alternative.
-----------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

GOLDEN SHARES

1) Is this CEM available?

Yes.

Golden Shares in the sense that the special rights are attached to the shares have – as far as we know – not been used in Denmark. In the case of privatization the state is granted some specific powers of decision or rights in the articles of association. For example when Copenhagen Airport was privatized a provision was put in the articles of association according to which the Danish state was the only shareholder, that could own more than 10% of the shares. This concrete CEM was probably in conflict with EU law, cf. below under section 2). There are no national rules concerning golden shares, no national court rulings, and they are not even discussed in legal theory (in depths).

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	To appear from the articles of association.
-----------------------------------------------------------	---------------------------------------------

2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.

Allowed by section 17 of the DCA as a deviation from the basic principle of equal rights, provided that the special rights appear from and are described in the articles of association.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule
------------------------------------------	--------------------------------------------------

3) If this CEM is available, is it subject to any restrictions?

The CEM cannot result in other shares not having any voting rights, cf. section 67 of the DCA. The European Court of Justice (“ECJ”) has ruled (case C-367/98, C-483/99 and 503/99 as of 4 June 2002 and C-463/00 and C-98/01 as of 12 May 2003 and upheld in C-282/04 and C-283/04) on whether national restrictions on the possibility to acquire shares in privatized corporations conflict with the principles of free movements of capital and other basic principles in the EEC Treaty. The ECJ ruled that the free movement of capital rights protected by the EEC Treaty can only be restricted by national arrangements to the extent justified by national tax and duty considerations or by compelling general public considerations and which apply to anyone who carries out business in the member state concerned. The restrictions shall at any time be proportionate in respect of the objectives pursued and shall be determined on basis of objective criteria which are known beforehand. Accordingly, discretionary restrictions which do not meet the conditions set out by the ECJ will most likely not be enforceable.

Short form answer:

<input checked="" type="checkbox"/> Application of a Breakthrough Rule	The shareholders may decide at a general meeting that special rights related to certain shares are suspended if a tender offer is pending, cf. section 81 (d) of the DCA.
------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------

4) Who decides whether this CEM should be implemented, and under what conditions?

If the CEM is implemented in the articles of association the company must come into existence holding such provisions, otherwise, such provisions may only be entered into the articles of association at a general meeting. The proposal to adopt provisions regarding this CEM will typically result in a change in the legal relationship between the shareholders and will therefore require consent of the shareholders whose legal rights are prejudiced in accordance with the basic principle of equal rights pursuant to section 17 of the DCA.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input checked="" type="checkbox"/> Quorum: None <input checked="" type="checkbox"/> If the company is not “born” with golden shares, the CEM will typically result in a change in the legal relationship between the shareholders and will therefore require 2/3 of the votes cast and 2/3 of the voting share capital represented at the general meeting and the consent of the shareholders whose legal rights are prejudiced.
-------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Specific conditions: None

5) Are there ongoing disclosure requirements regarding such CEM?

All articles of association of companies registered under Danish law are publicly available and thereby disclosed through the Danish Companies and Commerce Agency. The shares themselves will be subject to ordinary flagging obligations in respect of large shareholdings.

Short form answer:

<input checked="" type="checkbox"/> No	But the CEM must be adopted in and appear from the publicly available articles of association. The shareholdings are subject to ordinary flagging obligations on large shareholdings.
----------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

6) When a CEM is implemented, on what substantive grounds may such decision be challenged?

According to section 80 of DCA, the general meeting may not make any decision which clearly is suitable to give certain shareholders undue rights or advantages at the expense of other shareholders or the company itself.

Short form answer:

<input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the majority shareholders.	<input checked="" type="checkbox"/> The decision to implement the CEM is against the interest of the shareholders, or <input checked="" type="checkbox"/> The decision to implement the CEM is against the corporate interest (defined as being distinct from the sole interest of shareholders). <input checked="" type="checkbox"/> Such grounds are alternative.
-----------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

PARTNERSHIPS LIMITED BY SHARES**1) Is this CEM available?**

Partnerships Limited by Shares are allowed under Danish Law. However, Partnerships Limited by Shares are not allowed to be listed under Danish Law, cf. section 4 of government order of 25 April 2005.

Short form answer:

<input checked="" type="checkbox"/> No (Clear Situation)	Partnerships Limited by Shares are not allowed to be listed under Danish Law, cf. section 4 of government order of 25 April 2005.
----------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------

2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule
------------------------------------------	--------------------------------------------------

Other questions not applicable.

CROSS-SHAREHOLDINGS

1) **Is this CEM available?**

Yes, this CEM is available.

It is necessary to distinguish between, on the one hand, cross-ownership that does not establish a group of companies because none of the companies is a parent company according to section 2 of the DCA (a parent company is characterised by the fact that, either by ownership or agreement, it controls a majority of the voting rights in a subsidiary company or a majority of the seats of the board of the subsidiary) and, on the other hand, cross-ownership in a group of companies. For the latter, there are some restrictions on ownership of own shares (a company can only possess own shares amounting to a maximum of 10% of the share capital) and a parent company's treasury shares include all shares in the parent company held by the subsidiaries. There are no provisions concerning cross-holding outside a group structure.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	
-----------------------------------------------------------	--

2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.**

Implicitly allowed. Cross-shareholdings in groups are subject to the restrictions in section 48 of the DCA, regarding own shares within a group.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	
------------------------------------------	--------------------------------------------------	--

3) **If this CEM is available, is it subject to any restrictions?**

Pursuant to the Take-Over Rules in the DSTA, mandatory bid obligations for all shares in a company is triggered when either by ownership or agreement, a shareholder controls a majority of the voting rights in a another company or a majority of the seats of the board of a company or will be able to control the company and possessing more than 1/3 of the voting rights.

Cross-ownership in a group of companies, is subject to a requirement not directly or indirectly to own own shares for more than 10% of the share capital, cf. section 48 of the DCA. Shares in a parent company owned by subsidiaries are to be included when calculating the share capital threshold. A company may not subscribe own shares. Within a group of companies, a subsidiary cannot subscribe shares in a parent company.

Corporate Governance Codes (non-binding but subject to follow or explain why not principle) (Report on Corporate Governance issued by the committee of the Copenhagen Stock Exchange for Corporate Governance in May 2005) provide that a company being the subject of a pending tender offer desists from acquiring own shares.

Short form answer:

<input checked="" type="checkbox"/> The percentage of Cross-Shareholding is limited.	If the cross-holding establishes a group, cf. the DCA section 2, the parent company is subject to a requirement not directly or indirectly to obtain control of own shares for more than 10% of its share capital including any shares in the parent company held by a subsidiary.
<input checked="" type="checkbox"/> Application of a Breakthrough Rule	The shareholders may decide at a general meeting that the general meeting shall approve steps that may interfere with a pending tender offer, cf. section 81 (c) of the DCA.

4) Who decides whether this CEM should be implemented, and under what conditions?

As main rule the decision is made by the board of directors.

A company may acquire shares in other companies if the objects clause in the articles of association include the business purpose of the company “invested” in. If the object clause does not include the business purpose the objects clause must first be amended to include this share purchase. The objects clause may be amended by the GMS with a majority of at least 2/3 of the votes cast and 2/3 of the voting share capital represented at the general meeting.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the Chairman or the General Manager	<input checked="" type="checkbox"/> Autonomous decision, if allowed by the articles of association. <input checked="" type="checkbox"/> Upon authorization of the Board. <input checked="" type="checkbox"/> Upon authorization of the shareholders.	But only in rare cases
<input checked="" type="checkbox"/> Decision by the Board of Directors	<input checked="" type="checkbox"/> Autonomous decision, if allowed by the articles of association. <input checked="" type="checkbox"/> Upon authorization of the shareholders.	
<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input checked="" type="checkbox"/> Quorum: <input checked="" type="checkbox"/> Majority Only applicable in the event that the objectives of the articles of association need be amended to comprise the holding of shares in another company – if so a majority of 2/3 of the votes cast and 2/3 of the voting share capital represented at the general meeting	

	is required.	
--	--------------	--

Specific conditions:

<input checked="" type="checkbox"/> Specific requirements when deciding to implement the CEM: Special report to shareholders, prepared by: <input checked="" type="checkbox"/> Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.): If acquisition/subsorption of shareholding is a material (price sensitive) event, the acquirer/subscriber would need to disclose under the disclosure obligation rules in the DSTA. There are also flagging procedures for shareholders possessing 5% or more of the voting rights and/or issued share capital in a company,	Specific rights of minority shareholders when the CEM is implemented: <input checked="" type="checkbox"/> Right to require a minority buy-out Where a shareholder holds more than 9/10 of the shares in a company and also holds a corresponding proportion of the voting rights, such a qualifying shareholder may be required by any of the company's minority shareholders to acquire the shares of that minority shareholder, cf. section 20 (d) of the DCA. A shareholder that possesses 9/10 or more of the issued share capital and the voting rights can also demand to buy out the minority shareholder. This squeeze out mechanism is often used in connection with a takeover.
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

5) Are there ongoing disclosure requirements regarding such CEM?

No specific disclosure obligation except that any shareholder who possesses more than 5% of the votes and/or more than 5% of the issued share capital must give notice hereof to the issuer and the Stock Exchange immediately after any threshold is reached, cf. section 29 of the DSTA. Notice must also be given to the issuer and the Stock Exchange, whenever thresholds with an interval of 5% between 10 and 100% and 1/3 and 2/3 of the share capital or voting rights are reached. The identity of major shareholders whose share possessions exceed the above thresholds are included in the publicly available annual reports. If the CEM is a price sensitive transaction, the transaction must also be disclosed under ordinary disclosure obligations for listed companies. If the shareholding is deemed to be own shares (within a group of companies), the company must flag such shareholdings when amounting to 2% or more of the share capital and for any subsequent change of possession with an interval of 2%.

Short form answer:

<input checked="" type="checkbox"/> No	No specific disclosure requirements except for the general flagging obligations relating to large shareholdings and possible disclosure of the CEM if it represents a price sensitive transaction.
----------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

6) When a CEM is implemented, on what substantive grounds may such decision be challenged?

According to section 80 of DCA, the general meeting may not make any decision which clearly is suitable to give certain shareholders undue rights or advantages at the expense of other shareholders or the company itself. If the CEM is not a general meeting decision, the board of directors, or the management is not entitled to enter into transactions which are clearly likely to confer upon certain shareholders or others an undue advantage over other shareholders or over the company, cf. section 63 of the DCA. The CEM may be challenged under directors' and officers' liability (management and the board), cf. section 140 of the DCA if the management and/or the board negligently has inflicted damage on the company.

Short form answer:

<p><input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the majority shareholders.</p>	<p><input checked="" type="checkbox"/> The decision to implement the CEM is against the interest of the shareholders, or</p> <p><input checked="" type="checkbox"/> The decision to implement the CEM is against the corporate interest (defined as being distinct from the sole interest of shareholders).</p> <p>If the decision is made by the board: the Board is not entitled to enter into transactions which are clearly likely to confer upon certain shareholders or others an undue advantage over other shareholders or over the company.</p> <p><input checked="" type="checkbox"/> Such grounds are alternative.</p>
------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

SHAREHOLDERS' AGREEMENTS

1) Is this CEM available?

In Denmark the principle of freedom of contract applies. Shareholders are therefore free to enter into shareholders' agreements, as long as the shareholders' agreement do not contradict rules of law which cannot be dispensed with by agreement between parties (mandatory provisions/principles).

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	In accordance with the principle of contractual freedom.
-----------------------------------------------------------	----------------------------------------------------------

2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.

Shareholders' agreements are not prohibited by the DCA or any other Danish legislation, and thus allowed according to Danish law.

<input checked="" type="checkbox"/> Contractual Freedom

3) If this CEM is available, is it subject to any restrictions?

A shareholders' agreement cannot contradict rules of law which cannot be dispensed by an agreement between parties (mandatory provisions/principles). For example, a shareholders' agreement could not authorize or direct the directors as to how they are to perform their functions. It is debated whether a shareholders' agreement can contradict the articles of association. They often do. Shareholders' agreements are only to some extent binding on the company and would require that the board of directors of the company be notified of the existence and of the contents of the shareholders' agreement.

A mandatory takeover bid has to be launched if shareholders by entering into Shareholders' Agreements obtain control over the company as defined in the DSTA section 31 (1)((4)).

The principle of Directors' independence shall be complied with.

4) Who decides whether this CEM should be implemented, and under what conditions?

The shareholders are free to enter into agreements on their shareholdings.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Other: The shareholders themselves.

Specific conditions:

Specific requirements when deciding to implement the CEM:

Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.): Under the Order on Take-Overs and shareholders' disclosure obligations, parties (if being more than 5% owner) to a shareholders' agreement shall disclose to the Stock Exchange the relevant contents of a shareholders' agreement which may affect the free transferability or the price of the listed shares of the issuer.

5) Are there ongoing disclosure requirements regarding such CEM?

According to the Order on Take-Overs and shareholders' disclosure obligations, shareholders who hold more than 5% of the shares in a company are obligated to disclose information in shareholders' agreements that they are party to and which may affect the free transferability of the shares, or which may have a material price effect on the listed shares.

Parties to shareholders' agreements will continue to be subject to ordinary flagging obligations in respect of their large shareholdings in the company.

Specific filing is necessary when there is a change of the shareholders' agreement implying a change in the rights of the shareholders.

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place: Contents of shareholders' agreements which may affect the free transferability of the shares in the company or which may have a significant influence on the price of the shares shall be disclosed under the Order on Take-Overs and shareholders' disclosure obligations.
-----------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

6) When a CEM is implemented, on what substantive grounds may such decision be challenged?

Shareholders' agreements may be challenged by the parties to the agreement on the same substantive grounds as any other agreements made under Danish legislation.

B – GENERAL BACKGROUND QUESTIONS**1) What are the rules for board elections? How many corporate votes are required to appoint or remove corporate directors?**

The majority of the members of the board of directors shall be elected by the company at a general meeting save whereby the appointments are to be made by the committee of shareholders pursuant to section 59 of the DCA. The board of directors is elected with a simple majority vote, unless specific election requirements are provided in the articles of association. The term of office shall end at the closing of an annual general meeting, not later than four years after the election.

The articles of association may entitle public authorities or others right to appoint members to the board.

In companies which have had a staff of at least 35 employees on average over the last three years, the employees of the company are entitled, to elect from among themselves members of the board of directors together with alternates, cf. section 49 (2) of the DCA. The number may correspond to half of the members appointed by the general meeting, however, no less than 2 members.

The employees of a parent company and its subsidiary undertakings registered in Denmark are entitled to elect a number of members to the board of directors of the parent company together with alternates, cf. section 49 (3) of the DCA.

Unless otherwise provided for in the articles of association, the chairman of the board of directors (who cannot also be the managing director) is elected by the board itself.

Short form answer:

<p><input checked="" type="checkbox"/> Majority required for board election: Simple majority. For board removal: Simple majority. Quorum required for shareholders' meetings proceeding with the election or removal of board members: none.</p>	<p><input checked="" type="checkbox"/> Boards members may be revoked during any shareholders' meetings <i>or</i> only during certain shareholders' meetings <i>or</i> only if revocation is on the agenda:</p> <p>Board members elected by the general meeting, may have their election revoked at a general meeting, if revocation is on the agenda. All shareholders have the right to add issues to the agenda, cf. section 71 of the DCA. The term of office shall end at the closing of an annual general meeting, not later than four years after the election. In companies which have had a staff of at least 35 employees on average over the last three years, the employees of the company are entitled to elect from among themselves members of the board of directors, cf. DCA Section 49 (2)</p> <p>The employees of a parent company and its subsidiary undertakings registered in Denmark are entitled to elect a number of members to the board of directors of the parent company, cf. DCA, section 49 (3).</p>
<p><input checked="" type="checkbox"/> Electronic voting is authorized, but not mandatory.</p>	<p><input checked="" type="checkbox"/> Minority shareholders are entitled to require a general meeting of shareholders to be convened: Shareholders who own at least 1/10 of the issued share capital, or less if the articles of association states otherwise may with a notice of 2 weeks demand that an extraordinary general meeting must be convened, cf. section 70 of the DCA.</p>

	<input checked="" type="checkbox"/> Proxy solicitation is authorized: Yes. The information is accessible only if the shareholders decide so, by simple majority.
--	------------------------------------------------------------------------------------------------------------------------------------------------------------------

2) What shareholders' decisions require a vote from more than a simple majority?

Sections 78 and 79 of the DCA state which shareholders decisions require a qualified majority and super majority (2/3, 9/10 or all). These decisions all presume amendment of change in the articles of association, and decisions where the shareholder’s liabilities towards the company are increased or where the rights are restricted (for example the right of free transferability of shares).

Both Section 78 and 79 requires 2/3 (9/10) of both the votes cast and the capital with voting rights represented at the general meeting. The requirement of a qualified majority of both votes and capital ensures the shares with less votes (in companies with multiple voting right) have influence on important decisions.

If existing shares are to be divided into different classes the result is a change in the legal relationship between the shareholders. The adoption hereof would require a majority of at least 2/3 of the votes cast and 2/3 of the voting share capital represented at the general meeting and the consent of those shareholders whose legal rights are prejudiced.

In respect of qualified majority votes, shareholders who are present at the time of voting but who do not participate in the vote are counted as represented, and thereby will influence the voting by being present (2/3 or 9/10, as the case may be, of the voting share capital represented at the general meeting). A shareholder who does not want to vote – or cannot vote – and who does not want to influence the result of the voting must leave the room during the voting. In respect of majority requirements non-voting will not influence the votes cast. Blank vote will likely not be included in the calculation of votes cast but will be included in the voting share capital represented at the general meeting.

Short form answer:

<input checked="" type="checkbox"/> All changes in bylaws / articles of associations <input checked="" type="checkbox"/> Issuance of shares / bonds / other financial instruments: issuance of shares, convertible bonds, bonds that carry interest linked to dividend and/or profit of the company, and warrants	<input checked="" type="checkbox"/> Change of nationality of the company. <input checked="" type="checkbox"/> Change of corporate purpose. <input checked="" type="checkbox"/> Sale of all or substantially all the assets: to the extent that such divestiture would <i>de facto</i> result in the objects of the company no longer being complied with.
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------



PROPORTIONALITY BETWEEN OWNERSHIP AND CONTROL IN EU LISTED COMPANIES:
EXTERNAL STUDY COMMISSIONED BY THE EUROPEAN COMMISSION

**PROPORTIONALITY BETWEEN OWNERSHIP AND CONTROL
IN EU LISTED COMPANIES:**

COMPARATIVE LEGAL STUDY

GERMANY

SHEARMAN & STERLING^{LLP}

Hans Diekmann

Breite Strasse 69
D-40213 Düsseldorf, Germany
T: +49 211 17888 0
F: +49 211 17888 88

Reviewed by:

Peter o. Mülbart

Professor of corporation law, securities law, and banking law
Director of the Center for german and international law of financial services, University of Mainz

MULTIPLE VOTING RIGHTS SHARES

Note: Although we make some indications to the VW-Gesetz, please note that the following considerations do not reflect the exceptional case of the VW-Gesetz.

1) **Is this CEM available?**

According to Sec. 12 para. 2 of the German Stock Corporation Act (*Aktiengesetz* – "AktG") multiple voting rights are not permitted.

A former provision which stipulated that multiple voting rights could be allowed by way of ministerial authorization (Sec. 12 para. 2 sentence 2 AktG of 1965) was abolished in 1998 by Art. 1 No. 2 of the Corporate Sector Supervision and Transparency Act (*Gesetz zur Kontrolle und Transparenz im Unternehmensbereich* – "KonTraG") in order to achieve congruence between the capital share held in a company and the voting rights granted by such share.⁵

Existing multiple voting rights expired on June 1, 2003 after a transitional period of five years unless the shareholders' meeting resolved upon their continuation prior to that date and by a vote of a majority of at least three-quarters of the share capital represented in the passing of the resolution. Holders of multiple voting rights were not allowed to exercise their voting rights with respect to this resolution.⁶

<input checked="" type="checkbox"/> No (Clear Situation)	<p>German stock corporations are not allowed to issue multiple voting rights shares. Multiple voting rights shares already existing prior to the coming into force of the KonTraG (May 1, 1998) may continue to be valid, if the shareholders' meeting has resolved so till June 1, 2003.</p> <p>If the shareholders' meeting passed a resolution on the preservation of Multiple Voting Rights prior to June 1, 2003, such CEM will remain valid.</p>
----------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.**

Both Sec. 12 para. 2 AktG which explicitly prohibits multiple voting rights and Sec. 5 Introductory Act to the German Stock Corporation Act (*Einführungsgesetz zum Aktiengesetz* – EG AktG) which regulates transitional provisions regarding existing multiple voting rights are mandatory federal laws.⁷

The German Corporate Governance Code also underlines the non-existence of multiple voting rights.⁸

⁵ BT-Drucks. 13/9712, page 12; BGBl. I 1998, page 786.

⁶ See Sec. 5 para. 1 of the Introductory Act to the German Stock Corporation Act (*Einführungsgesetz zum Aktiengesetz* – "EGAktG"); *Zitzsch/Maul*, in: *Beck'sches Handbuch der AG*, 2004, § 4 note 58.

⁷ All economic regulations that are relevant to this study and referred to in this questionnaire are federal laws, unless expressly stated otherwise.

⁸ See No. 2.1.2 German Governance Code as amended on June 12, 2006.

<input checked="" type="checkbox"/> Laws Art. 12 para. 2 AktG Sec. 5 EG AktG	<input checked="" type="checkbox"/> Binding Rule
<input checked="" type="checkbox"/> Corporate Governance Codes No. 2.1.2 German Corporate Governance Code	<input checked="" type="checkbox"/> Non-Binding Rule

3) If this CEM is available, is it subject to any restrictions?

As stated above, multiple voting rights cannot be newly implemented.

Other questions not applicable.

5) Are there ongoing disclosure requirements regarding such CEM?

Pursuant to Sec. 289 para. 4 No. 2, 315 para. 4 No. 2 of the German Commercial Code (*Handelsgesetzbuch* – HGB) as amended by the Takeover Directive Transformation Act (*Übernehmerichtlinien-Umsetzungsgesetz* – ÜbRIUG), multiple voting rights must be disclosed in the management report which forms part of the company’s annual report.

In accordance with these provisions, those multiple voting rights have to be disclosed which already existed before the KonTraG came into force and which were not abolished by the respective company’s shareholders’ meeting.

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure to be made on yearly basis (management report).
-----------------------------------------	------------------------------------------------------------------------------------------------

6) When a CEM is implemented, on what substantive grounds may such decision be challenged?

As stated above, multiple voting rights cannot be newly implemented.

Multiple voting rights that still exist could be considered a violation of the principle of “one share-one vote” from which German stock corporation law emanates.⁹ Thus, the existence of this CEM could be challenged as a breach of Sec. 53a AktG which provides for the equal treatment of shareholders. However, statute law expressly provides for (i) the admissibility of different classes of shares with different rights and duties arising from each of them,¹⁰ and (ii) the possibility of the continuity of existing multiple voting rights if resolved so by the shareholders meeting. Therefore, the existence of multiple voting rights could hardly be considered a breach of the above-mentioned principles of stock corporation law.¹¹

⁹ See *Winkler, Das Stimmrecht der Aktionäre in der Europäischen Union*, 2006, page 76. The voting right is a general membership right of the shareholders to which each of them is entitled equally. Therefore, the extent of the voting right, basically, corresponds to the respective shareholder’s capital share; see *Bungeroth in: Münchener Kommentar AktG*, 2nd edition 2003, Vor § 53a note 13 and § 53 note 9.

¹⁰ See Sec. 11 sentence 1 AktG. Multiple voting rights shares are a discrete class of shares, see *Wiesner in: Münchener Handbuch des Gesellschaftsrechts*, Vol. 4 – *Aktiengesellschaft*, 2nd edition 1999, § 13 note 9;

¹¹ See *Hüffer AktG*, 7th edition 2006, § 11 note 2; *Kraft in: Kölner Kommentar AktG*, 2nd edition 1988, § 11 note 7.

Any provision of the articles of association by means of which multiple voting rights shall newly be implemented as well as any resolution based on such provision would be void (nichtig) by law (Sec. 241 No. 3 AktG).¹²

¹² See *Hüffer AktG*, 7th edition 2006, § 12 note 10, § 23 note 43, § 241 note 18 *et seq.* and *Hüffer Münchener Kommentar AktG*, 2nd edition 2001, § 241 note 52.

NON-VOTING SHARES

1) **Is this CEM available?**

Non-voting shares without preference rights may not be issued under German Stock Corporation Law. Since the granting of a preference dividend substitutes the voting right and therefore justifies its exclusion, it is condition precedent for the implementation of non-voting shares.¹³

Therefore, any resolution of the shareholders' meeting adopted in order to implement non-voting shares without preference rights would be void by law (Sec. 241 No. 3 AktG).¹⁴

However, please note that in general partially paid in shares have no voting rights (Sec. 134 para. 2 sentence 1 AktG). The voting right does not exist until the full payment of the contribution.

<input checked="" type="checkbox"/> No (Clear Situation)

2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.**

Sec. 139 para. 1 AktG as well as Sec 12 para. 1 sentence 2 AktG regulate that the issuance of non-voting shares is only permitted if such non-voting shares grant a preference dividend.

<input checked="" type="checkbox"/> Laws Sec. 12 para. 1 sentence 2 AktG Sec. 139 para. 1 AktG	<input checked="" type="checkbox"/> Binding Rule
------------------------------------------------------------------------------------------------------	--------------------------------------------------

Other questions not applicable.

¹³ See *Volhard* in: *Münchener Kommentar zum AktG*, 2nd edition 2004, § 139 note 8; *Hüffer AktG*, 7th edition 2006 § 12 note 5.

¹⁴ See *Hüffer AktG*, 7th edition 2006, § 139 note 19.

NON-VOTING PREFERENCE SHARES

1) Is this CEM available?

Since 1937 non-voting preference shares may be issued under the German Stock Corporation Act.¹⁵

According to Sec. 202 para. 1 AktG, the articles of association may authorize the management board (*Vorstand*) for a period of up to five years to increase the share capital in a certain amount by issuance of new shares against contributions (*Genehmigtes Kapital*).

If NVP Shares exist, preference shares which are to enjoy priority over or the same rights as such NVP Shares with respect to the distribution of profits or assets may only be issued if permitted in the authorization (Sec. 204 para. 2 AktG).

<input checked="" type="checkbox"/> Yes (Clear Situation)

2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.

The issuance of non-voting preference shares is regulated by Sec. 12 para. 1 sentence 2 and Sec. 139 to 141 AktG.

<input checked="" type="checkbox"/> Laws Sec. 12 para. 1 sentence 2 AktG Sec. 139 to 141 AktG	<input checked="" type="checkbox"/> Binding Rule
-----------------------------------------------------------------------------------------------------	--------------------------------------------------

3) If this CEM is available, is it subject to any restrictions?

In accordance with Sec. 139 para. 2 AktG, the total nominal amount of non-voting preference shares issued may not exceed one-half of the share capital (*Grundkapital*).

It is not allowed to restrict the shareholders' voting rights only with regard to specific concerns. The voting rights can only be excluded in total.¹⁶

If the preference dividend is not paid or not paid in full in any given year and if the amount in arrears is not paid in the next year together with the full preference dividend for such year, the holders of preference shares have voting rights until the amount in arrears has been paid. In such case, the preference shares issued are taken into account in computing any capital majority required by law or the articles of association.¹⁷

Resolutions of the shareholders' meeting restricting or canceling the preference right, require the consent of the holders of non-voting preference shares. The consent can be granted by a special resolution of the holders of non-voting preference shares in a special meeting (*Sonderversammlung*). The adoption of the resolution requires a majority of 75% of the votes cast. Likewise, any resolution

¹⁵ See Sec. 12 para. 1 sentence 2 and Sec. 139 para. 1 AktG.

¹⁶ See *Hüffer* AktG, 7th edition 2006, § 139 note 13.

¹⁷ See Sec. 140 para 2 AktG.

regarding the issuance of preference shares which are to enjoy the same benefits as or priority over non-voting preference shares with respect to the distribution of profits or assets require the consent of the holders of non-voting preference shares (as mentioned above, the holders of NVP Shares grant their consent in a special meeting. Consent does not have to be granted by each holder of NVP-Shares). Such consent is not required if the right to issue new preference shares was expressly reserved when the preference right was granted or, if the voting rights were excluded later, when such exclusion was made, provided, in either case, that the subscription rights of the holders of preference shares are not excluded.¹⁸

<input checked="" type="checkbox"/> Maximum percentage of Non-Voting Preference Shares:	50%
<input checked="" type="checkbox"/> Reinstatement of voting rights in certain circumstances: Sec. 141 para. 2 AktG Sec. 141 para 3 AktG	(Partial) default of payment of preference dividend in two subsequent years. Cancellation or restriction of preference. Issuance of other preference shares which are to enjoy the same rights as or priority over the existing non-voting preference shares. The consent regarding the issuance of such shares is granted by a special resolution of the holders of non-voting preference shares in a special meeting (<i>Sonderversammlung</i>).

4) **Who decides whether this CEM should be implemented, and under what conditions?**

Non-voting preference shares may only be implemented either by way of amendment of the existing articles of association or by means of a respective stipulation contained in the original articles of association.¹⁹

If the issuance of non-voting preference shares is realized within the scope of a capital increase, the resolution of the shareholders' meeting requires the majority prescribed for the respective capital measure. For so called fundamental resolutions such as (authorized or conditional) capital increases, as a general rule, a majority of three quarters of the share capital represented in the passing of the resolution is required. However, the articles of association may set forth another capital majority.²⁰

The implementation of non-voting preference shares by means of excluding the voting rights of existing shares, requires the consent of each shareholder affected by such deprivation.²¹

¹⁸ See Sec. 141 para. 1 and 2 AktG.

¹⁹ See *Hüffer AktG*, 7th edition 2006, § 139 note 11; *Volhard* in: *Münchener Kommentar zum AktG*, 2nd edition 2004, § 139 note 5; Sec. 60 para 3 AktG stipulates that the articles of association may provide for another method of profit distribution.

²⁰ See *Volhard* in: *Münchener Kommentar zum AktG*, 2nd edition 2004, § 139 note 5 and § 133 note 42; Sec. 182 para 1 sentence 2, 193 para 1, 202 para. 2, 207 para. 2 AktG.

²¹ See BGHZ 70, 117/122 "*Mannesmann*"; *Volhard* in: *Münchener Kommentar zum AktG*, 2nd edition 2004, § 139 note 5 and § 133 note 42.

Who decides:

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders:	<input checked="" type="checkbox"/> Majority: 75% of share capital represented if implemented by way of amendment of the articles of association (see Sec. 179 para. 2 AktG). If non-voting preference shares shall be implemented by means of excluding the voting rights of existing shares, the respective resolution requires the consent of <u>each</u> shareholder affected by such conversion of common shares into non-voting preference shares.
--------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Specific conditions:

<p>Specific requirements when deciding to implement the CEM:</p> <input checked="" type="checkbox"/> Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.): Pursuant to Sec. 30c of the German Securities Trading Act (<i>Wertpapierhandelsgesetz</i> – "WpHG") ²² the issuer of admitted shares whose state of origin is Germany must notify the admission board (<i>Zulassungsstelle</i>) about intended amendments of its articles of association without undue delay (<i>unverzüglich</i>), at the latest at the point in time the shareholders' meeting that shall resolve upon the respective amendment is convoked. However, a separate notification of the admission board is not required if the intended amendment of the articles of association is published in accordance with Sec. 124 para. 2 sentence 2 AktG. ²³

5) Are there ongoing disclosure requirements regarding such CEM?

Pursuant to Sec. 289 para. 4 No. 1, 315 para. 4 No. 1 HGB as amended by the ÜBRIUG, the composition of the share capital with respect to the existing classes of shares must be disclosed in the management report.

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure to be made on a yearly basis: in the Annual Report (management report), which must disclose: <ul style="list-style-type: none"> - different types of shares and rights and duties attached to such shares - limitation of voting rights (Sec. 289 para. 4 No. 2, 315 para. 4 No. 2 HGB)
-----------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

6) When a CEM is implemented, on what substantive grounds may such decision be challenged?

The issuance of non-voting preference shares can be implemented to the exclusion of subscription rights of shareholders.

²² With the coming into force of the Transparency Directive Transformation Act (*Transparenzrichtlinien-Umsetzungsgesetz* – "TUG") by means of which the Directive 2004/109/EC was transformed into German law on January 20, 2007, Sec. 64 of the German Stock Exchange Admission Regulation (*Börsenzulassungsverordnung* – "BörsZulV") was abolished and replaced by (the coextensive) Sec. 30c WpHG; see *BT-Drucks.* 16/2498, pages 22, 12.

²³ See *Groß Kapitalmarktrecht*, 3rd edition 2006, §§ 53-70 BörsZulV note 10.

This CEM is often used to safeguard the influence of majority shareholders, especially if a non-listed company decides to go public. The issuance of non-voting preference shares enables the majority shareholder to maintain its control even through a number of capital increases without the necessity of contributing its own capital.²⁴

Generally, the implementation of non-voting preference shares could not be challenged as a breach of the principle of equal treatment of shareholders, because German stock corporation law not only allows for the implementation of different classes of shares conferring different rights each²⁵ but also for the issuance of non-voting preference shares.²⁶

However, the implementation of the CEM could be challenged as the prosecution of special rights (*Sondervorteile*) in terms of Sec. 243 para.2 AktG.

Any resolution of the shareholders' meeting adopted in order to implement non-voting shares (i) without preference rights or (ii) to the exclusion of the right to the payment of arrears (*Nachzahlungsrecht*) **would** be void (*nichtig*) by law (Sec. 241 No. 3 AktG).²⁷ Anybody would be able to appeal to the nullity of such resolution.²⁸ Shareholders, the management board or a member of the management board or the supervisory board could bring forward an action against the company in order to declare such resolution to be void (*Nichtigkeitklage*).²⁹

The decision to implement the CEM is in the sole interest of the majority shareholders.

²⁴ See Zitzsch/Maul in: *Beck'sches Handbuch der AG*, 2004, § 4 note 49.

²⁵ See Sec. 11 AktG.

²⁶ See above.

²⁷ See Hüffer AktG, 7th edition 2006, § 139 note 19.

²⁸ See Hüffer AktG, 7th edition 2006, § 241 note 4.

²⁹ See Sec. 249 AktG.

PYRAMID STRUCTURES

1) **Is this CEM available?**

Pyramid structures are available under German law. (Indirect) participations in listed stock corporations are not restricted, but are subject to certain disclosure requirements both for the holding company and the listed subsidiary.

<input checked="" type="checkbox"/> Yes (Clear Situation)

2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.**

The provisions regarding group law form part of the AktG, the most important provisions concerning the disclosure of pyramid structures and similar group structures are contained in the Securities Trading Act (*Wertpapierhandelsgesetz – WpHG*) and the HGB.

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule
Sec. 15 <i>et seqq.</i> AktG	
Sec. 20 <i>et seqq.</i> AktG	
Sec. 291 <i>et seqq.</i> AktG	
Sec. 21 to 28 WpHG	
Sec. 313, 315, HGB	

3) **If this CEM is available, is it subject to any restrictions?**

The implementation of pyramid structures is not subject to any direct limitations, but there are certain indirect restrictions to the CEM:

Under the Securities Acquisition and Takeover Act (*Wertpapiererwerbs- und Übernahmegesetz – WpÜG*), e.g., any person attaining control over a target company³⁰ is obliged to tender a public offer for the acquisition of all outstanding shares in the target company.³¹ Control in terms of the WpÜG is defined as the holding of at least 30% of the voting rights in the target company, whereas Sec. 30 WpÜG (attribution of voting rights) applies.³²

³⁰ Pursuant to Sec. 1, 2 para. 3 WpÜG, a target company is a stock corporation or a partnership limited by shares domiciled in Germany the shares of which are admitted for trading on an organized market.

³¹ Companies whose shares are listed on an organized market in the European Economic Area (EEA) and with their registered office in Germany (Sec. 1 WpÜG in connection with Sec. 2 para. 3 and 7 WpÜG).

³² See *Hommelhoff/Witt* in: *Haarmann/Schüppen Frankfurter Kommentar zum WpÜG*, 2nd edition 2005, § 35 note 30.

4) Who decides whether this CEM should be implemented, and under what conditions?

Generally speaking, the decision on the purchase of participations in other companies lies within the competence of the management board (*Geschäftsführungsmaßnahme*). However, the articles of association or the supervisory board may require that specific types of transaction only be entered into with the consent of the latter.³³ The shareholders' meeting may only resolve upon matters concerning the management of the corporation if the management board so requires.³⁴

Who decides:

<input checked="" type="checkbox"/> Decision by the Board of Directors	<input checked="" type="checkbox"/> Autonomous decision
------------------------------------------------------------------------	---------------------------------------------------------

Specific conditions:

None.

5) Are there ongoing disclosure requirements regarding such CEM?

German securities law constitutes the obligation to disclose the amount of voting rights held in a listed stock corporation if certain voting right thresholds are met:

WpHG

Pursuant to Sec. 21 para. 1 sentence 1 WpHG, any person whose shareholding in a listed company³⁵ reaches, exceeds or falls short of 3, 5, 10, 25, 50 or 75 percent of the voting rights by purchase, sale or any other means shall immediately notify the company and the Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht* – BaFin) in writing of having reached, exceeded or fallen short of the respective threshold and of the amount of the percentage of the voting rights held.

Regarding the calculation of the thresholds triggering the notification requirements set forth in Sec. 21 WpHG, Sec. 22 and 23 WpHG contain rules for the attribution and the discounting of voting rights. As an imputation rule (*Zurechnungsnorm*), Sec. 22 WpHG sets forth various rules for the attribution of voting rights of third parties to the person or company being obliged to notify its shareholding in a quoted company. Sec. 23 WpHG provides for the BaFin to permit, upon written request, the notifying party to discount voting rights arising from shares in the listed company subject to certain conditions.

Any listed company to which the holding of voting rights is notified in accordance with Sec. 21 WpHG must publish such notification immediately, at the latest within nine calendar days of receipt, through a supra-regional official stock exchange gazette.³⁶

³³ See Sec. 111 para. 4 sentence 2 AktG.

³⁴ See Sec. 119 para. 2 AktG. However, there may be an unwritten competence of the shareholders' meeting to resolve upon certain transactions. That is the case if the envisaged transaction is of fundamental importance for the company (mostly sales/spin-offs of the company's material assets), see BGHZ 83, 122/130 *et seq.* "Holzmüller"; Hüffer, AktG, 7th edition 2006, § 119 note 16 *et seq.*

³⁵ Pursuant to Sec. 21 para.2 WpHG a listed company in terms of Sec. 21 *et seq.* WpHG are companies domiciled in Germany whose shares are listed on an organized market in a member state of the EU or another signatory state to the Agreement on the EEA.

³⁶ See Sec. 25 para. 1 WpHG.

Companies domiciled abroad whose shares are admitted to trading on an organized market in Germany, also have to publish notifications made in accordance with Sec. 21 WpHG subject to the provisions set forth in Sec. 26 WpHG.

HGB

Sec. 313 para. 2 HGB stipulates that the notes to the consolidated annual financial statements shall report the name and domicile and the share in the capital (held by the parent and the subsidiaries included in the consolidated financial statement or held by a person acting on behalf of the respective company) of (i) the companies included in the consolidated financial statements, (ii) associated companies, (iii) companies only proportionately included in the consolidated financial statements pursuant to Sec. 310 HGB as well as the name and the domicile of other companies in which the parent, a subsidiary or a person acting on behalf of one of these companies holds at least 20% of the shares (specifying the shares in capital and the amount of the equity capital and the results of the preceding fiscal year for which financial statements were prepared).

Within the scope of the Takeover Directive Transformation Act (*Übernehmerichtlinien Umsetzungsgesetz – ÜbRIUG*) Sec. 289 and 315 HGB were amended in order to transform Art. 10 of the EU Takeover Directive into German law: Sec. 289 para. 4 No. 3 and 315 para. 4 No. 3 HGB as amended set forth that direct or indirect holdings of more than 10% in the company's share capital must be disclosed within the (consolidated) management report, which forms part of a company's annual report.

AktG

Sec. 20 and 21 AktG stipulate notification requirements related to the holding of a participation in a stock corporation with its registered office in Germany of more than 25% or 50%. However, Sec. 20 para. 8 and Sec. 21 para. 5 AktG clarify that the provisions set forth by the respective Section of the AktG do not apply to stock corporations whose shares are listed on a stock exchange in terms of Sec. 21 para 2 WpHG.³⁷

WpÜG

According to Sec. 35 para. 1 sentence 1 WpÜG any person attaining direct or indirect control over a target company³⁸ must publish such event without undue delay (*unverzüglich*), at the latest within seven calendar days, indicating the percentage of voting rights held.

<input checked="" type="checkbox"/> Yes	<p><input checked="" type="checkbox"/> Disclosure to be made on a yearly basis:</p> <p>Disclosure of direct or indirect holdings of more than 10% in the company's share capital pursuant to Sec. 315 para. 4 No. 3 HGB as amended.</p> <p>Disclosure of participations held in (proportionately) consolidated companies, and associated companies by a holding company, its subsidiaries or any person acting on behalf of these entities as well as any participation in other than the above-mentioned companies held by the holding company, its subsidiaries or any other person acting on behalf of these entities, if it amounts to at least 20% (Sec. 313 para 2 HGB).</p> <p><input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place:</p> <p>A person's shareholding in a listed company reaches, exceeds or falls short of 3, 5, 10, 25,</p>
-----------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

³⁷ See footnote 35.

³⁸ See footnote 31.

	<p>50 or 75 percent of the voting rights by purchase, sale or any other means (Sec. 21 para. 1 sentence 1 WpHG).</p> <p>A listed company to which the holding of voting rights is notified in accordance with Sec. 21 WpHG must publish such notification immediately, at the latest within nine calendar days of receipt, through a supra-regional official stock exchange gazette.</p>
--	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

6) When a CEM is implemented, on what substantive grounds may such decision be challenged?

Using a pyramid structure, the parent company is able to exert a certain influence over its respective subsidiaries, especially those situated at the pyramid's base, by holding a participation which is comparatively small in economic terms.³⁹ However, under German law the parent company's management may not issue instructions to the management board (*Vorstand*) of a subsidiary unless the two companies have entered into a domination agreement (*Beherrschungsvertrag*) pursuant to Sec. 291 *et seqq.* AktG. The management board is responsible for the management of the stock corporation and therefore, in general, not subject to directives.

Any shareholder may bring forward an action against the company in order to declare a transaction entered into by the management board for the purpose of acquiring or selling (majority) participations or assets of the company (*Konzernbildungsmaßnahme*) to be void based on the argument that the autonomous decision of the management board infringes the shareholders' meeting right to resolve on transactions of fundamental importance (so-called Holz Müller-Doctrine).⁴⁰

³⁹ See *Seibt/Heiser*, ZGR 2005, page 200/237 footnote 197.

⁴⁰ See BGHZ 83, 122/130 *et seqq.* "Holz Müller"; *Hüffer*, AktG, 7th edition 2006, § 119 note 16 *et seqq.* Even an action (against the company) aimed at the rescission of the respective transaction was declared admissible; see *Kubis* in: *Münchener Kommentar AktG*, 2nd edition 2004, § 119 note 34.

PRIORITY SHARES

1) **Is this CEM available?**

Under German stock corporation law, specific shareholders or holders of certain shares can be granted the right to appoint members of the supervisory board by the articles of association.⁴¹

<input checked="" type="checkbox"/> Yes (Clear Situation)

2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.**

Sec. 101 para. 2 AktG expressly stipulates that the articles of association of a stock corporation (or a partnership limited by shares⁴²) may provide for the right of certain shareholders or of holders of certain shares to directly appoint members of the supervisory board.

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule
Sec. 101 para. 2 AktG	

3) **If this CEM is available, is it subject to any restrictions?**

The right to appoint members to the supervisory board can only be granted to certain shareholders or to holders of certain shares if the company's shares are registered shares which transfer requires the consent of the company (*vinkulierte Namensaktien*).⁴³

According to Sec. 101 para. 2 sentence 4 AktG, in general, the right to appoint may not be granted for more than one-third of the total number of supervisory board members who are to be elected by the shareholders.⁴⁴

<input checked="" type="checkbox"/> Others	The right to appoint may not be granted for more than one-third of the total number of supervisory board members who are to be elected by the shareholders.
--------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------

⁴¹ See Sec. 101 para. 2 sentence 1 AktG.

⁴² See Sec. 278 para. 3 AktG.

⁴³ See Sec. 101 para. 2 sentence 2 AktG; *Hüffer AktG*, 7th edition 2006, § 101 note 8.

⁴⁴ Sec. 101 para. 2 sentence 4 AktG expressly stipulates that Sec. 4 para. 1 of the Volkswagen Act (*Gesetz über die Überführung der Anteilsrechte an der Volkswagen GmbH in private Hand – VWG*) shall not be affected by the provision of Sec. 101 para. 2 sentence 3 AktG. Sec. 4 para. 1 VWG sets forth that the Federal Republic of Germany and the federal state of Lower Saxony each have the right to appoint two members to the supervisory board of VW AG as long as they own shares of the company. Whereas the Federal Republic of Germany has sold its VW shares in 1988, the state of Lower Saxony still held 14.9% of the company's shares as per September 30, 2006; see *Pießkalla, Goldene Aktien aus EG-rechtlicher Sicht*, Hamburg 2006, page 295.

	The right to appoint members to the supervisory board can only be granted shares if the company's shares are registered shares which transfer requires the consent of the company (<i>vinkulierte Namensaktien</i>).
--	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

4) Who decides whether this CEM should be implemented, and under what conditions?

Since Sec. 101 para. 2 sentence 1 AktG expressly stipulates that only the articles of association may provide for the right of certain shareholders to appoint members of the supervisory board, only the founders of the corporation or the shareholders' meeting, the latter by means of resolving upon an amendment of the articles of association, can implement this CEM.

Who decides:

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input checked="" type="checkbox"/> Majority: 75% of the share capital represented in the passing of the resolution (Sec. 179 para. 2 sentence 1 AktG) No specific quorum is required.
-------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Specific conditions:

<p>Specific requirements when deciding to implement the CEM:</p> <p><input checked="" type="checkbox"/> Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.):</p> <p>Pursuant to Sec. 30c of the German Securities Trading Act (<i>Wertpapierhandelsgesetz – "WpHG"</i>)⁴⁵ the issuer of admitted shares whose state of origin is Germany must notify the admission board (<i>Zulassungsstelle</i>) about intended amendments of its articles of association without undue delay (<i>unverzüglich</i>), at the latest at the point in time the shareholders' meeting that shall resolve upon the respective amendment is convoked.</p> <p>However, a separate notification of the admission board is not required if the intended amendment of the articles of association is published in accordance with Sec. 124 para. 2 sentence 2 AktG.⁴⁶</p>

5) Are there ongoing disclosure requirements regarding such CEM?

According to Sec. 289 para. 4 No. 4, 315 para. 4 No. 4 HGB as amended by the ÜbRIUG, the holders of priority shares must be indicated and the privileges arising from their shares must be described in the management report.⁴⁷

⁴⁵ With the coming into force of the Transparency Directive Transformation Act (*Transparenzrichtlinien-Umsetzungsgesetz – "TUG"*) by means of which the Directive 2004/109/EC was transformed into German law on January 20, 2007, Sec. 64 of the German Stock Exchange Admission Regulation (*Börsenzulassungsverordnung – "BörsZulV"*) was abolished and replaced by (the coextensive) Sec. 30c WpHG; see *BT-Drucks.* 16/2498, pages 22, 12.

⁴⁶ See *Groß Kapitalmarktrecht*, 3rd edition 2006, §§ 53-70 BörsZulV note 10.

⁴⁷ See *BT-Drucks.* 16/1003, page 25, where the provision of Sec. 101 para. 2 AktG is expressly referred to as an information to be disclosed in the management report.

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure to be made on a yearly basis (Sec. 289 para. 4 No. 4, 315 para. 4 No. 4 HGB): <ul style="list-style-type: none"> - respective provision of the articles of association - names of the holders of priority shares - description of their privileges
-----------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

6) When a CEM is implemented, on what substantive grounds may such decision be challenged?

Since the right to appoint members of the supervisory board can only be granted to specific shareholders as a person or to the holders of certain shares as attached to these shares, it is always in the interest of and favorable to the respective shareholders.

<input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the (majority) shareholders.

DEPOSITARY CERTIFICATES

1) **Is this CEM available?**

This CEM is not applicable under German law. According to the AktG, each share entitles its holder to a vote in the shareholders' meeting and cannot be divided. Thereby it is regulated that the right to vote may not be separated from the other membership rights granted by a share (*Abspaltungsverbot*).⁴⁸ Shareholders are not permitted to enter into agreements by which single administrative rights, such as the right to participate in the shareholders' meeting, the right to vote or the right to participate in the company's net profits, would be divided from the membership in the company and transferred to third parties.⁴⁹

<input checked="" type="checkbox"/> No (Clear Situation)

2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.**

Pursuant to Sec. 8 para. 5 AktG a share cannot be divided; according to Sec 12 para. 1 sentence 1 AktG each (common) share confers the right to vote, even though non-voting preference shares may be issued (Sec. 12 para. 1 sentence 2 AktG).

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule
Sec. 8 para. 5 AktG	
Sec. 12 para. 1 sentence 1 and 2 AktG	

Other questions not applicable.

⁴⁸ See Heider, in: *Münchener Kommentar zum AktG*, 2nd edition 2000, § 8 note 108; Hüffer, *AktG*, 7th edition 2006, § 8 note 30 and § 12 note 3.

⁴⁹ See RGZ 132, 149/158 *et seq.*; BGH NJW 1987, 780 *et seq.*

VOTING RIGHT CEILINGS

1) Is this CEM available?

According to German stock corporation law only the articles of association of non-listed stock corporations may provide for voting right ceilings.⁵⁰

For listed stock corporations, on which this study focuses, this CEM is not available.

An exception to this rule is the listed Volkswagen AG, which articles of association provide for a voting right ceiling of 20% for all shareholders holding more than 20% of the shares in the company. No other DAX company is subject to a similar provision.⁵¹ The legislative basis for the respective provision of the articles of association is Sec. 1 para. 1 of the Act Concerning The Privatization of Volkswagen GmbH (*Gesetz über die Überführung der Anteilsrechte an der Volkswagen GmbH in private Hand – VWG*).

<input checked="" type="checkbox"/> No (Clear Situation)	For non-listed stock corporations the articles of association may limit the voting rights of shareholders owning more than one share to a certain cap or a sliding scale. Exception: Volkswagen AG
----------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.

The inadmissibility of voting right ceilings for listed stock corporations is set forth in Sec. 134 para. 1 sentence 2 AktG.

The German Corporate Governance Code also underlines the non-existence of voting right ceilings in listed stock corporations.⁵²

<input checked="" type="checkbox"/> Laws Sec. 134 para 1 sentence 2 AktG	<input checked="" type="checkbox"/> Binding Rule
<input checked="" type="checkbox"/> Corporate Governance Codes No. 2.1.2 of the German Corporate Governance Code	<input checked="" type="checkbox"/> Non-Binding Rule

3) If this CEM is available, is it subject to any restrictions?

As stated above, this CEM is generally not available under German law. The only exception, regulated under the VWG, is Volkswagen AG.

⁵⁰ See Sec. 134 para. 1 sentence 2 AktG as amended by Art. 1 No. 20 of the KonTraG; *Hüffer AktG*, 7th edition 2006, § 134 note 4.

⁵¹ See *Börsenzeitung*, December 9, 2006, page 11.

⁵² See No. 2.1.2 of the German Governance Code.

4) **Who decides whether this CEM should be implemented, and under what conditions?**

Voting right ceilings may not be implemented for listed stock corporations.

5) **Are there ongoing disclosure requirements regarding such CEM?**

Pursuant to Sec. 289 para. 4 No. 2, 315 para. 4 No. 2 HGB as amended by the ÜbRIUG, voting right ceilings must be disclosed in the management report.

Since voting right ceilings under German law are only admissible for non-listed companies these disclosure requirements are not of great practical importance for the companies subject to this study. The only exception is the above-mentioned Volkswagen AG.

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure to be made on a yearly basis (Sec. 289 para. No. 2, 315 para. 4 No. 2 HGB)
-----------------------------------------	---------------------------------------------------------------------------------------------------------------------------

6) **When a CEM is implemented, on what substantive grounds may such decision be challenged?**

CEM is not available for listed stock corporations.

Any provision of the articles of association by means of which voting right ceilings shall be implemented could be challenged as a breach of the equal membership right of shareholders (principle of equivalence of voting right and capital share).⁵³

The implementation of this CEM (in non-listed companies) violates the principle of equal treatment of shareholders if it is established with regard to specific shareholders.⁵⁴

⁵³ See *Bungeroth in: Münchener Kommentar AktG*, 2nd edition 2003, § 53a note 22; *Winkler, Das Stimmrecht der Aktionäre in der Europäischen Union*, Berlin 2006, page 17.

⁵⁴ See *Winkler, Das Stimmrecht der Aktionäre in der Europäischen Union*, Berlin 2006, page 17, who underlines that by means of a provision of the articles of association providing for the implementation of voting right ceilings for specific shareholders, the prohibition of multiple voting rights contained in Sec. 12 para. 2 AktG could be bypassed.

OWNERSHIP CEILINGS

1) **Is this CEM available?**

This CEM is not available under German law.

<input checked="" type="checkbox"/> No (Clear Situation)

2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.**

As stated above, this CEM is not available under German law and violates the principle of one share one vote. It is only possible with shares with limited transferability (*vinkulierte Namensaktien*) and may violate the free transferability of the shares at the stock exchange (Sec. 5 para. 1 German Stock Exchange Admission Regulation (*Börsenzulassungsverordnung* – BörsZulV)).

The German Aviation Compliance Documentation Act (*Luftverkehrs-Nachweis-Sicherungsgesetz* – LuftNaSiG) provides for certain restrictions regarding German airlines which may only be stock corporations with registered shares with restricted transferability in terms of Sec. 68 para. 2 AktG (Sec. 2 para. 1 sentence 1 LuftNaSiG). Sec. 4 and 5 LuftNaSiG enable the airline's management board and shareholders' meeting respectively to decide upon the purchase of own shares by the company, the increase of the company's share capital to the exclusion of the shareholders subscription right and the obligation of the shareholders to sell their shares in the company to the extent necessary to comply with the requirements for maintaining authorization under air traffic law.

<input checked="" type="checkbox"/> Laws Sec. 4 et seq. LuftNaSiG	<input type="checkbox"/> Binding Rule <input type="checkbox"/> Non-Binding Rule	Provides for restrictions concerning the shareholding in German airlines.
<input checked="" type="checkbox"/> Stock Exchange Rules Sec. 5 para. 1 German Stock Exchange Admission Regulation (<i>Börsenzulassungsverordnung</i> – BörsZulV)	<input type="checkbox"/> Binding Rule <input type="checkbox"/> Non-Binding Rule	Sets forth that shares have to be freely tradable.

3) **If this CEM is available, is it subject to any restrictions?**

As stated above, this CEM, except for the provisions of the LuftNaSiG, is not available under German law.

4) **Who decides whether this CEM should be implemented, and under what conditions?**

If 40% or more of the total voting rights ensuing from the issued shares of a German airline are vested in shareholders whose shareholding might be dangerous to the fulfillment of the requirements for maintaining authorization under air traffic law, the respective airline is authorized to purchase own shares (Sec. 4 para. 1 LuftNaSiG). The decision to do so is taken by the management board.

If 45% of the total voting rights or a controlling stake in terms of Sec. 17 AktG is held by such shareholders, the airline's shareholders' meeting may authorize the management board to increase the company's share capital against cash contribution and to the exclusion of the shareholders subscription right by means of a resolution requiring the simple majority of the share capital or a

majority of at least two thirds of the represented share capital. The nominal amount of such capital increase may only be as high as is required to allow the aforementioned conditions precedent to lapse (Sec. 4 Para. 2 and 3 LuftNaSiG). Furthermore, the shareholders' meeting of a German airline, by means of a resolution to amend the articles of association which requires a majority of at least 75% of the represented share capital, may authorize the management board to request shareholders to sell shares in order to meet the conditions required to maintain the company's air traffic authorities. If the respective shareholders do not sell the requested number of shares, the management board may declare such shares as forfeited (Sec. 5 para. 1 and 7 LuftNaSiG).

Who decides:

<input checked="" type="checkbox"/> Decision by the Board of Directors Purchase of own shares by the company according to Sec. 4 para. 1 LuftNaSiG		
<input checked="" type="checkbox"/> Decision by the general meeting of shareholders Measures pursuant to Sec. 4 and 4 LuftNaSiG	<input checked="" type="checkbox"/> Majority: - Capital increase in terms of Sec. 4 para. 2 and 3 LuftNaSiG: Simple majority of share capital or at least two thirds of represented share capital - Selling obligation pursuant to Sec. 5 LuftNaSiG: at least 75% of the represented share capital	

Specific conditions:

None.

Other questions not applicable.

SUPERMAJORITY PROVISIONS

1) **Is this CEM available?**

Generally, this CEM is available under German law. Pursuant to Sec. 133 para. 1 AktG the resolutions of the shareholders' meeting require a majority of the votes cast ("simple majority"), unless otherwise provided for by law or the articles of association. Thus, the articles of association may require any majority to the point of a unanimous vote (either of votes cast or of the represented share capital), unless the AktG expressly sets forth a majority of votes cast.⁵⁵

Sec. 179 para. 2 AktG stipulates that any resolution of the shareholders' meeting by means of which the articles of association should be amended, requires at least a majority of three-quarters of the share capital represented in the passing of the resolution. The articles of association, however, may provide for a different, *i.e.* also higher, capital majority and may set forth additional requirements.

Certain capital measures, such as authorized or conditional capital increases, capital increases from the company's funds, or a capital decrease in either case require a majority of at least three-quarters of the represented share capital.⁵⁶

<input checked="" type="checkbox"/> Yes (Clear Situation)

2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.**

The majority requirements for resolutions of the shareholders' meeting are contained in miscellaneous provisions of the AktG.

<input checked="" type="checkbox"/> Laws Sec. 179 para 2 AktG Sec. 182 para. 1 sentence 2 AktG Sec. 193 para. 1 AktG Sec. 202 para. 2 AktG Sec. 207 para. 2 AktG Sec 222 para. 1 AktG	<input checked="" type="checkbox"/> Binding Rule
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------

⁵⁵ See *Hüffer* AktG, 7th edition 2006, § 133 note 15; *Volhard* in: *Münchener Kommentar zum AktG*, 2nd edition 2004, § 133 note 51 et seq.

⁵⁶ See Sec. 193 para. 1, 202 para. 2, 222 para. 1 AktG. Capital increases against contribution in cash or in kind also require a majority of at least 75% of the represented share capital, but the articles of association may provide not only for a higher but also for a lower majority, if the newly issued shares are not non-voting preference shares (Sec. 182 para. 1 sentence 2 AktG).

3) If this CEM is available, is it subject to any restrictions?

Implementing the CEM, the abovementioned regulations have to be observed. There are no specific – or additional – restrictions to be adhered to.

Supermajority Provisions are fully available under German law. In accordance with Sec. 133 para. 1 AktG the articles of association may provide for a higher than the simple majority with regard to any resolution.

<input checked="" type="checkbox"/> Supermajority Provisions may only be used for certain types of decisions.	Decisions which, according to an express regulation of statute law, in either case can be adopted by majority of votes cast, can not be subject to a supermajority requirement (see above).
---------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

4) Who decides whether this CEM should be implemented, and under what conditions?

Since any supermajority requirement has to be provided for in the articles of association, either the founders of the stock corporation or the shareholders' meeting (by way of a resolution that requires a majority for the amendment of the articles of association, in principle three-quarters of the represented share capital) can implement this CEM.

No quorum, as mentioned above: the 75%-majority is calculated on the basis of the share capital represented in the passing of the resolution.

Who decides:

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input checked="" type="checkbox"/> Majority for the amendment of the articles of association, in principle 75% of the represented share capital (Sec. 179 para. 1 sentence 1 and para. 2 sentence 1 AktG)
-------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Specific conditions:

Specific requirements when deciding to implement the CEM:

<input checked="" type="checkbox"/> Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.): According to Sec. 181 para. 1 sentence 1 AktG, the management board must file an application for registration of the amendment of the articles of association by means of which the CEM is implemented. The amendment of the articles of association has to be filed with the Commercial Register. Pursuant to Sec. 30c of the German Securities Trading Act (<i>Wertpapierhandelsgesetz</i> – “WpHG”) the issuer of admitted shares whose state of origin is Germany must notify the admission board (<i>Zulassungsstelle</i>) about intended amendments of its articles of association without undue delay (<i>unverzüglich</i>), at the latest at the point in time the shareholders' meeting that shall resolve upon the respective amendment is convoked.

However, a separate notification of the admission board is not required if the intended amendment of the articles of association is published in accordance with Sec. 124 para. 2 sentence 2 AktG.⁵⁷

5) **Are there ongoing disclosure requirements regarding such CEM?**

Supermajority requirements do not have to be disclosed in the (consolidated) management report, since they do not result in any restrictions of voting rights.

No

6) **When a CEM is implemented, on what substantive grounds may such decision be challenged?**

Supermajority requirements are favorable to majority shareholders holding a comparatively small stake in the respective company: Sec. 4 para. 3 VWG, *e.g.*, stipulates that a majority of 80% of the represented share capital is required in order to amend the articles of association of Volkswagen AG. Thus, any shareholder holding 20% plus one share of the share capital represented in the passing of the resolution can block an amendment of the articles of association.⁵⁸

The decision to implement the CEM is in the sole interest of the majority shareholders.

⁵⁷ See *Groß Kapitalmarktrecht*, 3rd edition 2006, §§ 53-70 BörsZulV note 10.

⁵⁸ See also *Pießkalla, Goldene Aktien aus EG-rechtlicher Sicht*, 2006, page 297.

GOLDEN SHARES

1) **Is this CEM available?**

Generally, golden shares are not available under German law. However, a much discussed exception is the previously mentioned Volkswagen Act (VWG): In March 2005 the EC Commission brought an action against Germany to the European Court of Justice, because it looks upon certain provisions of the VWG as contradicting the EC Treaty.

The privileges granted to the federal state of Lower Saxony by the VWG are not a golden share in the literal sense, because they do not arise from a specific share. Nevertheless, the respective provisions of the VWG have to be considered a golden share because privileges granted to public authorities by way of mandatory regulation are also considered golden shares.⁵⁹

The right to appoint one or more members of the supervisory board of the company that, according to Sec. 101 para. 2 AktG, may only be granted to holders of certain shares, and that is often referred to as a golden share, too, is discussed under the "Priority Shares" section of this questionnaire. For the purpose of this study, only share-related privileges of public authorities shall be considered golden shares.

<input checked="" type="checkbox"/> No (Clear Situation)

2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.**

Under German law no provisions exist which would either expressly prohibit or allow the implementation of golden shares. However, the only relevant golden share provisions are contained in the VWG, regarding both the exercise of voting rights in the shareholders' meeting and the composition of the supervisory board of Volkswagen AG (VW AG).

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule
Sec. 2 VWG	
Sec. 4 VWG	

Other questions not applicable.5) **Are there ongoing disclosure requirements regarding such CEM?**

In accordance with Sec. 289 para. 4 No. 4 and 315 para. 4 No. 4 HGB as amended by the ÜBRIUG, the holders of shares granting privileges or the power to exercise control, have to be named and the

⁵⁹ See Pießkalla, *Goldene Aktien aus EG rechtlicher Sicht*, Hamburg 2006, page 299.

respective privileges must be explained in the management report that forms part of the company's annual report.

With regard to the general inadmissibility of the CEM, these disclosure requirements are of practical importance only for Volkswagen AG.

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure to be made on a quarterly, half-yearly or yearly basis (pursuant to Sec. 289 para. 4 No. 4, 315 para. 4 No. 4 HGB).
-----------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------

6) **When a CEM is implemented, on what substantive grounds may such decision be challenged?**

The granting of golden shares is an unjustifiable betterment of public authority shareholders.

PARTNERSHIPS LIMITED BY SHARES

1) Is this CEM available?

The AktG and the HGB together regulate the corporate form of the partnership limited by shares (*Kommanditgesellschaft auf Aktien* – KGaA).

A KGaA is an entity with its own legal personality in which at least one partner, the so-called general partner, has unlimited liability with respect to the company's creditors. The other partners participate in the share capital, but they are not personally liable for the company's liabilities (limited shareholders).⁶⁰ Pursuant to Sec. 279 AktG, the legal relationship among (i) the general partners themselves, (ii) the general partners and the limited shareholders, and (iii) the general partners and third parties is, primarily, governed by the provision of the HGB regarding the limited partnership⁶¹ and, moreover, by the respective provisions of the first book of the AktG, except to the extent that it results otherwise from the absence of a management board in the KGaA and Sec. 278 et seqq. AktG.

<input checked="" type="checkbox"/> Yes (Clear Situation)

2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.

The provisions applicable to a KGaA are Sec. 278 et seqq. AktG, Sec. 161 et seqq. HGB and – to the extent the absence of a management board in the KGaA and Sec. 278 et seqq. AktG respectively do not provide otherwise – all the regulations applicable to a AktG (Sec. 1 et seqq. AktG).

<input checked="" type="checkbox"/> Laws Sec. 278 et seqq. AktG Sec. 161 et seqq. HGB Sec. 1 et seqq. AktG	<input checked="" type="checkbox"/> Binding Rule
---------------------------------------------------------------------------------------------------------------------	--------------------------------------------------

3) If this CEM is available, is it subject to any restrictions?

In accordance with Sec. 280 AktG, a KGaA must be founded by at least five persons (including all general partners and all limited shareholders who subscribe for shares in return for contribution) by way of preparing the company's articles of association in the form of a notarial deed.

The notarial deed must contain (i) the par value of shares (in the case par value shares are issued) or the number of shares (in the case non-par value shares are issued) respectively, (ii) the issue price, and (iii) the class of shares for which each founder has subscribed if different classes of shares are issued.

The articles of association must contain the full name and the place of residence of each general partner as well as any contribution of assets made by general partners other than in consideration of the issuance of the share capital by amount and kind.⁶²

⁶⁰ See Sec. 278 para. 1 AktG.

⁶¹ See Sec. 161 et seqq. HGB.

⁶² See Sec. 281 para. 1 AktG.

In the shareholders' meeting, the general partners have voting rights only with respect to their own shares; *i.e.* to the extent they act as limited shareholder. Sec. 285 para. 1 sentence 2 AktG contains a catalog of resolutions with regard to which the general partners may not exercise voting rights neither on their own nor for other persons, and with regard to which the general partners' voting rights cannot be exercised by others.⁶³

Without the prior consent of the other general partners and the supervisory board, a general partner may neither enter into any transaction on its own behalf or on behalf of others which involves the same line of business in which the partnership is engaged nor may he or she become a member of the management board, managing director or general partner of a similar commercial company without such consent.⁶⁴

<input checked="" type="checkbox"/> Others	<p>A KGaA must be founded by at least five persons (including all general partners and all limited shareholders who subscribe for shares in return for contribution) by way of preparing the company's articles of association in the form of a notarial deed.</p> <p>The notarial deed must contain (i) the par value of shares (in the case par value shares are issued) or the number of shares (in the case non-par value shares are issued) respectively, (ii) the issue price, and (iii) the class of shares for which each founder has subscribed if different classes of shares are issued.</p> <p>The articles of association must contain the full name and the place of residence of each general partner as well as any contribution of assets made by general partners other than in consideration of the issuance of the share capital by amount and kind.</p> <p>In the shareholders' meeting, the general partners have voting rights only with respect to their own shares.</p> <p>Without the prior consent of the other general partners and the supervisory board, a general partner may neither enter into any transaction on its own behalf or on behalf of others which involves the same line of business in which the partnership is engaged nor may he or she become a member of the management board, managing director or general partner of a similar commercial company without such consent.</p>
--------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

⁶³ Such resolutions are: (i) election or removal of the supervisory board, (ii) ratification of the acts of the general partners and members of the supervisory board, (iii) appointment of special auditors, (iv) assertion of claims for damage, (v) waiver of claims for damages, and (vi) appointment of auditors.

⁶⁴ See Sec. 284 para. 1 AktG. If a general partner violates this non-competition clause, the KGaA may claim damages. In lieu thereof, the company may require such partner to treat the transaction entered into on its own behalf as having been entered into on behalf of the company, and to turn over any remuneration received for such transaction to the company (Sec. 284 para. 2 AktG).

4) Who decides whether this CEM should be implemented, and under what conditions?

The decision whether the corporate form of the KGaA is implemented for a certain company, is taken by the founders of such company or the shareholders' meeting respectively. The latter can resolve upon a change of form or a merger by way of new formation according to the Transformation Act (*Umwandlungsgesetz – UmwG*). In order to adopt such resolution, a majority of at least three-quarters of the share capital represented in the passing of the resolution is required.

In either case, partners or shareholders who shall become general partners of the KGaA have to agree upon such change of form.⁶⁵

Who decides:

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input checked="" type="checkbox"/> Majority: At least 75% of the represented share capital if a corporation shall be changed into a KGaA (Sec. 240 para. 1 UmwG) or a unanimous vote of all shareholders in case a commercial partnership shall change its form into that of a KGaA (Sec. 217 para. 1 UmwG). Sec. 240 para. 1 UmwG: No quorum; 75% majority calculated on the basis of the represented share capital. Sec. 217 para. 1 UmwG: Unanimous vote of all present shareholders, but the absent shareholders also have to approve the resolution.
-------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Specific conditions:

<p>Specific requirements when deciding to implement the CEM:</p> <input checked="" type="checkbox"/> Special report to shareholders, prepared by: The representative body of the entity that intends to change its form into a KGaA or that wants to merge with another entity into a KGaA must issue a comprehensive written report justifying and legally and economically describing the merger or change of form/reorganization (<i>Umwandlungsbericht / Verschmelzungsbericht</i>) <input checked="" type="checkbox"/> Statutory auditors need to be involved as follows: Formation of a KGaA according to AktG: Formation auditors (see. Sec. 33 para. 2 AktG) Formation of KGaA according to UmwG: Merger auditors (see Sec. 78, 60 in connection with Sec. 8 UmwG) or formation auditors (see Sec. 197 UmwG in connection with Sec. 278, 33 AktG) The report of the merger auditor focuses on (i) the method according to which the exchange ratio was determined, (ii) the reason for which the application of the respective method is adequate, (iii) which (alternative) exchange ratios would result from the application of other methods and how these methods were considered by determining the exchange ratio, and (iv) the extraordinary difficulties occurred during the assessment of the legal entity (Sec. 12 para. 2 UmwG in connection with Sec. 78, 60 UmwG). The formation audit extends to (i) the founders statement regarding the subscription of shares, the capital contributions, and (ii) the value of assets contributed (must be at least equal to the lowest issue price of the shares to be issued or the value of the consideration to be paid in) (Sec. 34 AktG in connection with Sec. 197 UmwG).

⁶⁵ See Sec. 217 para. 3, 240 para. 2, and Sec. 78 in connection with 76 UmwG.

Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.):

The KGaA (or the change of form respectively) has to be registered with the commercial register (Sec. 282 AktG, Sec. 198 UmwG).

The shares of the KGaA must be (newly) admitted to trading.

Specific information or consultation of employees, workers' committees, unions or other employees' representatives.

The transformation / reorganization agreement or the resolution upon the transformation / reorganization must be delivered to the competent works council of each participating entity not later than one month prior to the date of the meeting in the course of which the resolution approving the respective measure should be adopted (see Sec. 5 para. 3, 126 para. 3 and 194 para. 2 UmwG).

5) Are there ongoing disclosure requirements regarding such CEM?

The fact that a company has been founded as or changed into a KGaA does not have to be disclosed on a regular basis.

Short form answer:

No

6) When a CEM is implemented, on what substantive grounds may such decision be challenged?

The supervisory board of a KGaA is neither entitled to require that specific types of transactions may only be entered into with its consent nor has it the capacity to appoint the managing directors of the company. The governance structure of the KGaA is not limited to the strict corporate law framework.⁶⁶

The company's supervisory board executes the resolutions of the limited shareholders unless otherwise provided for in the articles of association (Sec. 287 para. 1 AktG).

Only the company's general partners are entitled to manage the company, the limited partners are excluded from management and cannot object to an action taken by the general partner unless it goes beyond the ordinary course of business of the partnership (Sec. 278 para. 2 AktG in connection with Sec. 164 para. 1 AktG HGB).

⁶⁶ See *Raiser Recht der Kapitalgesellschaften*, 3rd edition 2001, § 23 note 2.

CROSS-SHAREHOLDINGS

1) **Is this CEM available?**

Cross-shareholding structures are available under German law. According to German Stock Corporation law, companies have to be considered cross-shareholding companies if they are incorporated as corporations, domiciled in Germany, and connected to each other in such a way that each company holds more than 25% of the shares of the other company; so-called common cross-shareholding (*einfache wechselseitige Beteiligung*).⁶⁷

The so-called qualified cross-shareholding (*qualifizierte wechselseitige Beteiligung*) has to be distinguished from common cross-shareholding: Qualified cross-shareholding is characterized by the fact that dependency exists between the involved companies and therefore certain rules regarding *de facto* groups (*faktische Konzerne*) apply.⁶⁸

<input checked="" type="checkbox"/> Yes (Clear Situation)

2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.**

Cross-shareholding is mainly regulated in Sec. 19 and 328 AktG.

<input checked="" type="checkbox"/> Laws Sec. 19, 328 AktG	<input checked="" type="checkbox"/> Binding Rule
---------------------------------------------------------------	--------------------------------------------------

3) **If this CEM is available, is it subject to any restrictions?**

Sec. 328 para. 1 AktG stipulates that rights arising from shares which are held by a corporation that, together with another company, constitutes a cross-shareholding structure may not be exercised with respect to more than 25% of all shares of the other company as from the date on which the respective shareholding company becomes aware of the mutual participation or the cross-shareholding has been notified to it by the other company.⁶⁹

If companies have cross-shareholdings in one another, such companies must immediately notify each other in writing of the amount of their holding and any change therein (see Sec. 328 para. 4 AktG).

⁶⁷ See Sec. 19 para. 1 AktG.

⁶⁸ See *Liebscher* in: *Beck'sches Handbuch der AG*, 2004, § 14 note 30.

⁶⁹ This restriction does not apply if the affected company notifies its shareholding to the other company prior to having received such notification from the other company or having obtained knowledge of the cross-shareholding (see Sec. 328 para. 2 AktG).

Pursuant to Sec. 328 Para. 3 AktG,⁷⁰ a company that is aware of a cross-shareholding situation may not exercise its voting rights arising from the shares of a listed corporation involved in the cross-shareholding in the election of members of the supervisory board of the listed company.

With respect to qualified cross-shareholding the legal consequences of the CEM depend on whether the qualified cross-shareholding is unilateral or bilateral.⁷¹ In the case of unilateral qualified cross-shareholding, the rules concerning *de facto* groups apply to the involved companies. Thus, the dependent company is subject to several restrictions, *e.g.*, those set forth in Sec. 56 para. 2⁷² and 71 *et seqq.* AktG.⁷³

Pursuant to Sec. 56 para. 2 AktG, a controlled company may not acquire shares in its controlling company, either as incorporator, subscriber or by exercising a conversion or subscription right granted in connection with a conditional capital increase.

Sec. 71 *et seqq.* AktG restrict the purchase of own shares.

According to Sec. 71d AktG, a third party acting on behalf of a stock corporation may acquire or hold shares of the stock corporation only to the extent that such purchase or holding would be permitted to the stock corporation itself. The same applies to the purchase or holding of shares by a controlled or a majority-held company. Therefore, certain rules regarding the purchase of treasury shares such as Sec. 70 para. 1 No. 1 through 5, 7 and 8, Sec. 70 para 2 (10% limit) and Sec. 71b AktG apply in cross-shareholding situations.

<input checked="" type="checkbox"/> The percentage of Cross-Shareholding is limited. No	Although the percentage of cross-shareholding is not limited, the rules (and restrictions) applicable to it depend on the stakes held by the involved companies.
------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------

4) **Who decides whether this CEM should be implemented, and under what conditions?**

Generally speaking, the decision on the purchase of participations in other companies lies within the competence of the management board (*Geschäftsführungsmaßnahme*). However, the articles of association or the supervisory board may require that specific types of transaction only be entered into with the consent of the latter.⁷⁴ The shareholders' meeting may only resolve upon matters concerning the management of the corporation if the management board so requires.⁷⁵

⁷⁰ As amended by Art. 1 No. 33 of the KonTraG.

⁷¹ Unilateral qualified cross-shareholding means that one of the involved companies holds a majority stake in another company, whereas the latter only holds a minority participation in the controlling company. Bilateral qualified cross-shareholding is defined as the holding of a mutual majority participation of the respective other company; see *Hüffer AktG*, 7th edition 2006, § 19 note 4 *et seqq.*; *Liebscher in: Beck'sches Handbuch der AG*, 2004, § 14 note 29 *et seqq.*

⁷² The provision sets forth that a dependant company may not acquire shares of its controlling company, either as founder or subscriber or by exercising a conversion or preemption right granted in connection with a conditional capital increase.

⁷³ See the examples given by *Liebscher in: Beck'sches Handbuch der AG*, 2004, § 14 note 31.

⁷⁴ See Sec. 111 para. 4 sentence 2 AktG.

⁷⁵ See Sec. 119 para. 2 AktG. However, there may be an unwritten competence of the shareholders' meeting to resolve upon certain transactions. That is the case, if the envisaged transaction is of

Who decides:

<input checked="" type="checkbox"/> Decision by the Board of Directors	<input checked="" type="checkbox"/> Autonomous decision that may require the consent of the supervisory board.
------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------

Specific conditions:

None.

5) Are there ongoing disclosure requirements regarding such CEM?

The disclosure requirements regarding cross-shareholding are basically the same as mentioned above in the section regarding pyramid structures.⁷⁶ As already explained there, Sec. 20 and 21 AktG, expressly referred to in Sec. 328 AktG, do not apply to listed companies.

<input checked="" type="checkbox"/> Yes ⁷⁷	<p><input checked="" type="checkbox"/> Disclosure to be made on a yearly basis:</p> <p>Disclosure of direct or indirect holdings of more than 10% in the company's share capital pursuant to Sec. 315 para. 4 No. 3 HGB as amended.</p> <p>Disclosure of participations held in (proportionately) consolidated companies, and associated companies by a holding company, its subsidiaries or any person acting on behalf of these entities as well as any participation in other than the above-mentioned companies held by the holding company, its subsidiaries or any other person acting on behalf of these entities, if it amounts at least to 20% (Sec. 313 para 2 HGB). These disclosures need to be made in an annual report.</p> <p><input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place:</p> <p>A person's shareholding in a listed company reaches, exceeds or falls short of 3, 5, 10, 25, 50 or 75% of the voting rights by purchase, sale or any other means (Sec. 21 para. 1 sentence 1 WpHG).</p> <p>A listed company to which the holding of voting rights is notified in accordance with Sec. 21 WpHG must publish such notification immediately, at the latest within nine calendar days of receipt, through a supra-regional official stock exchange gazette.</p>
-------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

6) When a CEM is implemented, on what substantive grounds may such decision be challenged?

Since the companies involved in a cross-shareholding structure indirectly hold participations in themselves cross-shareholding structures may serve to by-pass the rules regarding the contribution and the sustainment of capital. Moreover, cross-shareholding may lead to an increasingly autonomous management, because the members of the management board of an involved company

fundamental importance for the company (mostly sales/spin-offs of the company's material assets), see BGHZ 83, 122/130 et seqq. "Holzmüller"; Hüffer, AktG, 7th edition 2006, § 119 note 16 et seqq.

⁷⁶ See above, page 26 et seqq.

⁷⁷ For details see above, page 28 ("Pyramid Structures").

exercise the voting rights arising from their company's participation in another cross-shareholding company in the shareholders' meeting of the latter and vice versa. Thus the managements of the respective cross-shareholding companies are controlling themselves mutually.⁷⁸

The decision to implement the CEM is in the (sole) interest of the management.

⁷⁸ See *Liebscher* in: *Beck'sches Handbuch der AG*, 2004, § 14 note 29.

SHAREHOLDERS' AGREEMENTS

1) Is this CEM available?

Shareholder agreements are permitted under German law. Voting trust agreements are common. By such agreement several shareholders commit themselves to exercise their voting rights only in the way agreed upon (regularly on the basis of a majority vote).⁷⁹

Since their conclusion is subject to the general provisions of civil law, generally speaking also other types of shareholder agreement are permitted under German law.

<input checked="" type="checkbox"/> Yes (Clear Situation)

2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.

Shareholder agreements are not expressly prohibited by German stock corporation law and are therefore permissible.

3) If this CEM is available, is it subject to any restrictions?

Under German law, shareholder agreements are subject to the general restrictions of civil law (*allgemeine zivilrechtliche Schranken*), e.g. Sec. 138 German Civil Code (*Bürgerliches Gesetzbuch – BGB*), which stipulates that any agreement may not be *contra bonos mores*. A specific corporate law restriction consists in the principle that a shareholder agreement may not lead to a voting which is opposed to the company's interest.⁸⁰ This is also true if the company is not a party to such agreement.

<input checked="" type="checkbox"/> Others:

General restriction of civil law

Interest of the company

Voting Rights: Voting agreements with third (non-shareholding) parties which constitute enforceable obligations of the shareholding party may conflict with the principle that the right to vote may not be separated from the other rights granted by the share (*Abspaltungsverbot*).

4) Who decides whether this CEM should be implemented, and under what conditions?

The shareholders decide on the conclusion of such agreements. Their conclusion is subject to German Civil Law. It is unclear under German law whether voting agreements with third (non-shareholding) parties which constitute enforceable obligations of the shareholding party conflict with the principle

⁷⁹ See Hüffer AktG, 7th edition 2006, § 133 note 25; Semler, *Münchener Handbuch des Gesellschaftsrechts*, Volume 4, Aktiengesellschaft, 2nd edition 1999, § 38 notes 41 *et seqq.*

⁸⁰ See Semler, in: *Münchener Handbuch des Gesellschaftsrechts*, Volume 4, Aktiengesellschaft, 2nd edition 1999, § 38 note 44.

that the right to vote may not be separated from the other rights granted by the share (*Abspaltungsverbot*).⁸¹

Moreover, a mandatory bid has to be launched if shareholders who entered into certain types of shareholders' agreements are deemed to be acting in concert. According to Sec.35 in connection with Sec.29 paragraph 2 WpÜG, anyone who directly or indirectly holds 30% or more of the voting rights in a target company is obliged to launch a public takeover bid. Sec.35 paragraph 1, sentence 3 WpÜG clarifies that the rules regarding the attribution of voting rights set forth in Sec. 30 WpÜG apply to the calculation of the 30% threshold. Sec.30 paragraph 2 WpÜG refers to acting in concert.

Who decides:

<input checked="" type="checkbox"/> Other: Shareholders		
---------------------------------------------------------	--	--

Specific conditions:

	<p>Specific rights of minority shareholders when the CEM is implemented:</p> <p><input checked="" type="checkbox"/> Other</p> <p>Voting agreements with third (non-shareholding) parties which constitute enforceable obligations of the shareholding party may conflict with the principle that the right to vote may not be separated from the other rights granted by the share (<i>Abspaltungsverbot</i>)</p>
--	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

5) Are there ongoing disclosure requirements regarding such CEM?

In accordance with Sec. 289 para. 4 No. 2, 315 para. 4 No. 2 HGB as amended by the ÜBRIUG, shareholder agreements known to the company must be disclosed in the (consolidated) management report which forms part of the company's annual report.⁸²

Since an acting in concert must be disclosed pursuant to Sec. 21 et seqq. WpHG the notifying party is obliged to notify the company itself ("Specific Notification") each time the parties acting together reach or fall short of one of the thresholds mentioned in Sec. 21 para. 1 WpHG. The company which receives such notification is obliged to publish it without undue delay in accordance with Sec. 26 para. 1 WpHG which means that it has to announce it in the media and publish it in the electronic company register (Unternehmensregister) ("Publication in a Legal Gazette"). Moreover, the company has to disclose each shareholders' agreement it knows about (regardless whether it constitutes an acting in concert or not) in its annual report in accordance with Sec. 289 para. 4 and 315 para. 4 HGB ("Periodic Reports").

⁸¹ See *Hüffer AktG*, 7th edition 2006, § 133 note 27.

⁸² See also *BT-Drucks.* 16/1003, page 25, where particularly voting trust agreements are mentioned.

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure to be made on a yearly basis (Sec. 289 para. 4 No. 2, 315 para. 4 No. 2 HGB) <input checked="" type="checkbox"/> The following disclosure requirements apply: - Specific Notification, - Publication in a Legal Gazette.
-----------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

6) **When a CEM is implemented, on what substantive grounds may such decision be challenged?**

Shareholder agreements may discriminate shareholders who are not contracting parties.

As mentioned above, voting agreements with third (non-shareholding) parties which constitute enforceable obligations of the shareholding party could be challenged as conflicting with the principle of inseparability of the right to vote from the other rights granted by the share (*Abspaltungsverbot*).

Furthermore, a voting agreement could be challenged as void by law against the background of Sec. 136 para. 2 AktG which stipulates that an agreement whereby a shareholder undertakes to exercise voting rights in accordance with the instructions of the company, the management board, the supervisory board or a dependant company shall be void.⁸³

Short form answer:

<input checked="" type="checkbox"/> The decision to implement the CEM is in the (sole) interest of the majority shareholders.	<input checked="" type="checkbox"/> The decision to implement the CEM is against the interest of the non-participating shareholders. <input checked="" type="checkbox"/> Such grounds are alternative.
-------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

⁸³ See *Hüffer AktG*, 7th edition 2006, § 133 note 28.

B – GENERAL BACKGROUND QUESTIONS**1) What are the rules for board elections? How many corporate votes are required to appoint or remove corporate directors?**

Since the German stock corporation is characterized by its two tier system or dual structure, only the members of the supervisory board are appointed by the shareholders' meeting (by simple majority of votes cast unless otherwise provided for in the articles of association) and, if the respective company is subject to employee participation, by the employee representatives.⁸⁴ The shareholders' meeting can dismiss the members of the supervisory board it has appointed without being bound by a nomination by way of resolution which, in order to be adopted, requires a majority of at least three-quarters of the votes cast unless otherwise provided for in the articles of association.⁸⁵

The members of the management board are appointed and dismissed by the supervisory board which is not allowed to delegate the appointment of the members of the management board to one of its committees.⁸⁶ The supervisory board decides by way of resolution, in which at least three of its members must participate. Unless statute law or the articles of association provide for another quorum, the supervisory board constitutes a quorum if at least half of its members are present in the passing of the resolution.⁸⁷ The supervisory board may revoke the appointment of a member of the management board due to good cause (*aus wichtigem Grund*). Such cause includes, *inter alia*, the withdrawal of confidence by the shareholders' meeting.⁸⁸ However, the supervisory board is not obliged to revoke the appointment once the shareholders' meeting has withdrawn its confidence.

The German Co-determination Act 1976 (*Gesetz über die Mitbestimmung der Arbeitnehmer – MitbestG 1976*) contains provisions regarding the size and the composition of as well as the appointment of members, *i.e.* employee representatives, to the supervisory boards of co-determined companies. Sec. 9 para. 1 MitbestG 1976 sets forth that the employee representatives in companies with more than 8,000 employees generally are elected by delegates (unless those employees entitled to vote resolve otherwise). With regard to companies with less than 8,000 employees, Sec. 9 para. 2 MitbestG 1976 provides for the direct election of employee representatives, unless otherwise decided by the employees entitled to vote. In order to convoke an employee resolution regarding the applicable mode of election, an application signed by 5% of the employees entitled to vote is required.⁸⁹ According to Sec. 181 para. 1 sentence 1 AktG, the management board must file an application for registration of the amendment of the articles of association by means of which the CEM is implemented.

⁸⁴ See Sec. 101 para. 1 and 119 para. 1 No. 1 AktG; *Hüffer AktG*, 7th edition 2006, § 101 note 4.

⁸⁵ See Sec. 103 para. 1 AktG.

⁸⁶ See Sec. 84 and 107 para. 3 sentence 2 AktG.

⁸⁷ See Sec. 108 AktG.

⁸⁸ See Sec. 84 para. 3 sentence 1 and 2 AktG.

⁸⁹ See Sec. 9 para. 3 sentence 1 MitbestG 1976.

Majority required for board election and dismissal of members of the management board (directors) by supervisory board: Simple majority of votes cast.

Majority required for election of supervisory board members by the shareholders' meeting: Simple majority of votes cast, unless otherwise provided for in the articles of association.

Majority required for removal of members of the supervisory board: 75% of the votes cast.

As a general principle, the revocation of the admission only ends and eliminates the director's status as a representative of one of the company's corporate bodies (*korporationsrechtliche Organstellung*), but not the service/work agreement entered into between the company and the affected member of the management board.

To the termination of the employment agreement entered into by a director and the company, the general rules of German Civil law (Sec. 611 *et seqq.* BGB) apply (Sec. 84 para. 3 sentence 5 AktG). However, the revocation may contain a conclusive notice of extraordinary termination (*außerordentliche Kündigung*). (See *Hüffer AktG*, 7th ed. 2006, § 84 note 24).

2) What shareholders' decisions require a vote from more than a simple majority?

Generally, every amendment of the articles of association requires a majority of at least three-quarters of the share capital represented in the passing of the resolution unless otherwise provided for in the articles of association.⁹⁰ Certain capital measures, such as conditional or authorized capital increases and capital decreases as well as the dismissal of supervisory board members or the issuance of convertible bonds also require this majority.⁹¹

Statute law in either case requires a majority of at least 75% of the represented share capital for certain resolutions. Such resolutions concern, *e.g.*, capital decreases (Sec. 222 para. 1 sentence 2 AktG), conditional and authorized capital increases (Sec. 193 para. 1 sentence 2, 202 para. 2 sentence 2 AktG), exclusion of shareholders' subscription rights (Sec. 186 para. 2 sentence 2 and 3 AktG), the issuance of non-voting preference shares (Sec. 182 para. Sentence 2 AktG), and changes to the companies object (Sec. 179 para. 2 sentence 2 AktG).

All changes in bylaws / articles of associations

Issuance of shares / bonds / other financial instruments:

Issuance of (convertible) bonds (Sec. 221 para. 1 AktG)

Capital decrease (Sec. 222 para. 1 AktG)

Certain capital increases (Sec. 202 para. 2 sentence 2, 193 para. 1 sentence 1 AktG)

Dismissal of members of supervisory board (Sec. 103 AktG).

⁹⁰ See Sec. 179 para. 2 AktG.

⁹¹ See Sec. 103 and 221 para. 1 sentence 2 AktG.



PROPORTIONALITY BETWEEN OWNERSHIP AND CONTROL IN EU LISTED COMPANIES:
EXTERNAL STUDY COMMISSIONED BY THE EUROPEAN COMMISSION

**PROPORTIONALITY BETWEEN OWNERSHIP AND CONTROL
IN EU LISTED COMPANIES:**

COMPARATIVE LEGAL STUDY

ESTONIA

RAIDLA & PARTNERS

RoschierRaidla
Roosikrantsi 2
10119 Tallinn,
Estonia
Tel. +372 640 7170
Fax. +372 640 7171
e-mail email@raidla.ee
<http://www.raidla.ee>
<http://www.roschierraidla.com>

Reviewed by:

Andres Vutt, mag iur

Lecturer of Civil Law Faculty of Law, University of Tartu
50409 Tartu Estonia
e-mail andres.vutt@ut.ee

There are two types of limited liability companies in Estonia that can issue shares – “*osaiühing*” or the limited liability company (hereafter: **Ltd**) and “*aktsiaselts*” or the joint stock company (hereafter: **JSC**). Only the shares of JSCs can be listed. Both of these company forms are regulated in the Commercial Code (hereafter: **CommC**).⁹² Since only JSCs can be listed, the following only reflects the situation in respect of the companies incorporated in the form of JSC. All references below apply for JSCs only, if specific rules exist in respect of the listed JSCs, these are separately referred to.

MULTIPLE VOTING RIGHTS SHARES

1) **Is this CEM available?**

No. § 236 (2) CommC sets out a binding rule according to which the shares of JSC with equal nominal value shall have equal voting rights and, if shares with different nominal value are issued, the voting rights attached to such shares must be proportionate to their nominal value.

Short form answer:

<input checked="" type="checkbox"/> No (Clear Situation)

2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.**

§ 236 (2) CommC set out a binding rule according to which the shares with equal nominal value shall have equal voting rights and, if shares with different nominal value are issued, the voting rights attached to such shares must be proportionate to their nominal value.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	§ 236 (2) ⁹³ CommC. ⁹⁴
------------------------------------------	--------------------------------------------------	----------------------------------------------

Other questions not applicable.

⁹² *Äriseadustik* (Commercial Code) from 15 February 2005, as amended from time to time.

⁹³ In respect of JSC.

⁹⁴ All of the rules referred herein are state rules, no federal rules exist in Estonia.

NON-VOTING SHARES

1) **Is this CEM available?**

No. Non-voting shares can only exist in form of non-voting preference shares issued by JSC.

Short form answer:

<input checked="" type="checkbox"/> No (Clear Situation)	Possible only in case of the non-voting preference shares (see below).
----------------------------------------------------------	------------------------------------------------------------------------

2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.**

§ 236 (2) CommC set out a binding rule according to which the shares with equal nominal value shall have equal voting rights and, if shares with different nominal value are issued, the voting rights attached to such shares must be proportionate to their nominal value. Deviations are only possible in case of non-voting preferential shares issued by JCS.⁹⁵

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	§ 236 (2), 237 ⁹⁶ CommC.
------------------------------------------	--------------------------------------------------	-------------------------------------

Other questions not applicable.

⁹⁵ § 237 CommC, s. below.

⁹⁶ In respect of JSC.

NON-VOTING PREFERENCE SHARES

1) **Is this CEM available?**

Yes. JSCs can issue non-voting preference shares (hereafter: **NVP-Shares**) (§ 237 (1) CommC) and the issue is subject to restrictions.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	§ 237 (1) CommC. ⁹⁷
-----------------------------------------------------------	--------------------------------

2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.**

§ 237 CommC explicitly authorizes the issue of the NVP-Shares by JSC. The holder of the NVP-Shares has all the shareholder rights except for the voting rights (§ 237 (1) 2nd sentence CommC). The shareholder acquires preferential (in respect to other shareholders) dividend rights as well as preferential (in respect to other shareholders) rights in respect of the assets distributable to the shareholders upon liquidation of the company. The exact nature of the preferential rights is specified in the Articles. The preferential dividend rights give the shareholder preferential rights to dividend payments out of the distributable profits or other reserves, distributable to the shareholders (§ 238 (1) 1st sentence CommC). If the Articles do not provide otherwise, the preferential dividend is determined as a percentage of the nominal value of the NVP-Share (§ 238 (1) 2nd sentence CommC). If preferential dividends cannot be paid out (because of the lack of the distributable profits or other reserves), it is added to the dividend-payment of the next financial year. Statutory interest⁹⁸ shall accrue on the sums not paid out in-between.

The Corporate Governance Recommendations approved by the Estonian Financial Supervision Authority (hereafter: the **Recommendations**)⁹⁹ provide that under the Articles of JSC, it shall not be allowed to grant different types of shares with rights which would result in unequal treatment of shareholders in voting (*e.g.*, requiring agreement from holders of a particular type of shares for purposes of passing a resolution at the general meeting of shareholders) (Section 1.1.2 of Recommendations).

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	§§ 237, 238 CommC
<input checked="" type="checkbox"/> Stock Exchange Rules	<input checked="" type="checkbox"/> Binding Rule	The Rules of Tallinn Stock Exchange (hereafter: TSE Rules) provide that any NVP shares, which are submitted for listing on the Tallinn Stock Exchange, must grant their

⁹⁷ In case of JSC.

⁹⁸ The rate of such interest is determined in § 94 of the Law of Obligations Act from 26 September 2001 and equals to the last interest rate applicable to the main refinancing operations of the European Central Bank, as published on each 1st of January and 1st of July.

⁹⁹ The Recommendations are of non-binding nature. However, as of 1 January 2006, all companies whose shares are admitted to the trading on the Tallinn Stock Exchange are required to either comply with the Recommendations or explain reasons for their non-compliance (“comply or explain”) (Section 3.12 of the Requirements for Issuers of the TSE Rules).

		holders voting rights at least in case a resolution for liquidating JSC is adopted. ¹⁰⁰
<input checked="" type="checkbox"/> Corporate Governance Codes	<input checked="" type="checkbox"/> Non-Binding Rule	The Corporate Governance Recommendations approved by the Estonian Financial Supervision Authority (hereafter: the Recommendations) ¹⁰¹ provide that under the articles of association of JSC, it shall not be allowed to grant different types of shares with rights which would result in unequal treatment of shareholders in voting (<i>e.g.</i> , requiring agreement from holders of a particular type of shares for purposes of passing a resolution at the general meeting of shareholders). ¹⁰²

3) If this CEM is available, is it subject to any restrictions?

Yes. The law sets out the maximum percentage of NVP-Shares being 1/3 of the total share capital of JSC (§ 237 (2) CommC). If the preferential dividend has not been paid out in full for two financial years, the full voting rights of the NVP-Shares are reinstated (§ 239 (1) CommC), the reinstatement does not influence the obligation to pay preferential dividend (§ 239 (3) CommC). If the dividend is paid out in full, such voting rights shall cease by the end of the financial year on which the dividend was paid out in full (§ 239 (2) CommC). In addition to the above, the Articles of JSC can provide that the NVP-Shares give to the shareholders voting rights in respect of certain shareholders' decisions (limited voting rights, § 237 (4) CommC).

TSE Rules provide that any NVP Shares, which are submitted for listing on the Tallinn Stock Exchange, must grant their holders voting rights at least in case a resolution for liquidating JSC is adopted (Section 5.2.6 of the Listing Rules of TSE Rules).

The Recommendations¹⁰³ provide that under the Articles of JSC, it shall not be allowed to grant different types of shares with rights which would result in unequal treatment of shareholders in voting (*e.g.*, requiring agreement from holders of a particular type of shares for purposes of passing a resolution at the general meeting of shareholders) (Section 1.1.2 of Recommendations).

¹⁰⁰ Section 5.2.6 of the Listing Rules of TSE Rules.

¹⁰¹ The Recommendations are of non-binding nature. However, as of 1 January 2006, all companies whose shares are admitted to the trading on the Tallinn Stock Exchange are required to either comply with the Recommendations or explain reasons for their non-compliance ("comply or explain") (Section 3.12 of the Requirements for Issuers of the TSE Rules).

¹⁰² Section 1.1.2 of Recommendations.

¹⁰³ The Recommendations are of non-binding nature. However, as of 1 January 2006, all companies whose shares are admitted to the trading on the Tallinn Stock Exchange are required to either comply with the Recommendations or explain reasons for their non-compliance ("comply or explain") (Section 3.12 of the Requirements for Issuers of the TSE Rules).

Short form answer:

☒ Maximum percentage of Non-Voting Preference Shares	1/3 of the total share capital of JSC (§ 237 (2) CommC).
☒ Reinstatement of voting rights in certain circumstances	If preferential dividend not paid out in full for two financial years (§ 239 (1) CommC). In case a resolution for liquidating JSC is adopted (S.5.2.6 of Listing Rules of TSE Rules).
☒ Others (please specify)	§ 237 (4) CommC: Articles of JSC can provide that the NVP-Shares give to the shareholders voting rights in respect of certain shareholders' decisions (limited voting rights). Section 1.1.2 of Recommendations: under the articles of association of JSC, it shall not be allowed to grant different types of shares with rights which would result in unequal treatment of shareholders in voting (<i>e.g.</i> , requiring agreement from holders of a particular type of shares for purposes of passing a resolution at the general meeting of shareholders) (Section 1.1.2 of Recommendations).

4) Who decides whether this CEM should be implemented, and under what conditions?

There are three possibilities to issue NVP-Shares:

- **First Alternative:** the NVP-Shares can be issued upon the foundation of JSC if so provided in the initial Articles of JSC;
- **Second Alternative:** the NVP-Shares can be issued by deciding the increase of the company's share capital through issue of the new NVP-Shares;
- **Third Alternative** would involve converting some of the existing shares into NVP-Shares.

The implementation of each of the above alternatives requires different decisions, different conditions apply:

- **First Alternative:** the issue of the NVP-Shares upon foundation of JSC has to be provided for in the foundation agreement between the founders and in the initial Articles of JSC approved by the founders upon execution of the foundation agreement (the initial Articles are approved by the foundation agreement);
- **Second Alternative:** two decisions are necessary to implement the second alternative. First the Articles have to be amended in order to allow for the issue of the NVP-Shares. This decision is taken by the shareholders of JSC (§ 298 (1) 2) CommC) and the usual quorum requirements apply¹⁰⁴. In order to adopt the shareholder decision to amend the Articles the majority of 2/3 of the votes present or represented in the shareholder meeting is required (§ 300 (1) CommC). Secondly the increase of the share capital of JSC has to be decided by the shareholders, the same quorum and majority requirements as in the case of the amendment of

¹⁰⁴

Over 50% of the votes represented by shares present or represented unless the Articles require a higher quorum (§ 297 (1) CommC); if the quorum requirement is not met a subsequent shareholder meeting is convened that can pass decisions irrespective of the amount of votes present (§ 297 (2) CommC).

Articles apply here unless the Articles require higher quorum of majority (§ 341 (1) CommC). If JSC already has NVP-Shares, the increase of the share capital requires the approval of each of the common and the preferential shareholders, the above majority requirements apply within each group (§ 341 (2) CommC). The shareholders can authorize the supervisory board of the company to increase the share capital of JSC by up to 50% of the existing share capital by amending the Articles accordingly (§ 349 CommC), the shareholders can hence also authorize the supervisory board to issue new NVP-Shares, provided that their nominal value shall not exceed 1/3 of the share capital of JSC. If the Articles provide for the above possibility the decision of the supervisory board of JSC is necessary to increase the share capital and issue new NVP-Shares, the decision(s) can be passed during a three year period following the adoption or amendment of the Articles authorizing the supervisory board accordingly (§ 349 (1) CommC).

- **Third Alternative** would require a shareholder decision which would change the Articles in respect of the shares, issued by the company and authorize the conversion of some of the existing common shares into NVP-Shares; in order to pass such decision the majority of 4/5 of all the votes represented by the company's shares is necessary unless the Articles require a higher majority (§ 235 (1) and (2) CommC). In addition to that § 235 (2) CommC provides that in order to change the rights attached to a specific class of shares the consent of 9/10 of the votes represented by the shares belonging to the class of shares which is changed is necessary. Because of the general principle according to which the shareholders are to be treated equally on equal conditions (§ 272 CommC) it is evident that if not all of the existing common shares are converted into NVP-Shares such conversion can only be decided upon approval of all of the existing common shareholders. All of the existing shareholders of JSC are to be informed in writing by the management board upon any change related to the rights conferred by a specific class of shares (§ 235 (3) CommC).

After the initial foundation, the issuance of the NVP-Shares requires a separate decision on the increase of the share capital of JSC; the law does not enable the articles of association of JSC (hereafter: the Articles) to provide for the authorized capital.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the Board of Directors (in Estonia: Supervisory Board) ¹⁰⁵ (applicable in case of the Second Alternative only)	<input checked="" type="checkbox"/> Upon authorization of the shareholders through the relevant provisions in the Articles of JSC. ¹⁰⁶	
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------	--

¹⁰⁵ Estonian companies have a dual management structure consisting of the management board and the supervisory board. For JSC the dual system is compulsory. For Ltd. the management board is generally not required; however, if the share capital of the Ltd exceeds the threshold equaling the minimum share capital for JSC (400 000 Estonian kroons or roughly EUR 25 600), the supervisory board requirement also applies to the Ltd. For the purposes of this questionnaire, the actions and responsibilities of the management board are discussed under the "Chairman or the General Manager" section and the actions and responsibilities of the supervisory board under the "Board of Directors" section.

¹⁰⁶ § 349 CommC, for the authorization of the supervisory board after the foundation of the company the amendment of the Articles is necessary.

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders (applicable in case of the Second and the Third Alternative)	<p>Second Alternative</p> <input checked="" type="checkbox"/> Quorum: Common <i>i.e.</i> more than 50% of all the votes unless the Articles require a higher quorum ¹⁰⁷ and nil (second call). <input checked="" type="checkbox"/> Majority: 2/3 of the votes present or represented in the shareholder meeting ¹⁰⁸ unless the Articles require a higher quorum. ¹⁰⁹ <p>Third Alternative</p> <input checked="" type="checkbox"/> Quorum: Common <i>i.e.</i> more than 50% of all the votes unless the Articles require a higher quorum ¹¹⁰ and nil (second call). <input checked="" type="checkbox"/> Majority: 4/5 of all the votes unless the Articles require a higher quorum ¹¹¹ and all of the votes represented by the commons shares. ¹¹²	<p>If the shareholders may authorize the Board or the Chairman or GM to implement the CEM (applicable in case of the Second Alternative only):</p> <input checked="" type="checkbox"/> For how long would the authorization be valid (maximum duration): three (3) years following the adoption or amendment of the Articles authorizing the supervisory board accordingly. ¹¹³ <input checked="" type="checkbox"/> If a tender offer is filed on the company wishing to implement the CEM, between the authorization and the actual implementation, would the authorization need to be renewed? No. ¹¹⁴
<input checked="" type="checkbox"/> Other: Decision to issue NVP-Shares upon foundation (applicable in case of the First Alternative)	<p>Common decision of the Founders contained in the relevant provisions of the foundation agreement between the founders and in the initial Articles of JSC approved by the founders upon execution of the foundation agreement.</p>	

¹⁰⁷ § 297 (1) CommC, if the quorum requirement is not met a subsequent shareholder meeting is convened that can pass decisions irrespective of the amount of votes present (§ 297 (2) CommC).

¹⁰⁸ § 300 (1) CommC regarding the decision to amend the Articles; § 341 (1) CommC regarding the decision to increase the share capital through issue of the new NPV-Shares.

¹⁰⁹ § 300 (1) CommC regarding the decision to amend the Articles; § 341 (1) CommC regarding the decision to increase the share capital through issue of the new NPV-Shares.

¹¹⁰ § 297 (1) CommC, if the quorum requirement is not met a subsequent shareholder meeting is convened that can pass decisions irrespective of the amount of votes present (§ 297 (2) CommC).

¹¹¹ § 235 (2) 1st sentence CommC.

¹¹² § 235 (2) 2nd sentence CommC.

¹¹³ § 349 (1) CommC.

¹¹⁴ § 22(1) of Rules of Takeover Bids (Regulation No. 71 of the Minister of Finance of 28 May 2000) provides that after receiving information concerning a takeover bid and until disclosure of the results of the bid, the target issuer and the persons acting in concert with the issuer must refrain from any acts which may result in the frustration of the takeover bid.

Specific conditions:

Specific requirements when deciding to implement the CEM:

Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.): (applicable in case of the Third Alternative only): all of the existing shareholders of JSC are to be informed in writing by the management board upon any change related to the rights conferred by a specific class of shares.¹¹⁵

5) Are there ongoing disclosure requirements regarding such CEM?

Yes. The existence of the NVP-Shares as well as the rights conferred by the NVP-Shares are visible from the Articles of JSC, the Articles are filed by the Commercial Register and are accessible to the public. In addition to that all shares of JSC are registered in the Estonian Central Registry for Securities (ECRS) which is an electronic database, accessible for the general public, the existence and amount of NVP-Shares is visible from the ECRS. The acquisition and ownership of own shares has to be disclosed in the annual report, in particular in the notes to annual report and on the balance sheet of the company (equity).

JSC whose shares are listed on a stock exchange is required to disclose resolutions adopted by its general meeting of shareholders, including resolutions by which the Articles are amended. According to the rules of the Tallinn Stock Exchange, the same requirement applies to a company whose securities are admitted to trading on the "Free Market," *i.e.* a regulated market (not a stock exchange) operated by Tallinn Stock Exchange.

Short form answer:

<input checked="" type="checkbox"/> Yes	<p><input checked="" type="checkbox"/> The existence of the NVP-Shares as well as the rights conferred by such NVP-Shares are visible from the Articles of JSC, the Articles are accessible to the general public through the Commercial Register; Shareholder list is accessible from ECRS. The acquisition and ownership of own shares has to be disclosed in the annual report of the company.</p> <p><input checked="" type="checkbox"/> JSC whose shares are listed on a stock exchange is required to disclose resolutions adopted by its general meeting of shareholders, including resolutions by which the Articles are amended. According to the rules of the Tallinn Stock Exchange, the same requirement applies to a company whose securities are admitted to trading on the "Free Market", <i>i.e.</i> a regulated market (not a stock exchange) operated by Tallinn Stock Exchange.</p>
-----------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

6) When a CEM is implemented, on what substantive grounds may such decision be challenged?

There are no practically available legal grounds to challenge such decisions.

¹¹⁵ § 235 (3) CommC.

PYRAMID STRUCTURES

1) Is this CEM available?

Yes. There are no restrictions to creation of pyramid structures and, specifically to the use of “pure holdings”.

Short form answer:

Yes (Clear Situation)

2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.

There are no Rules that would either explicitly or implicitly prohibit the use of pyramid structures. Although no Rules explicitly authorize the use of pyramid structures there are no legal restrictions to the use of such structures.

3) If this CEM is available, is it subject to any restrictions?

There are no legal restrictions to the use of such structures

4) Who decides whether this CEM should be implemented, and under what conditions?

There are mainly three alternative solutions to create pyramid structures:

- **First Alternative** would involve the creation of a daughter-company whereby certain of the mothers’ assets will be transferred to the daughter company as an (equity) contribution-in-kind upon its foundation.
- **Second Alternative** would involve the creation of a daughter company through division of the mother. Again, certain of the mothers’ assets will be transferred to the daughter company as an (equity) contribution-in-kind in the course of division.
- **Third Alternative** would be the acquisition of the shares in an existing third company.

The implementation of each of the above alternatives requires different decisions, different conditions apply:

- **First Alternative:** the management board of JSC normally requires the approval of the supervisory board for the creation of a daughter-company (§ 317 (1) 1¹⁾ CommC) the Articles can provide otherwise (§ 317 (2) CommC);
- **Second Alternative:** For the division of the company, a shareholders’ decision is necessary (§ 440 CommC), the usual quorum requirements apply.¹¹⁶ In order to adopt the shareholder decision necessary for the approval of the division 2/3 of the votes represented by the shares of the company is necessary, the Articles can require a higher majority (§ 465 (1)), if JSC has different classes of shares (common and preferential) the same majority is required in each of the shareholder classes (§ 465 (2) CommC).

¹¹⁶ Over 50% of the votes represented by shares present or represented unless the Articles require a higher quorum (§ 297 (1) CommC), if the quorum requirement is not met a subsequent shareholder meeting is convened that can pass decisions irrespective of the amount of votes present (§ 297 (2) CommC).

- **Third Alternative:** the management board of JSC normally requires the approval of the supervisory board for acquisition of the shares in an existing third company (§ 317 (1) 1) CommC). According to TSE Rules, the approval of a general meeting of shareholders of JSC is required for acquisition or transfer of holdings in following cases: (i) according to the last audited consolidated report of JSC, the total assets, equity or sales of the company whose shares are being acquired or transferred by JSC is equal to or exceeds 50% of the respective figures of JSC and if as a result of the transaction the company becomes or ceases to be JSC's subsidiary (within the meaning of the CommC) and (ii) the amount of money to be paid or received for the shares by JSC, including cash payment and/or the market value of the securities used for/received as payment, and the debts transferred by/to JSC, is equal or exceeds 50% of the equity capital indicated in the last audited consolidated report of JSC.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the Board of Directors (in Estonia: the Supervisory Board) ¹¹⁷ (applicable in case of the first and third alternative only)	<input checked="" type="checkbox"/> Autonomous decision	
<input checked="" type="checkbox"/> Decision by the general meeting of shareholders (applicable in case of the second alternative only)	<input checked="" type="checkbox"/> Quorum: <i>Common i.e.</i> more than 50% of all the votes unless the Articles require a higher quorum. ¹¹⁸ <input checked="" type="checkbox"/> Majority: Majority: 2/3 of all the votes unless the Articles require a higher quorum. ¹¹⁹	
<input checked="" type="checkbox"/> Other: Decision by the general meeting of shareholders (applicable in case of third alternative for certain transactions of material value specified in the TSE Rules)	<input checked="" type="checkbox"/> Quorum: <i>Common i.e.</i> more than 50% of all the votes unless the Articles require a higher quorum. <input checked="" type="checkbox"/> Majority: <i>Common i.e.</i> more than 50% of votes unless the Articles require a higher quorum.	

Specific conditions:

Specific requirements when deciding to	
----------------------------------------	--

¹¹⁷ Estonian JSCs have a two-tier management system consisting of the management board and the supervisory board. For the purposes of this questionnaire, the actions and responsibilities of the management board are discussed under the "Chairman or the General Manager" section and the actions and responsibilities of the supervisory board under the "Board of Directors" section.

¹¹⁸ § 297 (1) CommC, if the quorum requirement is not met a subsequent shareholder meeting is convened that can pass decisions irrespective of the amount of votes present (§ 297 (2) CommC).

¹¹⁹ § 465 (1), if JSC has different classes of shares (common and preferential) the same majority is required in each of the shareholder classes (§ 465 (2) CommC).

<p>implement the CEM (applicable in case of the Second Alternative only):</p> <p><input checked="" type="checkbox"/> Special report (division report) to shareholders, prepared by the management board of the company to undergo the division (§ 436 (1) CommC), division report not mandatory if the company shall become a sole shareholder of the daughter company, established in the course of the division (§ 436 (2) CommC).</p> <p><input checked="" type="checkbox"/> Statutory auditors need to be involved as follows: in case of JSC, auditing of the division process is mandatory (§ 462 CommC).</p> <p><input checked="" type="checkbox"/> Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.): division of a company is to be registered in the Commercial Register (§ 433 CommC).</p>	
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

5) Are there ongoing disclosure requirements regarding such CEM?

Yes.

If a JSC, which shares have been admitted to trading to Tallinn Stock Exchange, is a parent group of a group of companies, it is required to disclose the quarterly and consolidated annual reports for the whole group and in such reports it is required to disclose also the structure of the group (S. 5.1.5 of Requirements for Issuers of TSE Rules).

JSC, which shares have been admitted to trading to Tallinn Stock Exchange, must immediately disclose a resolution on the partial or full acquisition or transfer of a holding in a company as well as a resolution on the acquisition or waiver of a right to acquire or transfer a holding in a company. For the above purposes, “acquisition of a holding” shall be deemed to include foundation of a company or being one of the founders of a company and “transfer of a holding” shall be deemed to include the dissolution of a company (S. 7.11.1. of the Requirements for Issuers of the TSE Rules). S. 7.11.2 and 7.11.3 of TSE Rules set forth detailed requirements on the information to be disclosed.

Short form answer:

<p><input checked="" type="checkbox"/> Yes</p>	<p><input checked="" type="checkbox"/> Disclosure to be made on a quarterly, half-yearly and yearly basis: consolidated financial reports for the group of companies and the structure of the group.</p> <p><input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place: adoption of resolution on the partial or full acquisition or transfer of a holding in a company; or adoption of a resolution on the acquisition or waiver of a right to acquire or transfer a holding in a company. TSE Rules set forth detailed requirements on the information to be disclosed.</p>
------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Other question not applicable.

PRIORITY SHARES

1) Is this CEM available?

Yes; however non-binding restrictions apply in case of listed JSC-s.

The Estonian company law provisions contain no specific provisions, which would allow for the creation of the priority shares. In case of JSCs the law allows for the division of the share capital into common shares and NVP-Shares, the creation of other classes of shares is not possible (§ 235 (1) CommC). Since all the common (voting) shares must have equal voting rights, proportionate to the nominal value of the share capital represented by such shares (§ 236 (2) CommC), there can generally be no priority shares. However, the Articles of JSC can provide that the NVP-Shares acquire voting rights in respect of certain shareholder decisions (the limited voting rights, § 237 (3) CommC). Through the limited voting rights, the NVP-Shares can be turned into priority shares. The Articles of JSC can provide that in order to pass certain shareholder decisions, the consent of the different classes of shareholders is necessary (§ 299 (1) 2nd sentence CommC). Hence by requiring the approval of the NVP-Shareholders to certain shareholder decisions and giving NVP-Shareholders voting rights in respect of such decisions, priority shares can be created.

However, the Recommendations¹²⁰ provide that under the articles of association of JSC, it shall not be allowed to grant different types of shares with rights which would result in unequal treatment of shareholders in voting (*e.g.*, requiring agreement from holders of a particular type of shares for purposes of passing a resolution at the general meeting of shareholders) (Section 1.1.2 of Recommendations). Therefore, in fact, the Recommendations do not allow turning NVP-Shares into priority shares.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	<p>JSC can issue NVP-Shares with limited voting rights;¹²¹ the Articles can require the consent of the NVP-Shareholders to certain shareholder decisions in order to pass them;¹²² that way, the NVP-Shares can be turned into priority shares.</p> <p>However, the Recommendations (which are non-binding and applicable to listed JSCs) do not allow turning NVP-Shares into priority shares.</p>
-----------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.

JSC can issue NVP-Shares (§ 237 CommC). According to § 237 (3) CommC the Articles of JSC can provide that the NVP-Shares acquire voting rights in respect of certain shareholder decisions (the limited voting rights). Since the Articles can also provide that in order to pass certain shareholder

¹²⁰ The Recommendations are of non-binding nature. However, as of 1 January 2006, all companies whose shares are admitted to the trading on the Tallinn Stock Exchange are required to either comply with the Recommendations or explain reasons for their non-compliance (“comply or explain”) (Section 3.12 of the Requirements for Issuers of the TSE Rules).

¹²¹ § 237 (3) CommC.

¹²² § 299 (1) 2nd sentence CommC.

decisions, the consent of the different classes of shareholders is necessary (§ 299 (1) 2nd sentence CommC), the NVP-Shares with limited voting rights can be turned into priority shares by providing that certain of the shareholder decisions require the consent of the NVP-Shareholders (the Articles can provide for the quorum and majority requirements in respect of such consent).

However, the Recommendations, which are non-binding and applicable to listed JSCs, provide that under the articles of association of JSC, it shall not be allowed to grant different types of shares with rights which would result in unequal treatment of shareholders in voting (*e.g.*, requiring agreement from holders of a particular type of shares for purposes of passing a resolution at the general meeting of shareholders) (Section 1.1.2 of Recommendations). Therefore, in fact, the Recommendations do not allow turning NVP-Shares into priority shares. See the subsection regarding the Non-Voting Priority Shares above.

The Priority shares are restricted by the no veto right principle.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	As a general rule § 237 CommC allows to issue NVP-Shares with limited voting rights which can be turned into Priority Shares by providing (in the Articles) that certain of the shareholder decisions require the consent of the NVP-Shareholders.
<input checked="" type="checkbox"/> Corporate Governance Codes	<input checked="" type="checkbox"/> Non-Binding Rule	Section 1.1.2 of Recommendations, ¹²³ which is applicable to listed JSCs, does not allow turning NVP-Shares into Priority Shares.

3) **If this CEM is available, is it subject to any restrictions?**

Yes. The law sets out a number of restrictions regarding the NVP-Shares which also apply to NVP-Shares with limited voting rights that are turned into priority shares (see for such restrictions the section regarding Non-Voting Priority Shares above).

The Recommendations, which are non-binding and applicable to listed JSCs, provide that under the articles of association of JSC, it shall not be allowed to grant different types of shares with rights which would result in unequal treatment of shareholders in voting (*e.g.*, requiring agreement from holders of a particular type of shares for purposes of passing a resolution at the general meeting of shareholders) (Section 1.1.2 of Recommendations). Therefore, in fact, the Recommendations do not allow turning NVP-Shares into priority shares. See the subsection regarding the Non-Voting Priority Shares above.

Short form answer:

<input checked="" type="checkbox"/> Maximum percentage of Priority Shares	1/3 of the total share capital of JSC (§ 237 (2) CommC)
<input checked="" type="checkbox"/> Others	Section 1.1.2 of Recommendations: under the articles of association of JSC, it shall not be allowed to grant

¹²³ The Recommendations are of non-binding nature. However, as of 1 January 2006, all companies whose shares are admitted to the trading on the Tallinn Stock Exchange are required to either comply with the Recommendations or explain reasons for their non-compliance (“comply or explain”) (Section 3.12 of the Requirements for Issuers of the TSE Rules).

	different types of shares with rights which would result in unequal treatment of shareholders in voting (<i>e.g.</i> , requiring agreement from holders of a particular type of shares for purposes of passing a resolution at the general meeting of shareholders) (Section 1.1.2 of Recommendations).
--	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

4) Who decides whether this CEM should be implemented, and under what conditions?

Narrative answer: The Priority Shares can be created through the issuance of the NVP-Shares with limited voting rights and requiring (in the Articles) the consent of the NVP-Shareholders to certain shareholder decisions. There are three possibilities to issue NVP-Shares with limited voting rights:

- **First Alternative:** the NVP-Shares with limited voting rights can be issued upon the foundation of JSC if so provided in the initial Articles of JSC. The Articles can then provide which shareholder decisions require the consent of the NVP shareholders (including the quorum and majority requirements in respect of such consent);
- **Second Alternative:** the NVP-Shares with limited voting rights can be issued by deciding the increase of the company's share capital through issue of the new NVP-Shares;
- **Third Alternative** would involve converting some of the existing shares into NVP-Shares with limited voting rights.

The implementation of each of the above alternatives requires different decisions, different conditions apply:

- **First Alternative:** the issue of the NVP-Shares with limited voting rights upon foundation of JSC has to be provided for in the foundation agreement between the founders and in the initial Articles of JSC approved by the founders upon execution of the foundation agreement (the initial Articles are approved by the foundation agreement). In order to turn such NVP-Shares into priority shares, the Articles must also provide which shareholder decisions require the consent of the NVP shareholders (including the quorum and majority requirements in respect of such consent);
- **Second Alternative:** two decisions are necessary to implement the second alternative. First the Articles have to be amended in order to allow for the issue of the NVP-Shares with limited voting rights in respect of certain shareholder decisions. This decision is taken by the shareholders of JSC (§ 298 (1) 2) CommC) and the usual quorum requirements apply.¹²⁴ In order to adopt the shareholder decision to amend the Articles the majority of 2/3 of the votes present or represented in the shareholder meeting is required (§ 300 (1) CommC). Secondly the increase of the share capital of JSC has to be decided by the shareholders; the same quorum and majority requirements as in case of the amendment of Articles apply here unless the Articles require higher quorum of majority (§ 341 (1) CommC). If JSC already has NVP-Shares with limited voting rights, the increase of the share capital requires the approval of each of the common and the preferential shareholders, the above majority requirements apply within each group (§ 341 (2) CommC). The shareholders can authorize the supervisory board of the company to increase the share capital of JSC by up to 50% of the existing share capital by amending the Articles accordingly (§ 349 CommC), the shareholders can hence also authorize the supervisory board to issue new NVP-Shares with limited voting rights, provided that their nominal value shall not exceed 1/3 of the share capital of JSC. If the Articles

¹²⁴

Over 50% of the votes represented by shares present or represented unless the Articles require a higher quorum (§ 297 (1) CommC), if the quorum requirement is not met a subsequent shareholder meeting is convened that can pass decisions irrespective of the amount of votes present (§ 297 (2) CommC).

provide for the above possibility the decision of the supervisory board of JSC is necessary to increase the share capital and issue new NVP-Shares, the decision(s) can be passed during a three year period following the adoption or amendment of the Articles authorizing the supervisory board accordingly (§ 349 (1) CommC).

- **Third Alternative** would require a shareholder decision which would change the Articles in respect of the shares, issued by the company and authorize the conversion of some of the existing common shares into NVP-Shares with limited voting rights. In order to pass such decision the majority of 4/5 of all the votes represented by the company's shares is necessary unless the Articles require a higher majority (§ 235 (1) and (2) CommC). In addition to that § 235 (2) CommC provides that in order to change the rights attached to a specific class of shares the consent of 9/10 of the votes represented by the shares belonging to the class of shares which is changed is necessary. Because of the general principle according to which the shareholders are to be treated equally on equal conditions (§ 272 CommC), it is evident that if not all of the existing common shares are converted into NVP-Shares with limited voting rights such conversion can only be decided upon approval of all of the existing common shareholders. All of the existing shareholders of JSC are to be informed in writing by the management board upon any change related to the rights conferred by a specific class of shares (§ 235 (3) CommC).

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the Board of Directors (in Estonia: Supervisory Board) ¹²⁵ (applicable in case of the Second Alternative only)	<input checked="" type="checkbox"/> Upon authorization of the shareholders through the relevant provisions in the Articles of JSC ¹²⁶	
<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	Second Alternative <input checked="" type="checkbox"/> Quorum: Common <i>i.e.</i> more than 50% of all the votes unless	If the shareholders may authorize the Board or the Chairman or GM to implement the CEM (applicable in

¹²⁵ Estonian companies have a dual management structure consisting of the management board and the supervisory board. For JSC the dual system is compulsory. For Ltd. the management board is generally not required, however, if the share capital of the Ltd exceeds the threshold equaling the minimum share capital for JSC (400 000 Estonian kroons or roughly EUR 25 600), the supervisory board requirement also applies to the Ltd. For the purposes of this questionnaire, the actions and responsibilities of the management board are discussed under the "Chairman or the General Manager" section and the actions and responsibilities of the supervisory board under the "Board of Directors" section.

¹²⁶ § 349 CommC, for the authorization of the supervisory board after the foundation of the company the amendment of the Articles is necessary.

¹²⁷ § 297 (1) CommC, if the quorum requirement is not met a subsequent shareholder meeting is convened that can pass decisions irrespective of the amount of votes present (§ 297 (2) CommC).

¹²⁸ § 300 (1) CommC regarding the decision to amend the Articles; § 341 (1) CommC regarding the decision to increase the share capital through issue of the new NPV-Shares.

¹²⁹ § 300 (1) CommC regarding the decision to amend the Articles; § 341 (1) CommC regarding the decision to increase the share capital through issue of the new NPV-Shares.

(applicable in case of the Second and the Third Alternative)	<p>the Articles require a higher quorum¹²⁷ and nil (second call).</p> <p><input checked="" type="checkbox"/> Majority: 2/3 of the votes present or represented in the shareholder meeting¹²⁸ unless the Articles require a higher quorum¹²⁹</p> <p>Third Alternative</p> <p><input checked="" type="checkbox"/> Quorum: Common <i>i.e.</i> more than 50% of all the votes unless the Articles require a higher quorum¹³⁰ and nil (second call).</p> <p><input checked="" type="checkbox"/> Majority: 4/5 of all the votes unless the Articles require a higher quorum¹³¹ and all of the votes represented by the common shares.¹³²</p>	<p>case of the Second Alternative only):</p> <p><input checked="" type="checkbox"/> For how long would the authorization be valid (maximum duration): three (3) years following the adoption or amendment of the Articles authorizing the supervisory board accordingly.¹³³</p>
<input checked="" type="checkbox"/> Other: Decision to issue NPV-Shares with limited voting rights upon foundation (applicable in case of the First Alternative)	Common decision of the Founders contained in the relevant provisions of the foundation agreement between the founders and in the initial Articles of JSC approved by the founders upon execution of the foundation agreement.	

Specific conditions: (See also subsection 5 below):

<p>Specific requirements when deciding to implement the CEM:</p> <p><input checked="" type="checkbox"/> Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.): (applicable in case of the Third Alternative only): all of the existing shareholders of JSC are to be informed in writing by the management board upon any change related to the rights conferred by a specific class of shares.¹³⁴</p>	
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

¹³⁰ § 297 (1) CommC, if the quorum requirement is not met a subsequent shareholder meeting is convened that can pass decisions irrespective of the amount of votes present (§ 297 (2) CommC).

¹³¹ § 235 (2) 1st sentence CommC.

¹³² § 235 (2) 2nd sentence CommC.

¹³³ § 349 (1) CommC.

¹³⁴ § 235 (3) CommC.

5) Are there ongoing disclosure requirements regarding such CEM?

Yes. The existence of the NVP-Shares, which are “turned into Priority Shares” as well as the rights conferred by such shares are visible from the Articles of JSC; the Articles are filed by the Commercial Register and are accessible to the public. If JSC, which shares have been admitted to trading on the Tallinn Stock Exchange, chooses not to comply with Section 1.1.2 of the Recommendations and decides to “turn the NVP-shares into priority shares,” then the management board and supervisory board of JSC must justify such deviation from the Recommendations in the annual report of JSC (Section 3.12 of the Requirements for Issuers of the TSE Rules).

JSC whose shares are listed on a stock exchange is required to disclose resolutions adopted by its general meeting of shareholders, including resolutions by which the Articles are amended. According to the rules of the Tallinn Stock Exchange, the same requirement applies to a company whose securities are admitted to trading on the “Free Market”, *i.e.* a regulated market (not a stock exchange) operated by Tallinn Stock Exchange.

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> The existence of the NVP-Shares as well as the rights conferred by such NVP-Shares are visible from the Articles of JSC; the Articles are accessible to the general public through the Commercial Register. <input checked="" type="checkbox"/> Disclosure is also to be made when one of the following events takes place: if NVP-shares are turned into priority shares, then the management board and supervisory board of JSC must justify such deviation from the Recommendations in the annual report of JSC. <input checked="" type="checkbox"/> JSC whose shares are listed on a stock exchange is required to disclose resolutions adopted by its general meeting of shareholders, including resolutions by which the Articles are amended. According to the rules of the Tallinn Stock Exchange, the same requirement applies to a company whose securities are admitted to trading on the “Free Market,” <i>i.e.</i> a regulated market (not a stock exchange) operated by Tallinn Stock Exchange.
-----------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Other question not applicable.

DEPOSITARY CERTIFICATES

1) **Is this CEM available?**

Yes. Estonian law does not establish any prohibition to use such CEM. However, there are no specific rules regulating such CEM, except that § 2 of the Securities Market Act defines a “transferable depository certificate” (in Estonian: “*kaubeldav väärtpaberi hoidmistunnistus*”) as one of the transferable securities.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	§ 2 of the Securities Market Act.
<input checked="" type="checkbox"/> Unclear Situation	The Unclear Situation is one of the following types: <input checked="" type="checkbox"/> Other: There are no clear rules regulating such CEM.

2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.**

§ 2 of the Securities Market Act defines a “transferable depository certificate” (in Estonian: “*kaubeldav väärtpaberi hoidmistunnistus*”) as one of the transferable securities.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	§ 2 of the Securities Market Act.
------------------------------------------	--------------------------------------------------	-----------------------------------

Other questions not applicable.

VOTING RIGHT CEILINGS

1) Is this CEM available?

The Estonian company law provisions do not allow for the creation of voting right ceilings. In case of JSC, different classes of shares can exist, as the law only allows for the division of the share capital into common shares and NVP-Shares (§ 235 (1) CommC). The Articles of JSC can provide that the NVP-Shares acquire voting rights in respect of certain shareholder decisions (the limited voting rights, § 237 (3) CommC). However, if the share has voting rights (limited or not), these must be strictly proportionate to the share's nominal value (§ 236 (2) CommC); this principle is mandatory. Hence, no voting right ceilings can exist. The voting right ceilings can in principle also be created through the shareholder's agreement; however, the non-adherence to such agreement does not render the votes, given by the shareholder above the ceiling and in breach of the agreement, void. The non-adherence can only be sanctioned through the general remedies of contract law such as (as an example) the claim for damages or a contractual penalty.

Short form answer:

<input checked="" type="checkbox"/> No (Clear Situation)

2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.

In case of JSC, if its shares have voting rights (limited or not), these must be strictly proportionate to the share's nominal value (§ 236 (2) CommC). The above principles are mandatory.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	§ 236 (2) CommC
------------------------------------------	--------------------------------------------------	-----------------

Other questions not applicable.

OWNERSHIP CEILINGS

1) **Is this CEM available?**

In case of JSC, ownership ceilings are not possible. In principle, such ceilings can be created through the shareholder's agreement; however, the non-adherence to such agreement does not render the acquisition of the shares, amounting to the shareholding above the ceiling, void (§ 76 (1) Law on the General Part of Civil Code) nor does it preclude the shareholder to make use of the voting rights, attached to such shares, acquired in breach of the agreement. The non-adherence can only be sanctioned through the general remedies of contract law such as (as an example) the claim for damages or a contractual penalty.

Short form answer:

<input checked="" type="checkbox"/> No (Clear Situation)

2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.**

§ 76 (1) Law on the General Part of Civil Code provides that any contractual restrictions to acquisition of certain property do not render the acquisition of such property void, if undertakings under the contract are breached when the property is acquired.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	§ 76 (1) Law on the General Part of Civil Code
------------------------------------------	--------------------------------------------------	------------------------------------------------

Other questions not applicable.

SUPERMAJORITY PROVISIONS

1) **Is this CEM available?**

Yes. Although Estonian company law rules generally provide that the shareholder decisions are passed by the simple majority of votes present or represented on the general meeting on which the decision is to be passed (unless a higher majority requirement is prescribed by law in respect of certain decisions), the Articles of the company can always require a higher majority, in case of JSC § 299 (1) 1st sentence CommC). The law does not set limits to majority requirements in respect of the shareholder decisions, set out in the Articles. This means that the Articles could even provide that all shareholder decisions are to be passed by consensus of all shareholders.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)

2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.**

The Articles of the company can require a higher majority (as the majority necessary under the applicable company law provisions) for certain or all of the shareholder decisions, in case of JSC § 299 (1) 1st sentence CommC).

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Non-Binding Rule	§ 299 (1) 1 st sentence CommC
------------------------------------------	------------------------------------------------------	------------------------------------------

3) **If this CEM is available, is it subject to any restrictions?**

There are no restrictions regarding the use of such CEM.

4) **Who decides whether this CEM should be implemented, and under what conditions?**

There are two possibilities to implement supermajority provisions:

- **First Alternative:** the initial Articles of JSC, approved upon foundation by the founders, can contain supermajority provisions in respect of certain (or all) shareholder decisions;
- **Second Alternative:** supermajority provisions in respect of certain (or all) shareholder decisions can be created by amending the Articles of JSC.

The implementation of each of the above alternatives requires different decisions; different conditions apply:

- **First Alternative:** the initial Articles of JSC approved by the founders upon execution of the foundation agreement (the initial Articles are approved by the foundation agreement);
- **Second Alternative:** The decision to amend the articles of JSC made by the shareholders (§ 298 (1) 2) CommC), the usual quorum requirements apply¹³⁵. In order to adopt the shareholder decision to amend the Articles the majority of 2/3 of the votes present or represented in the shareholder meeting is required (§ 300 (1) CommC).

¹³⁵

Over 50% of the votes represented by shares present or represented unless the Articles require a higher quorum (§ 297 (1) CommC), if the quorum requirement is not met a subsequent shareholder meeting is convened that can pass decisions irrespective of the amount of votes present (§ 297 (2) CommC).

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input checked="" type="checkbox"/> Quorum: Common i.e. more than 50% of all the votes unless the Articles require a higher quorum. ¹³⁶ <input checked="" type="checkbox"/> Majority: 2/3 of the votes present or represented in the shareholder meeting ¹³⁷ unless the Articles require a higher quorum. ¹³⁸
<input checked="" type="checkbox"/> Other: Decision to adopt the Articles, containing higher majority requirements in respect of certain or all shareholder decisions upon foundation of the company	Common decision of the Founders contained in the relevant provisions of the foundation agreement between the founders and in the initial Articles of JSC approved by the founders upon execution of the foundation agreement.

Specific conditions:

None.

5) Are there ongoing disclosure requirements regarding such CEM?

There are no specific disclosure requirements in respect of the supermajority provisions in the Articles of JSC. However, the Articles of the company as well as all amendments thereto¹³⁹ are registered in the Commercial Register and are accessible to the general public through the Commercial Register.

JSC whose shares are listed on a stock exchange is required to disclose resolutions adopted by its general meeting of shareholders, including resolutions by which the Articles are amended. According to the rules of the Tallinn Stock Exchange, the same requirement applies to a company whose securities are admitted to trading on the “Free Market”, *i.e.* a regulated market (not a stock exchange) operated by Tallinn Stock Exchange.

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> The supermajority requirements in respect of certain or all of the shareholder decisions are derived from the Articles. The Articles of the company as well as all amendments thereto are registered in the Commercial Register and are accessible to the general public through the Commercial Register. <input checked="" type="checkbox"/> JSC whose shares are listed on a stock exchange is required to disclose resolutions adopted by its general meeting of shareholders, including resolutions by which the Articles are amended. According to the rules of the Tallinn Stock Exchange, the same requirement applies to a company whose securities are admitted to trading on the “Free Market,” <i>i.e.</i> a regulated market (not a stock exchange) operated by Tallinn Stock Exchange.
-----------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

¹³⁶ § 297 (1) CommC, if the quorum requirement is not met a subsequent shareholder meeting is convened that can pass decisions irrespective of the amount of votes present (§ 297 (2) CommC).

¹³⁷ § 300 (1) CommC regarding the decision to amend the Articles; § 341 (1) CommC regarding the decision to increase the share capital through issue of the new NPV-Shares.

¹³⁸ § 300 (1) CommC regarding the decision to amend the Articles; § 341 (1) CommC regarding the decision to increase the share capital through issue of the new NPV-Shares.

¹³⁹ § 300 (2) CommC (in case of JSC).

6) When a CEM is implemented, on what substantive grounds may such decision be challenged?

There are no practical grounds for challenge visible regarding the supermajority provisions (in the Articles) itself. However, this does not preclude the shareholder to claim for damages from another shareholder if a particular shareholder decision is blocked by that shareholder because of the supermajority requirements in the Articles. The claim for damages is possible if the shareholder voting against the decision or avoiding the vote to block the decision acts in bad faith and against the interest of other shareholders and the company (§ 33 General Part of Civil Code Act together with § 115 Law of Obligations Act). It can be disputed if specific performance can be claimed in such a situation (§ 33 General Part of Civil Code Act together with § 108 (2) Law of Obligations Act) and whether a court decision could replace the vote of the blocking shareholder in such a case (§ 68 (5) General Part of Civil Code Act).

GOLDEN SHARES

1) Is this CEM available?

As a rule, the Estonian law does not enable the issue of golden shares or their use by state entities in its strict sense. The possibilities of state in respect of maximizing its control are limited to general CEM's available to all shareholders and not solely for the state or state controlled entities in their capacity as shareholders of the company. The Estonian Privatization Act contains a provision (§ 27 (1¹) Privatization Act) according to which the privatization agreement of a company can, in cases where the state retains only a minority shareholding after the privatization of the company, provide that the parties to the contract are obliged to amend the articles of the company (after its privatization) in order to provide that certain of the decisions of the general meeting of the shareholders (or of the supervisory board) can be passed only if supported by the representatives of the state acting in its capacity as the shareholder. Even if this possibility is followed and the Articles are amended, the special (preferential) rights acquired by the state as the shareholder would derive from the general company law provisions available to all shareholders and to all companies of a similar form. It could be argued that this possibility represents a mere recourse to company law mechanisms that do not represent a prohibited restriction to the free movement of the capital. It can hence be argued that Estonian law does not allow for golden shares in its strict sense. However, the creation of the golden shares is possible within the general boundaries of the company law, most of all through the issue of the NPV-Shares with limited voting rights (see subsections regarding Non-Voting Preferential Shares and Preferential Shares above).

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	Provided that the mechanism described in § 27 (1 ¹) of the Privatization Act counts as a golden share regulation.
-----------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------

2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.

The only specific reference to the golden share mechanism is to be found in § 27 of the Privatization Act. A golden share can be created upon privatization of the company through a specific requirement in the privatization agreement that requires the parties to the agreement (the buyer and the state as the minority shareholder) to amend the Articles of the privatized company after the privatization in order to enable the state to exercise disproportionate control in certain decisions regarding the company whether through supermajority provisions or by granting other preferential rights (through the issue of NVP-Shares that can be turned into Priority Shares, see "Priority Shares" above).

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Non-Binding Rule	§ 27 (1 ¹) Privatization Act
------------------------------------------	------------------------------------------------------	------------------------------------------

3) If this CEM is available, is it subject to any restrictions?

The State's possibility to exercise its voting rights under the golden shares is limited by § 27 (1²) of the Privatization Act which sets out conditions under which the State, in its capacity as the shareholder of the company, is entitled to block a specific shareholder decision.

Short form answer:

<input checked="" type="checkbox"/> Others	<p>§ 27 (1²) of the Privatization Act provides that in case the state has made use of the possibility, specified in § 27 (1¹) of the Privatization Act, it can use its voting rights to block a shareholder's decision only if the adoption of the shareholders' decision could lead to violation of laws or be detrimental to the business of the company for example through transfer of its assets to a third person or shift of control in the company or lead to substantial infringement of public interests. The state must reveal the grounds of its refusal to vote for the decision in question. The refusal to vote for the decision can be contested in the civil court if the conditions, specified in § 27 (1²) of the Privatization Act were not fulfilled when the vote was cast.</p>
--------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

4) Who decides whether this CEM should be implemented, and under what conditions?

According to § 27 (1) of the Privatization Act a golden share can be created upon privatization of the company through a specific requirement in the privatization agreement that requires the parties to the agreement (the buyer and the state as the minority shareholder) to amend the Articles of the privatized company after the privatization in order to enable the state to exercise disproportionate control in certain decisions regarding the company whether through supermajority provisions or by granting other preferential rights (through the issue of NVP-Shares, see "Preferential Shares" above). In order to effect amendments to the Articles, provided for by the privatization agreement a shareholder's decision is necessary.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input checked="" type="checkbox"/> Quorum: Common <i>i.e.</i> more than 50% of all the votes unless the Articles require a higher quorum. ¹⁴⁰ <input checked="" type="checkbox"/> Majority: 2/3 of the votes present or represented in the shareholder meeting ¹⁴¹ unless the Articles require a higher majority. ¹⁴²
-------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Specific conditions:

None.

¹⁴⁰ § 297 (1) CommC, if the quorum requirement is not met a subsequent shareholder meeting is convened that can pass decisions irrespective of the amount of votes present (§ 297 (2) CommC).

¹⁴¹ § 300 (1) CommC regarding the decision to amend the Articles; § 341 (1) CommC regarding the decision to increase the share capital through issue of the new NPV-Shares.

¹⁴² § 300 (1) CommC regarding the decision to amend the Articles; § 341 (1) CommC regarding the decision to increase the share capital through issue of the new NPV-Shares.

5) Are there ongoing disclosure requirements regarding such CEM?

Since the regulation of the golden shares in § 27 of the Privatization Act requires amendments to the Articles of the company, the existence of the golden shares is revealed through the general disclosure requirements regarding the Articles of the company. The Articles of the company as well as any amendments thereto are to be registered in and notified to the Commercial Register, the Articles of the company are accessible to the general public through the Commercial Register.

JSC whose shares are listed on a stock exchange is required to disclose resolutions adopted by its general meeting of shareholders, including resolutions by which the Articles are amended. According to the rules of the Tallinn Stock Exchange, the same requirement applies to a company whose securities are admitted to trading on the “Free Market”, i.e. a regulated market (not a stock exchange) operated by Tallinn Stock Exchange.

Short form answer:

<input checked="" type="checkbox"/> Yes	<p><input checked="" type="checkbox"/> Disclosure to be made through the Commercial Register that contains the Articles of the company, such information is accessible to the general public through the Commercial Register.</p> <p><input checked="" type="checkbox"/> JSC whose shares are listed on a stock exchange is required to disclose resolutions adopted by its general meeting of shareholders, including resolutions by which the Articles are amended. According to the rules of the Tallinn Stock Exchange, the same requirement applies to a company whose securities are admitted to trading on the “Free Market,” i.e. a regulated market (not a stock exchange) operated by Tallinn Stock Exchange.</p>
-----------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

6) When a CEM is implemented, on what substantive grounds may such decision be challenged?

There are generally no grounds available to challenge the decision to implement a golden share regulation in respect of the company that is to be privatized. The conditions of privatization, including the possible golden share regulation can however be challenged in the administrative court. Notwithstanding the above any use of voting rights granted to the state under the golden share regulation can be challenged on grounds provided for in § 27 (1²) of the Privatization Act if used by the state (in its capacity as the shareholder of the company) to vote against the particular shareholder decision in order to block its adoption against the corporate interest (see also 3) above).

Short form answer:

<p><input checked="" type="checkbox"/> The decision to implement the CEM is against the corporate interest (defined as being distinct from the sole interest of shareholders) There are no legal grounds available to challenge the golden share regulation itself. Notwithstanding this, the use of voting rights granted to the state under the golden share regulation can be challenged on grounds provided for in § 27 (1²) if the blocking of the shareholder decision using the golden share regulation was against the corporate interest.¹⁴³</p>

¹⁴³

§ 27 (1²) of the Privatization Act provides that in case the state has made use of the possibility, specified in § 27 (1¹) of the Privatization Act and the golden share regulation was adopted in the Articles of the privatized company, it can use its voting rights to block a shareholder’s decision only if the adoption of the shareholders decision could lead to violation of laws or be detrimental to the business of the company f. ex. through transfer of its assets to a third person or shift of control in the company or lead to substantial infringement of public interests.

PARTNERSHIPS LIMITED BY SHARES

1) Is this CEM available?

The Estonian company law provisions do not allow the partnership (whether general or limited) to issue shares.

Short form answer:

No (Clear Situation)

Other questions not applicable.

CROSS-SHAREHOLDINGS

1) Is this CEM available?

Cross-shareholdings are generally allowed but, in relationship between a mother company and a daughter subject to same restrictions as the acquisition and ownership of own shares (§ 285¹⁴⁴ CommC).

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)

2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.

The Commercial Code explicitly allows for basic cross-shareholdings (*i.e.* the situation where a company acquires shares of the company which, in turn, holds shares of the first company). However, such structures are subject to same restrictions as the acquisition and ownership of own shares if cross-shareholding exists between a mother company and its daughter *i.e.* in a situation where one company (the “Mother”) owns shares which represent (directly or indirectly) more than 50% of the voting rights or can (due to other arrangements) exercise a dominant influence in another company (the “**Daughter**”) (the direct control cross-shareholding, § 285 CommC). There are no exceptions regarding the indirect control cross-shareholdings (Art 24a (2) of Directive 77/91), the general rules regarding the ownership of own shares therefore also apply to indirect control cross-shareholding.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	§ 285 ¹⁴⁵ CommC
------------------------------------------	--------------------------------------------------	----------------------------

3) If this CEM is available, is it subject to any restrictions?

Cross-shareholdings are generally allowed but subject to same restrictions as the acquisition and ownership of own shares in relationship between the Mother and the Daughter. In the latter case, cross-shareholding can emerge if Daughter acquires shares of the Mother. Such acquisition has to be approved by the general meeting of the Daughter, the approval is valid for one year (§§ 285, 283 (2) 1) CommC¹⁴⁶). The approval of the general meeting is not required if acquisition of Mother’s shares is necessary in order to prevent substantial damage to the company, for example in case of a threatening takeover of the Mother. In such case the acquisition of Mother’s shares requires the approval of the supervisory board (§§ 285, 283 (3) CommC). Payment for Mother’s shares in a cross-shareholding situation has to follow out of distributable profits or other distributable reserves of the Daughter (§§ 285, 283 (2) 3) CommC). The percentage of the cross-shareholding is limited, the ownership of Mother’s shares by the Daughter counts as ownership of such shares by Mother itself and is hence limited to 10% of the total share capital of the Mother (§§ 285 2nd sentence, 283 (2) 2) CommC). The Daughter, after acquiring the shares of the Mother within a cross-shareholding structure is under the obligation to sell the Mother’s shares within a period of one year after the acquisition, otherwise the shares have to be declared void and the share capital has to be reduced

¹⁴⁴ In respect of JSC.

¹⁴⁵ In respect of JSC.

¹⁴⁶ In respect of JSC.

accordingly (§§ 285, 284 (1) and (9) CommC¹⁴⁷). If 10% limit is exceeded, the shares over the limit must be sold within 6 months (§§ 285, 284 (1) and (2) CommC). The shares involved in the cross-shareholding do not bear shareholder rights, in particular the dividend or voting rights (§§ 285 2nd sentence, 283 (5) CommC).

Short form answer:

<input checked="" type="checkbox"/> The percentage of Cross-Shareholding is limited (applicable in relationship between a mother company and its daughter i.e. in a situation where one company (the “Mother”) owns shares which represent more than 50% of the voting rights in another company (the “Daughter”))	In the relationship between Mother and Daughter (as defined above) the Daughter may not hold more than 10% of the total share capital of the Mother; in addition to that, Mother and Daughter together cannot hold more than 10% of Mother’s shares (§§ 285 2 nd sentence, 283 (2) 2) CommC)
<input checked="" type="checkbox"/> Others (applicable in relationship between a mother company and its daughter i.e. in a situation where one company (the “Mother”) owns shares which represent more than 50% of the voting rights in another company (the “Daughter”))	<p>The shares involved in the cross-shareholding do not bear shareholder rights, in particular the dividend or voting rights (§§ 285 2nd sentence, 283 (5) CommC)</p> <p>The company, after acquiring the shares within a cross-shareholding structure is under the obligation to sell such shares within a period of one year after the acquisition, otherwise the shares have to be declared void and the share capital has to be reduced accordingly (§§ 285, 284 (1) and (9) CommC). In case of JSC if 10% limit is exceeded, the shares over the limit must be sold within 6 months (§§ 285, 284 (1) and (2) CommC).</p>

4) **Who decides whether this CEM should be implemented, and under what conditions?**

In case of the direct or indirect control cross-shareholding the acquisition of the Mother’s shares has to be approved by the general meeting of the shareholders (§ 283 (2) 1), § 285 CommC). The approval of the general meeting is not required if acquisition of the shares within a cross-shareholding structure is necessary in order to prevent substantial damage to the company (§ 283 (3), for example in case of a threatening takeover of the Mother; in such case the acquisition of the Mother’s shares requires the approval of the supervisory board.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the Board of Directors (in Estonia the Supervisory Board) (applicable in relationship between a mother company and its daughter i.e. in a situation where one company (the “Mother”) owns shares which represent more than 50% of the voting rights in	<input checked="" type="checkbox"/> Autonomous decision but only if acquisition of the shares within a cross-shareholding structure is necessary in order to prevent substantial damage to the company, (§§ 285, 283 (3) CommC), otherwise the decision lies with the general meeting (see below)
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

¹⁴⁷

In respect of JSC.

another company (the “Daughter”))	
<input checked="" type="checkbox"/> Decision by the general meeting of shareholders (applicable in relationship between a mother company and its daughter i.e. in a situation where one company (the “Mother”) owns shares which represent more than 50% of the voting rights in another company (the “Daughter”))	<input checked="" type="checkbox"/> Quorum: Common <i>i.e.</i> 50% of all the votes unless the Articles require a higher quorum. ¹⁴⁸ <input checked="" type="checkbox"/> Majority: simple majority of the votes present or represented in the shareholder meeting unless the Articles require a higher majority. ¹⁴⁹

Specific conditions:

None.

5) Are there ongoing disclosure requirements regarding such CEM?

All shares and shareholders of JSC are registered in Estonian Central Registry for Securities (ECRS), which is an electronic database, accessible for the general public. There are no requirements to disclose specifically the existence of a cross-shareholding situation. If the acquisition of the shares in a cross-shareholding situation was decided by the supervisory board and not by the general meeting (in order to prevent substantial damage to the company, §§ 285, 283 (3) CommC) a special report regarding the acquisition has to be made (by the management board) to the shareholders in the next general meeting (§ 283 (3) 2nd sentence CommC).

JSC, whose shares have been admitted to trading to Tallinn Stock Exchange, must immediately disclose a resolution on the partial or full acquisition or transfer of a holding in a company as well as a resolution on the acquisition or waiver of a right to acquire or transfer a holding in a company. For the above purposes, “acquisition of a holding” shall be deemed to include foundation of a company or being one of the founders of a company and “transfer of a holding” shall be deemed to include the dissolution of a company (S. 7.11.1 of the Requirements for Issuers of the TSE Rules). S. 7.11.2 and 7.11.3 of TSE Rules set forth detailed requirements on the information to be disclosed.

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> A special report to the shareholders has to be made in the next GMS if acquisition of the shares of the Mother company was decided by the Supervisory Board (and not by the GMS). <input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place: adoption of resolution on the partial or full acquisition or transfer of a holding in a company; adoption of a resolution on the acquisition or waiver of a right to acquire or transfer a holding in a company. TSE Rules set forth detailed requirements on the information to be disclosed.
-----------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

¹⁴⁸ § 297 (1) CommC, if the quorum requirement is not met a subsequent shareholder meeting is convened that can pass decisions irrespective of the amount of votes present § 297 (2) CommC.

¹⁴⁹ § 299 (1) CommC.

6) **When a CEM is implemented, on what substantive grounds may such decision be challenged?**

The shareholder decision of the Daughter company, approving the acquisition of shares of the Mother can be challenged in cases provided for in § 38 (1) 2nd sentence General Part of the Civil Code Act. It provides that a shareholder decision can be declared void if, upon adoption of the resolution, a shareholder used his voting rights in order to acquire advantages for himself or a third person to the disadvantage of the company or other shareholders and the resolution enables the achievement of such objective.

Short form answer:

<input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the majority shareholders (see above)	<input checked="" type="checkbox"/> The decision to implement the CEM is against the interest of the shareholders (see above) or against the corporate interest (defined as being distinct from the sole interest of shareholders) (see above) <input checked="" type="checkbox"/> Such grounds are cumulative.
----------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

SHAREHOLDERS' AGREEMENTS

1) Is this CEM available?

The law does not impose restrictions regarding the Shareholders' Agreements; hence such agreements are permitted and enforceable. The only specific provision regarding the Shareholders' Agreements in the company law regulation is contained in § 33 (4) of the General Part of Civil Code Act which provides that agreements over the use of voting rights, derived from the shares, are permitted, unless specifically prohibited by law.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)

2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.

The law does not impose restrictions regarding the Shareholders' Agreements; hence such agreements are permitted and enforceable although no implicit rules authorizing or prohibiting such agreements are to be found in the laws.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input type="checkbox"/> Binding Rule <input type="checkbox"/> Non-Binding Rule	N/A
------------------------------------------	------------------------------------------------------------------------------------	-----

3) If this CEM is available, is it subject to any restrictions?

In general terms, only general restrictions of contract law such as invalidity of illegal contracts or provisions or contracts against public policy or morality are applicable, other restrictions can be derived from the general obligation of the parties to a contract to act in good faith and in reasonable manner (§ 6 Law of Obligations Act) and from the prohibition to demand performance of the contract or its provisions in bad faith (§ 138 General Part of Civil Code Act).

However, there are specific restrictions in respect of the agreements regarding the use of the voting rights. Generally such agreements are allowed for and enforceable (§ 33 (4) Law on the General Part of Civil Code). Notwithstanding the above the law prohibits the agreements regarding the use of the voting rights if such agreement provides for a direct monetary incentive for the use of the voting rights in a specific manner, the provision of such monetary incentives in relation to voting agreements constitutes a criminal offence (§ 504⁵ CommC) and is prohibited, any such agreements are void (§ 87 Law on the General Part of Civil Code).

Short form answer:

<input checked="" type="checkbox"/> Others	§ 504 ⁵ CommC in relation with (§ 87 Law on the General Part of Civil Code (prohibition to purchase the votes).
--------------------------------------------	----------------------------------------------------------------------------------------------------------------------------

4) Who decides whether this CEM should be implemented, and under what conditions?

The conclusion of the Shareholders' Agreement is the sole discretion of the shareholders or certain of the shareholders of the company. There are no restrictions to such agreements and any number of shareholders can enter into a Shareholders' Agreement in respect to their respective shareholding, there can be concurring or overlapping Shareholders' Agreements amongst the shareholders of the same company.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Other: sole discretion of the shareholders or certain of the shareholders of the company	Through conclusion of the Shareholders' Agreement
------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------

Specific conditions:

None.

5) Are there ongoing disclosure requirements regarding such CEM?

Yes (in respect of the listed companies only). According to TSE Rules, shareholders, who hold more than 5% of the votes represented by all shares of JSC, the shares of which are admitted to trading on Tallinn Stock Exchange, are required to disclose (through JSC) all material terms and conditions of such agreements which have been entered into with other shareholders or third parties and which purpose is to restrict the free transferability of the shares or which may have a significant influence on the share price (Section 7.8 of Requirements for Issuers of TSE Rules). According to Recommendations, JSC, whose shares are admitted on the Tallinn Stock Exchange, is required to disclose on its website all agreements between shareholders concerning concerted exercise of shareholders rights (if those are concluded and known to JSC) (Section 5.3 of Recommendations).

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place: Shareholders holding more than 5% of votes represented by shares of JSC (which is listed on Tallinn Stock Exchange) must disclose all material terms of agreements with other shareholders or third parties which purpose is to restrict the free transferability of the shares or which may have a significant influence on the share price. <input checked="" type="checkbox"/> JSC, listed on Tallinn Stock Exchange, must disclose on its website all agreements between shareholders concerning concerted exercise of shareholders rights (if those are concluded and known to JSC).
-----------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

6) When a CEM is implemented, on what substantive grounds may such decision be challenged?

General restrictions of contract law such as invalidity of illegal contracts or provisions or contracts against public policy or morality as well as the possibility to avoid a contract because of misrepresentation or fraud are applicable. Other restrictions can be derived from the general obligation of the parties to a contract to act in good faith and in reasonable manner (§ 6 Law of Obligations Act) and from the prohibition to demand performance of the contract or its provisions in bad faith (§ 138 General Part of Civil Code Act).

There are also specific restrictions in respect of the agreements regarding the use of the voting rights. Generally such agreements are allowed for and enforceable (§ 33 (4) Law on the General Part of Civil Code). However the law prohibits the agreements regarding the use of the voting rights if such agreement provides for a direct monetary incentive for the use of the voting rights in a specific manner, the provision of such monetary incentives in relation to voting agreements constitutes a criminal offence (§ 504⁵ CommC) and is prohibited, any such agreements are void (§ 87 Law on the General Part of Civil Code).

In addition to that, the shareholder decisions which were passed because of the voting agreements can be challenged by the minority shareholders if the majority shareholders (or some of them) used their voting rights to acquire benefits to the detriment of other shareholders or of the company and the shareholder decision passed enables them such benefits (§ 38 (1) Law on the General Part of Civil Code).

Short form answer:

<input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the majority shareholders (in case of the shareholder decisions passed because of the voting agreements) § 38 (1) Law on the General Part of Civil Code (see above)	<input checked="" type="checkbox"/> The decision to implement the CEM is against the corporate interest (defined as being distinct from the sole interest of shareholders) (in case of the shareholder decisions passed because of the voting agreements) § 38 (1) Law on the General Part of Civil Code (see above). <input checked="" type="checkbox"/> Such grounds are cumulative.
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

B – GENERAL BACKGROUND QUESTIONS**1) What are the rules for board elections? How many corporate votes are required to appoint or remove corporate directors?**

Estonian JSCs have a dual management structure consisting of the management board and the supervisory board. For JSC the dual system is compulsory.

- In the case of JSC the members of the Supervisory Board are elected in the general meeting of the shareholders. Common quorum requirements apply for the shareholders decision, in order to pass decisions more than 50% of all the votes must be represented in the meeting unless the Articles require a higher quorum.¹⁵⁰ For the election of the supervisory board members the simple majority of the votes present in the meeting is required unless the Articles require a higher majority.¹⁵¹ The law or the Articles of the company may provide that no more than half of the members of the Supervisory Board are appointed in another manner. The members of the Supervisory Board are appointed for a specific term, specified in the Articles but not for more than 5 years.¹⁵² In order to remove a Supervisory Board member prior to expiration of his term of appointment a majority of 2/3 of the votes represented in the general meeting is necessary.¹⁵³ On “substantial grounds” the shareholders whose shares represent at least 10% of the share capital of the company may demand removal of the Supervisory Board member by court.¹⁵⁴ The members of the Management Board are appointed and removed by the decision of the Supervisory Board.¹⁵⁵

Short form answer:

<p><input checked="" type="checkbox"/> Majority required for (supervisory) board election: simple. For board removal: 2/3 of the votes represented in the meeting (applicable only if board member is removed prior to expiration of his term of appointment). Quorum required for shareholders’ meetings proceeding with the election or removal of board members: more than 50% of all the votes must be represented in the meeting unless the Articles require a higher quorum.¹⁵⁶ And nil (second call).</p>	<p><input checked="" type="checkbox"/> The shareholders whose shares represent at least 10% of the share capital of the company may demand the matter to be taken to the agenda of the general meeting.</p> <p><input checked="" type="checkbox"/> The obligation to indemnify the board member depends on the contract concluded between him and the company upon appointment.</p> <p><input checked="" type="checkbox"/> Members of the Board of directors may be revoked without cause or notice or indemnity, but</p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

¹⁵⁰ § 297 (1) CommC, if the quorum requirement is not met a subsequent shareholder meeting is convened that can pass decisions irrespective of the amount of votes present (§ 297 (2) CommC).

¹⁵¹ §§ 319 (1), 299 (1) CommC.

¹⁵² § 319 (3) CommC.

¹⁵³ § 319 (4) CommC.

¹⁵⁴ § 319 (5) CommC.

¹⁵⁵ § 309 (1) CommC.

¹⁵⁶ If the quorum requirement is not met a subsequent shareholder meeting is convened that can pass decisions irrespective of the amount of votes present

	it must be on the agenda.
<input checked="" type="checkbox"/> Electronic voting is not authorized. However, if all the shareholders agree, they can pass a shareholders decision without holding a GMS by simply signing the relevant decision (by all existing shareholders). In such case each shareholder can sign by attaching a electronic signature to the draft shareholders decision.	<input checked="" type="checkbox"/> The shareholders whose shares represent at least 10% of the share capital of the company may demand the general meeting to be convened. <input checked="" type="checkbox"/> Proxy solicitation is authorized: the shareholder lists are accessible from ECRS or from the commercial register. ¹⁵⁷

2) **What shareholders' decisions require a vote from more than a simple majority?**

Shareholders' decisions requiring a vote from more than a simple majority are all decisions provided as such in the Articles of JSC, CommC contains additional decisions that require a higher majority. As a general rule, the Articles of the company may stipulate a higher majority requirement compared to the Commercial Code. In case the company has different types of shares (common shares and NVP-Shares), majority requirement may apply to each group of shareholders separately. The majority requirement means the required proportion of "yes"-votes, therefore refusal to vote by a shareholder represented in the meeting or casting of a blank vote by such shareholder (provided this shareholder is included in the quorum) does not influence the final result of the voting (compared to the situation where such shareholder would have voted "no").

Most important shareholders' decisions requiring a vote from more than a simple majority (in addition to the types of decisions referred above or listed in the short form answer below) concern: change of rights related to a type of shares (general majority of 4/5 + 9/10 majority of those shareholders whose rights related to their shares are changed), early recalling of a member of the supervisory board of JSC (2/3 majority), exclusion of shareholders' subscription right to subscribe for new shares (3/4 majority), decrease of share capital (2/3 majority), dissolution (2/3 majority), division (2/3 majority), transformation (2/3 or 100% majority depending on the circumstances of transformation).

Short form answer:

<input checked="" type="checkbox"/> All changes in bylaws (Articles): Yes (2/3) <input checked="" type="checkbox"/> Issuance of shares / bonds / other financial instruments: Yes (increase of share capital, required majority 2/3) <input checked="" type="checkbox"/> Mergers : Yes (2/3)	<input checked="" type="checkbox"/> Change of corporate purpose: Yes (in cases where this requires a change in the Articles).
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------

¹⁵⁷

All shares of JSC are registered in Estonian Central Registry for Securities (ECRS), which is an electronic database, accessible for the general public.



PROPORTIONALITY BETWEEN OWNERSHIP AND CONTROL IN EU LISTED COMPANIES:
EXTERNAL STUDY COMMISSIONED BY THE EUROPEAN COMMISSION

**PROPORTIONALITY BETWEEN OWNERSHIP AND CONTROL
IN EU LISTED COMPANIES:**

COMPARATIVE LEGAL STUDY

GREECE

KARATZAS & PARTNERS LAW FIRM

8 Omirou street, GR-105 64 Athens, TEL.: +30 210 371 3600, FAX: +30 210 323 4363, e-mail: mail@karatza-
partners.gr

Reviewed by:

Nicholas L. Georgakopoulos
H.R. Woodard Professor of Law
Indiana Univ. Sch. of Law - Indianapolis

MULTIPLE VOTING RIGHTS SHARES

1) Is this CEM available?

No, multiple voting rights shares are not available under Greek Rules.

Short form answer:

<input checked="" type="checkbox"/> No (Clear Situation)

2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.

Law 2190/1920 is the basic law on corporations established in Greece. It applies to both listed and non-listed entities.

Article 30 of Greek law 2190/1920 provides that each share incorporates one voting right (one-share-one-vote principle) and that the rights and obligations arising from each share are pro rata to the par value of such share (principle for the equal treatment of the shareholders). Article 30 introduces mandatory law provisions.

Therefore, the one share, one vote principle constitutes a basic rule of the Greek corporates (societes anonymes) law.

The distinction between Federal Rules or State Rules is not relevant for Greece.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	Under Greek mandatory Rules. ¹⁵⁸ Greek corporations are required to apply the one-share-one-vote principle, with no exemptions.
------------------------------------------	--------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------

Other questions not applicable.

¹⁵⁸ Greek law 2190/1920.

NON-VOTING SHARES

1) **Is this CEM available?**

Under a mandatory Rule¹⁵⁹ each share must have voting rights, unless it is a preferred share. However, there are certain occasions where the voting rights are suspended by operation of mandatory Rules (e.g., the issuer cannot exercise voting rights arising from its treasury shares; if, however the treasury shares are on-sold to other investors, such investors will be entitled to exercise the voting rights arising from the shares immediately upon acquiring the ownership of the same).

Two other instances when shares are stripped of their voting power are in the context of antitrust and banking regulation.

Article 4e of Greek law 703/1977 (on monopolies, unfair competition and free competition) prohibiting the exercise of voting rights by a purchaser, when the acquisition is subject to prior approval by the Greek Competition Commission.

Article 17 paragraph 7 of Greek law 2076/1992 (the basic banking corporation law), prohibiting a shareholder from exercising voting rights of shares exceeding 10% (or higher) of the aggregate share capital of a banking institution without having received the prior approval of such acquisition by the Central Bank of Greece.

Short form answer:

<input checked="" type="checkbox"/> No (Clear Situation)	All shares have voting rights. In some temporary circumstances the voting rights cannot be exercised (e.g., treasury shares, antitrust and bank acquisition approval).
----------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------

2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

None.

Other questions not applicable.

¹⁵⁹ Article 30 of Greek law 2190/1920.

NON-VOTING PREFERENCE SHARES

1) **Is this CEM available?**

a) Non-voting preference shares: Yes, it is; in particular, the articles of association of a company may provide for the issuance of non-voting preference shares.

b) Founding certificates: In addition, the articles of association may provide that the founders of a company are granted founding certificates, which entitle their holders to a maximum of 1/4 of the net profits of the company. The founding certificates do not incorporate voting rights, nor any right in management or in the liquidation proceeds of the company. Ten years after their issuance, the company has a call option, which is exercised at a price set out in the company's articles of association and which, in any case, cannot exceed 15% of the aggregate profits paid to the holders of the founding certificates in the past three years. If the company exercises the call option, the repurchased certificates are annulled.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	Non-voting preference shares and founding certificates.
-----------------------------------------------------------	---------------------------------------------------------

2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

a) Non-voting preference shares: The non-voting preference shares are expressly allowed under article 3 of Greek law 2190/1920; this is a non-binding rule, in the sense that a company may choose to include a provision in its articles of association allowing the issuance of non-voting preference shares or not. The respective Rules are expected to be amended soon (but not before the first half of 2007); we will highlight where such amendment (as found in the new draft law circulated for review that amends the provisions of Greek law 2190/1920 (the "Draft Law")) would affect the responses provided under this section.

b) Founding certificates: The founding certificates are expressly allowed under article 15 of Greek law 2190/1920; this is a non-binding rule, in the sense that a company may choose to include a provision to such effect in its articles of association or not. The Draft Law does not amend the current Rules on founding certificates.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Non-Binding Rule	Issuance of non-voting preference shares is discretionary
------------------------------------------	------------------------------------------------------	-----------------------------------------------------------

3) **If this CEM is available, is it subject to any restrictions?****a) Non-voting preference shares:**

Non-voting preference shares can be issued without restrictions. The only exception to that rule is that the aggregate of NVPs of listed companies cannot exceed 40% of all issued shares (article 4 of law 876/1979). The other restrictions refer to the type of preference, not to the exclusion of the voting right. In particular, non-voting preference shares incorporate one of the following privileges:

- preferred dividend; and/or
- cumulative dividend; or
- fixed annual income; or

- participation in the company's profits; or
- right to receive interest, provided that it does not result in reducing the own funds of the company below its nominal share capital.¹⁶⁰

There are no restrictions on the ratio between non-voting preference shares and common shares.

The non-voting preference shares cannot be converted to common with voting rights shares, as opposed to voting rights preference shares. Under the Draft Law, however, non-voting preference shares will be convertible to common voting shares.

No Breakthrough Rule is applicable.

b) Founding certificates:

They cannot exceed 1/10 of the aggregate number of the shares issued at the time of establishment of the company;

They cannot be issued after the establishment of the company;

No Breakthrough Rule is applicable.

Short form answer (the short form answer, which is different for each CEM, has exceptionally been split up between the various CEMs):

<input checked="" type="checkbox"/> Maximum percentage of Non-Voting Preference Shares	NVPS: 40% of all issued shares Founding Certificates: Maximum 1/10 of total number of shares
<input checked="" type="checkbox"/> Reinstatement of voting rights in certain circumstances	The non-voting rights shares may be convertible to common registered shares under the Draft Law but not under the current rules

4) Who decides whether this CEM should be implemented and under what conditions?

(i) Although the law does not explicitly provide so, it is broadly accepted in theory that all shareholders have the right to subscribe for newly issued shares irrespectively of their characterization. (ii) Decision of a special meeting of shareholders with pre-emptive rights by ¾ majority (2/3 under Draft law) of the represented shareholders with pre-emptive rights and decision of the GMS by ¾ majority (2/3 under Draft law).

There is no such notion as 'authorized capital' in Greek law. It is possible to authorize the issuance of NVP Shares pursuant to a decision by the BoD (capital increase), but such delegation by the GMS will be time-limited (5 years).

a) Non-voting preference shares:

The decision for implementation of this CEM lies with the shareholders of the company, who have the discretion to

- a) approve the inclusion of a respective provision in the company's articles of association (either at the time of establishment of a company or by a subsequent amendment of the articles of association, pursuant to a decision by its general meeting of the shareholders), as well as
- b) decide on the issuance of various series of non-voting preference shares; if the non-voting preference shares are issued at the time of establishment of the company, no further corporate action

¹⁶⁰ Article 44a of Greek law 2190/1920.

is required; if the shares are issued after the establishment of the company, they will be issued pursuant to an increase of the share capital of the company; the decision for such share capital increase must be made either by the general meeting of the shareholders or by the board of directors (provided they have been granted such authority under the articles of association of the company and/or by the general meetings of the shareholders).

b) Founding certificates:

The decision for the issuance of founding certificates lies with the shareholders of the company who have the discretion to decide so at the time of establishment of the company (i.e. by including the respective provisions in the company's initial articles of association). The call option is exercised pursuant to a decision by the Board of Directors of the company or any person to whom this authority will have been assigned by the Board of Directors (e.g., Managing Director).

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the Board of Directors	<input checked="" type="checkbox"/> Autonomous decision if provided in the bylaws of the company <input checked="" type="checkbox"/> Upon authorization of the shareholders	
<input checked="" type="checkbox"/> Decision by the general meeting of shareholders for the issuance of non-voting preference shares	<input checked="" type="checkbox"/> Quorum: 2/3 of the aggregate voting rights of the company <input checked="" type="checkbox"/> Majority: 2/3 of those shareholders present	If the shareholders may authorize the Board or the Chairman or GM to implement the CEM: <input checked="" type="checkbox"/> For how long would the authorization be valid (maximum duration): 5 years <input checked="" type="checkbox"/> If a tender offer is filed on the company wishing to implement the CEM, between the authorization and the actual implementation, would the authorization need to be renewed? No
<input checked="" type="checkbox"/> Other: Decision by the founders of the company for the issuance of non-voting preference shares or founding certificates	At the time of establishment of the company and execution of the notarial deed pursuant to which are approved the Articles of Association.	

Specific conditions:

None.

5) Are there ongoing disclosure requirements regarding such CEM?

No. The only ongoing disclosure requirements refer to the requirements of disclosure of listed shares.

The crossing of certain thresholds needs to be disclosed: 5%, 10%, 1/3, 50%, 2/3 of the aggregate votes.

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> The following disclosure requirements apply: - Filing of Articles of Association, - Publication in a Legal Gazette, - Annual Report, - Special Report, - Website.
-----------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

6) When a CEM is implemented, on what substantive grounds may such decision be challenged?

a) Non-voting preference shares:

This CEM is introduced under Greek law as an option completely unrelated to the tender offer processes. Therefore, in the case of a listed company that issues a series of non-voting rights shares, a challenge of the respective decision would be generally based on a breach of provisions of Greek law 2190/1920; if the issuance of these shares was made as a CEM, assuming that the decision was taken in compliance with Greek law 2190/1920, the decision may be challenged on the basis of a breach of:

a) the rule of article 5 paragraph d of Greek law 3461/2006 (which implemented EU Directive 2004/25/EC) (the “Greek Tender Offer Law”), prohibits market manipulation regarding the target which company, i.e., which results in artificial trading volumes or prices of the shares; or

b) the rule of article 14 of the Greek Tender Offer Law that restricts the Board of Directors from implementing any action out of the ordinary course of business of the company that may lead to the annulment of the tender offer without the prior authorization of the general meeting of the shareholders; or

c) the rule of article 281 of the Greek Civil Code, requiring all parties exercising a right to do so to act in good faith. On the basis of article 281, the decision could be challenged if it is invoked that the decision to implement the CEM is against the corporate interest or against the interest of the shareholders, or that the decision is in the sole interest of the management or of the majority shareholders, or any combination of the above.

b) Founding certificates:

The issuance thereof may be challenged on the basis of a breach of article 15 of Greek law 2190/1920. We cannot envisage a situation where their issuance could be challenged on the basis of the Greek Tender Offer Law, given that their issuance and rules of operation are based on provisions in the initial articles of association of the company.

Short form answer:

<input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the management.	<input checked="" type="checkbox"/> The decision to implement the CEM is against the interest of the shareholders.
<input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the majority shareholders.	<input checked="" type="checkbox"/> The decision to implement the CEM is against the corporate interest (defined as being distinct from the sole interest of shareholders).

PYRAMID STRUCTURES

1) Is this CEM available?

This structure is quite common practice in the Greek market. Usually the parent company is a non-listed entity, and the entire pyramid has only one subsidiary entity listed on the Athens Exchange. There are no particular rules regulating these structures. Incidentally, it should be noted that as regards tender offers, the Greek Tender Offers Law does not make any express provisions regarding a situation where two entities of the pyramid are listed on an exchange. However, very recently, the Greek Capital Markets Commission interpreted article 7 of the Greek Tender Offer Law as requiring an investor who acquired shares in a parent company through a tender offer to launch a mandatory tender offer for the listed shares of such parent company's subsidiary.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	The pyramid structure is available, and the Greek Capital Markets Commission has interpreted the Rules as requiring the investor who acquired shares in a parent company through a tender offer to launch a mandatory tender offer for the listed shares of such parent company's subsidiary.
-----------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.

There are no Rules restricting the establishment of a pyramid structure.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule
------------------------------------------	--------------------------------------------------

3) If this CEM is available, is it subject to any restrictions?

The Greek Capital Markets Commission interpreted article 7 of the Greek Tender Offer Law as requiring an investor who acquired shares in a parent company through a tender offer to launch a mandatory tender offer for the listed shares of such parent company's subsidiary. However, there are no express provisions regulating thresholds or other restrictions requirements for a mandatory / discretionary tender offer in a pyramid situation, nor any Rules regulating the structure of the pyramid.

No restrictions are applicable.

Short form answer:

<input checked="" type="checkbox"/> Others Tender Offer Law interpretation expands obligation to extend offer to minority to extending offer to the shareholders of a listed subsidiary.	Interpretation by the Greek Capital Markets Commission.
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------

4) **Who decides whether this CEM should be implemented and under what conditions?**

The founders of the corporation can autonomously implement a pyramid structure.

<input checked="" type="checkbox"/> Other: Autonomous decision by the founders and majority shareholders.

5) **Are there ongoing disclosure requirements regarding such CEM?**

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> The following disclosure requirements apply: - Specific Filing, - Specific Notification: when the acquired percentage is more than 50%, - Annual Report, - Website.
-----------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

6) **When a CEM is implemented, on what substantive grounds may such decision be challenged?**

The institution of the pyramid does not lie on the discretion of the target company or its management.

The decision to implement the CEM is against the corporate and/or the shareholders' interest. The management of the company makes a decision for the creation of one or more subsidiaries. This decision may be challenged as contrary to company and/or shareholders' interest. However, the effect of having the pyramid structure (i.e. the requirement to launch an offer for the Target's subsidiaries) is not due to any other decision of the management or of the target; it is a legal requirement on the basis of the interpretation of the law provided by the Greek regulator.

PRIORITY SHARES

1) Is this CEM available?

Priority shares are, in principle, not allowed under Greek law. However, Greek law allows the adoption of certain provisions in the articles of association of Greek listed companies, which, in effect, may give veto or similar rights to certain shareholders. The major difference with the Priority Shares is that the special voting / veto rights are not incorporated in certain shares but are provided for under the articles of association in relation to specific shareholders.

In particular, article 18 paragraph 3 of Greek law 2190/1920 provides that the articles of association may entitle a shareholder to appoint directly, (and not through the standard method of election by the general meeting of the shareholders), a maximum of 1/3 of the members of the Board of Directors of the company. This right, combined with provisions of the articles of association requiring increased majorities and quorum for the making of decisions on certain items both at the Board of Directors level and the general meeting of shareholders level, can lead to enabling one or more shareholders to exercise in effect veto rights with respect to such items.

Short form answer:

<input checked="" type="checkbox"/> No (Clear Situation)

2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.

The Rule that prohibits priority shares is article 30 of Greek law 2190/1920. Please see under Sections 1 and 2 of the Multiple Voting Rights Shares for an analysis.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule
------------------------------------------	--------------------------------------------------

Other questions not applicable.

DEPOSITARY CERTIFICATES**1) Is this CEM available?**

Depositary Certificates cannot be issued by Greek entities.

However, if a foreign entity were to issue Depositary Certificates where the underlying were shares of a Greek listed company, such certificates could be listed on the Athens Exchange; however, it is most probable that new Rules would need to be introduced to govern the trading and settlement thereof.

Short form answer:

<input checked="" type="checkbox"/> No (Clear Situation)

2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.

There are no Rules providing for such CEM.

Law 2190/1920 does not provide for Depositary Certificates, and, in that sense, they are prohibited to Greek SAs. As regards non-Greek DCs these may be listed under article 7 paragraph 1 of law 3371/2005. There are no provisions regulating, restricting or prohibiting them.

Other questions not applicable.

VOTING RIGHT CEILINGS

1) Is this CEM available?

This CEM is not available.

Please note that, as a similar form of CEM could be interpreted, the provision found in the founding laws of certain privatized state-owned companies, whereby the shareholding of the State could not be reduced below certain thresholds. Most privatized State-owned listed companies have, by now, been released from such mandatory provisions of law.

Short form answer:

<input checked="" type="checkbox"/> No (Clear Situation)

2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.

Article 30 of Greek law 2190/1920, which requires that each share bears a vote, is interpreted unanimously as forbidding the implementation of voting right ceilings.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule
------------------------------------------	--------------------------------------------------

Other questions not applicable.

OWNERSHIP CEILINGS**1) Is this CEM available?**

Greek law 2190/1920 does not prohibit the adoption of an ownership ceiling in the articles of association of corporates. In addition, Greek law 3371/2005 in combination with the Athens Exchange Regulation, that, among others, which set out the characteristics of shares in order for them to be listed on the Athens Exchange, does not prohibit such ceilings either. On the other hand, though, there are no mechanisms in place that would ensure the monitoring of such provisions in the case of listed companies, nor are there any mandatory or other Rules that set out the effects of a breach of an ownership ceiling provision. In that respect, ownership ceilings are not available under Greek law.

Short form answer:

<input checked="" type="checkbox"/> No (Clear Situation)

Other questions not applicable.

SUPERMAJORITY PROVISIONS

1) Is this CEM available?

Yes. By operation of law, the following items must be approved solely by the general meeting of the shareholders and by an increased quorum and majority:

- a) change of nationality of the company;
- b) change of the object of the company;
- c) increase of the shareholders' obligations;
- d) increase of the company's share capital, if such increase is not made pursuant to a decision of the Company's Board of Directors (if the Board has been attributed such authority according to the company's articles of association and/or a respective decision of the company's General Meeting), or it is imposed by law, or made after a capitalization of reserves;
- e) decrease of the company's share capital;
- f) change in the profits' appropriation;
- g) merger, split, conversion, revival;
- h) extension of the company's duration;
- i) dissolution of the company; and
- j) provision or renewal of authority to the company's Board of Directors to increase the share capital.

Notwithstanding the foregoing items, the company's articles of association may provide for more items, the decision on which must be adopted by qualified majority.¹⁶¹

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)

2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.

Article 29 paragraphs 3 and 5 and article 31 of Greek law 2190/1920.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule
------------------------------------------	--------------------------------------------------

3) If this CEM is available, is it subject to any restrictions?

The company's articles of association may provide for more (but mandatorily not for less) items, the decision on which must be adopted by qualified majority.

The only restriction is that the increased quorum and majority cannot reach 100% of the share capital of the company.

The Breakthrough Rule is not applicable.

¹⁶¹ Question to NLG: why do you want us to delete this?

Short form answer:

<input checked="" type="checkbox"/> Others	The bylaws of the company may provide for more items to be approved by an increased quorum and majority but not for less. The increased quorum and majority cannot reach 100% of the share capital of the company.
--------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

4) Who decides whether this CEM should be implemented and under what conditions?

The CEM for the items listed under 1(a) j) is mandatory by operation of a Rule. The shareholders of the company have the discretion, pursuant to a resolution of the general meeting of the shareholders made by a simple quorum and majority, to include more items in the list of those that by Rule require the qualified quorum and majority and to increase the qualified majority for items listed under 1a)-j). Once the articles of association have been approved by the general meeting of the shareholders and the regulator, the application of the CEM is mandatory and can only be waived by a subsequent amendment of the articles of association.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders to implement additional items for which supermajority is required	<input checked="" type="checkbox"/> Quorum: 1/5 of the aggregate share capital <input checked="" type="checkbox"/> Majority: 1/2 plus one vote of the votes of shareholders present and represented at the meeting
<input checked="" type="checkbox"/> Other: Rule ¹⁶²	For items listed above under 1a)-j)

Specific conditions:

None.

5) Are there ongoing disclosure requirements regarding such CEM?

No

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> The following disclosure requirements apply: <ul style="list-style-type: none"> - Filing of Articles of Association, - Publication in a Legal Gazette, - Website.
-----------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

¹⁶² Question to Shearman & Sterling: You had placed a question mark here, please clarify your question.

6) **When a CEM is implemented, on what substantive grounds may such decision be challenged?**

In case that a decision has been taken to introduce in the bylaws of the company more items to be approved by an increased quorum and majority, such a decision can be challenged only if the relative formalities are not complied with by law or if the decision is not in the benefit of the company and the shareholders or if the above-mentioned rule that the increased quorum and majority cannot reach 100% of the share capital of the company has been breached. Accordingly, the CEM could be challenged on the above grounds. Please note that there has been no precedent in Greek case law so far.

The rule of article 281 of the Greek Civil Code requires all parties exercising a right to do so to act in good faith. On the basis of article 281, the decision could be challenged if it is invoked that the decision to implement the CEM is against the corporate interest or against the interest of the shareholders, or that the decision is in the sole interest of the management or of the majority shareholders, or any combination of the above.

Short form answer:

<input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the management.	<input checked="" type="checkbox"/> The decision to implement the CEM is against the interest of the shareholders.
<input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the majority shareholders.	<input checked="" type="checkbox"/> The decision to implement the CEM is against the corporate interest (defined as being distinct from the sole interest of shareholders).

GOLDEN SHARES

1) **Is this CEM available?**

No

Short form answer:

<input checked="" type="checkbox"/> No (Clear Situation)

2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

Article 30 of Greek law 2190/1920 that imposes the equality among the shareholders and the one-vote-one-share principle.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule
------------------------------------------	--------------------------------------------------

Other questions not applicable.

PARTNERSHIPS LIMITED BY SHARES

1) **Is this CEM available?**

There is a very old provision in the Greek Commercial Code (article 38) that provides for the establishment of entities similar to Partnerships Limited by Shares; *i.e.* allowing for the establishment of a partnership company (eterorythmes kata metohes etairies) which has unitholders/ partners with unlimited liability regarding the company's obligations and who are entitled to run the company, and limited liability shareholders/partners who are deprived of any representation and management rights and are only entitled to dividends and other similar economic benefits arising from the shares. This corporate type has been used very seldom and, in fact, no such company was ever (to the best of our knowledge) listed on the Athens Exchange. Therefore, article 38 of the Greek Commercial Code should be disregarded, and the answer to this question is no.

Short form answer:

<input checked="" type="checkbox"/> No (Clear Situation)

2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

NOT APPLICABLE.

3) **If this CEM is available, is it subject to any restrictions?**

NOT APPLICABLE.

4) **Who decides whether this CEM should be implemented and under what conditions?**

The founders of the company.

<input checked="" type="checkbox"/> Other: Decision by the founders

Specific conditions:

None.

Other questions not applicable.

CROSS-SHAREHOLDINGS

1) **Is this CEM available?**

Cross-shareholdings are allowed under Greek law, provided that neither company could be deemed to constitute a subsidiary of the other. Assuming that this is so, a cross-shareholding is not specifically regulated, neither under Greek corporate law nor under Greek securities laws; in particular, a cross-shareholding is not characterized as a CEM under the Greek Tender Offers Law, nor is it envisaged as having such function.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	Cross-shareholdings are allowed, but there are no provisions regarding their function as a CEM.
-----------------------------------------------------------	-------------------------------------------------------------------------------------------------

2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

There is no particular Rule discussing cross-shareholdings.

3) **If this CEM is available, is it subject to any restrictions?**

Cross-shareholdings are allowed under Greek law, provided that neither company could be deemed to constitute a subsidiary of the other. A company is deemed to be a subsidiary of another company (the parent) when: a) the one company holds the majority of the capital or the voting rights of the other company, or b) when the one company controls the majority of the voting rights of the other company, or c) one company participates in the capital of the other company and has the right to directly or indirectly appoint and revoke members of the BoD of the other company, or d) the one company exercises dominant influence on the other company.

If Company B holds 40% of company A, then company A would probably be deemed to be a subsidiary of company B according to the analysis below, and in this case this CEM would not be available.

In the event of DCCS or ICCS, a subsidiary is not allowed to own shares of its parent company.

Short form answer:

<input checked="" type="checkbox"/> The percentage of Cross-Shareholding is limited	To the extent that it must be such, so that neither company could be deemed to constitute a subsidiary of the other.
-------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------

4) **Who decides whether this CEM should be implemented, and under what conditions?**

The implementation of a cross-shareholding structure is normally decided by the management of each company, subject to other provisions in the articles of association of either company (requiring, for example, that a decision of this type must be made by the general meeting of the shareholders).

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the Chairman or the General Manager	<input checked="" type="checkbox"/> Autonomous decision	Unless otherwise provided in the company's articles of association.
-------------------------------------------------------------------------------------	---------------------------------------------------------	---------------------------------------------------------------------

Specific conditions:

None.

5) Are there ongoing disclosure requirements regarding such CEM?

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> The following disclosure requirements apply: - Specific Filing, - Specific Notification, - Website.
-----------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------

6) When a CEM is implemented, on what substantive grounds may such decision be challenged?

The implementation of a cross-shareholding structure is normally decided by the management of each company, subject to other provisions in the articles of association of either company (requiring, for example, that a decision of this type must be made by the general meeting of the shareholders). Therefore, any challenge would need to be made against the decision of the management (be it of the managing director and/or the Board of Directors). Assuming that the decision was taken in compliance with Greek law 2190/1920, the decision may be challenged on the basis of a breach of:

- a) the rule of article 5 paragraph d of Greek law 3461/2006 (which implemented EU Directive 2004/25/EC) (the "Greek Tender Offer Law") that prohibits market manipulation regarding the target company, i.e. results in artificial trading volumes or prices of the shares; or
- b) the rule of article 14 of the Greek Tender Offer Law that restricts the Board of Directors from implementing any action out of the ordinary course of business of the company that may lead to the annulment of the tender offer without the prior authorization of the general meeting of the shareholders; or
- c) the rule of article 281 of the Greek Civil Code, requiring all parties exercising a right to do so to act in good faith. On the basis of article 281, the decision could be challenged if it is invoked that the decision to implement the CEM is against the corporate interest or against the interest of the shareholders, or that the decision is in the sole interest of the management or of the majority shareholders, or any combination of the above.

Short form answer:

<input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the management.	<input checked="" type="checkbox"/> The decision to implement the CEM is against the interest of the shareholders.
<input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the majority shareholders.	<input checked="" type="checkbox"/> The decision to implement the CEM is against the corporate interest (defined as being distinct from the sole interest of shareholders).
	<input checked="" type="checkbox"/> Such grounds are alternative.

SHAREHOLDERS' AGREEMENTS

1) Is this CEM available?

Yes. Shareholders' agreements are governed by general principles of contract law and, to the extent applicable, company law. There are no provisions expressly setting them out as a type of CEM, nor does the Greek Tender Offer Law include any rules relating thereto.

In principle, it is permitted under Greek law for shareholders to enter into agreements, outside the scope of the company's articles of association. There is no specific provision permitting these kinds of agreements; the systematic interpretation of the provisions of Greek law 2190/1920 (as well as the absence of any provision expressly prohibiting their execution) and the generally applicable principle of freedom of contracts enshrined in article 361 of the Greek Civil Code lead to the conclusion that these agreements are permitted by law.

Such agreements are solely private and personal agreements, and the obligations arising from them are binding only on the contracting parties; neither the company, in which the contracting parties are shareholders, nor any third party entering into relevant transactions with the contracting shareholders may assume any liability or have any obligation arising from these agreements.

In short, the legal effect of these contractual obligations refers only to the contracting parties and no other person; for example, if it is agreed in a shareholders' agreement that the contracting parties shall not sell their shares for the first three years of the company's term and one of them breaches the agreement and sells its shares, the shares' sale will be valid and the third party purchasing the shares will acquire ownership. The shareholder breaching the shareholders' agreement shall be forced to pay damages for the breach (under a penalty clause possibly included therein or under the general provisions on breach of contract of the Greek Civil Code), but the transaction with the third party shall not be declared null and void, subject to conditions, as the case may be.

Specifically, with respect to a Shareholders' Agreement by virtue of which the contracting shareholders agree to vote in a specific way in the general meeting of the shareholders of the company, this type of agreement, according to the case law, is also valid and enforceable vis a vis the contracting parties, subject to the following conditions:

a) it does not constitute the criminal offence of article 59 of Greek law 2190/1920;

Article 59 of Greek law 2190/1920 provides that any person, who intentionally and for illegal cause receives special benefits or promises, in order to vote in a specific way in the general meeting of the shareholders of the company or in order to be absent from such general meeting of the shareholders shall be punished with up to one year imprisonment and a monetary punishment of 1,000 euro at least.

b) its is not contrary to the law (i.e. specific legal prohibition providing for a public order rule) or morals (i.e. an agreement imposing onerous obligations only on one counterparty may be found as immoral); and

c) its content is not against the interests of the company or the scope of the company.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)

- 2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

There are no rules that prohibit shareholders' agreements, nor any Rules that authorize and regulate them as a CEM.

- 3) **If this CEM is available, is it subject to any restrictions?**

Shareholders' agreements entered into among shareholders of listed companies, have effect only among such shareholders and have no effect on third parties or on the regulator(s). Consequently, an action made in breach of a shareholders' agreement is valid against all parties; the shareholder who breached the agreement is liable therefrom towards the other shareholders in accordance with the particular provisions of the respective shareholders' agreement.

The Breakthrough Rules do not apply.

- 4) **Who decides whether this CEM should be implemented, and under what conditions?**

The decisions to enter into a shareholders' agreement is made solely by the parties to such shareholders' agreement.

Short form answer:

Who decides:

Other: the parties thereto.

Specific conditions: Mandatory Takeover

- 5) **Are there ongoing disclosure requirements regarding such CEM?**

Not on the basis of CEM; depending on the provisions of a shareholders' agreement, its parties may need to disclose it if it results in them being considered to act in concert and thus have an aggregate increased shareholding in the company.

Short form answer:

No

- 6) **When a CEM is implemented, on what substantive grounds may such decision be challenged?**

Challenge is possible under general principles of contract law.

B – GENERAL BACKGROUND QUESTIONS**1) What are the rules for board elections? How many corporate votes are required to appoint or remove corporate directors?**

Article 34 of Greek law 2190/1920 provides that the general meeting of the shareholders of the company is the sole competent corporate body to elect the members of the Board of Directors. This election requires a simple majority of votes present or represented (*i.e.*, 50% plus one share) and by a simple quorum of 20% of the aggregate number of votes.

It is permitted for shareholders to enter into agreements (Shareholders' Agreements), by virtue of which they commit to vote a specific person in the general meeting of the shareholders as a member of the Board of Directors. It is further permitted for shareholders to enter into agreements, by virtue of which they shall vote in the general meeting of the shareholders in such way that the composition of the board to be elected, with respect to the number of members, will reflect their participation in the company.

In addition, Article 18 of Greek law 2190/1920 provides for an exception to the general authorization attributed to the general meeting of the shareholders to elect the members of the Board of Directors. According to paragraph 3 of article 18 of Greek law 2190/1920, the company's articles of association may provide that certain shareholders will have the right to appoint up to one-third (1/3) of the total number of members of the Board of Directors, as the latter is determined in the articles of association. The same clause therein will define the terms and conditions required for the exercise of the aforementioned right, especially with respect to the participation in the share capital, and the blocking of shares. According to legal writing, this right is attributed to persons, not type or number of shares. Thus, the respective clause in the articles of association must either refer to these shareholders by name, or define them by determining their special characteristics.

The right of the shareholders to appoint members of the Board of Directors must be exercised before the election of the Board by the general meeting of the shareholders, in which case the election will refer only to the remainder members of the Board of Directors (*i.e.* in a Board of Directors of 3 members, if one member is appointed by a shareholder, only the remaining two may be elected by the general meeting of the shareholders of the company). In case members of the Board of Directors are appointed by shareholder/s, by exercise of the aforementioned right, the shareholder/s appointing these members, must notify to the company the aforementioned appointment three (3) full days before the meeting of the general meeting of the shareholders in which the Board is to be elected (the articles of association may provide for a longer term, but not for shorter); the shareholders having appointed members of the Board of Directors shall not participate in the aforementioned meeting.

Please note that the members of the first Board of Directors of a company are determined under the company's articles of association.

In conclusion, the members of the Board of Directors of a company are, in principle, elected by the General Meeting of the shareholders of the company by a simple majority voting, while, only if the company's articles of association include such clause, up to 1/3 of the provided in the articles of association number of members of the Board of Directors may be appointed by certain shareholders, who are defined in the articles of association.

If a seat becomes vacant, the other members of the Board of directors may elect a new member until the next GMS ratifies such an election.

Appointed members of the Board of Directors of a company may be revoked and replaced by the shareholders having them appointed, such revocation or replacement to be notified to the company as well, whereas members of the Board of Directors elected by the general meeting of the shareholders may only be revoked and replaced by the latter. Appointed members of the Board of Directors may also be revoked (but not replaced) by a court decision (issued under the interim measures procedure),

according to article 18 paragraph 4 of Greek law 2190/1920, if shareholders representing 1/10 of the paid-up share capital of the company file a petition requesting the member's revocation on due cause.

Under article 39 of the Greek law 2190/1920, the minority shareholders may request revocation, provided that they represent at least 1/20 of the aggregate votes of the company, by requesting the convocation of an extraordinary general meeting of the shareholders with item on the agenda the revocation of the Board member(s). Under the Draft Law, minority shareholders will also be entitled to add an item to the agenda of a general meeting of the shareholders that has already been convoked, provided they submit their request at least 15 days before the date of such general meeting. Under the Draft Law, the same rights will be granted to one or more shareholders, provided it/they hold(s) shares of a nominal value of at least 300,000 euro.

Electronic vote is not allowed under Greek law 2190/1920, but will be allowed upon implementation of the Draft law.

There are no mechanisms authorizing minority shareholders' representation in the Board of Directors.

Shareholders present or represented at a shareholders' meeting who either do not participate in the vote or cast a blank vote are not counted. Only the positive votes are important for a decision on the items on the agenda, with the exception of a decision regarding the approval of agreements between majority shareholders, members of the board of Directors or the management of the company, on the one hand, and the company, on the other, where such approval is granted, provided that negative votes are less than 1/3 of the shares present (article 23a paragraph 2 of Greek law 2190/1920).

The directors may enter into an employment agreement with the company.

Short form answer:

<p><input checked="" type="checkbox"/> Majority required for board election: 1/2 plus 1 vote. For board removal: 1/2 plus 1 vote Quorum required for shareholders' meetings proceeding with the election or removal of board members: 1/5 of the aggregate share capital of the company.</p>	<p><input checked="" type="checkbox"/> Board members may be revoked during any shareholders' meetings only if revocation is on the agenda. The minority shareholders may request revocation, provided that they represent at least 1/20 of the aggregate votes of the company, by requesting the convocation of an extraordinary general meeting of the shareholders with item on the agenda the revocation of the Board member(s). Under the Draft Law, minority shareholders will be entitled to add an item to the agenda of a general meeting of the shareholders that has already been convoked, provided they submit their request at least 15 days before the date of such general meeting. Under the Draft Law, the same rights will be granted to one or more shareholders, provided it/they hold(s) shares of a nominal value of at least 300,000 euro.</p> <p><input checked="" type="checkbox"/> Board members may always be removed without cause and without notice and without indemnity.</p> <p>The above conditions are cumulative, <i>i.e.</i> a director can be dismissed without cause and without notice.</p>
	<p><input checked="" type="checkbox"/> Minority shareholders are entitled to require a general meeting of shareholders to be convened, provided that (a) they represent together at least 1/20 of the aggregate votes of the company and (b) their request contains the items of the agenda.</p>

	<input checked="" type="checkbox"/> Proxy solicitation is not prohibited, but it is not specifically regulated. The person soliciting the proxies will not be entitled to the names and addresses of shareholders, unless (a) it is the company or (b) such information is public (<i>e.g.</i> through the records of the dematerialized shares system). The information only concerns registered shares authorized personnel of the issuer.
--	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

2) What shareholders' decisions require a vote from more than a simple majority?

The General Meeting of the shareholders, in principle, adopts its decisions by a simple majority voting. However, article 29 paragraph 3 of the c.l. 2190/1920 provides, in exception to the aforementioned rule, certain items the respective decisions on which must be adopted by the General Meeting of the shareholders only by a qualified majority (*i.e.* 2/3 of the votes represented in the relevant meeting of the General Meeting of the shareholders).

The items are the following:

- a) change of nationality of the company;
- b) change of the object of the company;
- c) increase of the shareholders' obligations;
- d) increase of the company's share capital, if such increase is not made pursuant to a decision of the Company's Board of Directors (if the Board has been attributed such authority according to the company's articles of association and/or a respective decision of the company's General Meeting), or it is imposed by law, or made after a capitalization of reserves;
- e) decrease of the company's share capital;
- f) change in the profits' appropriation;
- g) merger, split, conversion, revival;
- h) extension of the company's duration;
- i) dissolution of the company;
- j) provision or renewal of authority to the company's Board of Directors to increase the share capital.

Notwithstanding the foregoing items, the company's articles of association may provide for more items, the decision on which must be adopted by qualified majority.

In any case, the representation in the General Meeting of the shareholders of the total of the paid-up share capital may not be required.

Short form answer:

<input checked="" type="checkbox"/> Issuance of shares/convertible bonds (the Board of Directors may have been granted the same rights under the articles of association and/or an authorization by the general meeting of the shareholders). <input checked="" type="checkbox"/> Mergers of the company by a third party.	<input checked="" type="checkbox"/> Change of nationality of the company. <input checked="" type="checkbox"/> Change of corporate purpose.
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------



PROPORTIONALITY BETWEEN OWNERSHIP AND CONTROL IN EU LISTED COMPANIES:
EXTERNAL STUDY COMMISSIONED BY THE EUROPEAN COMMISSION

**PROPORTIONALITY BETWEEN OWNERSHIP AND CONTROL
IN EU LISTED COMPANIES:**

COMPARATIVE LEGAL STUDY

SPAIN

CMS ALBIÑANA & SUÁREZ DE LEZO

Génova, 27
28004 Madrid
Tel: (+34) 91 451 93 00
Fax: (+34) 91 441 21 93
e-mail: madrid@cms-asl.com

Reviewed by:

Andres Recalde Castells

Professor of Commercial Law at the University of Castellon de la Plana

MULTIPLE VOTING RIGHTS SHARES

1) Is this CEM available?

In the case of public limited companies,¹⁶³ section 50.2 of the Public Limited Company Law (hereafter, LSA), states the proportionality principle, according to which the creation of shares that directly or indirectly may distort the proportionality between the par value of the shares and the voting right, is not permitted.

However, the proportionality principle is not absolute and the LSA contains a number of exceptions to said principle:

- non-voting shares,¹⁶⁴
- the possibility that the company bylaws limit the maximum number of votes to be cast by one shareholder (voting right ceilings),¹⁶⁵

A shareholder may also voluntarily limit his freedom of voting by agreeing with other shareholders or with another third person to vote in the general shareholders meetings in a certain way through shareholder's agreements.

Short form answer:

<input checked="" type="checkbox"/> No ¹⁶⁶ (Clear Situation)	As a general rule, multiple voting rights shares are not permitted under LSA.
-------------------------------------------------------------------------	-------------------------------------------------------------------------------

2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.

Section 50.2 LSA prohibits, in general terms, the use of this CEM. Said section is a binding rule.

LSA is a state law.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	Section 50.2 of Public Limited Corporation Law (hereafter, LSA).
------------------------------------------	--------------------------------------------------	------------------------------------------------------------------

Other questions not applicable.

¹⁶³ In the case of private limited companies, although as a general rule each share shall give its holder a right to one vote, the bylaws may contain clauses stating the existence of multiple-voting-rights-shares. However, due to the fact that limited companies are not able to be listed companies in any case, said kind of companies will not be analyzed in the present questionnaire.

¹⁶⁴ Section 90 LSA.

¹⁶⁵ Section 105.2 LSA.

¹⁶⁶ According to section 50.2 LSA, the creation of shares that directly or indirectly distort the proportionality between the par value of the shares and the voting right is not permitted.

6) **When a CEM is implemented, on what substantive grounds may such decision be challenged?**

According to section 115 LSA, resolutions of the company passed in general meeting may be challenged when they are contrary to the law, contrary to the bylaws or damage the interests of the company to the benefit of one or more shareholders or third parties.

In any case, resolutions contrary to the law shall be null and void and the other aforementioned resolutions shall be voidable.

Due to the fact that according to section 50.2 LSA the creation of multi-voting-rights-shares is prohibited, in case the shareholders resolution decided to amend the bylaws for creating such shares, this resolution may be challenged arguing said decision is null and void for being contrary to the law.

Short form answer:

The decision to implement the CEM is against the law.

NON-VOTING SHARES

1) **Is this CEM available?**

In case of public limited companies it is permitted to create non-voting shares at a par value no superior than half of the paid up capital stock.¹⁶⁷ However, in order to compensate the holders of such shares for the inexistence of the voting rights, the public limited corporation law requires that in any case non-voting shares shall confer its shareholders certain preferences of an economic nature which shall be stated in the bylaws.¹⁶⁸ Therefore, the possibility of creation non-voting shares without preference not permitted under Spanish law.

Short form answer:

<input checked="" type="checkbox"/> No (Clear Situation)	The possibility of creation of non-voting shares without preference is prohibited for public limited companies.
----------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------

2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

According to section 91 LSA (state law), non-voting shares without preference are not permitted. The said section is a binding rule.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	Section 91 LSA (state law and binding rule).
------------------------------------------	--------------------------------------------------	----------------------------------------------

Other questions not applicable.

¹⁶⁷ For example, a company whose share capital is Euro 60.000, fully subscribed and paid-in, may validly issue non-voting shares at a maximum value of Euro 30.000.

¹⁶⁸ Said preferences will be stated in section relating to “Non-Voting Preference Shares.”

NON-VOTING PREFERENCE SHARES

1) Is this CEM available?

As stated in the CEM “Non-voting shares”, according to the public limited corporate law, non-voting shares shall be considered in any case preference shares as they must confer to its holders certain rights or preferences of an economic nature which does not exist for the owners of ordinary shares, in order to compensate for the inexistence of voting rights. Therefore, under Spanish jurisdiction the CEM related to non-voting preferred shares does not exist as an independent category of non-voting shares. Its implementation shall be stated in the bylaws.

The referred preferences have a minimum content legally established, which is:

-Right to a privileged dividend which shall necessarily be stated in the bylaws. Where distributable income exists, the corporation shall resolve to distribute to the holders of non-voting shares the minimum annual dividend established in the corporate bylaws. Once the minimum dividend has been stated, the owners of the non-voting shares shall have the right to the same dividend paid on ordinary shares. Should no distributable income exist or if the amount of the income is insufficient, then any unpaid amount of the minimum dividend shall be tendered within the following fiscal years. During this period and while payment of the minimum unpaid dividend has not been tendered, non-voting shares shall have the right to vote in any general and special meeting of shareholders.

-Non-voting shares shall not be affected by a reduction of capital stock due to losses regardless of how the reduction is made, except where the reduction is greater than the par value of the remaining shares. If after reduction the par value of the non-voting shares is greater than half the value of the paid-in capital stock, then such proportion must be reestablished within two years. Otherwise, the corporation shall be dissolved.

-Where a company is in liquidation, the holders of non-voting shares shall have the right to obtain the repayment of paid-in contributions before any amount is distributed to the shareholders.

For listed companies, with regard to the non-voting shareholders’ subscription rights, the recovery of voting rights in case the minimum dividend is not paid, and the non-cumulative nature of the latter, that provided for in their bylaws shall apply¹⁶⁹.

In general terms and with the exception related to the voting rights, the holders of non-voting shares shall exercise the rest of the shareholders rights.

There are two cases of authorized capital under Spanish law. Indeed, according to section 153.1 LSA, the general meeting of shareholders with the requirements established for modification of the bylaws, may delegate to the administrators:

- a) The authority to indicate the date on which the agreement that has already been adopted to increase the capital will be undertaken, for the agreed amount, and to establish the conditions of the same for all matters not stipulated in the agreement of the general meeting. The term for implementing this delegated authority may not exceed one year, except in the case of conversion of bonds into shares.
- b) The authority to agree the capital increase up to a specified figure on one or more occasions, at the time and for the amount which they decide, without prior consultation of the general meeting. Under no circumstances will these increases be of more than half the company capital at the time of authorization and they will be undertaken by means of monetary contributions within a maximum term of five years from the date of agreement by the general meeting.

¹⁶⁹ Section 91.4 LSA.

Therefore, the general meeting of shareholders may delegate to the administrators the authority to agree a capital increase through the issuance of non-voting preference shares, and such possibility may be stated in the Articles of Association. However, due to the fact that the terms of 1 and 5 years, respectively, stated in section 153 LSA are binding, it is not permitted to include in the Articles of Association a provision authorizing the issuance of non-voting preference shares without any time limit.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	In any case non-voting shares shall confer to its holders certain rights or preferences of an economic nature in order to compensate for the inexistence of voting rights. Therefore, the CEM relating to non-voting preferred shares does not exist as an independent category of non-voting shares.
-----------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

Sections 90 to 92 LSA explicitly authorize and regulate this CEM. Said rules are binding. Notwithstanding, the referred sections enable the bylaws to regulate the regime of non-voting shares as well as the content of the rights or preferences of economic nature conferred to the holders of non-voting shares provided that said regulations comply with the limitations contained in the LSA.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	Sections 90 to 92 LSA (state law). Both are binding rules. Notwithstanding, the referred sections enable the bylaws to regulate the regime of non-voting shares as well as the content of the rights or preferences of economic nature conferred to the holders of non-voting shares, provided that said regulations comply with the limitations contained in the LSA.
------------------------------------------	--------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

3) **If this CEM is available, is it subject to any restrictions?**

As explained above, the number of non-voting shares in the public limited companies shall not be superior to half of the paid up capital stock.

The creation of non-voting shares is not permitted for certain special companies such as Collective Investment Schemes, Installment Selling Financing Entities, Sportive Public Limited Companies and Workers-Owned Companies, whose shares shall confer to all its shareholders the same rights.

Short form answer:

<input checked="" type="checkbox"/> Maximum percentage of Non-Voting Shares	The creation of non-voting shares shall not be
-----------------------------------------------------------------------------	------------------------------------------------

	superior to half of the paid up capital stock.
<input checked="" type="checkbox"/> Reinstatement of voting rights in certain circumstances	For listed companies, with regard to the non-voting shareholders' subscription rights, the recovery of voting rights in case the minimum dividend is not paid, and the non-cumulative nature of the latter, that provided for in their bylaws shall apply. For non-listed companies, while payment of the minimum unpaid dividend has not been tendered, non-voting shares shall have the right to vote in any general and special meeting of shareholders.
<input checked="" type="checkbox"/> Others (please specify)	According to section 91.2 LSA, non-voting shares shall not be affected by a reduction of capital stock due to losses regardless of how the reduction is made, except where the reduction is greater than the par value of the remaining shares. According to section 91.3 LSA, where a company is in liquidation, the holders of non-voting shares shall have the right to obtain the repayment of paid-in contributions before any amount is distributed to the shareholders.

4) **Who decides whether this CEM should be implemented, and under what conditions?**

The creation of non-voting shares can be fixed in the company bylaws at the moment of the constitution of the company or in a subsequent moment by decision of the general meeting of shareholders passing a capital increase,¹⁷⁰ according to the formalities set forth the amendment of the company bylaws. A supermajority shall be required for passing the resolution (if less than the 50% of the share capital is present, 2/3 favorable vote of the present capital shall be required for public limited companies. If more than 50% is present, a majority of the votes (simple majority) shall be sufficient.¹⁷¹

The managing body shall draft a report justifying the reasons of the proposed amendment.¹⁷² Moreover, the calling of the relevant meeting shall make clear that the shareholders have the right to examine both the full text of the proposed amendment as well as the related report at the registered offices of the company. Such notice shall also state the right to obtain or have the documents sent free of charge.

In any case, the resolution shall be documented in a public deed which shall be filed with the Commercial Registry and published in the Official Gazette of the Commercial Registry.

The circumstance of the creation of non-voting shares shall be stated notably in the share title.

¹⁷⁰ The general meeting of shareholders may not delegate the creation of non-voting shares to the Board of Directors.

¹⁷¹ The company bylaws may raise the quorum and majorities specified in the first paragraph of question n.4.

¹⁷² In universal shareholders' meetings (this is, when all the share capital is present and all those attending unanimously agree to hold the meeting), no report shall be required.

In any case the implementation of the CEM prejudiced the rights of a different class of shares, the approval of the majority of the holders of such class of shares shall be required. Also, if the amendment of the bylaws implied the transformation of voting shares in non-voting shares, the consent of the affected shareholder shall be required.

For companies with shares listed on the official securities market the Regulation for the Shareholders' Meeting shall be notified to the National Securities Market Commission, accompanied by a copy of the Regulation itself.¹⁷³

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input checked="" type="checkbox"/> Quorum: 50% in the first calling. 25% in the second calling. <input checked="" type="checkbox"/> Majority: If less than the 50% is present, 2/3 favorable vote of the present capital shall be required for public limited companies. If more than 50% is present, majority of the votes shall be sufficient.
-------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Specific conditions:

Specific requirements when deciding to implement the CEM: <input checked="" type="checkbox"/> Special report to shareholders, prepared by the government body justifying the reasons of the creation of non-voting shares shall be required. <input checked="" type="checkbox"/> Specific disclosure requirements: The circumstance of the creation of non-voting shares shall be stated notably in the share title. Also, the Regulation for the Shareholders' Meeting shall be notified to the National Securities Market Commission, accompanied by a copy of the Regulation itself. ¹⁷⁴	Specific rights of minority shareholders when the CEM is implemented: <input checked="" type="checkbox"/> Other: In any case the implementation of the CEM prejudiced the rights of a different class of shares, the approval of the majority of the holders of such class of shares shall be required. Also, if the amendment of the bylaws implied the transformation of voting shares in non-voting shares, the consent of the affected shareholder shall be required.
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

5) Are there ongoing disclosure requirements regarding such CEM?

No ongoing disclosure requirements are foreseen regarding non-voting shares other than the general requirements relating to the publicity of the shareholders' rights content set forth in the securities regulation or the deposit of the Articles of Association in the Commercial Registry.

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> The following requirements apply: - Filing of Articles of Association: The resolution of creating non-voting preference shares and therefore, the corresponding amendment of the Articles of Association of the
-----------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

¹⁷³ Section 113 Securities Market Law (LMV).

¹⁷⁴ Section 113 Securities Market Law (LMV).

	<p>Company shall be documented in a public deed which shall be filled with the Commercial Registry;</p> <ul style="list-style-type: none"> - Publication in a Legal Gazette: The resolution of creating non-voting preference shares shall be published in the Official Gazette of the Commercial Registry; - Specific Filing: The circumstance of the creation of non-voting shares shall be stated notably in the share title or in the case of listed companies, in the computer register in which such shares are noted; - Information to shareholders: The administrators or, if applicable, the shareholders responsible for the proposal of creating non-voting preference shares, shall draft a written report with justification of the same which shall be submitted at the same time that the shareholders meeting is called. Also, the report shall be held at the statutory domicile at disposal of the shareholders, who could ask for it at any moment before the meeting is held; - Admission documentation: According to Section 16 of the RD 1310/2005, of November, 4th, the prospectus shall contain the necessary information to enable investors to arrive at a well-founded judgment on the investment being proposed to them. Thus, the existence of non-voting preference shares in the company shall be stated in the referred prospectus; - Annual Report: According to section 116.4 LMV and Order ECO/3722/2003, of December, 26th, issued by the Ministry of Economy, listed companies must publish a corporate governance report on a yearly basis, which shall contain, among others, the company's ownership structure. Also, according to section 15 of the RD 1310/2005, of November, 4th, issuers holding securities admitted to negotiation in a secondary Spanish market must deposit yearly before the Spanish Securities Market Commission, after the publication of their annual financial statements, a document containing or indicating where the information published by the issuer or supplied to the general public within the previous 12 months, in one or more Member States and third countries, could be obtained; - Website: According to Section 117.2 LMV, listed companies must have a website for shareholders to exercise the right to information, in accordance with the provisions stated in the Order ECO/3722/2003, of December, 26th, issued by the Ministry of Economy. Thus, the existence of non-voting preference shares in the company shall be stated in the company's website.
--	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

6) When a CEM is implemented, on what substantive grounds may such decision be challenged?

According to section 115 LSA, resolutions of the company passed in general meeting may be challenged when they are contrary to the law, contrary to the bylaws, damage the interests of the company to the benefit of one or more shareholders or third parties.

In any case, resolutions contrary to the law shall be null and void and the other aforementioned resolutions shall be voidable.

Therefore, in case a shareholders resolution decided to amend the bylaws in order to create non-voting shares without complying with the provisions set forth in the law, such resolution may be challenged arguing such resolution is null and void for being contrary to the law.

Short form answer:

The decision to implement the CEM is contrary to the law, contrary to the bylaws, damage the interests of the company to the benefit of one or more shareholders or third parties.

PYRAMID STRUCTURES

1) Is this CEM available?

This CEM is available under Spanish jurisdiction. There is no rule or court decision prohibiting a company to hold the majority of the share capital of another company that at the same time holds the majority of the share capital of another company and so on.

Concerning the “groups of companies” constituting pyramid structures, Spanish law states different rules in order to defend and/or to protect minority shareholders’ and other third parties’ interests.

In order that transparency may exist, there are some disclosure obligations with regard to accountancy and taxation of companies constituting a pyramid-structure. However, due to the fact that such regulation is dispersed through all the commercial and securities regulation, it will not be analyzed in the present questionnaire. Besides, the public limited corporate law foresees certain limitations regarding the pyramid structures, such as the acquisition by a company of the shares issued by its controlling corporation, the acceptance of its controlling corporation shares as security and the financing of acquisition of its controlling corporation shares.

On the other hand, the controlling corporation of a group of companies constituting a pyramid-structure may be considered responsible, shall it be the case, for damaging the interests of any of the group corporations due to the fact that said controlling corporation is the one that actually manages the other companies. Such responsibility is based on the “management in fact” imposed from the controlling company to the others.

Also, the existence of a pyramid structure affects the relationships between the managers and the shareholders of the controlling corporation. Therefore, it is very common in Spanish legal practice that the resolution to constitute a subsidiary through the contribution of important value assets of the controlling company (actually called, the “holding company”) shall be adopted by the General Meeting of Shareholders instead of by the Board of Directors. Such idea has been supported by some Court Decisions.

In this regard,,the recent Spanish Code of Good Governance recommends that in order that both a corporation and its controlling company may list on an official secondary market, certain preventions shall be adopted. Also, the Code of Good Governance recommends that if a company listed on an official secondary market is transformed in a holding company, said transformation shall be approved by the general meeting of shareholders.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	Spanish regulation does not foresee any prohibition regarding pyramid structures. Notwithstanding this, the legal practice, some Court Decisions, public limited corporate law, accountancy and taxation regulation and the Code of Good Governance foresee certain limitations and preventions regarding the “groups of companies”.
-----------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.

There isn't any section in the public limited corporate law which explicitly authorizes the use of pyramid-structures.

However, there are some Recommendations stated in the Code of Good Governance as well as some Court Decisions concerning pyramid-structures.

Short form answer:

<input checked="" type="checkbox"/> Code of Good Governances	<input checked="" type="checkbox"/> Non-Binding Rule ¹⁷⁵	
<input checked="" type="checkbox"/> Court Decisions	<input checked="" type="checkbox"/> Highest Court Case Law	<p>The controlling company of a group of corporations constituting a pyramid-structure may be considered responsible, shall it be the case, for damaging the interests of any of the group corporations due to the fact that said controlling corporation is the one that actually manages the other companies.</p> <p>Such Court Decision shall be considered a binding rule provided that the case previously resolved by the Highest Court and the present case are similar.</p>

3) If this CEM is available, is it subject to any restrictions?

According to the general legal practice supported by some Court Decisions as well as by the Recommendations stated in the Code of Good Governance, the resolution to create a subsidiary through the contribution of significant assets from the holding company shall be passed by the General Meeting of Shareholders.

Short form answer:

<input checked="" type="checkbox"/> Others: Resolution passed by the General Meeting of Shareholders.

4) Who decides whether this CEM should be implemented, and under what conditions?

The resolution to create a subsidiary through the contribution of the majority of the holding company's shares shall be freely adopted by the owner of such shares.

The creation of a subsidiary by another company through the contribution of its own assets is more controversial. According to LSA, the managing body of the company has the faculty to decide on the acquisition or selling of shares in other companies. However, as stated before, according to the general legal practice supported by some Court Decisions as well as by the Recommendations stated

¹⁷⁵ Even though the Recommendations stated in the Code of Good Governance are non-binding rules, its failure shall be justified in the annual report which shall be drafted according to Section 115 LMV.

in the Code of Good Governance, the resolution to create a subsidiary through the contribution of significant assets from the holding company shall be passed by the General Meeting of Shareholders.

In particular, in the case that a company listed on an official secondary market was to be transformed in a holding company, said transformation may be approved by the general meeting of shareholders instead of by the managing body in compliance with the Recommendation set forth the Code of Good Governance¹⁷⁶.

Short form answer:

Who decides:

The resolution to create a subsidiary through the contribution of significant assets from the holding company shall be passed by the General Meeting of shareholders.

Specific conditions:

Specific requirements when deciding to implement the CEM:

Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.): Section 53 of the Securities Market Law states the obligation to inform the National Securities Market Commission about the holding of a relevant percentage of shares in a listed company, being the minimum percentage from which the referred communication shall be made 5% of the share capital.

5) Are there ongoing disclosure requirements regarding such CEM?

Section 53 LMV states the obligation to inform the National Securities Market Commission about the holding of a relevant percentage of shares in a listed company, being the minimum percentage from which the referred communication shall be made 5% of the share capital.

Short form answer:

<input checked="" type="checkbox"/> Yes	<p><input checked="" type="checkbox"/> Any acquisition by a company of shares in its controlling company which are listed on an official secondary market and which exceed one percent of total share capital shall be notified to the National Securities Market Commission.</p> <p><input checked="" type="checkbox"/> The following requirements apply:</p> <ul style="list-style-type: none"> - Specific Filing: Section 53 of the Securities Market Law states the obligation to inform the National Securities Market Commission about the holding of a relevant percentage of shares in a listed company, being the minimum percentage from which the referred communication shall be made 5% of the share capital. <p>According to the first Additional Disposition of the LSA, in the case of acquisition of shares of the controlling company the minimum percentage from which the communication to the National Securities Market Commission shall be made is reduced to 1% of the share capital,</p> <ul style="list-style-type: none"> - Admission documentation: According to Section 16 of the RD 1310/2005, of November, 4th, the prospectus shall contain the necessary information to enable investors to arrive at a well-founded judgment on the investment being proposed to them. Thus, the existence of a pyramid structure shall be stated in the referred prospectus,
-----------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

¹⁷⁶

As stated above, such Recommendations are not binding rules.

	- Website: According to Section 117.2 LMV, listed companies must have a website for shareholders to exercise the right to information, in accordance with the provisions stated in the Order ECO/3722/2003, of December, 26th, issued by the Ministry of Economy. Thus, the existence of a pyramid structure shall be stated in the company's website.
--	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

6) When a CEM is implemented, on what substantive grounds may such decision be challenged?

According to section 143 LSA, resolutions of the Board of directors may be challenged when they are null and void (this is, in any case, resolutions contrary to the law) and voidable (this is, resolutions contrary to the bylaws, or which damage the interests of the company to the benefit of one or more shareholders or third parties).

Therefore, in case the Board of Directors passed a resolution regarding the creation of a pyramid-structure, such resolution may be challenged by the administrators or by shareholders representing at least 5% of the share capital arguing any of the aforementioned reasons.

Shall the resolution be adopted by the General Meeting of shareholders, according to section 115 LSA, such resolution may be challenged if it was contrary to the law, contrary to the by-laws or damaged the interests of the company to the benefit of one or more shareholders or third parties.

Also, as stated before, the controlling company of a group of corporations constituting a pyramid-structure may be considered responsible, shall it be the case, for damaging the interests of any of the subsidiaries due to the fact that said controlling corporation is the one that actually manages the other companies.

Short form answer:

<input checked="" type="checkbox"/> The decision to implement the CEM may be challenged, shall it be the case, for any of the following reasons: (i) it is contrary to the law; (ii) it is contrary to the the bylaws or (iii) it damages the interests of the company to the benefit of one or more shareholders or third parties.

<input checked="" type="checkbox"/> The controlling company of a group of corporations constituting a pyramid-structure may be considered responsible, shall it be the case, for damaging the interests of any of the subsidiaries due to the fact that said controlling corporation is the one that actually manages the other companies.

PRIORITY SHARES**1) Is this CEM available?**

According to section 50.2 LSA the creation of shares that directly or indirectly distort the proportionality between the nominal value of the shares and the voting right or the attribution of any special power of decision to any shareholder are not permitted. Therefore, as long as priority shares grant their holders specific powers of decision or veto rights in a company irrespective of the proportion of their equity stake, the creation of priority shares under the public limited companies law is not available. Notwithstanding the above, the creation of shares with an economic privilege such as, for example, the distribution of a preferential dividend or liquidation quota, is permitted under Spanish jurisdiction.

Short form answer:

<input checked="" type="checkbox"/> No (Clear Situation)	The attribution of any special power of decision to any shareholder is not permitted.
----------------------------------------------------------	---------------------------------------------------------------------------------------

2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.

Section 50.2 LSA implicitly prohibits the creation of shares by virtue of which any special power of decision to any shareholder is attributed. The referred section is a binding rule.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	Section 50.2 LSA
------------------------------------------	--------------------------------------------------	------------------

Other questions not applicable.

DEPOSITARY CERTIFICATES

1) **Is this CEM available?**

This CEM is not available under Spanish jurisdiction as, generally, a fiduciary-only ownership is not allowed nor the division of shareholders' rights so that a shareholder's voting right is transferred to one person while other people are transferred other rights.

Nevertheless, the unified Code of Good Governance for listed companies takes into account the fact that it is common practice to hold shares of Spanish companies through trustees who act on behalf of the actual owners. This is considered irremediable and thus what is only intended to be made sure is that the voting rights exercised by the trustee are used to serve the interests of each of the actual owners of the shares. In this context, the Code recommends¹⁷⁷ that companies should allow vote division in order to allow trustees registered as having locus stand as shareholders, but who act on behalf of other clients, to cast their votes according to the instructions given by the latter.¹⁷⁸ Likewise, in case voting rights are exercised through trustees or depositaries, Recommendation 10 of the Code of Good Governance establishes that the trustees which are entities affiliated to the Systems Society and act as depositaries or custodians of shares belonging to public companies that efficiently inform their principals on any voting instructions requests or any aspect concerning the General Shareholders' Meetings.

Short form answer:

<input checked="" type="checkbox"/> No (Clear Situation)	<p>Nevertheless, the unified Code of Good Governance for listed companies takes into account the fact that it is common practice to hold shares of Spanish companies through trustees who act on behalf of the actual owners. This is considered irremediable and thus what is only intended to be made sure is that the voting rights exercised by the trustee are used to serve the interests of each of the actual owners of the shares. In this context, the Code recommends¹⁷⁹ that companies should allow vote division in order to allow trustees registered as having locus stand as shareholders, but who act on behalf of other clients, to cast their votes according to the instructions given by the latter.</p>
----------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

¹⁷⁷ Recommendation n° 6.

¹⁷⁸ According to the legislation currently in force in Spain, Companies may allow vote division under the circumstances and restrictions stated above. Therefore, no amendment to the relevant laws may be required.

¹⁷⁹ Recommendation n° 6.

- 2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

As stated above, any binding regulation exists with regard to this CEM.

Recommendations n° 6 and 10 of the Code of Good Governance authorize the use of this CEM. However, such Recommendations are no binding rules.

Short form answer:

<input checked="" type="checkbox"/> Code of Good Governances	<input checked="" type="checkbox"/> Non-Binding Rule
--------------------------------------------------------------	------------------------------------------------------

- 3) **If this CEM is available, is it subject to any restrictions?**

The Code of Good Governance establishes that entities acting as depositaries or custodians of shares belonging to public companies shall efficiently inform their principals on any voting instructions requests or any aspect concerning the General Shareholders' Meetings.

Short form answer:

<input checked="" type="checkbox"/> Others: The Code of Good Governance establishes that entities acting as depositaries or custodians of shares belonging to public companies shall efficiently inform their principals on any voting instructions requests or any aspect concerning the General Shareholders' Meetings.

Other questions not applicable.

VOTING RIGHT CEILINGS

1) **Is this CEM available?**

This CEM is available under Spanish jurisdiction as in public limited companies the bylaws may limit the maximum number of votes to be cast by one shareholder¹⁸⁰ regardless the number of shares owned by said shareholder.

Notwithstanding the above, the Code of Good Governance is not favourable to the establishment of voting right ceilings in the bylaws. In fact, with regard to companies listed in a secondary stock market, said Code contains some Recommendations stating the non implementation of limitations to the voting right nor other defensive and preventive measures which may affect a takeover bid.¹⁸¹

Short form answer:

Yes (Clear Situation)

2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

Section 105.2 of LSA regulates the use of this CEM. Said section is a binding rule but enables the bylaws to regulate the regime of the number of votes to be cast by a shareholder.

Also the Code of Good Governance recommends to listed companies not to use this CEM. However, said Recommendation is not binding rule. Regardless, Section 116.4 LMV states the complain or explain principle by which listed companies shall elaborate an annual Corporate Governance report where the complying or non complying with the Recommendations set forth in the Code of Good Governance shall be stated, as well as, shall it be the case, the reasons for which said Recommendations have not been complied with by the company. In this way, listed companies which contrary to the content of said Recommendation establish in their bylaws voting right ceilings, shall at least inform to the National Securities Market Commission through the referred annual Corporate Governance report about the reasons of such failure to comply with the Recommendation.

Besides, the draft of the re-enactment of Act 24/1998, July 28, of the Securities Exchange for the amendment of the regime of public takeover bids and the transparency of the issuer contains some provisions with regard to voting right ceilings, but said provisions are not binding as they are not currently in force.

¹⁸⁰ Section 105.2 LSA.

¹⁸¹ However, the referred Recommendations stated in the Code of Good Governance are contrary to the instruments set forth in the Draft of the re-enactment of Act 24/1998, July 28, of the Securities Exchange for the amendment of the regime of public takeover bids and the transparency of the issuer, which authorizes the adoption of different defensive and preventive measures.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	LSA (state law) authorize the use of this CEM but its regime as well as the maximum number of votes to be cast by a shareholder shall be stated in the company bylaws.
<input checked="" type="checkbox"/> Code of Good Governances	<input checked="" type="checkbox"/> Non-Binding Rule	Even though the use of this CEM is authorized by the LSA, the Code of Good Governance recommends the non implementation of voting right ceilings.

3) If this CEM is available, is it subject to any restrictions?

In the case that the company bylaws states the limitation of the number of votes to be cast by one shareholder regardless the number of shares owned by said shareholder in the company, the referred limitation shall apply generally to all the shares or certain class of shares, not being permitted to implement different limitations according to the different shares or class of shares or in relation to certain shareholders only.

Also, in any case the use of this CEM is implemented in a subsequent moment after the constitution of the company, such decision shall be adopted by the general meeting of shareholders according to the majorities and proceeding set forth in the LSA for the amendment of the bylaws with the express consent of the holder whose shares were affected by the implementation of the restriction.

Short form answer:

<input checked="" type="checkbox"/> Others (please specify)	Voting right ceilings must apply to all the shares or certain class of shares or shareholders and not to any specific holder or holders of certain class of shares only.
-------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------

4) Who decides whether this CEM should be implemented, and under what conditions?

In the case of public limited companies the establishment of voting right ceilings in the company bylaws may take place at the moment of the constitution of the company or in a subsequent moment as a consequence of a decision of the general meeting of shareholders passing the amendment of the company bylaws.

A supermajority shall be required for passing the resolution, so that the applicable quorum on first call shall be shareholders present or represented possessing at least fifty percent of the subscribed capital with the right to vote. On second call, the attendance of twenty five percent of said capital will be sufficient. When shareholders representing less than fifty percent of the subscribed capital with the right to vote are present, the agreement of implementing voting right ceilings will only be adopted validly with the favourable vote of two thirds of the capital present or represented in the meeting. If more than 50% is present, a majority of the votes (simple majority) shall be sufficient.¹⁸²

For such purposes, the managing body shall draft a report justifying the reasons of the propose amendment¹⁸³. Moreover, the calling of the relevant meeting shall make clear that the shareholders

¹⁸² The company bylaws may raise the quorum and majorities specified in the first paragraph of question n.4.

¹⁸³ In universal shareholders' meetings (this is, when all the share capital is present and all those attending unanimously agree to hold the meeting) no report shall be required.

have the right to examine both the full text of the proposed amendment as well as the related report at the registered offices of the company. Such notice shall also state the right to obtain or have the documents sent free of charge.

In any case, the resolution shall be documented in a public deed which shall be filed with the Commercial Registry and published in the Official Gazette of the Commercial Registry.

For companies with shares listed on the official securities market the Regulation for the Shareholders' Meeting shall be notified to the National Securities Market Commission, accompanied by a copy of the Regulation itself.

Due to the fact that the implementation of this CEM is contrary to the Recommendations set forth in the Code of Good Governance and in compliance with the complain or explain principle, such implementation shall be stated in the annual Corporate Governance report as well as the reasons for the failure to comply with the Recommendation.

Also, in order the decision adopted by the general meeting of shareholders passing the implementation of voting right ceilings in the company bylaws to be effective, it is required that such decision be agreed by those shareholders whose voting rights are affected by the implementation of the restriction.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input checked="" type="checkbox"/> Quorum: 50% of the subscribed capital with the right to vote on first call. 25% of the subscribed capital with the right to vote on second call. <input checked="" type="checkbox"/> Majority: If more than 50% of the subscribed capital with the right to vote is present a majority of the votes (simple majority) shall be sufficient. If less than the 50% is present, 2/3 favorable vote of the present capital shall be required for public limited companies.
-------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Specific conditions:

Specific requirements when deciding to implement the CEM: <input checked="" type="checkbox"/> Special report to shareholders, prepared by the government body shall be required. <input checked="" type="checkbox"/> Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.): Due to the fact that the implantation of this CEM is contrary to the Recommendations set forth in the Code of Good Governance and in compliance with the complain or explain principle, the reasons for such implementation shall be stated in the annual Corporate Governance report.

5) Are there ongoing disclosure requirements regarding such CEM?

As stated above, companies with shares listed on the official securities market shall notify to the National Securities Market Commission the Regulation for the Shareholders' Meeting, accompanying such notification with a copy of the Regulation itself.

Also, due to the fact that the implantation of this CEM is contrary to the Recommendations set forth in the Code of Good Governance and in compliance with the complain or explain principle, the reasons for such implementation shall be stated in the annual Corporate Governance report.

Short form answer:

<input checked="" type="checkbox"/> Yes	<p><input checked="" type="checkbox"/> Companies with shares listed on the official securities market shall notify to the National Securities Market Commission the Regulation for the Shareholders' Meeting, accompanying such notification with a copy of the Regulation itself.</p> <p>Also, due to the fact that the implantation of this CEM is contrary to the Recommendations set forth in the Code of Good Governance and in compliance with the complain or explain principle, the reasons for such implementation shall be stated in the annual Corporate Governance report.</p> <p><input checked="" type="checkbox"/> The following requirements apply:</p> <ul style="list-style-type: none"> - Filing of Articles of Association: The implementing of voting right ceilings and therefore, the corresponding amendment of the Articles of Association of the Company shall be documented in a public deed which shall be filled with the Commercial Registry; - Publication in a Legal Gazette: The resolution of implementing voting right ceilings shall be published in the Official Gazette of the Commercial Registry; - Information to shareholders: The administrators or, if applicable, the shareholders responsible for the proposal of implementing voting right ceilings, shall draft a written report with justification of the same which shall be submitted at the same time that the shareholders meeting is called. Also, the report shall be held at the statutory domicile at disposal of the shareholders, who could ask for it at any moment before the meeting is held; - Specific Filing: The regulation for the GMS must be notified to the National Securities Market Commission (+ copy of regulation); - Admission documentation: According to Section 16 of the RD 1310/2005, of November, 4th, the prospectus shall contain the necessary information to enable investors to arrive at a well-founded judgment on the investment being proposed to them. Thus, the existence of voting right ceilings in the company shall be stated in the referred prospectus; - Annual Report: According to section 116.4 LMV and Order ECO/3722/2003, of December, 26th, issued by the Ministry of Economy, listed companies must publish a corporate governance report on a yearly basis, which shall contain, among others, the existence of voting right ceilings. Also, according to section 15 of the RD 1310/2005, of November, 4th, issuers holding securities admitted to negotiation in a secondary Spanish market must deposit yearly before the Spanish Securities Market Commission, after the publication of their annual financial statements, a document containing or indicating where the information published by the issuer or supplied to the general public within the previous 12 months, in one or more Member States and third countries, could be obtained; - Website: According to Section 117.2 LMV, listed companies must have a website for shareholders to exercise the right to information, in accordance with the provisions stated in the Order ECO/3722/2003, of December, 26th, issued by the Ministry of Economy. Thus, the existence of voting right ceilings in the company shall be stated in the company's website.
-----------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

6) **When a CEM is implemented, on what substantive grounds may such decision be challenged?**

According to article 115 LSA, resolutions of the company passed in general meeting may be challenged when they are contrary to the law, contrary to the bylaws, or damage the interests of the company to the benefit of one or more shareholders or third parties.

In any case, resolutions contrary to the law shall be null and void and the other aforementioned resolutions shall be voidable.

Therefore, in case the shareholders resolution decides to amend the bylaws in order to implement voting right ceilings, this resolution may be challenged arguing any of the aforementioned reasons.

Short form answer:

<p><input checked="" type="checkbox"/> The decision to implement the CEM may be challenged, shall it be the case, for any of the following reasons: (i) it is contrary to the law; (ii) it is contrary to the the bylaws or (iii) it damages the interests of the company to the benefit of one or more shareholders or third parties.</p>

OWNERSHIP CEILINGS

1) **Is this CEM available?**

In the case of public limited companies this CEM is not available under LSA.

There is however a prohibition of acquiring shares over a certain percentage in industry regulations relating to strategic sectors, such as electricity or gas.

The companies affected by this prohibition are: (i) ENAGAS; (ii) RED ELECTRICA ESPAÑOLA (REDESA); (iii) COMPAÑIA LOGÍSTICA DE HIDROCARBUROS (CLH) and (iv) OPERADOR DEL MERCADO ELÉCTRICO (OMEL). Such prohibitions vary from the 5% in the case of ENAGAS and OMEL, to 25% in the case of CLH or 3% in the case of REDESA.

Short form answer:

<input checked="" type="checkbox"/> No (Clear Situation)

2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

Such CEM is not available.

Short form answer:

<input checked="" type="checkbox"/> Stock Exchange Rules	<input checked="" type="checkbox"/> Binding Rule	Securities Market Law (LMV).
----------------------------------------------------------	--------------------------------------------------	------------------------------

Other questions not applicable.

SUPERMAJORITY PROVISIONS

1) Is this CEM available?

The shareholders constituted in a duly convened general meeting will decide by majority on matters pertaining to the competence of the meeting. According to sections 102.1 and 103.3 LSA, the bylaws may increase the quorums and majorities required in the LSA to validly pass resolutions on an issue of bond, an increase or reduction in capital, an alteration of the company's status, merger or splitting of the company and, generally, on any amendment in the articles of association. Also, the bylaws may increase the quorums and majorities with regard to resolutions subject to a simple majority.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	Supermajority provisions are foreseen by law for all decisions.
-----------------------------------------------------------	-----------------------------------------------------------------

2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.

Articles 102.1 and 103.3 LSA authorize the use of this CEM. Said articles are a binding rule and enable the bylaws to state supermajority provisions in order to pass all or certain resolutions in the general meeting of shareholders.

Section 113 of the Securities Market Law states that companies with shares listed on the official securities market shall approve a specific Regulation for the Shareholders' Meeting, which may address any matter relating to the Shareholders' Meeting in connection with the matters regulated by Law and by the bylaws. Supermajorities shall be foreseen in the said regulation.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	Section 103.3 and 102.1 LSA (state law).
<input checked="" type="checkbox"/> Stock Exchange Rules	<input checked="" type="checkbox"/> Binding Rule	Section 113 LMV (state law)
<input checked="" type="checkbox"/> Corporate Governance Codes	<input checked="" type="checkbox"/> Non-Binding	

3) If this CEM is available, is it subject to any restrictions?

Supermajority provisions may be foreseen in the bylaws provided that in no case unanimity is required.

Short form answer:

<input checked="" type="checkbox"/> Others:	In no case shall unanimity be required by the company bylaws.
---------------------------------------------	---------------------------------------------------------------

4) Who decides whether this CEM should be implemented, and under what conditions?

For implementing any supermajority different from the ones stated by law, the general shareholders meeting shall pass a resolution to amend the bylaws.

A supermajority shall be required for passing the resolution, so that the applicable quorum on first call shall be shareholders present or represented possessing at least fifty percent of the subscribed capital with the right to vote. On second call, the attendance of twenty five percent of said capital will be sufficient. When shareholders representing less than fifty percent of the subscribed capital with the right to vote are present, the agreement of implementing a supermajority will only be adopted validly with the favourable vote of two thirds of the capital present or represented in the meeting. If more than 50% is present, a majority of the votes (simple majority) shall be sufficient.¹⁸⁴

For such purposes, the managing body shall draft a report on the reasons justifying the reasons of the propose amendment.¹⁸⁵ Moreover, the calling of the relevant meeting shall make clear that the shareholders have the right to examine both the full text of the proposed amendment as well as the related report at the registered offices of the company. Such notice shall also state the right to obtain or have the documents sent free of charge.

In any case, the resolution shall be documented in a public deed which shall be filed with the Commercial Registry and published in the Official Gazette of the Commercial Registry.

For companies with shares listed on the official securities market the Regulation for the Shareholders' Meeting shall be notified to the National Securities Market Commission, accompanied by a copy of the Regulation itself.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input checked="" type="checkbox"/> Quorum: 50% of the subscribed capital with the right to vote on first call. 25% of the subscribed capital with the right to vote on second call. <input checked="" type="checkbox"/> Majority: If more than 50% of the subscribed capital with the right to vote is present a majority of the votes (simple majority) shall be sufficient. If less than the 50% is present, 2/3 favorable vote of the present capital shall be required for public limited companies.	If the shareholders may authorize the Board or the Chairman or GM to implement the CEM: <input checked="" type="checkbox"/> For how long would the authorization be valid (maximum duration): No authorization is required. Implementing any supermajority different from the ones set by law may require amending the bylaws
-------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

¹⁸⁴ In universal shareholders' meetings, no report shall be required.

¹⁸⁵ In universal shareholders' meetings, no report shall be required.

Specific conditions:

Specific requirements when deciding to implement the CEM:

- Special report to shareholders, prepared by the Board of Directors
- Specific disclosure requirements: The Regulation for the Shareholders' Meeting shall be notified to the National Securities Market Commission accompanied by a copy of the said Regulation itself.

5) Are there ongoing disclosure requirements regarding such CEM?

In so far as supermajority provisions constituted an anti take over bid measure and the implementation of such measures is contrary to the recommendations stated in the Good Governance Code, its implementation in the bylaws as well as the reasons for the failure to comply with the referred recommendations shall be stated in the annual Corporate Governance report.

Short form answer:

<input checked="" type="checkbox"/> Yes	<p>In so far as supermajority provisions constituted an anti-takeover bid measure its implementation in the bylaws as well as the reasons for the failure to comply with the Good Governance Code Recommendations shall be stated in the annual report of good governance.</p> <p><input checked="" type="checkbox"/> The following disclosure requirements apply:</p> <ul style="list-style-type: none"> -Filing of Articles of Association: The implementing of a supermajority and therefore, the corresponding amendment of the Articles of Association of the Company shall be documented in a public deed which shall be filled with the Commercial Registry, - Publication in a Legal Gazette: The resolution of implementing a supermajority shall be published in the Official Gazette of the Commercial Registry, - Information to shareholders: The administrators or, if applicable, the shareholders responsible for the proposal of implementing a supermajority, shall draft a written report with justification of the same which shall be submitted at the same time that the shareholders meeting is called. Also, the report shall be held at the statutory domicile at disposal of the shareholders, who could ask for it at any moment before the meeting is held. - Specific filing: The regulation for the GMS must be notified to the National Securities Market Commission (+ copy of regulation). - Admission documentation: According to Section 16 of the RD 1310/2005, of November, 4th, the prospectus shall contain the necessary information to enable investors to arrive at a well-founded judgment on the investment being proposed to them. Thus, the existence of supermajorities in the company shall be stated in the referred prospectus. - Annual Report: According to section 116.4 LMV and Order ECO/3722/2003, of December, 26th, issued by the Ministry of Economy, listed companies must publish a corporate governance report on a yearly basis, which shall contain, among others, the existence of supermajorities. Also, according to section 15 of the RD 1310/2005, of November, 4th, issuers holding securities admitted to negotiation in a secondary Spanish market must deposit yearly before the Spanish Securities Market Commission, after the publication of their annual financial statements, a document containing or indicating where the information published by the issuer or supplied to the general public within the previous 12 months, in one or more Member States and third countries, could be obtained. - Website: According to Section 117.2 LMV, listed companies must have a website for shareholders to exercise the right to information, in accordance with the provisions stated
-----------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

	in the Order ECO/3722/2003, of December, 26th, issued by the Ministry of Economy. Thus, the existence of supermajorities in the company shall be stated in the company's website.
--	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

6) When a CEM is implemented, on what substantive grounds may such decision be challenged?

According to article 115 LSA, resolutions of the company passed in general meeting may be challenged when they are contrary to the law, contrary to the bylaws, damage the interests of the company to the benefit of one or more shareholders or third parties.

In any case, resolutions contrary to the law shall be null and void and the other aforementioned resolutions shall be voidable.

Therefore, in case the shareholders resolution decides to amend the bylaws in order to set any supermajority, this resolution may be challenged arguing any of the aforementioned reasons.

Short form answer:

<input checked="" type="checkbox"/> The decision to implement the CEM may be challenged, shall it be the case, for any of the following reasons: (i) it is contrary to the law; (ii) it is contrary to the the bylaws or (iii) it damages the interests of the company to the benefit of one or more shareholders or third parties.

GOLDEN SHARES

1) **Is this CEM available?**

Share has been eliminated from the Spanish legal system by Law 13/2006, 26th May, which revokes the use of golden share by Public Administration in privatized companies. It was established by Law 5/1995 and could be used in Telefónica, Repsol, Endesa and Iberia.

Short form answer:

<input checked="" type="checkbox"/> No (Clear Situation)	Eliminated in 2006.
----------------------------------------------------------	---------------------

2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	Law 13/2006, 26 th May, revokes the use of golden share; this implies that privatized companies are totally free for any corporate operation.
------------------------------------------	--------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------

3) **If this CEM is available, is it subject to any restrictions?**

As stated before, this CEM is not available anymore under Spanish jurisdiction by consequence of the Law 13/2006, 26th May. Before Law 13/2006, 26th May, golden shares were established for a limited duration; Telefónica (18th February 2007), Iberia (3rd April 2006), Endesa (8th June 2007), Repsol (6th February 2006).

Short form answer:

<input checked="" type="checkbox"/> Golden Shares was effective for a limited duration only	Before Law 13/2006, 26 th May, golden share was established for a limited duration.
---------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------

4) **Who decides whether this CEM should be implemented, and under what conditions?**

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Other: Government Authorities

Specific conditions:

Specific requirements when deciding to implement the CEM:

Specific authorization from Regulatory Authority, Stock Exchange, Government Authorities (Economy Minister or Minister Council).

5) **Are there ongoing disclosure requirements regarding such CEM?**

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place: Winding up and liquidation, break-up or spin-off of the company, mergers or operations which affects 10% of the company shares.
-----------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

6) **When a CEM is implemented, on what substantive grounds may such decision be challenged?**

The decision to implement the golden share had to be in the sole interest of the public interest in order to avoid any risk for the security or public services carried out by privatized companies.

Short form answer:

<input checked="" type="checkbox"/> The decision to implement the golden share had to be in the sole interest of the public interest in order to avoid any risk for the security or public services carried out by privatized companies.

PARTNERSHIPS LIMITED BY SHARES**1) Is this CEM available?**

Partnerships limited by shares (hereafter, SComA) may be listed companies and are considered under Spanish jurisdiction a kind of corporation in which the directors have an unlimited liability for the company obligations.

The public limited corporation law applies to SComA unless said regulation is contrary to the specific SComA regulation stated in section 151 to 169 of the Commercial Code (hereafter Ccom) and in sections 213 to 215 of the Mercantile Registry Regulation (hereafter RRM).

Two kinds of shareholders shall be distinguished in SComA: (i) unlimited liability partners, who personally respond of the company obligations as directors of the company and (ii) limited liability partners, who respond of the company obligations up to the value of his investment in the company.

Unlimited liability partners, who in any case shall have the condition of directors of the company, shall contribute the share capital with investments of an economic nature. Therefore, neither its personal work nor its services shall be contributed by such kind of partners.

The condition of unlimited liability partner is acquired at the moment that the charge of director of the company is accepted by said partner and it disappears in case of its removal.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)

2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.

The public limited corporation law applies to SComA unless said regulation is contrary to the specific SComA regulation stated in section 151 to 169 of the Commercial Code (hereafter Ccom) and in sections 213 to 215 of the Mercantile Registry Regulation (hereafter RRM).

All the referred regulations are binding rules.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	-LSA -CCom -RRM
------------------------------------------	--------------------------------------------------	-----------------------

3) If this CEM is available, is it subject to any restrictions?

Besides all the particularities existing under Spanish Jurisdiction for Partnerships Limited by Shares, certain special requirements shall be observed in the process of constitution of a SComA regarding its corporate name and the mentions that the company bylaws shall contain.

Short form answer:

<input checked="" type="checkbox"/> Partnerships Limited by Shares may only be constituted for companies meeting certain criteria in the process of its constitution regarding its corporate name and the mentions that the bylaws shall contain.

4) Who decides whether this CEM should be implemented, and under what conditions?

The process of constitution of a SComA is similar to the process set forth in the LSA for public limited companies but observing the following:

- Should the corporate name be of a subjective nature, only the name of the unlimited liability partners shall appear in the corporate name. In other case, the mention regarding the condition of the company as Partnerships Limited by Shares shall be expressly included in the corporate name.
- With regard to the administrators of the company, their condition of unlimited liability partners shall be stated.
- The company bylaws shall identify who the unlimited liability partners are.

Also, Public limited companies may be reorganized into a partnership limited by shares meeting the following proceeding and criteria.¹⁸⁶

- The transformation shall be passed by the general meeting of shareholders. A supermajority shall be required. The agreement shall only be binding for those shareholders voting in favor thereof.
- The agreement shall be published three times in the Official Mercantile Registry Gazette and in the large circulation newspapers of the province.

Only those shareholders voting in favor of the transformation of a public company into a partnership limited by shares shall be shareholders in the new company. However, those shareholders voting against the transformation agreement or those not attending the general meeting shall automatically leave the company if, within a period of one month from the date of the last announcement in the Official Mercantile Registry Gazette or in the large circulation newspapers of the province, they do not adhere in writing to the transformation agreement.

Shareholders who do not adhere will be reimbursed for their shares, but not indemnified.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input checked="" type="checkbox"/> Quorum: 50% of the subscribed capital with the right to vote on first call. 25% of the subscribed capital with the right to vote on second call. <input checked="" type="checkbox"/> Majority: If less than the 50% is present, 2/3 favorable vote of the present capital shall be required for public limited companies. If more than 50% is present, majority of the votes shall be sufficient.
-------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Specific conditions:

Specific requirements when deciding to implement the CEM:	Specific rights of minority shareholders when the CEM is implemented:
-----------------------------------------------------------	-----------------------------------------------------------------------

¹⁸⁶ Section 225 LSA.

<input checked="" type="checkbox"/> Special report to shareholders, prepared by: the administrators.	<input checked="" type="checkbox"/> Other: Dissenting shareholders and those not attending the general meeting will become separated from the company if, within a period of one month from the date of the last announcement in the Official Mercantile Registry Gazette or in the large circulation newspapers of the province, they do not adhere in writing to the transformation agreement.
------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

5) Are there ongoing disclosure requirements regarding such CEM?

No ongoing disclosure requirements are foreseen regarding SComA.

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> The following requirements apply: - Filing of Articles of Association: The Articles of Association of a partnership limited by shares shall be documented in a public deed which shall be filed with the Commercial Registry. - Publication in a Legal Gazette: The reorganization of a public limited company into a partnership limited by shares shall be published three times in the Official Mercantile Registry Gazette.
-----------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

6) When a CEM is implemented, on what substantive grounds may such decision be challenged?

If the proceeding set forth in the law with regard the constitution of SComA hadn't been complied, the constitution of the company may be considered null and void for being contrary to the law.

Short form answer:

<input checked="" type="checkbox"/> The decision to implement the CEM is against the law.

CROSS-SHAREHOLDINGS

1) Is this CEM available?

This CEM is available under Spanish jurisdiction as the public limited corporation law only states a prohibition of cross-shareholdings exceeding 10% of the total capital of the corporation whose shares are so held.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	This CEM is available only for cross-shareholdings not exceeding 10% of the total capital of both corporations.
-----------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------

2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.

The regulation of this CEM under Spanish Jurisdiction is set forth in Section 82 ss LSA. Said section is a binding rule.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input type="checkbox"/> Binding Rule <input type="checkbox"/> Non-Binding Rule	Section 82 ss LSA
------------------------------------------	------------------------------------------------------------------------------------	-------------------

3) If this CEM is available, is it subject to any restrictions?

As stated above cross-holdings may not exceed 10% of the total capital of the corporation whose shares are so held. This prohibition also applies to circular holdings involving affiliated companies.

In the very moment in which a company is holder of 10% of the share capital of another one the former shall notify it to the latter. This way, if the latter, in turn, is holder of over 10% of the share capital, it shall proceed, in the term of one year as from the reception of the notice, to the alienation of its shares overcoming the said threshold. Whilst, the rights corresponding to the shares to be alienated shall become suspended. In short, the obligation to alienate is excluded for the company that had notified in the first place. In addition, on the liabilities side of the balance sheet of the company forced to alienate, a reserve shall be established equivalent to the total of the reciprocal participations which exceed ten percent of the capital included under assets.

Failure to comply with the obligation to alienate in the aforesaid terms will allow the other company to claim before the courts for the proceeding to the alienation of the shares and for the suspension of the voting rights of all the shares of the investee company held by the company obliged to alienate.

Notwithstanding, what stated above does not apply in case that the reciprocal shareholdings between a parent company and a subsidiary, scenario for which the general regime on limitation for the acquisition of treasury shares or parent company shares applies.

Indeed, for such cases section 75 LSA applies and therefore: (i) the acquisition shall be authorized by the general shareholders meeting through a resolution which delineates the manner of purchase, the maximum number of shares to be purchased, the minimum and maximum purchase price and the period of authorization, which under no circumstance may exceed eighteen months; (ii) the authorization of the controlling corporation's shareholders shall also be required; (iii) the par value of the shares acquired, in addition to those already held by any controlling corporation and its

subsidiaries, shall not exceed ten percent of corporation's capital; and (iv) the acquisition shall allow the acquiring corporation and the controlling corporation to provide a reserve equivalent to the conversion of the shares into liabilities.

Short form answer:

<input checked="" type="checkbox"/> The percentage of Cross-Shareholding is limited	<p>Cross-holdings may not exceed ten per-cent of the total capital of the corporation whose shares are so held. This prohibition also applies to circular holdings involving affiliated companies.</p> <p>Company B is entitled to hold 10% of company A provided that such holding does not exceed 10% of the share capital.</p> <p>In the case of reciprocal shareholdings between a parent company and a subsidiary the general regime on limitation for the acquisition of parent company shares applies and therefore the par value of the shares acquired in addition to those already held by any controlling corporation and its subsidiaries shall not exceed 10% of corporation's capital.</p>
-------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

4) Who decides whether this CEM should be implemented, and under what conditions?

The managing body shall decide about the implementation of cross-shareholdings.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the Board of Directors	<input checked="" type="checkbox"/> Autonomous decision.
------------------------------------------------------------------------	----------------------------------------------------------

Specific conditions:

<p>Specific requirements when deciding to implement the CEM:</p> <p>Special report to shareholders.</p> <p><input checked="" type="checkbox"/> Statutory auditors shall confirm that a reserve equivalent to the conversion of the shares into liabilities has been constituted: on the liabilities side of the balance sheet of the company forced to alienate, a reserve shall be established equivalent to the total of the reciprocal participations which exceed ten percent of the capital included under assets. In this case, the constitution of such reserve shall be confirmed by the auditors in the annual audit report, but no specific report has to be issued to that effect.</p> <p><input checked="" type="checkbox"/> Specific disclosure requirements: The notification made by the company which succeeds in possessing more than 10% of the capital of other company to the latter shall be included in each company's annual report.</p> <p>In the case of listed companies section 53 LMV states the obligation to inform the National Commission Securities Market and the stock exchange governing bodies about the holding of a relevant percentage of shares in a listed company, being the minimum percentage from which the referred communication shall be made 5% of the share capital.</p> <p>In the case of acquisition of shares of the controlling company the minimum percentage from which the communication shall be made is reduced to 1% of the share capital.</p>

5) Are there ongoing disclosure requirements regarding such CEM?

No ongoing disclosure requirements are specifically foreseen regarding cross-shareholdings other than the communications stated in section 4 above to the National Commission Securities Market as well as to the Stock Exchange Governing Bodies.

Short form answer:

<input checked="" type="checkbox"/> Yes	<p><input checked="" type="checkbox"/> The following requirements apply:</p> <ul style="list-style-type: none"> - Specific Filing: Section 53 of the Securities Market Law states the obligation to inform the National Securities Market Commission about the holding of a relevant percentage of shares in a listed company, being the minimum percentage from which the referred communication shall be made 5% of the share capital. <p>According to the first Additional Disposition of the LSA, in the case of acquisition of shares of the controlling company the minimum percentage from which the communication to the National Securities Market Commission shall be made is reduced to 1% of the share capital.</p> <ul style="list-style-type: none"> - Specific Notification: In the very moment in which a company is holder of 10% of the share capital of another one the former shall notify it to the latter. This way, if the latter, in turn, is holder of over 10% of the share capital, it shall proceed, in the term of one year as from the reception of the notice, to the alienation of its shares overcoming the said threshold. - Annual Report: According to section 116.4 LMV and Order ECO/3722/2003, of December, 26th, issued by the Ministry of Economy, listed companies must publish a corporate governance report on a yearly basis, which shall contain, among others, the company's ownership structure. Also, according to section 15 of the RD 1310/2005, of November, 4th, issuers holding securities admitted to negotiation in a secondary Spanish market must deposit yearly before the Spanish Securities Market Commission, after the publication of their annual financial statements, a document containing or indicating where the information published by the issuer or supplied to the general public within the previous 12 months, in one or more Member States and third countries, could be obtained. Also, as stated above, the notification made by the company which succeeds in possessing more than 10% of the capital of other company to the latter shall be included in each company's annual report. - Website: According to Section 117.2 LMV, listed companies must have a website for shareholders to exercise the right to information, in accordance with the provisions stated in the Order ECO/3722/2003, of December, 26th, issued by the Ministry of Economy. Thus, the company's ownership structure shall be stated in the company's website.
-----------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

6) When a CEM is implemented, on what substantive grounds may such decision be challenged?

Failure to comply with the obligation to alienate in the aforesaid terms will allow the other company to claim before the courts for the proceeding to the alienation of the shares and for the suspension of the voting rights of all the shares of the investee company held by the company obliged to alienate.

Short form answer:

<input checked="" type="checkbox"/> The decision to implement the CEM is against the law.

SHAREHOLDERS' AGREEMENTS

1) Is this CEM available?

The Public Limited Companies Act establishes the validity of any company agreement which does not contravene the Law. Company agreements only have effect between those taking part in the agreement, although it is currently maintained that any of the parties in this kind of agreement may seek enforcement of the same.

Nevertheless, since 2003 the Stock Market Act sets some transparency requirements or conditions for some shareholders' agreement of public companies. This regulation also applies to those agreements between partners or members of an entity that controls a public company.

These regulations only apply to shareholders' agreements regarding the exercise of the voting rights in the general meeting of shareholders or those regarding the shares transferability regime in public listed companies. Learned writers have considered that such regulations shall also apply to shareholders' agreements regarding the exercise of the voting right in the general meetings of the Board of Directors.

The current regulation can be summarized as comprising special transparency obligations which shall be communicated to the company affected by the agreement as well as to the National Securities Market Commission (CNMV) in order to be published as "relevant fact.". Subsequently, a copy of the agreement shall be filed at the Commercial Registry.

Whilst the referred communication has not been made the shareholders' agreement shall be considered null and shall not produce any effect not even between its signatoires. Notwithstanding, in the case that the publicity of the agreement may damage the interests of the company, the National Securities Market Commission may exceptionally exempt the company from the complying with the transparency obligations.

The draft amendment of the takeover bids regulation that is currently being discussed at the Parliament sets forth the obligation of launching a takeover bid not only when a shareholder acquires a 'controlling' number of shares, but also when several shareholders who jointly hold a 'controlling' number of shares enter in this type of agreement.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	<p>The shareholders' agreements are valid in Spanish law and the parties may have them enforced.</p> <p>However, in the event these agreements affect companies listed stock markets (public companies), they shall be subject to special transparency obligations.</p>
-----------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

The validity of shareholders' agreements is based on the general freedom of agreement principle. Nevertheless, the stock market regulation (Section 111 LMV) establishes special mandatory requirements which shall apply to shareholders' agreements regarding the exercise of the voting rights in the general meeting of shareholders or those regarding the shares transferability regime in public listed companies or companies that exert control over a public company.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	Binding transparency rules apply to certain shareholders' agreements involving public companies or companies that exert control over a public company.
<input checked="" type="checkbox"/> Stock Exchange Rules	<input checked="" type="checkbox"/> Binding Rule	Section 111 LMV (Transparency obligation).

3) **If this CEM is available, is it subject to any restrictions?**

The validity of shareholders' agreements is not currently discussed on the basis of whether the partners are free to enter into agreements they deem favorable to their interests.

However, in the case of public companies, agreements regarding the exercise of the voting rights as well as those regarding the transferability shares regime are subject to special transparency obligations which consist on the communication to the National Securities Market Commission and the deposit of the agreement in the Mercantile Registry. Whilst the referred requirements are not complied with, such agreements shall not produce any effect not even between its signatories.

On the other hand, the National Securities Market Commission has considered that the referred agreements could be deemed as an "acting in concert" event which may force the launching of a takeover bid. This interpretation by the National Securities Market Commission was controversial, but it seems to be backed now by the recent Act 6/2007, of April 12.

Short form answer:

<input checked="" type="checkbox"/> Others	Transparency obligations and, eventually, obligation to launch a takeover bid when the parties to the Shareholders' Agreement cross jointly the thresholds of the compulsory takeover bid.
--------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

4) **Who decides whether this CEM should be implemented, and under what conditions?**

Where the closing of these types of agreements is within the authority of the Board, the decision to close a shareholders' agreement shall be taken by the board of directors. Regarding the target company the only requirement is that it should be notified. Notwithstanding, if the company has delegated its faculties in the CEO, the latter may close the corresponding agreement, with the only requirement of reporting it to the Board.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the Board of Directors	<input checked="" type="checkbox"/> Autonomous decision
------------------------------------------------------------------------	---------------------------------------------------------

Specific conditions:

Specific requirements when deciding to implement the CEM:

Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.): The shareholders' agreement shall be communicated to the National Securities Market Commission as relevant information and it shall be deposited in the Mercantile Registry. Whilst the referred requirements are not complied the shareholders' agreement shall not be efficient nor shall be able to be enforced by any of its signatories.

5) Are there ongoing disclosure requirements regarding such CEM?

No ongoing disclosure requirements other than the communications stated in section 4 above are foreseen.

Short form answer:

<input checked="" type="checkbox"/> Yes	<p>The shareholders' agreement shall be communicated to the National Securities Market Commission as relevant information and it shall be deposited in the Mercantile Registry. Whilst the referred requirements are not complied the shareholders' agreement shall not be efficient nor shall be able to be cited by any of its signatories.</p> <p><input checked="" type="checkbox"/> The following requirements apply:</p> <ul style="list-style-type: none"> - Specific Filing: The signing, extension, modification of a shareholder agreement which addresses the exercise of voting rights in Shareholders' Meetings, or which restricts or conditions the free transferability of shares or convertible or exchangeable bonds of listed companies, must be disclosed immediately to the company in question and to the National Securities Market Commission, accompanied by a copy of the clauses of the shareholder agreement itself which affect the voting right or which restrict or condition the free transferability of the shares or convertible or exchangeable bonds. Once these disclosures have been made, the document containing the shareholder agreement must be recorded in the Mercantile Registry in which the company is registered. <p>The shareholder agreement must be published as a significant disclosure.</p> <ul style="list-style-type: none"> - Annual Report: According to section 116.4 LMV and Order ECO/3722/2003, of December, 26th, issued by the Ministry of Economy, listed companies must publish a corporate governance report on a yearly basis, which shall contain, among others, the existence of shareholders' agreements. <p>Also, according to section 15 of the RD 1310/2005, of November, 4th, issuers holding securities admitted to negotiation in a secondary Spanish market must deposit yearly before the Spanish Securities Market Commission, after the publication of their annual financial statements, a document containing or indicating where the information published by the issuer or supplied to the general public within the previous 12 months, in one or more Member States and third countries, could be obtained.</p> <ul style="list-style-type: none"> - Website: According to Section 117.2 LMV, listed companies must have a website for shareholders to exercise the right to information, in accordance with the provisions stated in the Order ECO/3722/2003, of December, 26th, issued by the Ministry of Economy. Thus, the existence of shareholders' agreements shall be stated in the company's website.
-----------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

6) **When a CEM is implemented, on what substantive grounds may such decision be challenged?**

In order for the stock market to operate correctly, stringent transparency rules as well as the obligation of launching a takeover bid under certain circumstances has been stated.

However, in the cases that said rules are not complied by the shareholders, the conclusion of a shareholders' agreement may be considered contrary to the general interests of the national stock market. In such cases the shareholder agreement shall be considered null and inefficient.

Short form answer:

In the cases that transparency rules (or: "disclosure requirements") are not complied with, any shareholder agreement shall be considered null and inefficient.

B – GENERAL BACKGROUND QUESTIONS**1) What are the rules for board elections? How many corporate votes are required to appoint or remove corporate directors?**

Members of the Board of Directors shall be elected or removed by decision of the general meeting of shareholders. Neither any special quorum nor any supermajority is required in order to pass such decisions.

The appointment of a director shall be passed by majority of votes being present or represented. It shall enter into effect from the moment of the acceptance of the appointment by the director and shall be registered in the Mercantile Registry.

The cessation of any director may be passed by the general meeting of shareholders at any moment without prior calling of the meeting nor its prevision in the agenda. The decision shall be passed by majority of votes being present or represented and no specific cause shall need to be argued.

However there are some exceptions to the aforementioned rules:

-Company bylaws of a public limited company may state a stricter majority in order to appoint the directors of the company.

-Should a vacancy exist in the Board of Directors; the rest of the members of the board may fill such vacancy by electing a director between the shareholders. The director appointed under such circumstances, shall need to be confirmed in the next general meeting of shareholders (Co-optation).

-Public corporation law also foresees the possibility that the minority shareholders may agree to appoint a director so that the referred minority may have a proportional representation in the board of directors. In this regard, shareholders who voluntarily pool their shares to create an amount of capital equal to or higher than the number derived by dividing the total capital by the number of Board members (disregarding fractional numbers) shall have the right to appoint the number of directors in proportion to their capital. In such cases, minority shareholders shall not participate in the appointment of the rest of directors according to the general majority rules¹⁸⁷ (Proportional Representation¹⁸⁸).

The condition of shareholder is not required to be a director. Notwithstanding, the bylaws may state certain requirements to be director.

Besides the above, certain specialities are required by the Code of Good Governance with regard to listed companies. Such Recommendations are not binding rules.

¹⁸⁷ Section 137 LSA and RD 821/1991

¹⁸⁸ For example, in the case of a company whose Board of Directors was constituted by 20 directors, shareholders representing 10% of the capital shall have the right to appoint 2 directors.

Short form answer:

<p><input checked="" type="checkbox"/> Majority required for board election: 51% of the share capital being present or represented in the general meeting of shareholders. Same majority is required in the case of board removal. (in both cases stricter majorities may be stated in the company bylaws).</p> <p><input checked="" type="checkbox"/> Quorum required for shareholders' meetings passing the election or removal of board members: 25% of the share capital in the first calling and any quorum in the second calling shall be sufficient (stricter quorums may be stated in the company bylaws).</p> <p><input checked="" type="checkbox"/> Specific mechanisms authorize minority shareholders to be represented at the board.</p>	<p><input checked="" type="checkbox"/> Board members may be revoked at any shareholders' meetings even if the revocation is not on the agenda</p> <p><input checked="" type="checkbox"/> Board members may always be removed without cause and without notice and without indemnity (said conditions concerning the dismissal of the directors are cumulative).</p>
<p><input checked="" type="checkbox"/> Electronic voting is authorized:</p>	<p><input checked="" type="checkbox"/> Minority shareholders (those representing 5% of the share capital) are entitled to require a general meeting of shareholders to be convened.</p> <p><input checked="" type="checkbox"/> Proxy solicitation is authorized.</p> <p>In principle, the law allows any shareholder to know the personal data of all the shareholders at any moment. However, in a majority of the cases informatics systems of shares representation do not even allow the company itself to know who its shareholders are in any other moment that previously to the celebration of the general meeting of shareholders. In such cases, the shareholders right to know the identity of all the shareholders shall just operate on the occasion of the celebration of the general meeting of shareholders.</p>

2) What shareholders' decisions require a vote from more than a simple majority?

In case of public limited companies, according to article 103 LSA, to validly pass resolutions on an issue of bond, an increase or reduction in capital, an alteration of the company's status, merger or splitting of the company and, generally, on any amendment in the articles of association, it shall be necessary, at first call, for shareholders holding at least fifty percent of the subscribed capital with the right to vote to be present in person or by proxy. At second call, the presence of twenty five percent of the said capital shall be sufficient.

When shareholders representing less than fifty percent of the subscribed capital with the right to vote are present, the resolutions referred to in the preceding subsection may only be validly passed with the favorable vote of two thirds of the capital present or represented at the meeting.

Short form answer:

<input checked="" type="checkbox"/> All changes in bylaws/articles of associations. <input checked="" type="checkbox"/> Issuance of bonds. <input checked="" type="checkbox"/> Mergers / acquisitions of the company by a third party.	<input checked="" type="checkbox"/> Change of nationality of the company. In this case any shareholder has an appraisal right. <input checked="" type="checkbox"/> Change of corporate purpose. <input checked="" type="checkbox"/> Sale of all or substantially all the assets.
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------



PROPORTIONALITY BETWEEN OWNERSHIP AND CONTROL IN EU LISTED COMPANIES:
EXTERNAL STUDY COMMISSIONED BY THE EUROPEAN COMMISSION

**PROPORTIONALITY BETWEEN OWNERSHIP AND CONTROL
IN EU LISTED COMPANIES:**

COMPARATIVE LEGAL STUDY

FRANCE

SHEARMAN & STERLING^{LLP}

Christophe Clerc

Hervé Letréguilly

114, avenue des Champs-Élysées

75008 Paris, France

T: +33 1 53 89 70 00

F: +33 1 53 89 70 70

Reviewed by:

Pierre-Henri Conac

Professor of Law at the University of Luxembourg

Chief editor of the Revue des sociétés

For ease of reference, the following terms are used in this report:

“AMF”	<i>Autorité des Marchés Financiers</i> , the French authority for financial markets
“CEM”	Control Enhancing Mechanism
“Commercial Code”	<i>Code de Commerce</i> , the French commercial code
“Decree”	Decree n° 2007-431 of March 25, 2007 concerning the regulatory part of the Commercial code
“General Manager”	<i>Directeur Général</i>
“RG AMF”	<i>Règlement Général de l’AMF</i> , the General Regulations of the AMF

MULTIPLE VOTING RIGHTS SHARES**1) Is this CEM available?**

Time-phased double voting right is authorized, if it is provided for in the bylaws. The double voting right is a reward for the long-term commitment of shareholders; it may only be attributed to fully paid shares that have been registered in the name of a shareholder for a specific duration set in the bylaws. Such duration may not be less than two years.

There are some exceptions to the two-year term. For instance, in the case of a merger of a company with double voting shares, the bylaws of the newly formed company may provide that double voting rights may be exercised immediately. This provision is designed to neutralize the effect of the merger on pre existing double voting rights. When double voting rights are introduced in the bylaws, each shareholder already holding a two-year registration will benefit from such double voting right.

Any share that is transferred or converted into a bearer share shall lose its double voting right. However, a transfer on succession or on the partition of property jointly owned by spouses, or a gift *inter vivos* to a spouse or a relative entitled to inherit to the donor's estate shall not cause the right to be lost, nor interrupt the holding period.

It should be noted that such loyalty shares, with their time-phased double voting right, are not a specific class of shares. Double voting rights are attributed to all ordinary shares that have been held for the required time period.

Multiple voting rights shares other than time-phased voting right shares are prohibited.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	Only loyalty shares, with time-phased double voting rights.
-----------------------------------------------------------	-------------------------------------------------------------

2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.

The applicable rules (which have been described in answer to question 1 above) are set out in the Commercial Code.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	Articles L. 225-123 and L. 225-124 of the Commercial Code.
------------------------------------------	--------------------------------------------------	------------------------------------------------------------

3) If this CEM is available, is it subject to any restrictions?

There is a maximum of two votes per share. The double voting right is attributed to shareholders after a specific duration set in the bylaws, which may not be less than 2 years.

Any share that is transferred or converted into a bearer share shall lose its double voting right.¹⁸⁹ However, a transfer on succession or on the partition of property jointly owned by spouses, or a gift *inter vivos* to a spouse or a relative entitled to inherit to the donor's estate shall not cause the right to be lost, nor interrupt the holding period.

Moreover, the equality principle shall apply: the multiple voting right must apply to all shares of a specified class.

¹⁸⁹ Article L. 225-123 of the Commercial Code.

Short form answer:

<input checked="" type="checkbox"/> Maximum number of votes per share	2 votes maximum per share.
<input checked="" type="checkbox"/> Loss of multiple voting rights in certain circumstances	Loss of double voting rights in case of transfer or conversion to bearer shares.
<input checked="" type="checkbox"/> Equality principle	
<input checked="" type="checkbox"/> Loyalty Condition	2 years minimum

4) Who decides whether this CEM should be implemented, and under what conditions?

Double voting right shares may only be established by the original bylaws and by an extraordinary general meeting of shareholders amending the bylaws. The decision to amend the bylaws may not be delegated to the board. The decision to issue shares may be delegated to the board. If authorized by the extraordinary general meeting, the board of directors may subdelegate the issuance to the General Manager¹⁹⁰.

There is no notion of authorized capital in France.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the General Manager (only for the issuance of shares)	<input checked="" type="checkbox"/> Upon authorization of the Board, if authorized by the shareholders	
<input checked="" type="checkbox"/> Decision by the Board of Directors (only for the issuance of shares)	<input checked="" type="checkbox"/> Upon authorization of the shareholders	
<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input checked="" type="checkbox"/> Quorum: one quarter on first notice. One fifth on second notice <input checked="" type="checkbox"/> Majority: majority of the two thirds of the shareholders present or represented	<p>The shareholders may authorize the Board to implement the CEM, but only for the issuance of shares (not for amendment of the bylaws):</p> <input checked="" type="checkbox"/> The authorization is valid (maximum duration) for 26 months. <input checked="" type="checkbox"/> If a tender offer is filed on the company wishing to implement the CEM, between the authorization and the actual implementation, the authorization would need to be renewed, except in the event that the reciprocity exception provided by Article 12 of the EC Directive on Takeover Bids is applicable. ¹⁹¹

¹⁹⁰ Articles L.225-129 to L.225-129-6 of the Commercial Code.

¹⁹¹ Articles L. 233-32 and L. 233-33 of the Commercial Code.

Specific conditions:

Specific requirements when deciding to implement the CEM:

- Special report to shareholders, prepared by the management.
- Statutory auditors need to prepare a report when a capital increase takes place.
- Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.): Information regarding issuance of double voting shares must be published in a legal gazette and filed with the appropriate Commercial Court, and must be provided in the annual report and in the issuance prospectus.

5) Are there ongoing disclosure requirements regarding such CEM?

The amended bylaws must be filed with the court of commerce and the amendment must be published in a legal gazette.

The annual report must contain information on the capital structure of the company (including details on the rights and obligations attaching to its shares), direct and indirect shareholdings that have been notified to the company,¹⁹² the identity of holders of securities with special control rights (together with a description of those rights), and restrictions on voting rights and transfer of shares contained in the by-laws.¹⁹³

Listed companies must also file with the AMF, on a monthly basis, the total number of voting rights and the number of shares that make up the company's capital. This information has to be published and posted on the company's website¹⁹⁴.

The acquisition of double voting rights may also trigger disclosure requirements for shareholders acquiring such rights: any individual or legal entity, acting alone or in concert, that becomes the owner, directly or indirectly, of more than 5%, 10%, 15%, 20%, 25%, 33.33%, 50%, 66.66%, 90% or 95% of the outstanding shares or voting rights of a French listed company (or that falls below any of such thresholds), must notify this company and the AMF, within five trading days of such event, of the number of shares (and, if applicable, of securities giving access directly or indirectly to shares) it holds and the voting rights attached to such shares and securities. The AMF makes this information public.¹⁹⁵

An individual or legal entity acquiring more than 10% or 20% of the outstanding shares or voting rights of a French listed company is subject to additional reporting requirements: it has to notify the company and the AMF, within ten trading days of the date it crosses the applicable threshold, of its intentions for the following 12-month period. The acquirer must specify, *inter alia*, whether it intends to continue its purchases, to acquire a controlling interest in the company or to seek nominations to the board of directors and whether it is acting alone or in concert. The AMF makes the notice public. The acquirer may amend its stated intentions, provided that it does so on the basis of significant changes. Upon any change of intention, it must file a new report.¹⁹⁶

¹⁹² When such notifications are made pursuant to articles L. 233-7 and L. 233-12 of the Commercial Code.

¹⁹³ Article L. 225-100-3 of the Commercial Code.

¹⁹⁴ Article L. 233-7 of the Commercial Code and article R.233-1 of the Decree and article 223-16 of the RG AMF.

¹⁹⁵ Article L. 233-7 of the Commercial Code and articles 223-11 *et seq.* of the RG AMF.

¹⁹⁶ Article L. 233-7 of the Commercial Code and article 223-17 of the RG AMF.

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure to be made by the company on a monthly and yearly basis.
	<input checked="" type="checkbox"/> Disclosure required by shareholders crossing certain specified thresholds.

6) **When a CEM is implemented, on what substantive grounds may such decision be challenged?**

Such decision may be challenged if it is taken with the sole intent to favor the interest of the majority shareholders against the minority shareholders and the corporate interest.¹⁹⁷ The corporate interest is not legally defined but it is generally admitted that it is distinct from the sole interest of the shareholders.

Short form answer:

<input checked="" type="checkbox"/> The decision to implement the CEM is with the sole intent to favor the interest of the majority shareholders against the minority shareholders and the corporate interest (defined as being distinct from the sole interest of shareholders).

¹⁹⁷

Precedent set in 1961 by the Highest French Court (Cass.Com. April 18, 1961: D 1961, 661) and constantly applied since then.

NON-VOTING SHARES

1) Is this CEM available?

There are no specific provisions under French law governing Non-Voting Shares without preference. To issue such shares, it would be necessary to rely on the provisions pertaining to “preference shares” which provide that preference shares may be created, with or without voting rights, which confer special rights of various kinds, either temporarily or permanently. It is debatable whether Non-Voting Shares without any preference may be issued under such provisions. We believe the relevant provisions authorize such issuance; however we are not aware of any significant precedent. This position has never been tested before the Courts.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	We are not aware of any significant precedent.
-----------------------------------------------------------	------------------------------------------------

2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.

This CEM is governed by the rules regarding preference shares. Such rules are provided in the Commercial Code.

Upon formation of the company or during its existence, preference shares may be created, with or without voting rights, which confer special rights of various kinds, either temporarily or permanently.

Voting rights may be amended for a defined period. They may also be suspended for a defined period, or may be revoked.

A decision to issue, redeem or convert preference shares may only be taken by an extraordinary general meeting of shareholders on the basis of a special report from the auditors.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	Articles L. 228-11 to L. 228-20 of the Commercial Code.
------------------------------------------	--------------------------------------------------	---------------------------------------------------------

3) If this CEM is available, is it subject to any restrictions?

In listed companies, the percentage of Non-Voting Shares may not exceed 25% of the outstanding share capital. Any issue having the effect of increasing the proportion of preference shares beyond this limit may be cancelled.

The issuance contract may also provide for the reinstatement of voting rights in certain cases.

Short form answer:

<input checked="" type="checkbox"/> Maximum percentage of Non-Voting Shares	Up to a limit of 25% of the outstanding share capital.
-----------------------------------------------------------------------------	--------------------------------------------------------

4) Who decides whether this CEM should be implemented, and under what conditions?

A decision to issue preference shares may only be taken by an extraordinary general meeting of shareholders on the basis of a special report from the auditors. The decision to amend the bylaws to

provide for the existence of the Non-Voting Shares may not be delegated to the board of directors. When the creation of a new category of preference shares has been decided, the general meeting of shareholders may delegate to the board of directors the issuance of such preference shares.¹⁹⁸

Within the limits of the delegation given by the extraordinary general meeting, the board of directors or the executive board has the power required to determine the conditions of issue and to declare the completion of the resultant capital increases. If authorized by the general meeting, the board of directors may subdelegate the issuance to the General Manager.

There is no notion of authorized capital in France.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the General Manager (only for the issuance of shares)	<input checked="" type="checkbox"/> Upon authorization of the Board, if authorized by the general meeting.	
<input checked="" type="checkbox"/> Decision by the Board of Directors (only for the issuance of shares)	<input checked="" type="checkbox"/> Upon authorization of the shareholders.	
<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input checked="" type="checkbox"/> Quorum: one quarter on first notice. One fifth on second notice <input checked="" type="checkbox"/> Majority: majority of the two thirds of the shareholders present or represented	<p>The shareholders may authorize the Board to implement the CEM, but only for the issuance of shares (not for amendment of the bylaws):</p> <input checked="" type="checkbox"/> The authorization is valid (maximum duration) for 26 months. <input checked="" type="checkbox"/> If a tender offer is filed on the company wishing to implement the CEM, between the authorization and the actual implementation, the authorization would need to be renewed, except in the event that the reciprocity exception provided by Article 12 of the EC Directive on Takeover Bids is applicable. ¹⁹⁹

¹⁹⁸ Articles L. 225-129 to L. 225-129-6 of the Commercial Code.

¹⁹⁹ Articles L. 233-32 and L. 233-33 of the Commercial Code.

Specific conditions:

Specific requirements when deciding to implement the CEM:

- Special report to shareholders, prepared by the management.
- Statutory auditors need to elaborate a special report when a capital increase takes place and when ordinary shares are converted into preference shares.
- Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.): Information regarding the issuance of shares must appear in the annual report of the company as well as in the issuance prospectus.

5) Are there ongoing disclosure requirements regarding such CEMs?

The annual report must contain information on the capital structure of the company (including details on the rights and obligations attaching to its shares), direct and indirect shareholdings that have been notified to the company,²⁰⁰ the identity of holders of securities with special control rights (together with a description of those rights), and restrictions on voting rights and transfer of shares contained in the by-laws.²⁰¹

Listed companies must also file with the AMF, on a monthly basis, the total number of voting rights and the number of shares that make up the company's capital. This information has to be published and posted on the company's website.²⁰²

In addition, any individual or legal entity, acting alone or in concert, that becomes the owner, directly or indirectly, of more than 5%, 10%, 15%, 20%, 25%, 33.33%, 50%, 66.66%, 90% or 95% of the outstanding shares or voting rights of a French listed company (or that falls below any of such thresholds), must notify this company and the AMF, within five trading days of such event, of the number of shares (and, if applicable, of securities giving access directly or indirectly to shares) it holds and the voting rights attached to such shares and securities. The AMF makes this information public.²⁰³

An individual or legal entity acquiring more than 10% or 20% of the outstanding shares or voting rights of a French listed company is subject to additional reporting requirements: it has to notify the company and the AMF, within ten trading days of the date it crosses the applicable threshold, of its intentions for the following 12-month period. The acquirer must specify, *inter alia*, whether it intends to continue its purchases, to acquire a controlling interest in the company or to seek nominations to the board of directors and whether it is acting alone or in concert. The AMF makes the notice public. The acquirer may amend its stated intentions, provided that it does so on the basis of significant changes. Upon any change of intention, it must file a new report.²⁰⁴

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure to be made by the company on a monthly and yearly basis. <input checked="" type="checkbox"/> Disclosure required by shareholders crossing certain specified thresholds.
-----------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

²⁰⁰ When such notifications are made pursuant to articles L. 233-7 and L. 233-12 of the Commercial Code.

²⁰¹ Article L. 225-100-3 of the Commercial Code.

²⁰² Article L. 233-7 of the Commercial Code and article R.233-1 of the Decree and article 223-16 of the RG AMF.

²⁰³ Article L. 233-7 of the Commercial Code and articles 223-11 *et seq.* of the RG AMF.

²⁰⁴ Article L. 233-7 of the Commercial Code and article 223-17 of the RG AMF.

6) **When a CEM is implemented, on what substantive grounds may such a decision be challenged?**

Such decision may be challenged if it is taken with the sole intent to favor the interest of the majority shareholders against the minority shareholders and the corporate interest.²⁰⁵ The corporate interest is not legally defined but it is generally admitted that it is distinct from the sole interest of the shareholders.

Short form answer:

The decision to implement the CEM is with the sole intent to favor the interest of the majority shareholders against the minority shareholders and the corporate interest (defined as being distinct from the sole interest of shareholders).

²⁰⁵ Precedent set in 1961 by the Highest French Court (Cass.Com. April 18, 1961: D 1961, 661) and constantly applied since then.

NON-VOTING PREFERENCE SHARES

1) **Is this CEM available?**

French law²⁰⁶ used to provide for a specific class of non-voting preference shares.²⁰⁷ This law was repealed in 2004²⁰⁸ and no further issuance of such specific non-voting preference shares has been authorized. However, non-voting preference shares that were previously issued under the 1978 law still remain outstanding.

The 2004 law provides for the issuance of preference shares which may be created, with or without voting rights, which confer special rights of various kinds, either temporarily or permanently. Thus, Non-Voting Preference Shares are authorized as a subcategory of preference shares. Non-Voting Preference Shares are governed by such 2004 law.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	
-----------------------------------------------------------	--

2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.**

The specific class of 1978 Law Non-Voting Preference Shares is governed by Articles L. 228 35-2 to L. 228-35-11 of the French Commercial Code.

Other Non-Voting Preference Shares are governed by Articles L. 228-11 to L. 228-20 of the Commercial Code which govern preference shares in general.

Upon formation of the company or during its existence, preference shares may be created, with or without voting rights, which confer special rights of various kinds, either temporarily or permanently. Such rights are defined in the bylaws pursuant to the provisions of Articles L. 225-10 and L. 225-122 to L. 225-125.

Voting rights may be amended for a defined period. They may also be suspended for a defined period, or may be revoked.

A decision to issue, redeem or convert preference shares may only be taken by an extraordinary general meeting of shareholders on the basis of a special report from the auditors.

²⁰⁶ Law n° 78-741 of July 13, 1978.

²⁰⁷ *Actions à dividende prioritaire sans droit de vote.*

²⁰⁸ Ordinance 2004-604 of June 27, 2004.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	Articles L. 228-35-2 to L. 228-35-11 of the Commercial Code. Articles L. 228-29-8 et seq. of the Commercial Code. Articles L.228-11 to L.228-20 of the Commercial Code.
------------------------------------------	--------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

3) If this CEM is available, is it subject to any restrictions?

In listed companies, the percentage of Non-Voting Preference Shares may not exceed 25% of the outstanding share capital. Any issue having the effect of increasing the proportion of preference shares beyond this limit may be cancelled.

The issuance contract may also provide for the reinstatement of voting rights in certain cases.

Short form answer:

<input checked="" type="checkbox"/> Maximum percentage of Non-Voting Preference Shares	Up to a limit of 25% of the outstanding share capital.
----------------------------------------------------------------------------------------	--------------------------------------------------------

4) Who decides whether this CEM should be implemented, and under what conditions?

A decision to issue preference shares may only be taken by an extraordinary general meeting of shareholders on the basis of a special report from the auditors. The decision to amend the bylaws to provide for the particular rights attached to the preference shares may not be delegated to the board of directors. When the creation of a new category of preference shares has been decided, the general meeting of shareholders may delegate to the board of directors the issuance of such preference shares.²⁰⁹

Within the limits of the delegation given by the general meeting, the board of directors or the executive board has the power required to determine the conditions of issue and to declare the completion of the resultant capital increases. If authorized by the general meeting, the board of directors may subdelegate the issuance to the General Manager.

There is no notion of authorized capital in France.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the General Manager (only for the issuance of shares)	<input checked="" type="checkbox"/> Upon authorization of the Board, if authorized by the shareholders.	
-------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------	--

²⁰⁹ Articles L. 225-129 to L. 225-129-6 of the Commercial Code.

<input checked="" type="checkbox"/> Decision by the Board of Directors (only for the issuance of shares)	<input checked="" type="checkbox"/> Upon authorization of the shareholders.	
<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input checked="" type="checkbox"/> Quorum: one quarter on first notice. One fifth on second notice <input checked="" type="checkbox"/> Majority: majority of the two thirds of the shareholders present or represented	<p>The shareholders may authorize the Board to implement the CEM, but only for the issuance of shares (not for amendment of the bylaws):</p> <input checked="" type="checkbox"/> The authorization is valid (maximum duration) for 26 months. <input checked="" type="checkbox"/> If a tender offer is filed on the company wishing to implement the CEM, between the authorization and the actual implementation, the authorization would need to be renewed, except in the event that the reciprocity exception provided by Article 12 of the EC Directive on Takeover Bids is applicable. ²¹⁰

Specific conditions:

<p>Specific requirements when deciding to implement the CEM:</p> <input checked="" type="checkbox"/> Special report to shareholders, prepared by the management. <input checked="" type="checkbox"/> Statutory auditors must issue a special report when a capital increase takes place and when ordinary shares are converted into preference shares. <input checked="" type="checkbox"/> Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.): Information regarding the issuance of shares must appear in the annual report of the company and in the issuance prospectus.

5) Are there ongoing disclosure requirements regarding such CEM?

The annual report must contain information on the capital structure of the company (including details on the rights and obligations attaching to its shares), direct and indirect shareholdings that have been notified to the company,²¹¹ the identity of holders of securities with special control rights (together with a description of those rights), and restrictions on voting rights and transfer of shares contained in the by-laws.²¹²

Listed companies must also file with the AMF, on a monthly basis, the total number of voting rights and the number of shares that make up the company's capital. This information has to be published and posted on the company's website.²¹³

²¹⁰ Articles L. 233-32 and L. 233-33 of the Commercial Code.

²¹¹ When such notifications are made pursuant to articles L. 233-7 and L. 233-12 of the Commercial Code.

²¹² Article L. 225-100-3 of the Commercial Code.

²¹³ Article L. 233-7 of the Commercial Code and article R.233-1 of the Decree and article 223-16 of the RG AMF.

In addition, any individual or legal entity, acting alone or in concert, that becomes the owner, directly or indirectly, of more than 5%, 10%, 15%, 20%, 25%, 33.33%, 50%, 66.66%, 90% or 95% of the outstanding shares or voting rights of a French listed company (or that falls below any of such thresholds), must notify this company and the AMF, within five trading days of such event, of the number of shares (and, if applicable, of securities giving access directly or indirectly to shares) it holds and the voting rights attached to such shares and securities. The AMF makes this information public.²¹⁴

An individual or legal entity acquiring more than 10% or 20% of the outstanding shares or voting rights of a French listed company is subject to additional reporting requirements: it has to notify the company and the AMF, within ten trading days of the date it crosses the applicable threshold, of its intentions for the following 12-month period. The acquirer must specify, *inter alia*, whether it intends to continue its purchases, to acquire a controlling interest in the company or to seek nominations to the board of directors and whether it is acting alone or in concert. The AMF makes the notice public. The acquirer may amend its stated intentions, provided that it does so on the basis of significant changes. Upon any change of intention, it must file a new report.²¹⁵

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure to be made by the company on a monthly and yearly basis.
	<input checked="" type="checkbox"/> Disclosure required by shareholders crossing certain specified thresholds.

6) When a CEM is implemented, on what substantive grounds may such decision be challenged?

Such decision may be challenged if it is taken with the sole intent to favor the interest of the majority shareholders against the minority shareholders and the corporate interest.²¹⁶ The corporate interest is not legally defined but it is generally admitted that it is distinct from the sole interest of the shareholders.

Short form answer:

<input checked="" type="checkbox"/> The decision to implement the CEM is with the sole intent to favor the interest of the majority shareholders against the minority shareholders and the corporate interest (defined as being distinct from the sole interest of shareholders).

²¹⁴ Article L. 233-7 of the Commercial Code and articles 223-11 *et seq.* of the RG AMF.

²¹⁵ Article L. 233-7 of the Commercial Code and article 223-17 of the RG AMF.

²¹⁶ Precedent set in 1961 by the Highest French Court (Cass.Com. April 18, 1961: D 1961, 661) and constantly applied since then.

PYRAMID STRUCTURES

1) **Is this CEM available?**

Pyramid structures are not specifically regulated under French law. They are available under the principle of freedom of contract.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	Freedom of contract.
-----------------------------------------------------------	----------------------

2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.**

There are no rules specifically governing the pyramid structures. The basis of the rules is the contractual freedom of the parties when they create a pyramid structure.

Short form answer:

<input checked="" type="checkbox"/> General Principle	Freedom of contract.
-------------------------------------------------------	----------------------

3) **If this CEM is available, is it subject to any restrictions?**

There are no restrictions on pyramid structures.

4) **Who decides whether this CEM should be implemented, and under what conditions?**

Pyramid structures are set up by individual shareholders. When such shareholders are a corporation, the decision is usually taken by the General Manager. In some instances, such as contributions of shares subject to a spin-off specific regime, a decision of the meeting of shareholders would be required.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the Chairman or the General Manager	<input checked="" type="checkbox"/> Autonomous decision.
-------------------------------------------------------------------------------------	----------------------------------------------------------

Specific conditions:

Specific requirements when deciding to implement the CEM: <input checked="" type="checkbox"/> Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.): Application of general disclosure rules if certain thresholds are crossed.

5) **Are there ongoing disclosure requirements regarding such CEM?**

The annual report must contain information on the capital structure of the company (including details on the rights and obligations attaching to its shares), direct and indirect shareholdings that have been

notified to the company,²¹⁷ the identity of holders of securities with special control rights (together with a description of those rights), and restrictions on voting rights and transfer of shares contained in the by-laws.²¹⁸

Listed companies must also file with the AMF, on a monthly basis, the total number of voting rights and the number of shares that make up the company's capital. This information has to be published and posted on the company's website.²¹⁹

In addition, any individual or legal entity, acting alone or in concert, that becomes the owner, directly or indirectly, of more than 5%, 10%, 15%, 20%, 25%, 33.33%, 50%, 66.66%, 90% or 95% of the outstanding shares or voting rights of a French listed company (or that falls below any of such thresholds), must notify this company and the AMF, within five trading days of such event, of the number of shares (and, if applicable, of securities giving access directly or indirectly to shares) it holds and the voting rights attached to such shares and securities. The AMF makes this information public.²²⁰

An individual or legal entity acquiring more than 10% or 20% of the outstanding shares or voting rights of a French listed company is subject to additional reporting requirements: it has to notify the company and the AMF, within ten trading days of the date it crosses the applicable threshold, of its intentions for the following 12-month period. The acquirer must specify, *inter alia*, whether it intends to continue its purchases, to acquire a controlling interest in the company or to seek nominations to the board of directors and whether it is acting alone or in concert. The AMF makes the notice public. The acquirer may amend its stated intentions, provided that it does so on the basis of significant changes. Upon any change of intention, it must file a new report.²²¹

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure to be made by the company on a monthly and yearly basis.
	<input checked="" type="checkbox"/> Disclosure required by shareholders crossing certain specified thresholds.

6) When a CEM is implemented, on what substantive grounds may such decision be challenged?

There are no clear grounds on which to challenge Pyramid Structures. However, if such structure is set up by a company, there may be some cases where such decision may be challenged if it is taken with the sole intent to favor the interest of the majority shareholders against the minority shareholders and the corporate interest.²²² The corporate interest is not legally defined but it is generally admitted that it is distinct from the sole interest of the shareholders.

²¹⁷ When such notifications are made pursuant to articles L. 233-7 and L. 233-12 of the Commercial Code.

²¹⁸ Article L. 225-100-3 of the Commercial Code.

²¹⁹ Article L. 233-7 of the Commercial Code and article 223-16 of the RG AMF.

²²⁰ Article L. 233-7 of the Commercial Code and articles 223-11 *et seq.* of the RG AMF.

²²¹ Article L. 233-7 of the Commercial Code and article 223-17 of the RG AMF.

²²² Precedent set in 1961 by the Highest French Court (Cass.Com. April 18, 1961: D 1961, 661) and constantly applied since then.

Short form answer:

The decision to implement the CEM is with the sole intent to favor the interest of the majority shareholders against the minority shareholders and the corporate interest (defined as being distinct from the sole interest of shareholders).

PRIORITY SHARES

1) Is this CEM available?

Priority Shares are governed by the 2004 law on preference shares.²²³ Upon formation of the company or during its existence, preference shares may be issued, with or without voting rights, with special rights of various kinds, either temporary or permanent. Voting rights may be increased for a defined period. They may also be suspended for a defined period, or may be revoked. For listed companies, preference shares may not represent more than one quarter of the outstanding share capital.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)

2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.

The rules governing preference shares (which include Priority Shares) are set out in the Commercial Code.

Upon formation of the company or during its existence, preference shares may be created, with or without voting rights, which confer special rights of various kinds, either temporarily or permanently. Such rights are defined in the bylaws and by the French Commercial Code pursuant to the provisions of Articles L. 228-11 to L. 228-20.

Voting rights may be amended for a defined period. They may also be suspended for a defined period, or may be revoked.

A decision to issue, redeem or convert preference shares may only be taken by an extraordinary general meeting of shareholders on the basis of a special report from the auditors.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	Articles L. 228-11 to L. 228-20 Commercial Code.
------------------------------------------	--------------------------------------------------	--------------------------------------------------

3) If this CEM is available, is it subject to any restrictions?

The percentage of Priority Shares may not exceed 25% of the outstanding share capital. Any issue having the effect of increasing the proportion of preference shares beyond this limit may be cancelled.

The principle of Corporate Separateness applies. Directors have to act in compliance with the company's corporate interest, which is distinct from the sole shareholders' interest.

Short form answer:

<input checked="" type="checkbox"/> Maximum percentage of Priority Shares	Up to a limit of 25% of outstanding share capital.
---------------------------------------------------------------------------	----------------------------------------------------

²²³ Ordinance 2004-604 of June 27, 2004.

4) Who decides whether this CEM should be implemented, and under what conditions?

A decision to issue preference shares may only be taken by an extraordinary general meeting of shareholders on the basis of a special report from the auditors. The decision to amend the bylaws to provide for the particular rights attached to the preference shares may not be delegated to the board of directors. When the creation of a new category of preference shares has been decided, the general meeting of shareholders may delegate to the board of directors the issuance of such preference shares.

Within the limits of the delegation given by the general meeting, the board of directors or the executive board has the power required to determine the conditions of issue and to declare the completion of the resultant capital increases.

If authorized by the general meeting, the board of directors may subdelegate the issuance to the General Manager.

There is no notion of authorized capital in France.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the General Manager (only for the issuance of shares)	<input checked="" type="checkbox"/> Upon authorization of the Board, if authorized by the general meeting.	
<input checked="" type="checkbox"/> Decision by the Board of Directors (only for the issuance of shares)	<input checked="" type="checkbox"/> Upon authorization of the shareholders.	
<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input checked="" type="checkbox"/> Quorum: one quarter on first notice. One fifth on second notice <input checked="" type="checkbox"/> Majority: majority of the two thirds of the shareholders present or represented	<p>The shareholders may authorize the Board to implement the CEM, but only for the issuance of shares (not for amendment of the bylaws):</p> <input checked="" type="checkbox"/> The authorization is valid (maximum duration) for 26 months. <input checked="" type="checkbox"/> If a tender offer is filed on the company wishing to implement the CEM, between the authorization and the actual implementation, the authorization would need to be renewed, except in the event that the reciprocity exception provided by Article 12 of the EC Directive on Takeover Bids is applicable. ²²⁴

²²⁴ Articles L. 233-32 and L. 233-33 of the Commercial Code.

Specific conditions:

Specific requirements when deciding to implement the CEM:

- Special report to shareholders, prepared by the management.
- Statutory auditors must issue a special report when a capital increase takes place and when ordinary shares are converted into priority shares.
- Specific disclosure requirements: Information regarding the issuance of shares must appear in the annual report of the company and in the issuance prospectus.

5) Are there ongoing disclosure requirements regarding such CEM?

The annual report must contain information on the capital structure of the company (including details on the rights and obligations attaching to its shares), direct and indirect shareholdings that have been notified to the company,²²⁵ the identity of holders of securities with special control rights (together with a description of those rights), and restrictions on voting rights and transfer of shares contained in the by-laws.²²⁶

Listed companies must also file with the AMF, on a monthly basis, the total number of voting rights and the number of shares that make up the company's capital. This information has to be published and posted on the company's website.²²⁷

In addition, any individual or legal entity, acting alone or in concert, that becomes the owner, directly or indirectly, of more than 5%, 10%, 15%, 20%, 25%, 33.33%, 50%, 66.66%, 90% or 95% of the outstanding shares or voting rights of a French listed company (or that falls below any of such thresholds), must notify this company and the AMF, within five trading days of such event, of the number of shares (and, if applicable, of securities giving access directly or indirectly to shares) it holds and the voting rights attached to such shares and securities. The AMF makes this information public.²²⁸

An individual or legal entity acquiring more than 10% or 20% of the outstanding shares or voting rights of a French listed company is subject to additional reporting requirements: it has to notify the company and the AMF, within ten trading days of the date it crosses the applicable threshold, of its intentions for the following 12-month period. The acquirer must specify, *inter alia*, whether it intends to continue its purchases, to acquire a controlling interest in the company or to seek nominations to the board of directors and whether it is acting alone or in concert. The AMF makes the notice public. The acquirer may amend its stated intentions, provided that it does so on the basis of significant changes. Upon any change of intention, it must file a new report.²²⁹

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure to be made by the company on a monthly and yearly basis. <input checked="" type="checkbox"/> Disclosure required by shareholders crossing certain specified thresholds.
-----------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

²²⁵ When such notifications are made pursuant to articles L. 233-7 and L. 233-12 of the Commercial Code.

²²⁶ Article L. 225-100-3 of the Commercial Code.

²²⁷ Article L. 233-7 of the Commercial Code and article 223-16 of the RG AMF.

²²⁸ Article L. 233-7 of the Commercial Code and articles 223-11 *et seq.* of the RG AMF.

²²⁹ Article L. 233-7 of the Commercial Code and article 223-17 of the RG AMF.

6) **When a CEM is implemented, on what substantive grounds may such decision be challenged?**

Such decision may be challenged if it is taken with the sole intent to favor the interest of the majority shareholders against the minority shareholders and the corporate interest.²³⁰ The corporate interest is not legally defined but it is generally admitted that it is distinct from the sole interest of the shareholders.

Short form answer:

The decision to implement the CEM is with the sole intent to favor the interest of the majority shareholders against the minority shareholders and the corporate interest (defined as being distinct from the sole interest of shareholders).

²³⁰ Precedent set in 1961 by the Highest French Court (Cass. Com. April 18, 1961: D 1961, 661) and constantly applied since then.

DEPOSITARY CERTIFICATES

1) **Is this CEM available?**

It is generally considered that Depositary Certificates are not available under French law. There is no concept of beneficial ownership under French law and granting rights to Depositary Certificates would generate serious and complex issues. In addition, foundations are not permitted to issue shares. There are no precedents of issuances of Depositary Certificates in France.²³¹

Short form answer:

<input checked="" type="checkbox"/> No (Clear Situation)

2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.**

Law n° 87-571 of July 23, 1987 prohibits the issuance of shares for foundations.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	Law n° 87-571 of July 23, 1987.
------------------------------------------	--------------------------------------------------	---------------------------------

Other questions not applicable.

²³¹ Law n°87-571 of July 23, 1987.

VOTING RIGHTS CEILINGS

1) Is this CEM available?

This CEM is available under French Law. In widely held companies, it is generally considered that such ceilings protect shareholders against *de facto* changes of control through the acquisition of a minority interest.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)

2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.

Voting rights ceilings are governed by Article L. 225-125 of the Commercial Code. Such article provides that the bylaws may limit the number of votes attributed to each shareholder at meetings, provided that any such limitation shall be imposed on all shares irrespective of class, other than non-voting preference shares.²³²

The bylaws may for instance limit the number of votes to a fixed amount or to a percentage of the total amount of shares or grant to shareholders a proportionally decreasing amount of votes for each additional share held. They may also provide that a shareholder may not vote a number of shares above a quantity fixed by the votes attached to the shares present or represented in the meeting.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	Article L. 225-125 of the Commercial Code.
------------------------------------------	--------------------------------------------------	--------------------------------------------

3) If this CEM is available, is it subject to any restrictions?

Following the implementation of the Takeover Directive in France, a breakthrough rule has been adopted.

The effects of the limitation of the number of votes, provided in the bylaws of a company which is subject to a takeover bid and whose shares are listed on a regulated market, are suspended during the first general meeting which follows the end of the offer when the takeover bid author, acting alone or in concert, has obtained more than two thirds of the capital or voting rights of the target Company.²³³

The bylaws may limit the number of votes attributed to each shareholder at meetings, provided that any such limitation shall be imposed on all shares irrespective of class, other than non-voting preference shares.

²³² Non-voting preference shares (without preference) referred to here are *actions à dividende prioritaire sans droit de vote*.

²³³ Article L.225-125 alinea 2 of the Commercial Code and Article 231-43 of the RG AMF.

Short form answer:

<input checked="" type="checkbox"/> Application of a Breakthrough Rule	If more than 2/3 of the outstanding share capital or voting rights have been tendered into a takeover bid.
<input checked="" type="checkbox"/> Equality of shareholders	

4) Who decides whether this CEM should be implemented, and under what conditions?

Voting rights ceiling are included in the bylaws. The decision to create, amend or delete a voting right ceiling is taken by an extraordinary general meeting of the shareholders.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input checked="" type="checkbox"/> Quorum: one quarter of the voting shares on first notice. One fifth of the voting shares on second notice. <input checked="" type="checkbox"/> Majority: majority of the two third of the shareholders present or represented.
-------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Specific conditions:

Specific requirements when deciding to implement the CEM:

Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.): This information should be provided in the annual report of the company.

5) Are there ongoing disclosure requirements regarding such CEM?

The amended bylaws must be filed with the court of commerce and the amendment must be published in a legal gazette.

The annual report must contain information on the capital structure of the company (including details on the rights and obligations attaching to its shares) and restrictions on voting rights and transfer of shares contained in the by-laws.²³⁴

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure to be made on a yearly basis.
-----------------------------------------	------------------------------------------------------------------------------

6) When a CEM is implemented, on what substantive grounds may such decision be challenged?

Such decision may be challenged if it is taken with the sole intent to favor the interest of the majority shareholders against the minority shareholders and the corporate interest.²³⁵ The corporate interest is

²³⁴ Article L. 225-100-3 of the Commercial Code.

²³⁵ Precedent set in 1961 by the Highest French Court (Cass. Com. April 18, 1961: D 1961, 661) and constantly applied since then.

not legally defined but it is generally admitted that it is distinct from the sole interest of the shareholders.

Short form answer:

The decision to implement the CEM is with the sole intent to favor the interest of the majority shareholders against the minority shareholders and the corporate interest (defined as being distinct from the sole interest of shareholders).

OWNERSHIP CEILINGS

1) **Is this CEM available?**

In our opinion, ownership ceilings are not available under French law for listed companies. French law provides for the acquisition of 100% of the outstanding share capital of a company through takeover bids. Such a ceiling would thus deprive an acquirer of its right to acquire 100% of the outstanding share capital of a company, and therefore would constitute a limitation on public tender offers.²³⁶ In addition, the by-laws of a French listed company may not grant to such company the right to consent (or object) to the transfer of its shares; an ownership ceiling providing for a similar mechanism would be prohibited²³⁷.

If a clause providing for an ownership ceiling were included in the bylaws, it would be very difficult to enforce. Moreover, it is not clear whether it would be possible under French law to compel a buyer acting in breach of such clause to return his shares.

The bylaws could not provide for the limitation of the voting rights of an acquirer in breach of an ownership ceiling, as such limitation may only be provided by law. However, ownership ceilings may be included in Shareholders' Agreements.

It should be noted, however, that specific rules apply to airlines companies in connection with their right to operate specific airline routes. Such rules are not addressed in this study.

Short form answer:

<input checked="" type="checkbox"/> No (Clear Situation)

2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.**

The applicable rules are article L.228-23 of the Commercial Code and article 231-6 of the RG AMF
The prohibition is implicit.

Short form answer:

<input checked="" type="checkbox"/> Law	<input checked="" type="checkbox"/> Binding Rule	Article L. 228-23 of the Commercial Code
<input checked="" type="checkbox"/> Regulatory Authority Rules	<input checked="" type="checkbox"/> Binding Rule	Article 231-6 of the RG AMF.

Other questions not applicable.

²³⁶ Article 231-6 of the RG AMF.

²³⁷ Article L.228-23 of the Commercial Code.

SUPERMAJORITY PROVISIONS

1) Is this CEM available?

There is no specific Law that authorizes or prohibits supermajority provisions. It is generally considered that majority rules are a matter of public order and that supermajority provisions are not available.²³⁸

However, there are dissenting opinions and there is no case law on this issue.²³⁹ Although we are not aware of any listed company having included supermajority provisions in its bylaws, it may not be completely ruled out that such provisions could be held lawful.

Short form answer:

<input checked="" type="checkbox"/> Unclear Situation	The Unclear Situation is one of the following types: <input checked="" type="checkbox"/> Untested Situation
-------------------------------------------------------	----------------------------------------------------------------------------------------------------------------

2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.

Articles L. 225-96 and L. 225-98, which set majority rules for extraordinary and ordinary general meetings, are generally considered to be a matter of public order.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	Article L. 225-96 Commercial Code
------------------------------------------	--------------------------------------------------	-----------------------------------

3) If this CEM is available, is it subject to any restrictions?

If this CEM were considered lawful, it would probably be subject to certain limitations (for instance, regarding removal of directors).

4) Who decides whether this CEM should be implemented, and under what conditions?

If this CEM were considered to be lawful, it would be implemented by an extraordinary general meeting.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input checked="" type="checkbox"/> Quorum: one quarter on first notice. One fifth on second notice. <input checked="" type="checkbox"/> Majority: majority of the two third of the shareholders present or represented.
-------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

²³⁸ *Jurisclasseur Sociétés Traité*, Shareholders' Meetings, Fascicle 136-35 n° 173 and *Memento Lefebvre Sociétés commerciales*, n° 11089.

²³⁹ Yves Guyon. *Rép.Sociétés Dalloz*, Shareholders' Meetings n° 168.

Specific conditions:

Specific requirements when deciding to implement the CEM:

The following disclosure requirements apply: filing of the bylaws and information to shareholders.

5) Are there ongoing disclosure requirements regarding such CEM?

If it were considered lawful, this CEM would have to be included in the bylaws.

The amended bylaws must be filed with the court of commerce.

The annual report must contain information on the rules applicable to the designation and removal of board members and amendments to the bylaws.²⁴⁰

6) When a CEM is implemented, on what substantive grounds may such decision be challenged?

If the CEM were considered lawful, such decision could be challenged if it is taken with the sole intent to favor the interest of the majority shareholders against the minority shareholders and the corporate interest.²⁴¹ The corporate interest is not legally defined but it is generally admitted that it is distinct from the sole interest of the shareholders.

Short form answer:

The decision to implement the CEM is with the sole intent to favor the interest of the majority shareholders against the minority shareholders and the corporate interest (defined as being distinct from the sole interest of shareholders).

²⁴⁰ Article L. 225-100-3 of the Commercial Code.

²⁴¹ Precedent set in 1961 by the Highest French Court (Cass. Com. April 18, 1961: D 1961, 661) and constantly applied since then.

GOLDEN SHARES

1) **Is this CEM available?**

Golden Shares were introduced in French Law in 1986 for a specified list of privatized companies. They currently remain only in a very limited number of French companies. For instance, they may provide the right for the State to appoint one board member.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	Clear, even if not frequent.
-----------------------------------------------------------	------------------------------

2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.**

Golden Shares were introduced in French Law by the Privatizations Law of August 6th, 1986.

Short form answer:

<input checked="" type="checkbox"/> Laws and Administrative Rules	<input checked="" type="checkbox"/> Binding Rule	Article 10 of Law 86-912 of August 6 th , 1986.
<input checked="" type="checkbox"/> Court Decisions		There is a decision of the European Court of Justice of June 4 th , 2002 invalidating a Golden Share held by the State in the company TotalFinaElf. ²⁴²

3) **If this CEM is available, is it subject to any restrictions?**

The limitations to the Golden Shares are instituted by the Decrees creating them. They mainly refer to national interest.

Short form answer:

<input checked="" type="checkbox"/> Others: In-built restrictions	The limitations to Golden Shares are set out by the Decrees implementing them.
-------------------------------------------------------------------	--------------------------------------------------------------------------------

²⁴² This study does not address the impact of ECJ decisions on the availability of Golden Shares in France.

4) Who decides whether this CEM should be implemented, and under what conditions?

Golden Shares are attributed to the State bylaws which are implemented by specific Administrative Rules.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Other: Laws and Administrative Rules.

Specific conditions:

Specific requirements when deciding to implement the CEM:

<input checked="" type="checkbox"/> Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.): Disclosure in the annual report of the company.

5) Are there ongoing disclosure requirements regarding such CEM?

The amended bylaws must be filed with the court of commerce and the amendment must be published in a legal gazette.

The annual report must contain information on the capital structure of the company (including details on the rights and obligations attaching to its shares), direct and indirect shareholdings that have been notified to the company,²⁴³ the identity of holders of securities with special control rights (together with a description of those rights), and restrictions on voting rights and transfer of shares contained in the by-laws.²⁴⁴

Listed companies must also file with the AMF, on a monthly basis, the total number of voting rights and the number of shares that make up the company's capital. This information has to be published and posted on the company's website.²⁴⁵

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure to be made on a yearly basis.
-----------------------------------------	------------------------------------------------------------------------------

6) When a CEM is implemented, on what substantive grounds may such decision be challenged?

Implementation of the Golden Shares by the State would be subject to review by the French administrative Courts for compliance with all applicable laws and regulations including European Law.

²⁴³ When such notifications are made pursuant to articles L. 233-7 and L. 233-12 of the Commercial Code.

²⁴⁴ Article L. 225-100-3 of the Commercial Code.

²⁴⁵ Article L. 233-7 of the Commercial Code and article 223-16 of the RG AMF.

PARTNERSHIPS LIMITED BY SHARES

1) **Is this CEM available?**

Partnerships limited by shares take the form of *sociétés en commandite par actions* (“SCA”), which combine rules regarding joint-stock companies and limited partnerships. Members of the SCA are either unlimited partners (with unlimited liability) or shareholders (whose liability is limited to their contribution). There must be at least one unlimited partners and at least three shareholders. SCAs are managed by one or several managers, who may be unlimited partners (which is the most common case) or third parties. They have a supervisory board composed of at least three shareholders. Unlimited partners may not be members of the supervisory board.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)

2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.**

SCAs are authorized by Articles L. 226-1 to L. 226-14 of the Commercial Code.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	Articles L. 226-1 to 226-14 Commercial Code.
------------------------------------------	--------------------------------------------------	----------------------------------------------

3) **If this CEM is available, is it subject to any restrictions?**

SCAs are not subject to specific restrictions.

4) **Who decides whether this CEM should be implemented, and under what conditions?**

An SCA is a corporate form selected by the founding shareholders. The transformation of a joint-stock company into an SCA requires the approval of the extraordinary general meeting of shareholders and the unanimous consent of shareholders becoming unlimited partners. Moreover, when a listed company is transformed into an SCA, those who controlled it prior to the conversion or the new unlimited partners must launch a minority buy-out.²⁴⁶

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input checked="" type="checkbox"/> Quorum: one quarter on first notice. One fifth on second notice
	<input checked="" type="checkbox"/> Majority: majority of the two third of the shareholders

²⁴⁶

Article 236-5 of the RG AMF provides that: “When a public limited company (*société anonyme*) whose equity securities are admitted to trading on a regulated market is converted into a limited partnership limited by shares (*société en commandite par actions*), those who controlled it prior to the conversion, or the unlimited partners, are required to file a minority buyout offer, upon adoption by the general meeting of shareholders of a resolution deciding such conversion. The offer may not include a minimum acceptance condition and must be drawn up in terms that may be declared compliant by the AMF.”

	present or represented and unanimous consent of shareholders becoming unlimited partners.
<input checked="" type="checkbox"/> Other: The founding shareholders	

Specific conditions:

Specific requirements when deciding to implement the CEM: <input checked="" type="checkbox"/> Specific disclosure requirements: Filing of the bylaws and publication in a legal gazette. <input checked="" type="checkbox"/> Special report to shareholders, prepared by the management. <input checked="" type="checkbox"/> Statutory auditors must issue a special report.	Specific rights of minority shareholders when the CEM is implemented: <input checked="" type="checkbox"/> Obligation to launch a minority buy-out
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------

5) Are there ongoing disclosure requirements regarding such CEM?

The annual report must contain information on the capital structure of the company (including details on the rights and obligations attaching to its shares), direct and indirect shareholdings that have been notified to the company,²⁴⁷ the identity of holders of securities with special control rights (together with a description of those rights), and restrictions on voting rights and transfer of shares contained in the by-laws.²⁴⁸

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure to be made on a yearly basis.
-----------------------------------------	------------------------------------------------------------------------------

6) When a CEM is implemented, on what substantive grounds may such decision be challenged?

The SCA may be challenged on the grounds that it was not properly formed. However, in most cases this action would be very unlikely to succeed. The transformation of a stock company into a Partnership Limited by Shares may be challenged if such decision is with the sole intent to favor the interest of the majority shareholders against the minority shareholders and the corporate interest.²⁴⁹ The corporate interest is not legally defined but it is generally admitted that it is distinct from the sole interest of the shareholders.

²⁴⁷ When such notifications are made pursuant to articles L. 233-7 and L. 233-12 of the Commercial Code.

²⁴⁸ Article L. 225-100-3 of the Commercial Code.

²⁴⁹ Precedent set in 1961 by the Highest French Court (Cass. Com. April 18, 1961: D 1961, 661) and constantly applied since then.

Short form answer:

The decision to implement the CEM is with the sole intent to favor the interest of the majority shareholders against the minority shareholders and the corporate interest (defined as being distinct from the sole interest of shareholders).

CROSS-SHAREHOLDINGS

1) Is this CEM available?

Cross-shareholdings are specifically authorized.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)

2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.

Cross-shareholdings are governed by Articles L. 233-29 to L. 233-31 of the Commercial Code.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	Articles L. 233-29 to L. 233-31 of the Commercial Code.
------------------------------------------	--------------------------------------------------	---------------------------------------------------------

3) If this CEM is available, is it subject to any restrictions?

To determine the restrictions applicable to cross-shareholdings in France, three situations need to be distinguished:

- (i) Basic Cross-Shareholding: A joint-stock company may not own shares in another company, whatever its type, if such other company holds more than 10% of the joint-stock company's capital.²⁵⁰ In addition, a company other than a joint-stock company may not hold shares issued by a joint-stock company, if such joint-stock company holds more than 10% of the former company's capital.²⁵¹
- (ii) Direct Control Cross-Shareholding: If a company directly controls another company, the shares held by the controlled company in the controlling company are deprived of their voting rights.²⁵² It should be noted that if the controlling company holds more than 10% of the controlled company's capital, rules regarding Basic Cross-Shareholding are applicable: the controlled company shall not be authorized to hold shares of the controlling company.
- (iii) Indirect Control Cross-Shareholding: If a company indirectly controls another company, the shares held by the controlled company in the controlling company are deprived of their voting rights.²⁵³ In this situation, rules regarding Basic Cross-Shareholding are not applicable.

In addition, it is prohibited for a company (Company A) to purchase another company's shares (Company B shares) on behalf of Company B.²⁵⁴

²⁵⁰ Article L. 233-29 of the Commercial Code.

²⁵¹ Article L. 233-30 of the Commercial Code.

²⁵² Article L. 233-31 of the Commercial Code.

²⁵³ Article L. 233-31 of the Commercial Code.

²⁵⁴ Article 225-206 II of the Commercial Code.

Short form answer:

<input checked="" type="checkbox"/> Basis Cross-Shareholding	Up to the limit of 10%.
<input checked="" type="checkbox"/> Direct Control Cross-Shareholding	If the control is based on (or associated with) ownership by the controlling company of more than 10% of the controlled company's capital: prohibited. Otherwise, shares held by the controlled company in the controlling company are deprived of their voting rights.
<input checked="" type="checkbox"/> Indirect Control Cross-Shareholding	Shares held by the controlled company in the controlling company are deprived of their voting rights.

4) Who decides whether this CEM should be implemented, and under what conditions?

This CEM may be implemented by the General Manager.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the General Manager	<input checked="" type="checkbox"/> Autonomous decision.
---------------------------------------------------------------------	----------------------------------------------------------

Specific conditions:

Specific requirements when deciding to implement the CEM: <input checked="" type="checkbox"/> Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.): Usual disclosure requirements for crossing shareholding thresholds.

5) Are there ongoing requirements regarding such CEM:

The annual report must contain information on the capital structure of the company (including details on the rights and obligations attaching to its shares), direct and indirect shareholdings that have been notified to the company,²⁵⁵ the identity of holders of securities with special control rights (together with a description of those rights), and restrictions on voting rights and transfer of shares contained in the by-laws.²⁵⁶

Listed companies must also file with the AMF, on a monthly basis, the total number of voting rights and the number of shares that make up the company's capital. This information has to be published and posted on the company's website.²⁵⁷

²⁵⁵ When such notifications are made pursuant to articles L. 233-7 and L. 233-12 of the Commercial Code.

²⁵⁶ Article L. 225-100-3 of the Commercial Code.

²⁵⁷ Article L. 233-8 of the Commercial Code and article 223-16 of the RG AMF.

Any individual or legal entity, acting alone or in concert, that becomes the owner, directly or indirectly, of more than 5%, 10%, 15%, 20%, 25%, 33.33%, 50%, 66.66%, 90% or 95% of the outstanding shares or voting rights of a French listed company (or that falls below any of such thresholds), must notify this company and the AMF, within five trading days of such event, of the number of shares (and, if applicable, of securities giving access directly or indirectly to shares) it holds and the voting rights attached to such shares and securities. The AMF makes this information public.²⁵⁸

An individual or legal entity acquiring more than 10% or 20% of the outstanding shares or voting rights of a French listed company is subject to additional reporting requirements: it has to notify the company and the AMF, within ten trading days of the date it crosses the applicable threshold, of its intentions for the following 12-month period. The acquirer must specify, *inter alia*, whether it intends to continue its purchases, to acquire a controlling interest in the company or to seek nominations to the board of directors and whether it is acting alone or in concert. The AMF makes the notice public. The acquirer may amend its stated intentions, provided that it does so on the basis of significant changes. Upon any change of intention, it must file a new report.²⁵⁹

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure to be made by the company on a monthly and yearly basis.
	<input checked="" type="checkbox"/> Disclosure required by shareholders crossing certain specified thresholds.

6) When a CEM is implemented, on what substantive grounds may such decision be challenged?

Such decision may be challenged if it is taken with the sole intent to favor the interest of the majority shareholders against the minority shareholders and the corporate interest.²⁶⁰ The corporate interest is not legally defined but it is generally admitted that it is distinct from the sole interest of the shareholders.

Short form answer:

<input checked="" type="checkbox"/> The decision to implement the CEM is with the sole intent to favor the interest of the majority shareholders against the minority shareholders and the corporate interest (defined as being distinct from the sole interest of shareholders).

²⁵⁸ Article L. 233-7 of the Commercial Code and articles 223-11 *et seq.* of the RG AMF.

²⁵⁹ Article L. 233-7 of the Commercial Code and article 223-17 of the RG AMF.

²⁶⁰ Precedent set in 1961 by the Highest French Court (Cass. Com. April 18, 1961: D 1961, 661) and constantly applied since then.

SHAREHOLDERS' AGREEMENTS

1) Is this CEM available?

Shareholders' Agreements are available and are binding between the parties entering into such agreements. However, these agreements have no formal status according to the law and are not binding against third parties. Shareholders' Agreements are interpreted according to the principles of contract law.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)

2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.

Shareholders' Agreements are governed by the rules of the Civil Code applying to contracts. They may be revoked only by mutual consent, or for causes authorized by law. They must be performed in good faith. Some types of agreements that may be entered into by shareholders are specifically addressed by the Commerce Code, such as agreements including preferential conditions to buy or sell listed shares representing 0.5% or more of the capital or voting rights of the issuer.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	Article 1134 Civil code: Principle of contractual freedom. Article 233-11 of the Commerce Code
<input checked="" type="checkbox"/> Regulatory Authority Rules	<input checked="" type="checkbox"/> Binding Rule	Article 223-18 of the RG AMF.

3) If this CEM is available, is it subject to any restrictions?

Shareholders' Agreements must comply with mandatory laws (including mandatory rules regarding company law). However, for most typical uses of shareholders' agreements in listed companies, there are no significant restrictions.

It should be noted, however, that a shareholder's agreement should not direct the directors as to how they are to perform their functions, if this would lead them to act against the company's corporate interest.

The breach of a Shareholders' Agreement providing for voting right restrictions would only lead to an attribution of damages as compensation. Providing for liquidated damages in the agreement is possible, subject to judiciary review if the pre-defined amount of damages is obviously and significantly too high or too low.²⁶¹

If as a matter of principle voting agreements are often included in shareholders' agreements, their validity is subject to certain conditions: (i) the sole consideration for this type of agreement may not

²⁶¹ Article 1152 of the Civil Code.

be the payment of a sum of money,²⁶² (ii) these agreements may not lead to a vote against the corporate interest and motivated by the willingness to harm any party to the convention, and (iii) the duration of such agreements must be limited (it should be noted that if the duration is not determined, any party may terminate the agreement).

Short form answer:

<input checked="" type="checkbox"/> Director Independence	
<input checked="" type="checkbox"/> Voting Rights	

4) Who decides whether this CEM should be implemented, and under what conditions?

Shareholders' Agreements are based on contractual freedom of the shareholders.

Shareholders entering a shareholders' agreement providing for the acquisition, sale or exercise of voting rights in order to implement a common policy are considered acting in concert.²⁶³ Such shareholders must file a mandatory tender offer on all equity securities of the company if they hold more than one third of the company's outstanding share capital or voting rights.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Other: Shareholders	Autonomous decision.
---------------------------------------------------------	----------------------

Specific conditions:

Specific requirements when deciding to implement the CEM:

Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.): Agreements including preferential conditions to buy or sell listed shares representing 0.5% or more of the capital or voting rights of an issuer must be filed with such issuer and the AMF within five trading days of the execution of the agreement or any amendment thereto. The issuer and the AMF must also be informed of the date on which the clause lapses. Failure to file the agreement results in a suspension of its effects during tender offers.²⁶⁴

5) Are there ongoing disclosure requirements regarding such CEM?

The above-mentioned agreements including preferential conditions to buy or sell listed shares and any shareholders' agreement known to the company and which may restrict share transfers or voting rights must be included by the issuer in its annual report.²⁶⁵

²⁶² Such agreement would constitute a criminal offense (article L. 242-9, 3° of the French Commerce Code).

²⁶³ Article 233-10 of the Commerce Code.

²⁶⁴ Article L. 233-11 of the Commercial Code.

²⁶⁵ Article L. 225-100-3 of the Commercial Code.

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure to be made when the Shareholders' Agreement covers transfer of more than 0.5% of capital or voting rights of the issuer.
-----------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------

6) When a CEM is implemented, on what substantive grounds may such decision be challenged?

Such agreement may be challenged by its parties on the basis of French contractual rules regarding breach of contract provided in the Civil Code.²⁶⁶

Violation of disclosure requirements regarding the above-mentioned agreements including preferential conditions to buy or sell listed shares may result in a suspension of their effectiveness during tender offer periods.

Short form answer:

<input checked="" type="checkbox"/> Breach of contract.
<input checked="" type="checkbox"/> Violation of disclosure requirements.

²⁶⁶ Articles 1109 *et seqq.* of Civil Code.

B – GENERAL BACKGROUND QUESTIONS**1) What are the rules for board elections? How many corporate votes are required to appoint or remove corporate directors?**

A public limited company (“*société anonyme*”) is administered by a board of directors composed of at least three members. The bylaws stipulate the maximum permissible number of board members, which shall not exceed eighteen. The term of their office shall be determined by the bylaws but may not exceed six years.

The directors are appointed by the shareholders’ ordinary general meeting. All decisions of the ordinary general meeting may be validly deliberated when first convened only if the shareholders present or represented hold at least one fifth of the voting shares. It rules on a majority of the votes held by the shareholders present or represented. Shareholders present or represented who abstain from casting their vote are considered having voted no.

If the bylaws so provide, shareholders may participate in a meeting by video-conferencing or means of telecommunication that enable them to be identified.

The directors shall be eligible for re-election unless otherwise specified in the bylaws. They may be dismissed at any time by the ordinary shareholders’ meeting. The meeting may deliberate on the directors’ appointment only if it is on the agenda. It may nevertheless remove one or more directors or supervisory board members from office and replace them, in any circumstances²⁶⁷ even if such decision is not in the agenda.²⁶⁸ Board members may always be removed without cause, without notice, although they must be given an opportunity to defend themselves, and without indemnities (“*ad nutum*” revocation). A director may be temporarily co-opted by the board of directors in the event a director died or resigned; such cooptation has to be ratified by the next general meeting of shareholders.

Regarding joint-stock companies with supervisory boards (“*conseil de surveillance*”), the following rules apply: the members of the executive board (“*directoire*”), who may not be more than seven, are appointed by the supervisory board and dismissed by the general meeting of shareholders. Such dismissal may give right to indemnification if it is not for cause.²⁶⁹

Moreover, it is strictly prohibited for a director to enter into an employment agreement with the company. The violation of such a principle would render the agreement entered into void. It is however possible for a company’s employee to be elected as a director if the employment agreement existed prior to the nomination as a director and if it relates to an effective employment. This possibility is nevertheless limited by the fact that the number of directors already having an employment agreement with the Company may not exceed 1/3 of the existing directors. If the employment agreement was duly executed by the director, the latter may be awarded damages corresponding to its functions upon his dismissal, but only if the compensation is moderate.

²⁶⁷ Articles L. 225-17 *et seq.* of Commercial Code.

²⁶⁸ Article L. 225-105 Commercial Code provides that the meeting of shareholders cannot deliberate on an item which is not on the agenda; it may nevertheless remove one or more directors or supervisory board members from office and replace them in any circumstances.

²⁶⁹ Articles L. 225-58 *et seq.* of the Commercial Code.

Short form answer:

<p><input checked="" type="checkbox"/> Majority required for board election: Enhanced simple majority. For board removal: Enhanced simple majority. Quorum required for shareholders' meetings proceeding with the election or removal of board members. On first notice: one fifth of the voting shares detained by the shareholders present or represented. On second notice: no quorum is required.</p>	<p><input checked="" type="checkbox"/> Board members may be revoked during any shareholders' meeting. <input checked="" type="checkbox"/> Board members may always be removed cumulatively without cause, without notice and without indemnities (<i>ad nutum</i> revocation).</p>
<p><input checked="" type="checkbox"/> Electronic voting is authorized; but not mandatory.</p>	<p><input checked="" type="checkbox"/> Minority shareholders are entitled to require a general meeting of shareholders to be convened: the general meeting may be convened by a representative appointed by the Court, on an application by one or more shareholders who together hold more than 5% of the outstanding share capital, or by an association of shareholders.</p> <p>The necessary percentage of the outstanding share capital in order for a shareholder to add an item to the agenda is 5% if the outstanding share capital is less than 750.000 euros (article L.225-105 of the French Commercial Code). If the outstanding share capital is more than 750.000 euros, the necessary percentage is calculated according to decreasing thresholds: 4% for the 750.000 first euros, 2.5% if the outstanding share capital is between 750.000 and 7.500.000 euros; 1% if the outstanding share capital is between 7.500.000 and 15.000.000 euros and 0.5% if the outstanding share capital is above 15.000.000 euros.</p> <p><input checked="" type="checkbox"/> Proxy solicitation is authorized. The effectiveness of proxy solicitation is limited by the fact that the proxy solicitor has no access to the name and contact details of holders of bearer shares.</p>

2) **What shareholders' decisions require a vote from more than a simple majority?**

The following Shareholders' decisions require a majority of two-thirds of the votes held by the shareholders present or represented:

- Amending any provision of the bylaws;
- Changing the domicile of the company;
- Issuing, redeeming or converting shares;
- Approving the valuation of contributions and the grant of special privileges;
- Removing the preferential subscription right for a capital increase;
- Changing the corporate purpose;

- Approving a capital increase;
- Approving a merger or split-off;
- Winding up the affairs of the company;
- Capital reduction.

Decisions to change the nationality of a company or to increase the liability of shareholders require a unanimous consent.

Short form answer:

<input checked="" type="checkbox"/> All changes in bylaws.	<input checked="" type="checkbox"/> Change of nationality of the company.
<input checked="" type="checkbox"/> Issuance of shares.	<input checked="" type="checkbox"/> Change of corporate purpose.
<input checked="" type="checkbox"/> Mergers.	



PROPORTIONALITY BETWEEN OWNERSHIP AND CONTROL IN EU LISTED COMPANIES:
EXTERNAL STUDY COMMISSIONED BY THE EUROPEAN COMMISSION

**PROPORTIONALITY BETWEEN OWNERSHIP AND CONTROL
IN EU LISTED COMPANIES:**

COMPARATIVE LEGAL STUDY

IRELAND

MCCANN FITZGERALD

Riverside One
Sir John Rogerson's Quay
Dublin 2
Tel: +353-1-829 0000
Fax: +353-1-829 0010
Email: inquiries@mccannfitzgerald.ie
www.mccannfitzgerald.ie

Reviewed by:

Irene Lynch Fannon

Professor Dr. Bcl(nui) bcl(oxon.) Sjd (university of Virginia) Solicitor, Department of law
University College Cork, Ireland

MULTIPLE VOTING RIGHTS SHARES

1) Is this CEM available?

Section 134 of the Irish Companies Act, 1963 provides that, unless the articles of association of a company otherwise provide, every shareholder shall have one vote per share. The articles of association of an Irish-incorporated company may, therefore, confer different voting rights on different classes of shares, either generally or in specified circumstances. The standard form Articles of Association envisage this. Shares may be issued which carry multiple voting rights either generally or in specified circumstances. However, in the case of a class of shares for which listing is sought, all the shares of the class should carry the same voting rights. The listing particulars should indicate, where relevant, if the shares are non-voting or have limited or restricted voting rights.

Note the general regulatory framework in Irish company law is based on the 'principal act' of 1963 which has been amended on a number of occasions, most recently by the 2006 Investment Funds, Companies and Miscellaneous Provisions Act. Significant legislation was passed in 1990. In the context of the issues raised in this survey the 1983 Companies Act is significant. Generally the legislation is referred to as the Companies Acts 1963-2006. A consolidating act is contemplated for late 2007/2008.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	The articles of association of an Irish-incorporated company may confer different voting rights on shares, either generally or in specified circumstances.
-----------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------

2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.

Section 134 of the Irish Companies Act, 1963 contemplates that the articles of association of an Irish-incorporated company may confer different voting rights on classes of shares.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	Section 134 of the Companies Act, 1963 allows the articles of association to depart from the one share-one vote principle.
<input checked="" type="checkbox"/> Stock Exchange Rules	<input checked="" type="checkbox"/> Binding Rule	

3) If this CEM is available, is it subject to any restrictions?

There is no statutory maximum or minimum number of votes which may be attached to shares or any mandatory Breakthrough Rule which would restrict the exercise of multiple voting rights.

It should be noted that, while Ireland has implemented the Takeover Directive, it has, in accordance with article 12 of that directive, opted to disapply the Breakthrough Rule which is provided for in article 11 of that directive. However, as required by article 12, the Irish implementing regulations include opt-in provisions, and, for Irish companies which opt to avail of those provisions, multiple voting rights shares in the capital of such companies would be subject to the restrictions in article 11, so that in a bid situation, those shares will have only one vote per share at an article 9 defensive measures meeting and at an article 11(4) meeting.

The exercise of voting rights may be restricted or suspended in certain other circumstances. These circumstances are not unique to shares carrying multiple voting rights, but potentially apply to the exercise of any voting rights attached to shares (whether multiple or not). For example, the exercise of voting rights attached to shares in a public limited company may be affected by a failure properly to notify the acquisition of a notifiable interest (5% plus) in the company, (Companies Act, 1990). The articles of association of a company may also include provisions for suspension of voting rights in certain circumstances, e.g., failure to respond to a disclosure notice to ascertain ownership of shares.

Short form answer:

<input checked="" type="checkbox"/> Application of a Breakthrough Rule	Subject to opt-in by the relevant company
------------------------------------------------------------------------	-------------------------------------------

4) Who decides whether this CEM should be implemented, and under what conditions?

The relevant shares may be part of the capital structure on incorporation of the company or may be included after incorporation by special resolution of the shareholders (passed either in general meeting or by written resolution signed by all shareholders entitled to attend and vote at general meetings). In the latter situation, the directors must be authorized (by ordinary resolution or in the Articles of Association) by the shareholders to issue the new shares. S. 20 1983 Companies Act provides *inter alia* that the authority to issue shares must not exceed a five year period. If the shares constitute equity shares and are to be issued for cash, a special resolution or appropriate provision in the articles to disapply statutory pre-emption rights on new equity issues for cash would be required under s. 23 of the 1983 Act. Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the Board of Directors	<input checked="" type="checkbox"/> Upon authorization of the shareholders	
<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input checked="" type="checkbox"/> Quorum: Quorum depends on the articles of association of the company. The optional, model form of articles set out in the Companies Act, 1963 for public limited companies provides that 3 members present in person shall be a Quorum. For the second call, the members who are present are the quorum. <input checked="" type="checkbox"/> Majority: Affirmative vote of 75% of the votes cast by those present and voting at the meeting.	If the shareholders may authorize the Board or the Chairman or GM to implement the CEM: <input checked="" type="checkbox"/> For how long would the authorization be valid (maximum duration): Under the legislation, the authority may last for up to 5 years, but may be renewed. For listed companies, Irish institutional guidelines require listed companies to obtain shareholder approval annually for a special resolution to disapply statutory pre-emption rights and lay down limits on the annual disapplication (5% of the then issued equity share capital).
<input checked="" type="checkbox"/> Other: Shareholders/upon incorporation		

Specific conditions:

Specific requirements when deciding to implement the CEM:

- Circular to shareholders prepared by the company convening a general meeting to pass resolutions to implement the CEM and to authorize the directors to issue the shares.
- Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.): Copies of resolutions to be filed in the Companies Registration Office.

5) Are there ongoing disclosure requirements regarding such CEM?

The voting rights attached to the shares should be contained in the articles of association, which will be publicly available in the Irish Companies Registration Office – the central official registry for Irish incorporated companies. Copies of the resolutions creating the shares and authorizing their issue free from statutory pre-emption rights also need to be filed in the Companies Registration Office. In addition, in the case of a listed company, regulation 21 of the European Communities (Takeover Bids (Directive 2004/25/EC)) Regulations 2006, the directors' annual report must contain information on the capital structure of the company, including the rights and obligations attached to its shares, the identity of persons holding shares carrying special rights with regard to control of the company together with the nature of the rights, details of any restrictions on voting rights (including limitations on voting rights of holders of a given percentage or number of shares, deadlines for exercising voting rights).

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure to be made annually in the case of a listed company, setting out the information outlined above. <input checked="" type="checkbox"/> The following disclosure requirements apply: - Filing of Articles of Association; - Specific Filing; - Information to shareholders; - Admission documentation; - Annual Report; - Article 10 Report.
-----------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

6) When a CEM is implemented, on what substantive grounds may such decision be challenged?

If shares with multiple voting rights are included in the capital structure on incorporation of the company or are subsequently included in the capital structure by a duly passed special resolution, and those shares are subsequently duly issued, it would be very difficult to challenge the decision to implement this CEM. It is, in theory, possible for other shareholders affected to allege that their rights have been varied or abrogated as a result of the issue of the shares, but it is difficult to make a case on this basis. In any event, the risk of a variation or abrogation can be dealt with by obtaining appropriate shareholder class consents in advance. It is also possible, in theory, that the exercise of multiple voting rights might be challenged by another shareholder as constituting oppression under section 205 of the Companies Act, 1963. Section 205 allows a shareholder to apply to the Irish High Court for a range of remedies where it can be shown that the affairs of the company are being conducted or that the powers of the directors are being exercised in a manner oppressive to that shareholder or any shareholders (including that shareholder) or in disregard of their interests as members. Under Irish law, shareholders are entitled to vote their shares in their own interest and do

not (except, possibly, on certain class resolutions) have a duty to act in the interest of other shareholders. It would therefore be difficult to prove oppression in practice in these circumstances.

In the case of a listed company, the allotment or issue of such shares or the granting of options in respect of such shares during the course of an offer or at any earlier time at which the target company has reason to believe that an offer may be imminent may constitute prohibited frustrating action under rule 21 of the Irish Takeover Rules and, accordingly, may not take place except as permitted by rule 21.

Short form answer:

<p><input checked="" type="checkbox"/> The decision to implement might be challenged as a variation or abrogation of class rights.</p> <p><input checked="" type="checkbox"/> The decision to implement might be challenged as giving rise to oppression of shareholders.</p>	<p><input checked="" type="checkbox"/> The decision to implement may constitute prohibited frustrating action under the Irish Takeover Rules in the case of a listed company.</p> <p><input checked="" type="checkbox"/> Such grounds are alternative.</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

NON-VOTING SHARES

1) Is this CEM available?

Section 134 of the Irish Companies Act, 1963 provides that, unless the articles of association of a company otherwise provide, every shareholder shall have one vote per share. The articles of association of an Irish-incorporated company may, therefore, provide that a particular class of share shall carry no voting rights. Such shares may be preference shares or shares which carry no special dividend or capital rights. Although ordinary shares listed on the Irish Stock Exchange will almost invariably carry voting rights, it is not a requirement for listing that shares carry voting rights. However, in the case of a class of shares for which listing is sought, all the shares of the class should carry the same voting rights. The listing particulars should indicate, where relevant, if the shares are non-voting or have limited or restricted voting rights. The ordinary share capital (or other share capital constituting the equity capital) of a company will usually carry voting rights

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)

2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.

Section 134 of the Irish Companies Act, 1963 provides that, unless the articles of association of a company otherwise provide, every shareholder shall have one vote per share. The articles of association of an Irish-incorporated company may, therefore, confer different voting rights on shares, either generally or in specified circumstances, or may provide that the shares shall carry no voting rights.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule
<input checked="" type="checkbox"/> Stock Exchange Rules	<input checked="" type="checkbox"/> Binding Rule

3) If this CEM is available, is it subject to any restrictions?

There is no statutory restriction on a company's ability to issue non-voting shares.

We do not consider that non-voting shares benefit from the breakthrough provisions in article 11 of the Takeover Directive. In any event, it should be noted that, while Ireland has implemented that directive, it has, in accordance with article 12 of that directive, opted to disapply the Breakthrough Rule which is provided for in article 11 of that directive.

4) Who decides whether this CEM should be implemented, and under what conditions?

The relevant shares may be part of the capital structure on incorporation of the company or may be included after incorporation by special resolution of the shareholders (passed either in general meeting or by written resolution signed by all shareholders entitled to attend and vote at general meetings). In the latter situation, the directors would need to be authorized (by ordinary resolution) by the shareholders to issue the shares. If the shares constitute equity shares and are to be issued for cash, a special resolution or appropriate provision in the articles to disapply statutory pre-emption rights on new equity issues for cash would be required under the 1983 Companies Act.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the Board of Directors	<input checked="" type="checkbox"/> Upon authorization of the shareholders.	
<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input checked="" type="checkbox"/> Quorum: Quorum depends on the articles of association of the company. The optional, model form of articles set out in the Companies Act, 1963 for public limited companies provides that 3 members present in person shall be a quorum. For the second call, the members who are present are the quorum. <input checked="" type="checkbox"/> Majority: Affirmative vote of 75% of the votes cast by those present and voting at the meeting.	<p>If the shareholders may authorize the Board or the Chairman or GM to implement the CEM:</p> <input checked="" type="checkbox"/> For how long would the authorization be valid (maximum duration): Under the legislation, the authority may last for up to 5 years, but may be renewed. For listed companies, Irish institutional guidelines require listed companies to obtain shareholder approval annually for a special resolution to disapply statutory pre-emption rights and lay down limits on the annual disapplication (5% of the then issued equity share capital). <input checked="" type="checkbox"/> Article 9 Confirmation.
<input checked="" type="checkbox"/> Other: Shareholders/upon incorporation		

Specific conditions:

<p>Specific requirements when deciding to implement the CEM:</p> <input checked="" type="checkbox"/> Circular to shareholders prepared by the company convening a general meeting to pass resolutions to implement the CEM and to authorize the directors to issue the shares. <input checked="" type="checkbox"/> Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.): Copies of resolutions to be filed in the Companies Registration Office.

5) Are there ongoing disclosure requirements regarding such CEM?

The voting rights, if any, attached to shares in a company should be contained in the articles of association of the company, which will be publicly available in the Irish Companies Registration Office – the central official registry for Irish incorporated companies. In addition, in the case of a listed company, regulation 21 of the European Communities (Takeover Bids (Directive 2004/25/EC))

Regulations 2006, the directors' annual report must contain information on the capital structure of the company, including details of the rights and obligations attaching to its shares.

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure to be made annually in the case of a listed company, setting out the information outlined above. <input checked="" type="checkbox"/> The following disclosure requirements apply: - Filing of Articles of Association; - Specific Filing; - Information to shareholders; - Admission documentation; - Annual Report; - Article 10 Report.
-----------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

6) When a CEM is implemented, on what substantive grounds may such decision be challenged?

If non-voting shares are included in the capital structure on incorporation of the company or are subsequently included in the capital structure by a duly passed special resolution, and those shares are subsequently duly issued, it would be very difficult to challenge the decision to implement this CEM. Given that the shares do not carry any votes and no special cash-flow rights, it is difficult to see how the decision could be successfully challenged by other shareholders on the grounds of variation or abrogation of class rights, oppression or otherwise.

In the case of a listed company, the allotment or issue of such shares or the granting of options in respect of such shares during the course of an offer or at any earlier time at which the target company has reason to believe that an offer may be imminent may constitute prohibited frustrating action under rule 21 of the Irish Takeover Rules (implementing Article 9 of the Takeover Directive) and, accordingly, may not take place except as permitted by rule 21.

Short form answer:

<input checked="" type="checkbox"/> Decision to implement may constitute frustrating action in the case of a listed company under rule 21 of the Irish Takeover Rules. <input checked="" type="checkbox"/> No obvious substantive ground for challenge by other shareholders in other circumstances.

NON-VOTING PREFERENCE SHARES

1) Is this CEM available?

Section 134 of the Irish Companies Act, 1963 provides that, unless the articles of association of a company otherwise provide, every shareholder shall have one vote per share. The articles of association of an Irish-incorporated company may, therefore, provide that a particular class of share shall carry no voting rights. Such shares may be preference shares or shares which carry no special dividend or capital rights. It is not a requirement for listing on the Irish Stock Exchange that shares carry voting rights. The listing particulars should indicate, where relevant, if the shares are non-voting or have limited or restricted voting rights.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)

2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.

Section 134 of the Irish Companies Act, 1963 provides that, unless the articles of association of a company otherwise provide, every shareholder shall have one vote per share. The articles of association of an Irish-incorporated company may, therefore, confer different voting rights on shares, either generally or in specified circumstances, or may provide that the shares shall carry no voting rights. Generally under the law relating to meetings, in private companies the voting will usually be conducted on the basis of a show of hands until a poll is demanded. The conditions for demanding a poll are described in s. 137 of the 1963 Act. Once this occurs voting will take place on the basis of the number of votes attaching to each share which may be one share one vote or may be otherwise as described.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule
<input checked="" type="checkbox"/> Stock Exchange Rules	<input checked="" type="checkbox"/> Binding Rule

3) If this CEM is available, is it subject to any restrictions?

There is no statutory restriction on a company's ability to issue non-voting preference shares.

On the basis that the lack of voting rights is compensated for by special cash-flow rights, we do not consider that non-voting preference shares benefit from the breakthrough provisions in article 11 of the Takeover Directive. In any event, it should be noted that, while Ireland has implemented that directive, it has, in accordance with article 12 of that directive, opted to disapply the breakthrough rule which is provided for in article 11 of that directive.

4) Who decides whether this CEM should be implemented, and under what conditions?

It is possible to include in the Articles of Association a provision authorizing the issuance of NVP Shares without any time limit (authorized capital).

This would be subject to the available authorized capital of the Company from time to time.

There is indeed a notion of "authorized capital" under Irish law: it is similar to UK law in this respect.

The relevant shares may be part of the capital structure on incorporation of the company or may be included after incorporation by special resolution of the shareholders (passed either in general meeting or by written resolution signed by all shareholders entitled to attend and vote at general meetings). In the latter situation, the directors would need to be authorized (by ordinary resolution) by the shareholders to issue the shares. If the shares constitute equity shares and are to be issued for cash, a special resolution or appropriate provision in the articles to disapply statutory pre-emption rights on new equity issues for cash would be required.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the Board of Directors	<input checked="" type="checkbox"/> Upon authorization of the shareholders based on the authorized capital (subject to available authorized capital of the company from time to time)	
<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<input checked="" type="checkbox"/> Quorum: Quorum depends on the articles of association of the company. The optional, model form of articles set out in the Companies Act, 1963 for public limited companies provides that 3 members present in person shall be a Quorum. For the second call, the members who are present are the quorum. <input checked="" type="checkbox"/> Majority: Affirmative vote of 75% of the votes cast by those present and voting at the meeting.	<p>If the shareholders may authorize the Board or the Chairman or GM to implement the CEM:</p> <input checked="" type="checkbox"/> For how long would the authorization be valid (maximum duration): Under the legislation, the authority may last for up to 5 years, but may be renewed. For listed companies, Irish institutional guidelines require listed companies to obtain shareholder approval annually for a special resolution to disapply statutory pre-emption rights and lay down limits on the annual disapplication (5% of the then issued equity share capital).
<input checked="" type="checkbox"/> Other: Shareholders/upon incorporation		

Specific conditions:

<p>Specific requirements when deciding to implement the CEM:</p> <input checked="" type="checkbox"/> Circular to shareholders prepared by the company convening a general meeting to pass resolutions to implement the CEM and to authorize the directors to issue the shares. <input checked="" type="checkbox"/> Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.): Copies of resolutions to be filed in the Companies Registration Office.

5) Are there ongoing disclosure requirements regarding such CEM?

The voting rights, if any, attached to shares in a company should be contained in the articles of association of the company, which will be publicly available in the Irish Companies Registration Office – the central official registry for Irish incorporated companies. In addition, in the case of a

listed company, regulation 21 of the European Communities (Takeover Bids (Directive 2004/25/EC)) Regulations 2006, the directors' annual report must contain information on the capital structure of the company, including details of the rights and obligations attaching to its shares.

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure to be made annually in the case of a listed company, setting out the information outlined above. <input checked="" type="checkbox"/> The following disclosure requirements apply: - Filing of Articles of Association; - Specific Filing; - Information to shareholders; - Admission documentation; - Annual Report; - Article 10 Report.
-----------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

6) When a CEM is implemented, on what substantive grounds may such decision be challenged?

If non-voting preference shares are included in the capital structure on incorporation of the company or are subsequently included in the capital structure by a duly passed special resolution, and those shares are subsequently duly issued, it would be very difficult to challenge the decision to implement this CEM. It is, in theory, possible for other shareholders affected to allege that their rights have been varied or abrogated as a result of the issue of the non-voting preference shares and by reason of the special cash-flow rights attached to them, particularly if they carry a priority in that respect over existing shares. However, it is difficult to make a case on this basis in practice. In any event, the risk of a variation or abrogation can be dealt with by obtaining appropriate shareholder class consents in advance.

In the case of a listed company, the allotment or issue of such shares or the granting of options in respect of such shares during the course of an offer or at any earlier time at which the target company has reason to believe that an offer may be imminent may constitute prohibited frustrating action under rule 21 of the Irish Takeover Rules and, accordingly, may not take place except as permitted by rule 21.

Short form answer:

<input checked="" type="checkbox"/> The decision to implement might be challenged as a variation or abrogation of class rights. <input checked="" type="checkbox"/> The decision to implement might be challenged as giving rise to oppression of other shareholders.	<input checked="" type="checkbox"/> The decision to implement may constitute prohibited frustrating action under the Irish Takeover Rules in the case of a listed company. <input checked="" type="checkbox"/> Such grounds are alternative.
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

PYRAMID STRUCTURES

1) **Is this CEM available?**

Yes. The ownership or control of a company may be either direct or through any number of companies or corporations. This is common in group company structures and is explicitly recognized in the Irish statutory definitions of “holding company” and “subsidiary” (section 155 of the Companies Act, 1963). The possibility of such ownership or control is recognized in many other provisions of Irish company law, in particular, the statutory provisions for aggregating family and connected corporate interests for the purpose of notification of interest obligations imposed on directors and substantial shareholders. The possibility is also recognized in the listing rules of the Irish Stock Exchange. It is also possible for the parent or holding company to be an unlimited company, holding shares in a limited subsidiary or number of subsidiaries. This is common in larger private family owned structures.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)

2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.**

This possibility is recognized in section 155 of the Companies Act, 1963.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	The possibility of Pyramid Structures is clearly recognized in Irish company law.
------------------------------------------	--------------------------------------------------	-----------------------------------------------------------------------------------

3) **If this CEM is available, is it subject to any restrictions?**

There are no restrictions on the use of Pyramid Structures as such. However, the establishment of a Pyramid Structure may require Irish governmental or regulatory clearances if regulated entities are included (*e.g.*, Irish licensed banks, authorized insurers, authorized investment business firms, stockbrokers, etc.). It is also possible for the parent or holding company to be an unlimited company, holding shares in a limited subsidiary or number of subsidiaries. This is common in larger private-family owned structures and is motivated in large part by less restrictive disclosure requirements applicable to unlimited companies under accounting rules.

4) **Who decides whether this CEM should be implemented, and under what conditions?**

Pyramid Structures are permitted under Irish law. Broadly speaking, the organizational structure for ownership or control of a company or companies will be a matter for the owners or controllers to determine. However, the establishment of a Pyramid Structure may require Irish governmental or regulatory clearances if regulated entities are included (*e.g.*, Irish licensed banks, authorized insurers, authorized investment business firms, stockbrokers, etc.).

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Other: Individual decisions by relevant shareholders

5) Are there ongoing disclosure requirements regarding such CEM?

Group structure details will be contained in the accounts and related reports (particularly the consolidated accounts of the companies involved). The ownership interests may also be notifiable under the notification of interest provisions of the Companies Act, 1990 (disclosure of interests in shares in public limited companies, disclosure of directors' interests, including family and connected company interests). Notification may be necessary under applicable Irish Stock Exchange Rules or to relevant Irish governmental or regulatory authorities if regulated entities are included.

In addition, in the case of a listed company, according to regulation 21 of the European Communities (Takeover Bids, Directive 2004/25/EC) Regulations 2006, the directors' annual report must contain information known to the company as to the identity and holdings of persons with significant direct or indirect holdings in the company.

Short form answer:

- Yes
- The following disclosure requirements apply:
- Admission documentation;
 - Annual Report;
 - Article 10 Report.

6) When a CEM is implemented, on what substantive grounds may such decision be challenged?

It is difficult to see a basis on which such decision may be challenged.

Short form answer:

- No obvious substantive ground for challenge.

PRIORITY SHARES

1) Is this CEM available?

Although the articles of association of the company will usually delegate management of the company's business to a board of directors, it is possible under Irish law to create and issue a share in an Irish company which grants the holder special rights, including the right to appoint or propose the appointment of persons to the board of directors. The special rights attached to the share should be set out in the articles of association of the company. These may include what are effectively veto rights on a range of transactions, *e.g.*, disposals. Such rights will usually be expressed on the basis that the specified transactions may not be carried out without the consent of the holder of the special share. They would not typically be expressed as a right to veto a decision already taken by the shareholders in general meeting.

Priority Shares may raise issues in the event of a listing on the Irish Stock Exchange. In particular, rule 3.4.5 of the listing rules provide that a company which has a controlling shareholder must be capable at all times of carrying on its business independently of that controlling shareholder. For this purpose, controlling shareholder is any person (or persons acting jointly by agreement, formal or otherwise) who is (a) entitled to exercise, or to control the exercise of, 30% or more of the right to vote at general meetings of the company or (b) able to control the appointment of directors who are able to exercise a majority of votes at board meetings of the company.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)

2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.

There is no specific prohibition in the legislation on the inclusion of Priority Shares in the share capital of a company.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	
<input checked="" type="checkbox"/> Stock Exchange Rules	<input checked="" type="checkbox"/> Binding Rule	Rule 3.4.5 of Listing Rules.

3) If this CEM is available, is it subject to any restrictions?

There is no statutory prohibition or restriction on the inclusion of Priority Shares in the share capital of a company or any mandatory Breakthrough Rule which would restrict the exercise of the rights attached to such shares. It should be noted that, while Ireland has implemented the Takeover Directive, it has, in accordance with article 12 of that directive, opted to disapply the Breakthrough Rule which is provided for in article 11 of that directive. However, as required by article 12, the Irish implementing regulations include opt-in provisions, and, for Irish companies which opt to avail of those provisions, it is possible that priority shares in the capital of such companies would be subject to the restrictions in article 11, so that in a bid situation, those shares will have only one vote per share at an article 9 defensive measures meeting and at an article 11(4) meeting.

Priority Shares may raise issues in the event of a listing on the Irish Stock Exchange. In particular, rule 3.4.5 of the listing rules provide that a company which has a controlling shareholder must be

capable at all times of carrying on its business independently of that controlling shareholder. For this purpose, controlling shareholder is any person (or persons acting jointly by agreement, formal or otherwise) who is (a) entitled to exercise, or to control the exercise of, 30% or more of the right to vote at general meetings of the company or (b) able to control the appointment of directors who are able to exercise a majority of votes at board meetings of the company.

Short form answer:

<input checked="" type="checkbox"/> Application of a Breakthrough Rule.	Subject to opt-in by the relevant company.
<input checked="" type="checkbox"/> Others: a listed company must be capable of carrying on its business independently of its controlling shareholder.	

4) **Who decides whether this CEM should be implemented, and under what conditions?**

The relevant shares may be part of the capital structure on incorporation of the company or may be included after incorporation by special resolution of the shareholders (passed either in general meeting or by written resolution signed by all shareholders entitled to attend and vote at general meetings). In the latter situation, the directors would need to be authorized (by ordinary resolution) by the shareholders to issue the shares. If the shares constitute equity shares and are to be issued for cash, a special resolution or appropriate provision in the articles to disapply statutory pre-emption rights on new equity issues for cash would be required. In general the provisions of the 1983 Companies Act applies to the issue and allotment of new shares and provides for the application or dis-application of pre-emption rights.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the Board of Directors.	<input checked="" type="checkbox"/> Upon authorization of the shareholders.	
<input checked="" type="checkbox"/> Decision by the general meeting of shareholders.	<input checked="" type="checkbox"/> Quorum: Quorum depends on the articles of association of the company. The optional, model form of articles set out in the Companies Act, 1963 for public limited companies provides that 3 members present in person shall be a Quorum. For the second call, the members who are present are the quorum. <input checked="" type="checkbox"/> Majority: Affirmative vote of 75% of the votes cast by those present and voting at the meeting.	If the shareholders may authorize the Board or the Chairman or GM to implement the CEM: <input checked="" type="checkbox"/> For how long would the authorization be valid (maximum duration): Under the legislation, the authority may last for up to 5 years, but may be renewed. For listed companies, Irish institutional guidelines require listed companies to obtain shareholder approval annually for a special resolution to disapply statutory pre-emption rights and lay down limits on the annual disapplication (5% of the then issued equity share capital).
<input checked="" type="checkbox"/> Other: Shareholders/upon incorporation.		

Specific conditions:

Specific requirements when deciding to implement the CEM:

- Circular to shareholders prepared by the company convening a general meeting to pass resolutions to implement the CEM and to authorize the directors to issue the shares.
- Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.): Copies of resolutions to be filed in the Companies Registration Office.

5) Are there ongoing disclosure requirements regarding such CEM?

The rights attached to the priority shares should be contained in the articles of association, which will be publicly available in the Irish Companies Registration Office – the central official registry for Irish incorporated companies. In addition, in the case of a listed company, regulation 21 of the European Communities (Takeover Bids (Directive 2004/25/EC)) Regulations 2006, the directors' annual report must contain information on the capital structure of the company, including the rights and obligations attached to its shares, the identity of persons holding shares carrying special rights with regard to control of the company, together with the nature of the rights, details of any restrictions on voting rights (including limitations on voting rights of holders of a given percentage or number of shares, deadlines for exercising voting rights).

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure to be made annually in the case of a listed company, setting out the information outlined above. <input checked="" type="checkbox"/> The following disclosure requirements apply: - Filing of Articles of Association; - Specific Filing; - Information to shareholders; - Admission documentation; - Annual Report; - Article 10 Report.
-----------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

6) When a CEM is implemented, on what substantive grounds may such decision be challenged?

If Priority Shares are included in the capital structure on incorporation of the company or are subsequently included in the capital structure by a duly passed special resolution, and those shares are subsequently duly issued, it would be very difficult to challenge the decision to implement this CEM. It is, in theory, possible for other shareholders affected to allege that their rights have been varied or abrogated as a result of the issue of the shares, but it is difficult to make a case on this basis in practice. In any event, the risk of a variation or abrogation can be dealt with by obtaining appropriate shareholder class consents in advance. It is also possible, in theory, that the exercise of priority rights might be challenged by another shareholder as constituting oppression under section 205 of the Companies Act, 1963. Section 205 allows a shareholder to apply to the Irish High Court for a range of remedies where it can be shown that the affairs of the company are being conducted or that the powers of the directors are being exercised in a manner oppressive to that shareholder or any shareholders (including that shareholder) or in disregard of their interests as members. Under Irish law, shareholders are entitled to vote their shares in their own interest and do not (except, possibly, on

certain class resolutions) have a duty to act in the interest of other shareholders. It may therefore be difficult to prove oppression in practice in these circumstances.

In the case of a listed company, the allotment or issue of such shares or the granting of options in respect of such shares during the course of an offer or at any earlier time at which the target company has reason to believe that an offer may be imminent may constitute prohibited frustrating action under rule 21 of the Irish Takeover Rules and, accordingly, may not take place except as permitted by rule 21.

Short form answer:

<p><input checked="" type="checkbox"/> The decision to implement might be challenged as a variation or abrogation of class rights.</p> <p><input checked="" type="checkbox"/> The decision to implement might be challenged as giving rise to oppression of other shareholders.</p>	<p><input checked="" type="checkbox"/> The decision to implement may constitute prohibited frustrating action under the Irish Takeover Rules in the case of a listed company.</p> <p><input checked="" type="checkbox"/> Such grounds are alternative.</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

DEPOSITARY CERTIFICATES

1) **Is this CEM available?**

While depositary receipts or despositary securities have been issued by Irish companies to facilitate trading on other stock exchanges, in particular NYSE and NASDAQ, these take the form of certificates issued through a trust representing the deposit of traded securities. The trust holds the voting rights and other rights dependant on the shareholder being the registered shareholder. The holder of the depositary receipts or securities is therefore considered to be the beneficial holder of the shares and lacks standing under Irish law in relation to a number of matters. We are not aware of any depositary certificates issued by entities in Ireland of the type described. However, we do not see a legal impediment to such certificates.

Short form answer:

<input checked="" type="checkbox"/> Unclear Situation.	The Unclear Situation is one of the following types: <input checked="" type="checkbox"/> Untested Situation.
--------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------

2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

In our view, there is no legal impediment in principle to depositary certificates structure.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input type="checkbox"/> Binding Rule. <input type="checkbox"/> Non-Binding Rule.
------------------------------------------	--------------------------------------------------------------------------------------

Other questions not applicable.

VOTING RIGHT CEILINGS

1) Is this CEM available?

Voting rights ceilings are very unusual in Irish companies. However, they are not, in our view, prohibited. Section 134 of the Irish Companies Act, 1963 provides that, unless the articles of association of a company otherwise provide, every shareholder shall have one vote per share. The articles of association of an Irish-incorporated company may, therefore, contain voting rights ceilings.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)

2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.

Voting rights ceilings are very unusual in Irish companies. However, they are not, in our view, prohibited. Section 134 of the Irish Companies Act, 1963 provides that, unless the articles of association of a company otherwise provide, every shareholder shall have one vote per share. The general law of shareholders meetings allows for voting on a show of hands, unless the shareholders call for a poll, where the shareholders will vote the number of votes attaching to their respective shares. This will as described depend on the articles of association and the rights pertaining to each shareholder class. As stated the default rule under s. 134 is that the voting will take place on the basis of one vote per share. The right to demand a poll is governed by s. 137 of the 1963 Act. The articles of association of an Irish-incorporated company may, therefore, contain voting rights ceilings but this is not a common practice.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule
------------------------------------------	--------------------------------------------------

3) If this CEM is available, is it subject to any restrictions?

There is no statutory prohibition on voting rights ceilings. It should be noted that, while Ireland has implemented the Takeover Directive, it has, in accordance with article 12 of that directive, opted to disapply the Breakthrough Rule which is provided for in article 11 of that directive. However, as required by article 12, the Irish implementing regulations include opt-in provisions, and, for Irish companies which opt to avail of those provisions, shares subject to voting rights ceilings would, in our view, benefit from the one share-one vote provision of article 11, so that in a bid situation, those shares would have one vote per share at an article 9 defensive measures meeting and at an article 11(4) meeting.

Short form answer:

<input checked="" type="checkbox"/> Application of a Breakthrough Rule.	Subject to opt-in by the relevant company.
-------------------------------------------------------------------------	--------------------------------------------

4) Who decides whether this CEM should be implemented, and under what conditions?

A provision for a voting rights ceiling may be contained in the articles of association of a company on incorporation of the company or it may be included after incorporation by special resolution of the shareholders (passed either in general meeting or by written resolution signed by all shareholders entitled to attend and vote at general meetings).

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders – special resolution amending the articles of association to incorporate such a provision	<input checked="" type="checkbox"/> Quorum: Quorum depends on the articles of association of the company. The optional, model form of articles set out in the Companies Act, 1963 for public limited companies provides that 3 members present in person shall be a Quorum. For the second call, the members who are present are the quorum. <input checked="" type="checkbox"/> Majority: Affirmative vote of 75% of the votes cast by those present and voting at the meeting.
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Specific conditions:

<p>Specific requirements when deciding to implement the CEM:</p> <input checked="" type="checkbox"/> Circular to shareholders prepared by the company convening a general meeting to pass resolutions to implement the CEM. <input checked="" type="checkbox"/> Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.): Copies of resolutions to be filed in the Companies Registration Office.

5) Are there ongoing disclosure requirements regarding such CEM?

The voting rights attached to the shares should be contained in the articles of association, which will be publicly available in the Irish Companies Registration Office – the central official registry for Irish incorporated companies. In addition, in the case of a listed company, regulation 21 of the European Communities (Takeover Bids (Directive 2004/25/EC)) Regulations 2006, the directors' annual report must contain information on the capital structure of the company, including the rights and obligations attached to its shares, the identity of persons holding shares carrying special rights with regard to control of the company together with the nature of the rights, details of any restrictions on voting rights (including limitations on voting rights of holders of a given percentage or number of shares, deadlines for exercising voting rights).

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure to be made annually in the case of a listed company, setting out the information outlined above. <input checked="" type="checkbox"/> The following disclosure requirements apply: - Filing of Articles of Association; - Specific Filing; - Information to shareholders; - Admission documentation;
-----------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

	- Annual Report; - Article 10 Report.
--	------------------------------------------

6) When a CEM is implemented, on what substantive grounds may such decision be challenged?

If provision for a voting rights ceiling is included in the articles of association of a company on incorporation, it would be difficult to challenge the decision to implement this CEM. However, if a voting rights ceiling is imposed on existing issued shares, the decision may be challenged by shareholders as a variation of abrogation of their rights or possibly on the grounds of oppression under section 205 of the Companies Act, 1963.

In the case of a listed company, a decision to implement the CEM during the course of an offer or at any earlier time at which the target company has reason to believe that an offer may be imminent may constitute prohibited frustrating action under rule 21 of the Irish Takeover Rules and, accordingly, may not take place except as permitted by rule 21.

Short form answer:

<input checked="" type="checkbox"/> The decision to implement might be challenged as a variation or abrogation of class rights. <input checked="" type="checkbox"/> The decision to implement might be challenged as giving rise to oppression of other shareholders.	<input checked="" type="checkbox"/> The decision to implement may constitute prohibited frustrating action under the Irish Takeover Rules in the case of a listed company. <u>Note:</u> the introduction of a voting right ceiling in response to an actual or imminent bid could be regarded as frustrating action. <input checked="" type="checkbox"/> Such grounds are alternative.
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

OWNERSHIP CEILINGS

1) Is this CEM available?

Ownership ceilings are very unusual in Irish companies. The Companies Acts do not preclude a prohibition or restriction being placed on investors taking a participation in a company above a certain threshold. However, in a facilitative provision under s. 204 of the 1963 Act a shareholder who acquires 80% of the shares may 'squeeze out' the remaining 20% (the compulsory acquisition threshold is 90% in the case of companies subject to the Takeover Directive). Nationality-based ownership ceilings are contained in the articles of, for example, authorized air carriers to preserve bi-lateral and other aviation rights. These include Irish companies listed on the Irish Stock Exchange (e.g. Aer Lingus).

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)

2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.

The Companies Acts do not preclude ownership ceilings and a small number of Irish companies have them in order to preserve aviation operating licenses.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule
------------------------------------------	--------------------------------------------------

3) If this CEM is available, is it subject to any restrictions?

There is no specific statutory restriction on ownership ceilings. Note that section 204 of the 1963 Act provides for a 'squeeze out' where a shareholder acquires 80% of the shareholding. However, such ceilings may, in practice, inhibit the listing of the relevant company.

4) Who decides whether this CEM should be implemented, and under what conditions?

A provision for ownership ceiling may be part of the articles of association on incorporation of the company or may be included after incorporation by special resolution of the shareholders (passed either in general meeting or by written resolution signed by all shareholders entitled to attend and vote at general meetings).

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders.	<input checked="" type="checkbox"/> Quorum: Quorum depends on the articles of association of the company. The optional, model form of articles set out in the Companies Act, 1963 for public limited companies provides that 3 members present in person shall be a Quorum. For the second call, the members who are present are the quorum. <input checked="" type="checkbox"/> Majority: Affirmative vote of 75% of the votes cast by
--------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

	those present and voting at the meeting.
<input checked="" type="checkbox"/> Other: Shareholders/upon incorporation.	

Specific conditions:

<p>Specific requirements when deciding to implement the CEM:</p> <p><input checked="" type="checkbox"/> Circular to shareholders prepared by the company convening a general meeting to pass resolutions to implement the CEM.</p> <p><input checked="" type="checkbox"/> Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.): Copies of resolutions to be filed in the Companies Registration Office.</p>

5) Are there ongoing disclosure requirements regarding such CEM?

Any ownership ceilings should be contained in the articles of association, which will be publicly available in the Irish Companies Registration Office – the central official registry for Irish incorporated companies. In addition, in the case of a listed company, regulation 21 of the European Communities (Takeover Bids (Directive 2004/25/EC)) Regulations 2006, the directors' annual report must contain information on the capital structure of the company, including the rights and obligations attached to its shares and details of any restrictions on voting rights (including limitations on voting rights of holders of a given percentage or number of shares).

Short form answer:

<input checked="" type="checkbox"/> Yes	<p><input checked="" type="checkbox"/> Disclosure to be made annually in the case of a listed company, setting out the information outlined above.</p> <p><input checked="" type="checkbox"/> The following disclosure requirements apply:</p> <ul style="list-style-type: none"> - Filing of Articles of Association; - Specific Filing; - Information to shareholders; - Admission documentation; - Annual Report; - Article 10 Report.
-----------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

6) When a CEM is implemented, on what substantive grounds may such decision be challenged?

If an ownership ceiling is included in the articles of association of a company on incorporation of the company or is subsequently included by a duly passed special resolution, it would be difficult to challenge the decision to implement this CEM. However, if an ownership ceiling is imposed which adversely affects existing issued shares, the decision may be challenged by shareholders as a variation of abrogation of their rights or on the grounds of oppression under section 205 of the Companies Act, 1963 if it obliges shareholders to dispose of all or part of their shareholdings. Section 204 of the 1963 Act operates a statutorily recognized provision which allows the holder of 80% of the shares to acquire the remaining 20%. Note that the equivalent provision in the UK relates to 90%.

In the case of a listed company, a decision to implement the CEM during the course of an offer or at any earlier time at which the target company has reason to believe that an offer may be imminent may constitute prohibited frustrating action under rule 21 of the Irish Takeover Rules and, accordingly, may not take place except as permitted by rule 21.

In addition, depending on the nature of the ceiling, the decision to implement might be challenged as anti-competitive or discriminatory.

<p><input checked="" type="checkbox"/> The decision to implement might be challenged as a variation or abrogation of class rights.</p> <p><input checked="" type="checkbox"/> The decision to implement might be challenged as giving rise to oppression of other shareholders.</p>	<p><input checked="" type="checkbox"/> The decision to implement may constitute prohibited frustrating action under the Irish Takeover Rules in the case of a listed company.</p> <p><input checked="" type="checkbox"/> Such grounds are alternative.</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

SUPERMAJORITY PROVISIONS

1) **Is this CEM available?**

Under Irish law, many corporate actions require a special resolution (75% of shareholders present or voting by proxy where applicable) of the shareholders. These include amendments to the memorandum or articles of association, disapplication of statutory pre-emption rights on new equity issues for cash, approval of off-market share buy backs, Irish High Court-approved capital reduction, voluntary winding up, re-registration of private company as public limited company (and *vice versa*). Unless specified under the Companies Acts 1963-2005, or under the Articles of Association of a particular company most ordinary business can be conducted by ordinary resolution (51%). Some provisions of Irish company law, for example under ss.201 and 204 on arrangements and takeovers, require 75% resolutions from each class of shares, thus adding weight to the voting rights of particular classes. Section 204 also provides that a majority of 80% voting in favour of a takeover bid can appropriate the remaining 20%. It has been established by English case law (which is of persuasive, but not binding, authority in Ireland) that a company may not contract out of its statutory ability to amend its articles of association by special resolution. It may be that this principle applies also to other corporate actions which are permitted by statute to take place by special resolution. However, the position is unclear. Subject to that qualification, supermajority provisions are, in our view, available under Irish law.

Short form answer:

<input checked="" type="checkbox"/> Unclear Situation.	The Unclear Situation is one of the following types: <input checked="" type="checkbox"/> Insufficiently Tested Situation. <input checked="" type="checkbox"/> Other: Supermajority provisions, in our view, and subject to the foregoing qualifications, are available.
--------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.**

Please see answer to 1) above.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	
<input checked="" type="checkbox"/> Court Decisions	<input checked="" type="checkbox"/> English Case Law	English case law is of persuasive value only.

3) **If this CEM is available, is it subject to any restrictions?**

Please see answer to 1) above and 6) below.

4) Who decides whether this CEM should be implemented, and under what conditions?

The relevant supermajority provisions may be included in the articles of association of the company on incorporation or may be included after incorporation by special resolution of the shareholders (passed either in general meeting or by written resolution signed by all shareholders entitled to attend and vote at general meetings).

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders to pass special resolution to include supermajority provisions in the articles of association.	<input checked="" type="checkbox"/> Quorum: Quorum depends on the articles of association of the company. The optional, model form of articles set out in the Companies Act, 1963 for public limited companies provides that 3 members present in person shall be a Quorum. <input checked="" type="checkbox"/> Majority: Affirmative vote of 75% of the votes cast by those present and voting at the meeting.
<input checked="" type="checkbox"/> Other: Shareholders/upon incorporation.	

Specific conditions:

<p>Specific requirements when deciding to implement the CEM:</p> <input checked="" type="checkbox"/> Circular to shareholders prepared by the company convening a general meeting to pass resolutions to implement the CEM. <input checked="" type="checkbox"/> Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.): Copies of resolutions to be filed in the Companies Registration Office.

5) Are there ongoing disclosure requirements regarding such CEM?

Any supermajority provisions should be contained in the articles of association, which will be publicly available in the Irish Companies Registration Office – the central official registry for Irish incorporated companies. In addition, in the case of a listed company, regulation 21 of the European Communities (Takeover Bids (Directive 2004/25/EC)) Regulations 2006, the directors' annual report must contain information on the capital structure of the company, including the rights and obligations attached to its shares and details of any restrictions on voting rights.

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure to be made annually in the case of a listed company, setting out the information outlined above. <input checked="" type="checkbox"/> The following disclosure requirements apply: <ul style="list-style-type: none"> - Filing of Articles of Association; - Specific Filing; - Information to shareholders; - Admission documentation; - Annual Report; - Article 10 Report.
-----------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

6) When a CEM is implemented, on what substantive grounds may such decision be challenged?

If supermajority provisions are included in the articles of association of the company on incorporation or are subsequently included by a duly passed special resolution, it would be difficult to challenge the decision to implement this CEM. However, it is possible, in the latter circumstances, that other shareholders might argue that the inclusion of such provisions constitutes a variation or abrogation of their class rights, but that risk could be eliminated by obtaining appropriate class consents. The decision might also be challenged on the basis that it interferes with a company's statutory ability to take certain corporate actions, such as amendment of its articles of association which are permitted by legislation to be carried out by special resolution.

In the case of a listed company, the decision to implement the CEM during the course of an offer or at any earlier time at which the target company has reason to believe that an offer may be imminent may constitute prohibited frustrating action under rule 21 of the Irish Takeover Rules and, accordingly, may not take place except as permitted by rule 21.

Short form answer:

<input checked="" type="checkbox"/> The decision to implement the CEM constitutes a variation or abrogation of shareholder rights.	<input checked="" type="checkbox"/> The decision to implement the CEM interferes with the company's statutory ability to take certain actions by special resolution.
<input checked="" type="checkbox"/> The decision to implement may constitute oppression under section 205 of the Companies Act, 1963 as being against the interest of shareholders.	<input checked="" type="checkbox"/> The decision to implement may constitute prohibited frustrating action under the Irish Takeover Rules in the case of a listed company. <input checked="" type="checkbox"/> Such grounds are alternative.

GOLDEN SHARES

1) **Is this CEM available?**

Subject to limited exceptions, no company registered and listed in Ireland is subject to any golden share. The exceptions are:

- a specific control on the disposal of landing and take-off slots at London Heathrow Airport by Aer Lingus plc, a company that was, until 2006, owned and controlled by the State. Since the initial public offering of Aer Lingus plc in 2006, the Government of Ireland has retained only a minority interest in the company; however, the articles of association of the company require shareholder approval for any disposal of the relevant landing and take-off slots. It is to be noted that the special provisions regarding the relevant slots requires only that any proposed disposal be submitted to an extraordinary general meeting of the company and such a disposal is not precluded outright; and
- a special-rights preference share held by the Minister for Agriculture in Greencore Group plc, a company that was, until 1991, owned and controlled by the State. Since the initial public offering of Greencore Group plc, the Minister for Agriculture has held a share that requires the prior written consent of the Minister to any of the following: (a) any change in certain specified articles of the articles of association of Greencore; (b) the voluntary winding up of Greencore, (c) the sale of more than 40% of Irish Sugar plc (a subsidiary of Greencore); (d) the disposal of specified sugar assets, including the Irish sugar quota which is held by Irish Sugar plc; (e) the creation of a new class of shares in Greencore, and (f) the accumulation by any one shareholder, or by a consortium of shareholders, other than the Minister for Finance, of more than a 30% shareholding in Greencore.

Short form answer:

<input checked="" type="checkbox"/> No (Clear Situation)	Subject to a specific control on the disposal of landing and take-off slots at London Heathrow Airport by Aer Lingus plc and the special-rights share held by the Minister for Agriculture in Greencore Group plc.
----------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.**

No law expressly prohibits or authorizes the use of a golden share: it is merely that, in practice and informed by EU jurisprudence on the matter, note Commission v UK (C-98/01) where the ECJ rejected arguments of the UK government that golden shares retained by BA did not restrict access to the relevant market, golden shares are not employed in listed companies that were previously in State ownership.

Short form answer:

<input checked="" type="checkbox"/> Court Decisions	<input checked="" type="checkbox"/> Highest Court Case Law	Relevant ECJ decisions and jurisprudence described above.
-----------------------------------------------------	------------------------------------------------------------	-----------------------------------------------------------

3) If this CEM is available, is it subject to any restrictions?

See answer to 2) above.

4) Who decides whether this CEM should be implemented, and under what conditions?

Narrative answer: For reasons outlined above, it is not envisaged that such a share would be implemented in the future in Irish companies. However, if this were to be done it could be done by alteration of the Articles of Association in the normal way, ie by special resolution of the shareholders.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders.	<input checked="" type="checkbox"/> Majority: 75%
--------------------------------------------------------------------------------------	---------------------------------------------------

Other questions not applicable.

PARTNERSHIPS LIMITED BY SHARES

1) **Is this CEM available?**

The Limited Partnerships Act, 1907 allows for the formation of limited partnerships of up to 20 persons (up to 50 persons in the case of a limited partnership formed for the purpose of, and whose main business consists of, the provision of investment and loan finance and ancillary facilities and services to persons engaged in industrial or commercial activities) consisting of one or more general partners (who are liable for the debts and obligations of the firm) and one or more limited partners (who have limited liability by reference to the capital contributed by them provided they do not take part in the management of the firm's business). A limited partnership formed under the 1907 legislation would not be capable of being listed on the Irish Stock Exchange and is therefore not relevant for the purpose of this survey. The Investment Limited Partnerships Act, 1994 allows for the formation of investment limited partnerships, again consisting of general partners and limited partners, but there is no limit on the number of partners. An investment limited partnership is a partnership of two or more persons having as its principal business the investment of its funds in property of all kinds and consisting of at least one general partner and at least one limited partner. The limited partner is effectively equivalent to a shareholder in a limited liability company while the general partner would be the equivalent of the management company in a unit trust. Investment limited partnerships under the 1994 Act are required to be authorized by the Irish Financial Regulator.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	Investment Limited Partnerships only
-----------------------------------------------------------	--------------------------------------

2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

The Limited Partnerships Act, 1907 and the Investment Limited Partnerships Act, 1994. See above.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule
------------------------------------------	--------------------------------------------------

3) **If this CEM is available, is it subject to any restrictions?**

In the case of a limited partnership to be established under the Limited Partnerships Act, 1907 there is a statutory limit to the maximum number of partners. See above. A limited partner may not take part in the management of the partnership and may not, during the continuance of the partnership, withdraw the capital contribution made by that limited partner. An investment limited partnership under the Investment Limited Partnerships Act, 1994 must first be authorized, and is subject to regulation, by the Financial Regulator, who may give directions to the general partner, including a direction to wind up the investment limited partnership.

Short form answer:

<input checked="" type="checkbox"/> Partnerships Limited by Shares may only be set up for companies meeting certain criteria.

4) Who decides whether this CEM should be implemented, and under what conditions?

The Investment Limited Partnerships Act, 1994 sets out the requirements to be satisfied to form an investment limited partnership. An investment limited partnership under the Investment Limited Partnerships Act, 1994 must first be authorized by the Financial Regulator.

Short form answer:

Who decides:

Other: Financial Regulator.

Specific conditions:

Specific requirements when deciding to implement the CEM:

- Prescribed filings to be made with the Financial Regulator.
- Specific authorization from Financial Regulator under the Investment Limited Partnerships Act, 1994.
- This regulatory authority is entitled to object to this CEM.

5) Are there ongoing disclosure requirements regarding such CEM?

A limited partnership under the Limited Partnerships Act, 1907 must be registered in the Irish Companies Registration Office. Details of, amongst other things, the name of the firm, the business to be carried on, the partners and their capital contributions must also be given. Changes in those details must also be notified to the Companies Registration Office. Certain other matters (*e.g.* change of status of a general partner to a limited partner) must also be publicized in an official journal (*Iris Oifigiúil*). If the general partner is a limited company, the limited partnership is obliged to file its accounts for public record with the Companies Registration Office. It may also be required to register any business name with the Irish Registrar of Business Names. The Investment Limited Partnerships Act, 1994 prescribes ongoing disclosure requirements for investment limited partnerships authorized under that legislation, including a general obligation on the general partner to provide to the Financial Regulator such information and returns about the business as the Financial Regulator may specify from time to time.

Short form answer:

- Yes.
- The following disclosure requirements apply:
 - Filing of Articles of Association;
 - Publication in a Legal Gazette;
 - Specific Filing;
 - Admission documentation.

6) **When a CEM is implemented, on what substantive grounds may such decision be challenged?**

The Investment Limited Partnerships Act, 1994 allows the Financial Regulator to give directions to the general partner, including a direction to wind up the partnership. The Financial Regulator may also revoke the partnership's authorization.

Short form answer:

- | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><input checked="" type="checkbox"/> The Financial Regulator may revoke the partnerships; authorization in certain circumstances.
For instance, if any of the requirements for authorization are no longer complied with, or if it is undesirable in the interests of the limited partners for the authorization to continue.</p> <p><input checked="" type="checkbox"/> The Financial Regulator may give directions to the general partner, including a direction to wind up the partnership.
This refers to a direction to terminate the partnership; for example, in the event of insolvency.</p> <p><input checked="" type="checkbox"/> Such grounds are alternative.</p> |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

CROSS-SHAREHOLDINGS

1) Is this CEM available?

Cross-shareholdings are not prohibited under Irish law. However, subject to limited exceptions, there are restrictions on subsidiaries holding shares in their parent companies. More generally, the acquisition of cross-shareholdings may require Irish regulatory clearances depending on the extent of the cross-shareholdings and/or the companies involved, particularly in the context of sectoral regulation (financial services, insurance companies etc.) or regulation of anti-competitive practices. (e.g., Irish-licensed banks, Irish-authorized investment business firms, Irish-authorized stock brokers, Irish-authorized insurance companies).

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)

2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.

Cross-shareholdings are not prohibited under Irish law. However, there is no statutory provision explicitly authorizing cross-shareholdings.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule
------------------------------------------	--------------------------------------------------

3) If this CEM is available, is it subject to any restrictions?

Subject to limited exceptions, there are restrictions on subsidiaries holding shares in their parent companies. Section 32 of the Companies Act, 1963 provides that, subject to certain exceptions, a body corporate cannot be a member of a company which is its holding company, and any allotment or transfer of shares in a company to its subsidiary shall be void. More generally, the acquisition of cross-shareholdings may require Irish regulatory clearances depending on the extent of the cross-shareholdings and/or the companies involved (e.g., the Irish Financial Services Regulatory authority (IFSRA) in the case of Irish-licensed banks, Irish-authorized investment business firms, Irish-authorized stock brokers, Irish-authorized insurance companies). These may be sectoral in nature regarding for example the provision of financial services such as insurance or regulated generally as anti-competitive.

4) Who decides whether this CEM should be implemented, and under what conditions?

This is a matter for the companies involved. If the cross-shareholdings are sufficiently significant, they may have to be approved by the shareholders of one or more of the companies involved. If the cross-shareholdings relate to regulated entities, Irish governmental or regulatory clearances may be needed. The rules are the same for Control Cross-shareholding and for Basic Cross-shareholding.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders.	<input checked="" type="checkbox"/> Quorum: Quorum depends on the articles of association of the company. The optional, model form of articles set out in the Companies Act, 1963 for public limited companies provides that 3 members present in person shall be a Quorum. <input checked="" type="checkbox"/> Majority: If a special resolution is required, affirmative vote of 75% of the votes cast by those present and voting at the meeting. If an ordinary resolution is required, affirmative majority vote (a simple majority in favour).
--------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Specific conditions:

<p>Specific requirements when deciding to implement the CEM:</p> <input checked="" type="checkbox"/> If shareholder resolutions are necessary, circular to shareholders prepared by the company convening a general meeting to pass resolutions to implement the CEM. <input checked="" type="checkbox"/> Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.): Copies of resolutions to be filed in the Companies Registration Office.

5) Are there ongoing disclosure requirements regarding such CEM?

Cross-shareholding details may have to be contained in the accounts and related reports of the companies involved. The ownership interests may also be notifiable under the notification of interest provisions of the Companies Act, 1990 (disclosure of interests in shares in public limited companies, disclosure of directors' interests, including family and connected company interests). Notification may be necessary under applicable Irish Stock Exchange Rules or to relevant Irish governmental or regulatory authorities if regulated entities are included (for instance, the IFSRA in the case of Irish licensed banks).

In addition, in the case of a listed company, regulation 21 of the European Communities (Takeover Bids, Directive 2004/25/EC) Regulations 2006, the directors' annual report must contain information known to the company as to the identity and holdings of persons with significant direct or indirect holdings in the company.

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure may be necessary upon acquisition of the cross-shareholdings and thereafter in the event of changes in those shareholdings. <input checked="" type="checkbox"/> The following disclosure requirements apply: - Admission documentation; - Annual Report; - Article 10 Report.
-----------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

6) **When a CEM is implemented, on what substantive grounds may such decision be challenged?**

As with any other management decision, the decision to implement the CEM may be challenged if it was not taken bona fide in the interests of the relevant company, but, for example, in the sole interest of management. It might also be challenged if it was outside the corporate capacity of the relevant company. If implemented as an anti-takeover device in the case of a listed company during the course of an offer or at any earlier time at which the company has reason to believe that an offer may be imminent, it is likely to constitute prohibited frustrating action under rule 21 of the Irish Takeover Rules and, accordingly, may not take place except as permitted by rule 21.

Short form answer:

<input checked="" type="checkbox"/> The decision to implement the CEM is in the sole interest of the management. <input checked="" type="checkbox"/> The decision to implement may constitute prohibited frustrating action under the Irish Takeover Rules in the case of a listed company.	<input checked="" type="checkbox"/> The decision to implement the CEM is against the interest of the shareholders. <input checked="" type="checkbox"/> The decision to implement the CEM is against the corporate interest (defined as being distinct from the sole interest of shareholders). <input checked="" type="checkbox"/> Such grounds are alternative.
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

SHAREHOLDERS' AGREEMENTS

1) **Is this CEM available?**

Shareholders' agreements are possible under Irish law. Many provisions of Irish company law recognize the possibility of formal and/or informal alliances between shareholders. For example, the acting in concert provisions of the Irish Takeover Panel Act, 1997 and the Irish Takeover Rules made under it recognize the possibility of shareholders acting together to acquire or consolidate control of a company, including a listed company. Also, the concert party notification provisions of the Companies Act, 1990 (Part IV) recognize the possibility of shareholder alliances (formal and informal) to acquire or increase interest in the issued share capital of Irish public limited companies. These are quite common in private companies but not so in public limited companies and are, in many respects, governed by the general principles of Irish contract law.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)

2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

Many provisions of Irish law recognize explicitly the possibility of shareholder agreements; e.g., the Irish Takeover Panel Act, 1997 and the Companies Act, 1990.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule
------------------------------------------	--------------------------------------------------

3) **If this CEM is available, is it subject to any restrictions?**

There is no mandatory Breakthrough Rule which would restrict such alliances. It should be noted that, while Ireland has implemented the Takeover Directive, it has, in accordance with article 12 of that directive, opted to disapply the Breakthrough Rule which is provided for in article 11 of that directive. The Irish implementing regulations include opt in provisions, and, for Irish companies which opt to avail of those provisions, any voting restrictions contained in shareholder agreements will be subject to the breakthrough provisions in article 11 in a bid situation.

While it is open to shareholders to enter into formal and/or informal alliances, such alliances may, depending on the circumstances, give rise to obligations under Irish law. In particular, the shareholders involved may become subject to obligations under the Irish Takeover Panel Act, 1997 and the Irish Takeover Rules, including, in certain circumstances, the obligation to make a mandatory offer for the other shares in the listed company. The alliance may give rise to concert party notification obligations to the relevant company and, if the company is listed on the Official List of the Irish Stock Exchange, to the Irish Stock Exchange. Depending on the effect or potential effect of the alliance, regulatory notifications or clearances may be necessary (e.g., under the Irish Competition Act).

Short form answer:

<input checked="" type="checkbox"/> Application of a Breakthrough Rule.	Subject to opt-in by relevant company.
<input checked="" type="checkbox"/> Others.	Relevant shareholders may incur disclosure or other obligations.

4) Who decides whether this CEM should be implemented, and under what conditions?

In principle, shareholders are free to enter into voting or other alliances and it is a matter for the relevant shareholders to decide whether or not to do so.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Other: Relevant shareholders.

Specific Conditions: Mandatory Takeover.

5) Are there ongoing disclosure requirements regarding such CEM?

There may be ongoing notification requirements depending on the nature and circumstances of the relevant agreement. For example, in the case of an agreement relating to voting shares in a public limited company, the agreement may require compliance with the concert party notification obligations under the Companies Act, 1990, including ongoing notification obligations to the relevant company and, if the company is listed on the official list of the Irish Stock Exchange, the Irish Stock Exchange. The notification obligations may include the notification of changes to the parties to the shareholders' agreement and acquisitions or disposals of interests in shares the subject of the agreement.

In addition, in the case of a listed company, regulation 21 of the European Communities (Takeover Bids, Directive 2004/25/EC) Regulations 2006, the directors' annual report must contain information as to any agreements that are known to the company and may result in restrictions on the transfer of securities or on voting rights.

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure may be necessary to the company and the Irish Stock Exchange on entry into the shareholders' agreement and in the event of changes to the parties to it or changes in the shares, the subject of the agreement. <input checked="" type="checkbox"/> The following disclosure requirement applies: - Article 10 Report.
-----------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

6) When a CEM is implemented, on what substantive grounds may such decision be challenged?

It is possible that the effect of actions taken pursuant to a shareholders' agreement may be challenged by another shareholder as constituting oppression under section 205 of the Companies Act, 1963. Section 205 allows a shareholder to apply to the Irish High Court for a range of remedies where it can be shown that the affairs of the company are being conducted or that the powers of the directors are being exercised in a manner oppressive to that shareholder or any shareholders (including that shareholder) or in disregard of their interests as members. Under Irish law, shareholders are entitled to vote their shares in their own interest and do not (except, possibly, on certain class resolutions)

have a duty to act in the interest of other shareholders. It would therefore be difficult to prove oppression in practice in these circumstances.

Short form answer:

The decision to implement the CEM and the actions taken pursuant to it may constitute oppression of other shareholders.

B – GENERAL BACKGROUND QUESTIONS**1) What are the rules for board elections? How many corporate votes are required to appoint or remove corporate directors?**

The Companies Acts, 1963-2005 stipulates the minimum number of directors which a company must have and also precludes a body corporate from being appointed a director. The legislation also requires, subject to a limited exception, that any board appointments which are to be made at a general meeting should be voted on individually. In addition, Irish company law requires that at least one director will be resident in Ireland.

Broadly speaking, the appointment and removal of directors is regulated by the articles of association of the relevant company. The articles of association will typically provide for the appointment of directors by an ordinary resolution of the shareholders; *i.e.*, an affirmative majority of the votes cast by the voting shareholders. They may also provide for retirement by rotation at stated intervals. The articles will also usually allow the board of directors to co-opt directors, usually stipulating that a co-opted director will hold office until the next annual general meeting. The listing rules of the Irish Stock Exchange require a listed company to ensure that at all times not more than one-third of its board of directors is composed of persons who have been co-opted by the board. If something happens to cause a breach of this requirement, the company must convene an extraordinary meeting for the election of the relevant directors. Failure to comply will result in a suspension of the company's listing.

The articles of association may also allow a shareholder to appoint directors by notice to the company. This generally occurs in a group situation to allow the parent company to nominate directors. However, it is also possible in certain circumstances in the case of a listed company.

The Combined Code (the Combined Code on Corporate Governance published in July 2003 by the Financial Reporting Council which is appended to the listing rules), with which listed companies are expected to comply, provides that there should be a formal, rigorous and transparent procedure for board appointments, including a nomination committee to lead the process. The code also states that all directors should be submitted for re-election at regular intervals (no more than 3 years). It also sets out standards for the appointment of non-executive directors.

As regards removal of directors, section 182 of the Companies Act, 1963 provides that a company may by ordinary resolution remove a director before the expiration of his period of office notwithstanding anything in its articles or in any agreement between the company and the director. The operation of this provision does not exclude any action the removed director may have on foot of a contract of employment or on other legal grounds against the company: section 182(7). There is provision for extended notice to be given and other formalities to be complied with in the event of such a resolution. The articles of association will almost invariably provide for a director's appointment to cease automatically in certain events, *e.g.* where he becomes disqualified or restricted by law from being a director or in the event of his bankruptcy or mental incapacity. There are extensive provisions regarding the disqualification and restriction of directors of insolvent companies under the 1990 Companies Act. Directors may be disqualified in non-insolvent situations also; for example, following an investigation of the company's affairs under Part II of the Companies Act 1990.

Under the Companies Act, 1963 holders of at least 10% of a company's voting share capital may requisition extraordinary general meetings. Such a meeting may be requisitioned for the purpose of appointing or removing directors, subject to compliance with extended notice and other formalities.

Short form answer:

<input checked="" type="checkbox"/> Ordinary resolution usually required for board election by shareholders. <input checked="" type="checkbox"/> A director may be removed by ordinary resolution, subject to extended notice and other formalities. (This does not affect any entitlement to compensation for breach of contract). <input checked="" type="checkbox"/> The articles of association will usually provide for a director's appointment to cease in the event of disqualification or restriction, bankruptcy or mental incapacity.	<input checked="" type="checkbox"/> The articles of association will usually authorize the board to co-opt directors. <input checked="" type="checkbox"/> The articles may allow for appointment of directors by notice in certain circumstances.
	<input checked="" type="checkbox"/> Under the Companies Acts, holders of at least 10% of a company's voting share capital are entitled to requisition extraordinary general meetings, which may be for the purpose of appointing or removing directors.

2) **What shareholders' decisions require a vote from more than a simple majority?**

Under the Companies Act, a number of shareholder decisions require a special resolution (*i.e.*, an affirmative vote of no less than 75% of the votes cast by such shareholders as, being entitled so to do, vote in person or by proxy on the resolution). These include amendments to the memorandum or articles of association, disapplication of statutory pre-emption rights on new equity issues for cash, approval of off-market share buy backs, Irish High Court-approved capital reduction, voluntary winding up, re-registration of private company as public limited company (and vice versa).

Short form answer:

<input checked="" type="checkbox"/> All changes to the articles of association. <input checked="" type="checkbox"/> All changes to the memorandum of association. <input checked="" type="checkbox"/> Disapplication of statutory pre-emption rights on new equity issues for cash. <input checked="" type="checkbox"/> Off-market share buy backs.	<input checked="" type="checkbox"/> Capital reduction. <input checked="" type="checkbox"/> Voluntary liquidation. <input checked="" type="checkbox"/> Change of corporate status.
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------



PROPORTIONALITY BETWEEN OWNERSHIP AND CONTROL IN EU LISTED COMPANIES:
EXTERNAL STUDY COMMISSIONED BY THE EUROPEAN COMMISSION

**PROPORTIONALITY BETWEEN OWNERSHIP AND CONTROL
IN EU LISTED COMPANIES:**

COMPARATIVE LEGAL STUDY

ITALY

SHEARMAN & STERLING LLP

Domenico Fanuele

Via Borgognona, 47
00187 Roma, Italy
T: +39 06 697 679 1
F: +39 06 697 679 300

Reviewed by:

Ettore Scimemi

Associate Professor at the University of Padova - Italy

MULTIPLE VOTING RIGHTS SHARES

1) Is this CEM available?

Pursuant to Article 2351 (4) of the Italian Civil Code,²⁷⁰ Italian joint stock companies (*società per azioni*) are not allowed to issue multiple voting rights shares.

It is not clear whether Italian companies can issue reduced voting right shares; the majority opinion among legal commentators seems to be that reduced voting right shares are not allowed as in this way Italian companies would avoid the prohibition to issue multiple voting rights shares.

Short form answer:

<input checked="" type="checkbox"/> No (Clear Situation) Article 2351 (4) of the Italian Civil Code.

2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.

Article 2351 (4) of the Italian Civil Code explicitly prohibits to issue multiple voting rights shares. Such rule is binding.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	Article 2351 (4) c.c. is a binding rule.
------------------------------------------	--------------------------------------------------	------------------------------------------

Other questions not applicable.

²⁷⁰ Royal Decree 16 March 1942, n. 262, as amended. The Section of the Italian Civil Code regarding to the regulation of corporate entities has been amended by Legislative Decree 17 January 2003 n. 6 (the “Italian Corporate Reform”), which came into effect on 1 January 2004.

NON-VOTING SHARES

1) Is this CEM available?

In general, pursuant to Article 2351 (2) of the Italian Civil Code, Italian companies can issue non-voting shares without any preference rights, provided, however, that such shares do not exceed 50% of the company's share capital.

However, Article 145 (2) of the Italian Securities Act²⁷¹ provides that Italian listed companies can issue non-voting preference shares (known as "savings shares"). Therefore, it is debated among Italian commentators, whether Italian listed companies can issue non-voting shares without preference rights of an economic nature; the majority opinion among legal commentators seems to be that Italian listed companies can issue non-voting shares without preference rights of an economic nature.

Please also note that pursuant to Article 2346 (6) of the Italian Civil Code all joint stock companies can issue "financial instruments," carrying economic rights as well as administrative rights, with the exception of the right to vote in the shareholders' meeting. The nature and extent of the economic rights which can be attributed by such "financial instruments" are currently subject to discussion among Italian legal commentators; the majority opinion among legal commentators seems to be that these "financial instruments" can attribute cash-flow rights equivalent to shares.

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Untested Situation It is debated whether "financial instrument" can attribute cash-flow rights equivalent to shares.
-----------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------

2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.

It is debated whether the combination of Article 145 (2) of the Italian Securities Act and Article 2351 (2) of the Italian Civil Code implicitly provides that Italian listed companies cannot issue non-voting shares without preference rights.

Short form answer:

<input checked="" type="checkbox"/> Laws Article 145 (2) of the Italian Securities Act.	<input checked="" type="checkbox"/> Binding Rule	It is debated whether this Article implicitly prohibits the issuance of non-voting shares without any preference right.
--------------------------------------------------------------------------------------------	--------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------

3) If this CEM is available, is it subject to any restrictions?

According to Article 2351 (2) of the Italian Civil Code, the aggregate par value of non-voting and limited voting shares cannot exceed 50% of the share capital. For the purposes of calculating such 50% limitation, one needs to take into account non-voting shares, shares with voting rights limited to specific arguments and shares with voting rights that are triggered by particular circumstances.

²⁷¹ Legislative Decree 24 February 1998 n. 58, as amended.

Short form answer:

<input checked="" type="checkbox"/> Maximum percentage of Non-Voting Preference Shares	Aggregate of non-voting and limited voting shares cannot exceed 50% of the share capital.
----------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------

4) Who decides whether this CEM should be implemented, and under what conditions?

Pursuant to Article 2364 (1) of the Italian Civil Code, the issuance of shares is resolved by the extraordinary shareholders' meeting with the majorities required for the amendments to the articles of association of the company.

These majorities, unless the Articles of Association require a higher quorum, are:

(i) first call: quorum: 50% of the share capital; majority: 2/3s of the share capital present or represented at the shareholders meeting;

(ii) second call: quorum: 1/3 + 1 of the legal capital; majority: 2/3s of the share capital present or represented at the shareholders meeting;

(iii) subsequent calls: quorum 20% of the share capital; majority: 2/3s of the share capital present or represented at the shareholders meeting.

The Board can be authorized either by the initial articles of association or by the shareholders' general meeting. The authorization is valid for five years from the registration of the company in the Company Register or from the general meeting decision respectively (Article 2443 of the Italian Civil Code).

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<p>Resolution must be approved by the extraordinary shareholders' meeting</p> <p><u>First call:</u> Quorum: 50% of the share capital; Majority: 2/3s of the share capital present or represented at the meeting.</p> <p><u>Second call:</u> Quorum: 1/3 + 1 of the legal capital Majority: 2/3s of the share capital present or represented at the meeting</p> <p><u>Third call:</u> Quorum: 20% of the share capital; Majority: 2/3s of the share capital present or represented at the meeting</p>	<p>If the shareholders may authorize the Board or the Chairman or GM to implement the CEM:</p> <p><input checked="" type="checkbox"/> For how long would the authorization be valid (maximum duration): Yes, the Board can be authorized. The authorization is valid for five years (Article 2443 of the Italian Civil Code).</p> <p><input checked="" type="checkbox"/> If a tender offer is filed on the company wishing to implement the CEM, between the authorization and the actual implementation, would the authorization need to be renewed? No, as the issuance of non-voting shares is generally not a defensive measure.</p>
-------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Specific conditions:

Specific requirements when deciding to implement the CEM:

Special report to shareholders, prepared by:

An information document on the amendments of the articles of association is prepared by the company pursuant to a Consob form that is made public at the registered office of the company and the Italian Stock Exchange, at least 15 days before the date of the shareholders meeting convened to approve the amendment(s) (Article 72 (1) of Regulation on Issuers²⁷²).

Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.):

A report of the board of directors on the amendments of the articles of association is sent to Consob no later than 30 days before the meeting (Article 92 (1) (a) of Regulation on Issuers).

Following the issuance of the new shares, listed companies should provide both Consob and the Italian Stock Exchange with the relevant information regarding the capital increase.

The Italian Stock Exchange disseminates the information.

5) Are there ongoing disclosure requirements regarding such CEM?

According to Article 2427 (1) n. 17 of the Italian Civil Code, the report of the board (*Nota Integrativa*), which forms part of the company's annual report, should disclose the number and the nominal value of any type of shares and the number and the nominal value of the new shares of the company subscribed during the last accounting period.

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure to be made on yearly basis (management report).
-----------------------------------------	------------------------------------------------------------------------------------------------

6) When a CEM is implemented, on what substantive grounds may such decision be challenged?

Pursuant to Article 2377 and 2379 of the Italian Civil Code, resolutions of the shareholders' meeting can be challenged as either "voidable" or "null and void."

Voidable. Pursuant to Article 2377 of the Italian Civil Code, absent, abstaining and/or dissenting shareholders holding at least one-thousandth of the company's share capital as well as directors and/or statutory auditors may challenge shareholders' meetings resolutions on the grounds that the relevant resolution was not adopted in compliance with the law or the bylaws of the company. Shareholders holding less than one-thousandth of the company's share capital (or shareholder's holding shares with no voting rights) cannot challenge the resolution and can only claim damages suffered in connection thereto.

Null and Void. Pursuant to Article 2379 of the Italian Civil Code any person who has an interest in the challenge may request that the resolution be declared null and void in limited circumstances, including when (i) the shareholders meeting has been held in the absence of any invitation, (ii) no minutes of the meeting have been drafted and (iii) the subject matter of the resolution is either impossible or illegal.

²⁷² Consob Regulation n. 11971 of 14 May 1999, as amended (*Regolamento Emittenti*).

Short form answer:

- Pursuant to Article 2377 and 2379 of the Italian Civil Code, resolutions of the shareholders meeting can be challenged as either voidable or null and void.
- Resolutions of the general meeting can be challenged if they are in fraud on the minority and without any significant corporate interest, or if they violate the principle of equal treatment.

NON-VOTING PREFERENCE SHARES

1) **Is this CEM available?**

Pursuant to Articles 145 to 147 bis of the Italian Securities Act, Italian listed companies can issue non-voting preference shares (known as “savings shares” – *azioni di risparmio*). Under Article 145 of the Italian Securities Act, the content of the preference rights must be indicated in the articles of association of the company. Article 146 of the Italian Securities Act provides that any shareholders’ meeting resolutions affecting the rights of the savings shareholders must also be approved by the special meeting of such shareholders.

Pursuant to Articles 2.2.2.(4) and 2B.2.2.(4) of the Italian Stock Exchange Regulation,²⁷³ non-voting shares can only be listed if ordinary shares of the same issuer are already listed.²⁷⁴

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	Pursuant to Articles 145-147-bis of the Italian Securities Act, Italian listed companies can issue non-voting preference shares (savings shares - <i>azioni di risparmio</i>).
-----------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.**

Article 145 of the Italian Securities Act explicitly allows listed companies to issue non-voting preference shares.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	Article 145 of the Italian Securities Act.
------------------------------------------	--------------------------------------------------	--------------------------------------------

3) **If this CEM is available, is it subject to any restrictions?**

According to Article 2351 (2) of the Italian Civil Code, the aggregate par value of non-voting and limited voting shares cannot exceed 50% of the share capital. For the purposes of calculating such 50% limitation, one needs to take into account non-voting shares, shares with voting rights limited to specific arguments and shares with voting right triggered by particular circumstances.

Short form answer:

<input checked="" type="checkbox"/> Maximum percentage of Non-Voting Preference Shares	Aggregate of non-voting and limited voting shares cannot exceed 50% of the share capital.
----------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------

²⁷³ Regulation of the markets organized and managed by Borsa Italiana S.p.A. issued on 20 April 2006, as amended.

²⁷⁴ Such limitation does not apply to non-voting shares issued by certain cooperative banks (*banche popolari*) and cooperative insurance companies.

4) Who decides whether this CEM should be implemented, and under what conditions?

Pursuant to Article 145 (7) of the Italian Securities Act, the issuance of savings shares is resolved by the extraordinary shareholders' meeting with the majorities required for the amendments to the articles of association of the company.

These majorities, unless the articles of association require a higher quorum, are:

- (i) first call: quorum: 50% of the share capital; majority: 2/3s of the share capital present or represented at the shareholders meeting;
- (ii) second call: quorum: 1/3 + 1 of the legal capital; majority: 2/3s of the share capital present or represented at the shareholders meeting;
- (iii) subsequent calls: quorum 20% of the share capital; majority: 2/3s of the share capital present or represented at the shareholders meeting.

The Board can be authorized either by the initial articles of association or by the shareholders' general meeting. The authorization is valid for five years from the registration of the company in the Company Register or from the general meeting decision respectively (Article 2443 of the Italian Civil Code).

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	Resolution must be approved by the extraordinary shareholders' meeting <u>First call:</u> Quorum: 50% of the share capital; Majority: 2/3s of the share capital present or represented at the meeting. <u>Second call:</u> Quorum: 1/3 + 1 of the share capital; Majority: 2/3s of the share capital present or represented at the meeting <u>Third call:</u> Quorum: 20% of the share capital; Majority: 2/3s of the share capital present or represented at the meeting	If the shareholders may authorize the Board or the Chairman or the GM to implement the CEM: <input checked="" type="checkbox"/> For how long would the authorization be valid (maximum duration): Yes, the Board can be authorized. The authorization is valid for five years (Article 2443 of the Italian Civil Code). <input checked="" type="checkbox"/> If a tender offer is filed on the company wishing to implement the CEM, between the authorization and the actual implementation, would the authorization need to be renewed? No, as the issuance of savings shares is generally not a defensive measure.
-------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Specific conditions:

Specific requirements when deciding to implement the CEM: <input checked="" type="checkbox"/> Special report to shareholders, prepared by: An information document on the amendments of the articles of association is prepared by the

company pursuant to a Consob form that is made public at the registered office of the company and the Italian Stock Exchange, at least 15 days before the date of the shareholders' meeting convened to approve the amendment (Article 72 (1) of Regulation on Issuers²⁷⁵).

Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.):

A report of the board of directors on the amendments of the articles of association is sent to Consob no later than 30 days before the meeting (Article 92 (1) (a) of Regulation on Issuers).

Following the issuance of the new shares, listed companies should provide both Consob and the Italian Stock Exchange with the relevant information regarding the capital increase.

The Italian Stock Exchange disseminates the information.

5) Are there ongoing disclosure requirements regarding such CEM?

According to Article 2427 (1) n. 17 of the Italian Civil Code, the report of the board (*Nota Integrativa*), which forms part of the company's annual report, should disclose the number and the nominal value of any type of shares and the number and the nominal value of the new shares of the company subscribed during the last accounting period.

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure to be made on yearly basis (management report).
-----------------------------------------	------------------------------------------------------------------------------------------------

6) When a CEM is implemented, on what substantive grounds may such decision be challenged?

Pursuant to Article 2377 and 2379 of the Italian Civil Code, resolutions of the shareholders' meeting can be challenged as either "voidable" or "null and void."

Voidable. Pursuant to Article 2377 of the Italian Civil Code, absent, abstaining and/or dissenting shareholders holding at least one-thousandth of the company's share capital as well as directors and/or statutory auditors may challenge shareholders' meetings resolutions on the grounds that the relevant resolution was not adopted in compliance with the law or the bylaws of the company. Shareholders holding less than one-thousandth of the company's share capital (or shareholders holding shares with no voting rights) cannot challenge the resolution and can only claim damages suffered in connection thereto.

Null and Void. Pursuant to Article 2379 of the Italian Civil Code any person who has an interest in the challenge may request that the resolution be declared null and void in limited circumstances, including when (i) the meeting has been held in the absence of any invitation, (ii) no minutes of the meeting have been drafted and (iii) the subject matter of the resolution is either impossible or illegal.

²⁷⁵ Consob Regulation n. 11971 of 14 May 1999, as amended (*Regolamento Emittenti*).

Short form answer:

- Pursuant to Article 2377 and 2379 of the Italian Civil Code, resolutions of the shareholders' meeting can be challenged as either voidable or null and void.
- Resolutions of the general meeting can be challenged if they are in fraud on the minority, and without any significant corporate interest, or if they violate the principle of equal treatment.

PYRAMID STRUCTURES

1) Is this CEM available?

“Pyramid” and “group” structures are commonly used in the Italian economic system as a factual means to separate ownership and control.

Pyramid company structures and groups of companies are allowed under Italian company law, which contains specific provisions on the liability of controlling shareholders and on transparency of the group’s structure (Articles 2497-bis of the Italian civil code).

The Italian Stock Exchange Regulation prohibits the “multi-layer listing,” *i.e.*, listing of companies whose main asset or revenues are or derive from shares held in another listed company (Articles 2.2.1 (6), 2.2.3 (3 –c), 2A. 2.1 (7)).

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	The sole limit appears to be that “pure holding” may not be listed if the subsidiary is listed.
-----------------------------------------------------------	-------------------------------------------------------------------------------------------------

2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.

Italian companies are allowed to hold control shareholdings, unless the value of the shareholding and the activity of the controlled company de facto change the official activity of the holding company as established by the articles of association (Article 2361 of the Italian Civil Code²⁷⁶).

The Corporate Law Reform provided for a new regulation for “groups” of companies (Articles 2497-2497-quinquies of the Italian Civil Code). The most significant provisions relate to: (a) liability of the parent company for damages to minority shareholders and creditors of the subsidiaries in case of mismanagement of the subsidiary (Article 2497 (1) of the Italian Civil Code); (b) publicity of the “group” structure (Article 2497-bis of the Italian Civil Code); (c) withdrawal right of subsidiary’s minority shareholders when: (i) the parent company has decided to transform itself with a change in its corporate purpose or modified its corporate object in a way which affects the financial situation of the subsidiary; (ii) the shareholder has obtained a sentence against the parent company for mismanagement of the subsidiary (Article 2497-quater of the Italian Civil Code).

The Regulation of the Italian Stock Exchange prohibits “multi-layer listing,” defined as the listing of companies whose main asset or revenues are or derive from shares held in another listed company.

According to the combination of Article 106 (3) (a) of the Italian Securities Act and Article 45 of the Regulation on Issuer, the transfer of the control stake (which is conventionally set at 30% of the voting capital) of a listed company whose main asset is the control interest in another listed company triggers a mandatory tender offer on the shares of the subsidiary.

All the rules described above are binding.

²⁷⁶ See Italian Supreme Court (*Cassazione*) 6 June 2003 n. 9100; Court of Appeal (*Corte d’appello*) of Milan, 16 October 2001.

According to the corporate governance code prepared by the Italian Stock Exchange, issued in 2006, the board of directors of a listed company should take into account “the directives and policies defined for the group of which the issuer is a member, as well as the benefits deriving from being a member of the group” (Article 1.P.2.). This rule is not binding.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	Articles 2361 and 2497 ff. of the Italian Civil Code.
<input checked="" type="checkbox"/> Regulatory Authority Rules	<input checked="" type="checkbox"/> Binding Rule	Mandatory bid in case of indirect acquisition of control.
<input checked="" type="checkbox"/> Stock Exchange Rules	<input checked="" type="checkbox"/> Binding Rule	Prohibition of “multi-layer listing,” defined as the listing of companies whose main asset or revenues are or derive from shares held in another listed company.
<input checked="" type="checkbox"/> Corporate Governance Codes	<input checked="" type="checkbox"/> Non-Binding Rule	Directors should take into account the group structure to whom their company belongs and the interests of the group as a whole.

3) If this CEM is available, is it subject to any restrictions?

The Regulation of the Italian Stock Exchange prohibits “multi-layer listing,” defined as the listing companies whose main asset or revenues are or derive from shares held in another listed company.

Short form answer:

<input checked="" type="checkbox"/> Limits on the use of "pure holdings" (<i>i.e.</i> , holdings whose only purpose is to hold an interest in one subsidiary).	The Regulation of the Italian Stock Exchange prohibits “multi-layer listing,” defined as the listing of companies whose main asset or revenues are or derive from shares held in another listed company.
-----------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

4) Who decides whether this CEM should be implemented, and under what conditions?

The board of directors is competent to decide on the acquisition of shareholdings in other companies or on the transfer of assets to a newly incorporated company.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the Board of Directors	<input checked="" type="checkbox"/> Autonomous decision.
------------------------------------------------------------------------	----------------------------------------------------------

Specific conditions:

<p>Specific requirements when deciding to implement the CEM:</p> <p><input checked="" type="checkbox"/> Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.):</p> <p>Pursuant to Article 71 of the Regulation on Issuers, significant acquisition of shareholding should be disclosed in an information document, which should be deposited at the registered office of the company and filed with the Italian Stock Exchange.</p>	<p>Specific rights of minority shareholders when the CEM is implemented:</p> <p><input checked="" type="checkbox"/> Right to indemnification.</p> <p>Indemnification of shareholders of the subsidiaries in the event that the parent company has damaged them in the exercise of its control power.</p> <p><input checked="" type="checkbox"/> Others Rights.</p> <p>In specific circumstances, withdrawal right of minority shareholders of the subsidiaries (Article 2497-quater of the Italian Civil Code).</p>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

5) Are there ongoing disclosure requirements regarding such CEM?

According to Article 2497-bis of the Italian Civil Code, a company subject to the “direction and coordination” of another legal entity should declare it in its letterhead and should notify it for registration to the registry of enterprises.

The notes to the financial statements of the subsidiary should contain a table setting forth the main financial items for the last financial year of the company that exercises on it “direction and coordination” (Article 2497-bis (4) of the Italian Civil Code).

Short form answer:

<p><input checked="" type="checkbox"/> Yes</p>	<p><input checked="" type="checkbox"/> Disclosure to be made on a quarterly, half-yearly or yearly basis.</p> <p>Disclosure to be made on a yearly basis in the financial statements.</p> <p><input checked="" type="checkbox"/> Disclosure to be made when one of the following events takes place:</p> <p>Pursuant to Article 2497 (3), when a company becomes or ceases to be subject to the “activity of direction and coordination” of another legal entity, this should be reported without delay to the register of enterprises.</p>
------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

6) When a CEM is implemented, on what substantive grounds may such decision be challenged?

Italian law does not provide for any specific ground to challenge pyramid structures, except for Article 2361 of the Italian Civil Code, pursuant to which Italian companies are not allowed to hold control shareholdings if the value of the shareholding and the activity of the controlled company *de facto* change the official activity of the holding company as established by the Articles of Association. Article 2361 of the Italian Civil Code is binding.

PRIORITY SHARES

1) Is this CEM available?

The availability of priority shares under Italian law is highly debated.

Pursuant to Article 2351 (5) of the Italian Civil Code, Italian companies can issue financial instruments which, in addition to cash-flow rights, can be granted the right to vote on specific subjects and in particular on the appointment of one independent member of the board of directors or of the supervisory board, or of one statutory auditor (“*sindaco*”). In light of this, some Italian scholars have indicated the admissibility also of a special type of shares which grant their holders the right to nominate a member of the board (or even two or more members, as long as less than the majority of the board).

Short form answer:

<input checked="" type="checkbox"/> Unclear situation

2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.

No explicit provision exists.

Short form answer:

<input checked="" type="checkbox"/> Laws		No explicit provision exists
------------------------------------------	--	------------------------------

3) If this CEM is available, is it subject to any restrictions?

See above, sub 1). It is generally believed that the power to nominate members of the board of directors granted to a particular type of shares (not amounting to half the legal capital) cannot extend to the majority of the board members. This limitation is derived from Article 2351 (2) of the Italian Civil Code, pursuant to which the articles of association can contemplate the creation of non-voting shares, with voting rights limited to specific subjects, or with voting rights subordinated to specific events, but the value of such shares cannot cumulatively amount to more than one half of the legal capital of the company. It is believed that, if to a particular type of share was granted the right to nominate the majority of the members of the board of directors, the other shares would end up qualifying as “limited voting shares” with regard to the election of the members of the board. According to Article 2351 (2), such “limited voting shares” could not represent more than half of the legal capital, and therefore the particular type of shares granting the power to nominate the majority of the members of the board of directors would need to represent at least one half of the legal capital.

4) Who decides whether this CEM should be implemented, and under what conditions?

Pursuant to Article 2365 (1) of the Italian Civil Code, the issuance of shares is resolved by the extraordinary shareholders’ meeting with the majorities required for the amendments to the articles of association of the company. These majorities, unless the Articles of Association require a higher quorum, are:

(i) first call: quorum: 50% of the share capital; majority: 2/3s of the share capital present or represented at the shareholders’ meeting;

(ii) second call: quorum: 1/3 + 1 of the legal capital; majority: 2/3s of the share capital present or represented at the shareholders’ meeting;

(iii) subsequent calls: quorum 20% of the share capital; majority: 2/3s of the share capital present or represented at the shareholders’ meeting.

The Board can be authorized either by the initial articles of association or by the shareholders' general meeting. The authorization is valid for five years from the registration of the company in the Company Register or from the general meeting decision respectively (Article 2443 of the Italian Civil Code).

Short form answer:

Who decides:

<p><input checked="" type="checkbox"/> Decision by the general meeting of shareholders</p>	<p>Resolution must be approved by the extraordinary shareholders' meeting.</p> <p><u>First call:</u> Quorum: 50% of the share capital; Majority: 2/3 of the share capital present or represented at the meeting.</p> <p><u>Second call:</u> Quorum: 1/3 + 1 of the share capital; Majority: 2/3s of the share capital present or represented at the meeting.</p> <p><u>Third call:</u> Quorum 20% of the share capital. Majority: 2/3s of the share capital present or represented at the meeting.</p>	<p>If the shareholders may authorize the Board or the Chairman or GM to implement the CEM:</p> <p><input checked="" type="checkbox"/> For how long would the authorization be valid (maximum duration): Yes, the Board can be authorized either by the initial articles of association or by the shareholders' general meeting. The authorization is valid for five years from the registration of the company in the Company Register or from the general meeting decision respectively (Article 2443 of the Italian Civil Code).</p> <p><input checked="" type="checkbox"/> If a tender offer is filed on the company wishing to implement the CEM, between the authorization and the actual implementation, would the authorization need to be renewed? No, as the issuance of non-voting shares is generally not a defensive measure.</p>
--------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Specific conditions:

<p>Specific requirements when deciding to implement the CEM:</p> <p><input checked="" type="checkbox"/> Special report to shareholders, prepared by:</p> <p>An information document on the amendments of the articles of association is prepared by the company pursuant to a Consob form that is made public at the registered office of the company and the Italian Stock Exchange, at least 15 days before the date of the shareholders meeting convened to approve the amendment (Article 72 (1) of Regulation on Issuers²⁷⁷).</p> <p><input checked="" type="checkbox"/> Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.):</p> <p>A report of the board of directors on the amendments of the articles of association is sent to Consob no later than 30 days before the meeting (Article 92 (1) (a) of Regulation on Issuers).</p> <p>Following the issuance of the new shares, listed companies should provide both Consob and the Italian Stock Exchange with the relevant information regarding the capital increase.</p> <p>The Italian Stock Exchange disseminates the information.</p>	
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

5) Are there ongoing disclosure requirements regarding such CEM?

According to Article 2427 (1) n. 17 of the Italian Civil Code, the report of the board (*Nota Integrativa*), which forms part of the company’s annual report, should disclose the number and the nominal value of any type of shares and the number and the nominal value of the new shares of the company subscribed during the last accounting period.

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Disclosure to be made on yearly basis (management report)
-----------------------------------------	-----------------------------------------------------------------------------------------------

6) When a CEM is implemented, on what substantive grounds may such decision be challenged?

Pursuant to Article 2377 and 2379 of the Italian Civil Code, resolutions of the shareholders’ meeting can be challenged as either “voidable” or “null and void.”

Voidable. Pursuant to Article 2377 of the Italian Civil Code, absent, abstaining and/or dissenting shareholders holding at least one-thousandth of the company’s share capital as well as directors and/or statutory auditors may challenge shareholders’ meetings resolutions on the grounds that the relevant resolution was not adopted in compliance with the law or the bylaws of the company. Shareholders

²⁷⁷ Consob Regulation n. 11971 of 14 May 1999, as amended (*Regolamento Emittenti*).

holding less than one-thousandth of the company's share capital (or shareholders holding shares with no voting rights) cannot challenge the resolution and can only claim damages suffered in connection thereto.

Null and Void. Pursuant to Article 2379 of the Italian Civil Code any person who has an interest in the challenge may request that the resolution be declared null and void in limited circumstances, including when (i) the meeting has been held in the absence of any invitation, (ii) no minutes of the meeting have been drafted and (iii) the subject matter of the resolution is either impossible or illegal.

Short form answer:

- Pursuant to Article 2377 and 2379 of the Italian Civil Code, resolutions of the shareholders' meeting can be challenged as either voidable or null and void.
- Resolutions of the general meeting can be challenged if they are in fraud on the minority, and without any significant corporate interest, or if they violate the principle of equal treatment.

DEPOSITARY CERTIFICATES

1) **Is this CEM available?**

Pursuant to Article 16 (3) Circular 3188/1988 of the Ministry of Industry, fiduciary companies are not allowed to issue depositary certificates.

Short form answer:

<input checked="" type="checkbox"/> No (Clear Situation)

2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.**

Article 16 (3) Circular 3188/1988 of the Ministry of Industry explicitly prohibits fiduciary companies to issue depositary certificates.

Short form answer:

<input checked="" type="checkbox"/> Administrative Rules	<input checked="" type="checkbox"/> Binding Rule
----------------------------------------------------------	--------------------------------------------------

Other questions not applicable.

VOTING RIGHT CEILINGS

1) Is this CEM available?

According to Article 2351 (3) of the Italian Civil Code voting right ceilings are not allowed for listed joint stock companies.

The Governance of cooperative companies and mutual insurances, provided for by Articles 2511 – 2548 of the Italian Civil Code, is based upon the “one head – one vote principle” regardless of the numbers of shares held by each shareholder (Article 2538 (2) of the Italian Civil Code). However, the articles of association of such entities may grant shareholders which have the form of a legal entity up to 5 voting rights (Article 2538 (3) of the Italian Civil Code).

For cooperative banks (so called *banche popolari*) the “one head – one vote principle” does not contemplate any exception (Article 30 Italian Banking Act ²⁷⁸).

Please note that the “one head – one vote principle” is compatible with the listing on a regulated Stock Exchange.

Short form answer:

<input checked="" type="checkbox"/> No (Clear Situation)	Not allowed with the exception of cooperative companies.
----------------------------------------------------------	----------------------------------------------------------

2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.

Article 2351 (3) of the Italian Civil Code prohibits listed joint stock companies to have voting right ceilings in their Articles of Association. This rule is binding.

Cooperative companies, on the contrary, apply the “one head – one vote” principle under Article 2538 (2) of the Italian Civil Code. Such rule is mandatory for banks incorporated as cooperative companies, while other cooperative companies can grant up to 5 voting rights to shareholders which have the form of legal entities.

Short form answer:

<input checked="" type="checkbox"/> Laws 2351 (3) of the Italian Civil Code. Article 2538 (2) of the Italian Civil Code	<input checked="" type="checkbox"/> Binding Rule	Listed joint stock companies are not permitted to have voting right ceilings in their Articles of Association. Cooperative companies apply the “one head – one vote” principle. Such rule is mandatory for banks incorporated as cooperative companies, while other cooperative companies can grant up to 5 voting rights to shareholders which have the form of legal entities.
-----------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Other questions not applicable.

²⁷⁸ Legislative decree 1 September 1993, n. 385, as amended.

OWNERSHIP CEILINGS

1) Is this CEM available?

The Articles of Association of certain companies operating in strategic sectors (such as telecommunications and energy), and banks and insurance companies, controlled by the State or by another public body and specifically indicated on a case by case basis by Ministerial decrees, may contain ownership ceilings, up to a maximum of 5% of the share capital (for banks and insurance companies this ceiling could be higher). These ceilings do not apply to the State (Italian Privatization Law,²⁷⁹ Article 3). If such ownership ceiling is exceeded, the voting rights and the non-economic rights relating to the shareholding in excess of the maximum threshold are suspended; the law does not provide that the shareholding in excess of the ownership ceiling should be disposed (Italian Privatization law, Article 3 (3)).

Company law provides that all cooperative companies have an ownership ceiling of €100.000. If the cooperative company has more than 500 shareholders, the articles of association can elevate the ownership ceiling up to 2% of the share capital; these ceilings do not apply to legal entities and in other specific circumstances (*e.g.*, in case of capital contributions in kind) (Article 2525 of the Italian Civil Code).

Article 30 (2) of the Italian Banking Act provides for a mandatory ownership ceiling in banks with the form of cooperative company (0.5% of the legal capital); this ceiling does not apply to collective investment undertakings.

Currently the introduction of an ownership ceiling in the articles of association of listed companies different from the ones described above is debated. In particular, after the enactment of the Corporate Law Reform, authoritative legal commentators have questioned whether ownership ceilings are compatible with the prohibition to establish voting right ceilings (Art. 2351 (3) of the Italian Civil Code).

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation) Art. 3 Italian Privatization Law (Law n.474/1994) Article 2525 of the Italian Civil Code Article 30 (2) of the Italian Banking Act	Strategic companies controlled by the State can have ownership ceilings. Ownership ceiling for cooperative companies (mandatory rule). Mandatory ownership ceilings in banks with the form of cooperative company (0.5% of the legal capital); this ceiling does not apply to collective investment undertakings.
<input checked="" type="checkbox"/> Unclear Situation	The introduction of an ownership ceiling in the Articles of Association of listed companies different from the ones described above is debated among Italian scholars, who point out that it might not be compatible with the prohibition to establish voting right ceilings (Art. 2351 (3) of the Italian Civil Code).

²⁷⁹ Law 30 July 1994, n. 474, as amended.

2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.**

Strategic companies controlled by the State or another public body are explicitly allowed to provide for ownership ceilings in their articles of association (Italian Privatization Law, Article 3).

The provisions relating to cooperatives under 500 shareholders and the *banche popolari* are mandatory (Article 30 Italian Banking Law); for cooperatives with more than 500 shareholders it might be slightly modified by the articles of association (they can elevate the ownership ceiling up to 2% of the share capital. This ceiling does not apply to legal entities and in other specific circumstances, such as capital contributions in kind).

As to other companies, it is currently debated whether Art. 2351 (3) of the Italian Civil Code (which prohibits voting right ceilings in listed companies) should be interpreted as extending to ownership ceilings as well.

Short form answer:

<input checked="" type="checkbox"/> Laws Italian Privatization Law, Article 3 Italian Banking Law, Article 30 Art. 2351 (3) of the Italian Civil Code	<input checked="" type="checkbox"/> Binding Rule	Ownership ceilings are allowed to strategic companies controlled by the State or another public body. Ownership ceilings are mandatory for cooperative companies. As to other companies, it is currently debated whether Art. 2351 (3) of the Italian Civil Code (which prohibits voting right ceilings in listed companies) should be interpreted as extending to ownership ceilings as well.
------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

3) **If this CEM is available, is it subject to any restrictions?**

With regard to ownership ceilings in strategic companies controlled by the State or other public bodies, Article 3 (3) of the Italian Privatization Law, as amended by Article 212 of the Italian Securities Act, provides for a “break-through rule” according to which, if a public tender offer (pursuant to Articles 106 and 107 of the Italian Securities Act) is launched against one of these companies, the ownership ceiling provision becomes ineffective.

Short form answer:

<input checked="" type="checkbox"/> Application of a Breakthrough Rule Italian Privatization Law, Article 3 (3)	Breakthrough rule for companies owned by the State, in case a public tender offer pursuant to Articles 106 and 107 of the Italian Securities Act is launched against one of these companies.
--------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

4) **Who decides whether this CEM should be implemented, and under what conditions?**

Ownership ceilings should be decided by the extraordinary shareholders meeting.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	<p>Resolution must be approved by the extraordinary shareholders' meeting</p> <p><u>First call:</u> Quorum: 50% of the share capital; Majority: 2/3s of the share capital present or represented at the meeting.</p> <p><u>Second call:</u> Quorum: 1/3 + 1 of the legal capital; Majority: 2/3s of the share capital present or represented at the meeting.</p> <p><u>Third call:</u> Quorum: 20% of the share capital; Majority: 2/3s of the share capital present or represented at the meeting.</p>
-------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

5) Are there ongoing disclosure requirements regarding such CEM?

The bylaws of Italian companies are public and must be filed with the Register of Enterprises and this provides for an ongoing disclosure readily accessible by third parties.

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Special Reports in case of modification to the bylaws must be filed with Register of Enterprises (Article 2436 of the Italian Civil Code) and Consob (Article 92 of the Regulation on Issuer) and made public at the registered office of the company and the Italian Stock Exchange (Article 72 of the Regulation on Issuer).
-----------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

6) When a CEM is implemented, on what substantive grounds may such decision be challenged?

Pursuant to Articles 2377 and 2379 of the Italian Civil Code, resolutions of the shareholders' meeting can be challenged as either voidable or null and void.

Voidable. Pursuant to Article 2377 of the Italian Civil Code, absent, abstaining and/or dissenting shareholders holding at least one-thousandth of the company's share capital as well as directors and/or statutory auditors may challenge shareholders' meetings resolutions on the grounds that the relevant resolution was not adopted in compliance with the law or the bylaws of the company. Shareholders holding less than one-thousandth of the company's share capital (or shareholder's holding shares with no voting rights) cannot challenge the resolution and can only claim damages suffered in connection thereto.

Null and Void. Pursuant to Article 2379 of the Italian Civil Code any person who has an interest in the challenge may request that the resolution be declared null and void in limited circumstances, including when (i) the meeting has been held in the absence of any invitation, (ii) no minutes of the meeting have been prepared and (iii) the subject matter of the resolution is either impossible or illegal.

Short form answer:

- Pursuant to Article 2377 and 2379 of the Italian Civil Code, resolutions of the shareholders meeting can be challenged as either voidable or null and void.
- Resolutions of the general meeting can be challenged if they are in fraud on the minority, and without any significant corporate interest, or if they violate the principle of equal treatment.

SUPERMAJORITY PROVISIONS

1) Is this CEM available?

The Articles of Association can require that shareholders' meeting resolutions be approved with majorities higher than the statutory majorities provided for by the Italian Civil Code. Supermajority provisions cannot be implemented for (i) the approval of the financial statements and (ii) the decisions to remove or appoint members of the board of directors and other corporate officers (Article 2369 (4) of the Italian Civil Code), on second call.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation) Article 2369 (4) of the Italian Civil Code

2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non-binding. Significant Court Decisions should also be mentioned.

Article 2368 (1) of the Italian Civil Code explicitly provides that the articles of association can raise the majority required to pass a resolution at the first call of the ordinary shareholders meeting (which is competent on general issues as well as on the decision on the appointment and the removal of the board and to approve the financial statements).

Article 2368 (2) of the Italian Civil Code explicitly provides that the articles of association can raise the quorum required for the validity of the first call of the extraordinary shareholders meeting (which is competent for extraordinary resolutions, such as the amendments to the articles of association or the winding-up of the company).

Article 2369 (4) of the Italian Civil Code explicitly provides that the articles of association can raise the quorums and the majorities required at the second and subsequent calls of both the ordinary and the extraordinary shareholders' meeting, with the exception of (i) the approval of the financial statements and (ii) the decisions to remove or appoint members of the board of directors and other corporate officers.

Article 2369 (7) of the Italian Civil Code explicitly provides that the articles of association of listed companies can raise the majority required for the validity of the third and subsequent calls of the extraordinary shareholders' meetings (which is usually one-fifth of the share capital).

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	The law explicitly allows supermajorities, with the exception for (i) the approval of the financial statements and (ii) the decisions to remove or appoint members of the board of directors and other corporate officers, at the second call of the ordinary meeting.
------------------------------------------	--------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

3) If this CEM is available, is it subject to any restrictions?

Pursuant to Article 2369 (4) of the Italian Civil Code, the Articles of Association cannot provide supermajorities for (i) the approval of the financial statements and (ii) the decisions to remove or appoint members of the board of directors and other corporate officers. In addition, it is often asserted – although the point is not completely settled – that the articles of association may not request that certain matters be approved unanimously by all shareholders.²⁸⁰

Short form answer:

<input checked="" type="checkbox"/> Supermajority provisions may only be used for certain types of decisions.	Not allowed for (i) the approval of the financial statements and (ii) the decisions to remove or appoint members of the board of directors and other corporate officers.
---------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------

4) Who decides whether this CEM should be implemented, and under what conditions?

Supermajority provisions must be introduced in the articles of association by a resolution of the extraordinary shareholders' meeting.

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	Resolution must be approved by the extraordinary shareholders' meeting. <u>First call:</u> Quorum: 50% of the share capital; Majority: 2/3 of the share capital present or represented at the meeting. <u>Second call:</u> Quorum: 1/3 + 1 of the legal capital; Majority: 2/3 of the share capital present or represented at the meeting. <u>Third call:</u> Quorum: 20% of the share capital; Majority: 2/3 of the share capital present or represented at the meeting.
-------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

²⁸⁰ See for instance the obiter dictum in Supreme Court (*Cassazione*), 13 April 2005, n. 7663.

Specific conditions:

<p>Specific requirements when deciding to implement the CEM:</p> <p><input checked="" type="checkbox"/> Special report to shareholders, prepared by:</p> <p>An information document on the amendments of the articles of association is prepared by the company pursuant to a Consob form that is made public at the registered office of the company and the Italian Stock Exchange, at least 15 days before the date of the shareholders meeting convened to approve the amendment (Article 72 (1) of Regulation on Issuers).</p> <p><input checked="" type="checkbox"/> Specific disclosure requirements (such as specific filings, disclosures in annual reports, etc.):</p> <p>A report of the board of directors on the amendments of the articles of association is sent to Consob no later than 30 days before the meeting (Article 92 (1) (a) of Regulation on Issuers).</p> <p>Following the amendment, listed companies should provide the Italian Stock Exchange with the relevant information within five days from the registration in the Registry of Enterprises (Article 1A 2.3.1 of the Instructions to the Regulation of the Italian Stock Exchange²⁸¹).</p>

5) Are there ongoing disclosure requirements regarding such CEM?

The bylaws of Italian companies are public and must be filed with the Register of Enterprises. This provides for an ongoing disclosure readily accessible by third parties.

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Special Reports in case of modification to the bylaws must be filed with Register of Enterprises (Article 2436 of the Italian Civil Code) and Consob (Article 92 of the Regulation on Issuer) and made public at the registered office of the company and the Italian Stock Exchange (Article 72 of the Regulation on Issuer).
-----------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

6) When a CEM is implemented, on what substantive grounds may such decision be challenged?

Pursuant to Article 2377 and 2379 of the Italian Civil Code, resolutions of the shareholders' meeting can be challenged as either voidable or null and void.

Voidable. Pursuant to Article 2377 of the Italian Civil Code, absent, abstaining and/or dissenting shareholders holding at least one-thousandth of the company's share capital as well as directors and/or statutory auditors may challenge shareholders' meetings resolutions on the grounds that the relevant resolution was not adopted in compliance with the law or the bylaws of the company. Shareholders holding less than one-thousandth of the company's share capital (or shareholder's holding shares with no voting rights) cannot challenge the resolution and can only claim damages suffered in connection thereto.

Null and Void. Pursuant to Article 2379 of the Italian Civil Code any person who has an interest in the challenge may request that the resolution be declared null and void in limited circumstances, including when (i) the meeting has been held in the absence of any invitation, (ii) no minutes of the meeting have been prepared and (iii) the subject matter of the resolution is either impossible or illegal.

²⁸¹ Instructions to the Regulations of the Italian Stock Exchange, as amended at 24 July 2006.

Short form answer:

- Pursuant to Article 2377 and 2379 of the Italian Civil Code, resolutions of the shareholders meeting can be challenged as either voidable or null and void.
- Resolutions of the general meeting can be challenged if they are in fraud on the minority and without any significant corporate interest, or if they violate the principle of equal treatment.

GOLDEN SHARES

1) **Is this CEM available?**

According to Article 2449 of the Italian Civil Code if shares in a joint stock company are held by the State or public bodies, the articles of association of the company may grant to such entities the power to appoint one or more members of the board of directors or of the board of statutory auditors or members of the supervisory board. Such directors and auditors can be removed only by the body which has appointed them. They have the same rights and powers of other directors and auditors.

According to Article 2 of the Italian Privatization Law,²⁸² the articles of association of certain strategic companies controlled by the State or other public bodies and specifically indicated by an ad hoc decree of the Prime Minister may grant the Ministry of Economics and Finance one or more of the following special rights (“Special Rights”):

- 1) to veto any acquisition of more than 5% of the share capital, or such lower percentage as established by decree by the Ministry of Economics and Finance;
- 2) to veto shareholders’ agreements, when their participants collectively represent at least 5% of the share capital or such lower percentage established by decree by the Ministry of Economics and Finance;
- 3) to veto any amendment of the articles of association of extraordinary nature, such as the winding-up of the company, the sale of the assets, mergers and divisions, the transfer abroad of the registered office, the change of the object of the company, the changes of the articles of association that modify the special rights provided by Article 2 of the Italian Privatization Law;
- 4) to appoint a non-voting member of the Board.

In order to comply with the decisions on “Golden Shares” issued by the ECJ,²⁸³ the Italian Parliament specified that the Special Rights can be used only in order to protect “vital interests of the State” (Law n. 350/2003, Article 4 (230), indicated by Prime Minister Decree (see Prime Minister Decree 10 June 2004²⁸⁴).

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)

2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.**

According to Article 2 of the Italian Privatization Law, the articles of association of strategic companies controlled by the State or another public body, indicated by ad hoc decrees of the Prime Minister, should include one or more of the Special Rights.

²⁸² Law 30 July 1994, n. 474, as amended.

²⁸³ ECJ 23.5.2000 – Case C-58/99 *Commission v. Italy*, ECR 2000, I-3811; ECJ 4.6.2002 – Case 367/98 *Commission v. Portugal*, ECR 2002, I-4731; ECJ 4.6.2002 – Case C-483/99 *Commission v. France*, ECR 2002, I-4781; ECJ 4.6.2002 – Case C-503/99 *Commission v. Belgium*, ECR 2002, I-4809; ECJ 13.5.2003 – Case C-463/00 *Commission v. Spain*; ECJ 13.5.2003 – Case C-98/01 *Commission v. United Kingdom*, ECR 2003, I-4641.

²⁸⁴ In G.U., 16 June 2004, n. 139.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule	
<input checked="" type="checkbox"/> Administrative Rules	<input checked="" type="checkbox"/> Binding Rule	Ad hoc decrees of the Treasury indicate which companies should include the Special Rights in their Articles of Association.

3) If this CEM is available, is it subject to any restrictions?

The Special Rights can be used by the Ministry of Economics and Finance only in order to protect the “vital interests of the State.”

A decree of the Prime Minister of 2004²⁸⁵ specifies that the vital interests of the State are in question only in the following cases:

- (a) severe and real risk of a lack in the supply and distribution of oil, energy, raw materials, telecommunications and transports;
- (b) severe and real risk to interrupt a public service;
- (c) severe and real danger for the safety of plants and of energy or telecommunication nets;
- (c) severe and real danger for the national defense and the public order; and
- (d) health emergencies.

Short form answer:

<input checked="" type="checkbox"/> Others	The Special Rights can be used only in order to protect the “vital interests of the State.”
--------------------------------------------	---------------------------------------------------------------------------------------------

4) Who decides whether this CEM should be implemented, and under what conditions?

The introduction of the Special Rights should be resolved by the extraordinary shareholders meeting.

Article 2 (2) of the Italian Privatization Law grants the right to withdraw to shareholders dissenting with the decision to introduce the Special Right under Article 2 (1) (c) (*i.e.*, the Special Right to veto any amendment of the articles of association of extraordinary nature, such as the winding-up of the company, the sale of the assets, mergers and divisions, the transfer abroad of the registered office, the change of the object of the company, or the changes of the articles of association that modify the special rights provided by Article 2 of the Italian Privatization Law).

Short form answer:

Who decides:

<input checked="" type="checkbox"/> Decision by the general meeting of shareholders	Resolution must be approved by the extraordinary shareholders’ meeting. <u>First call:</u> Quorum: 50% of the share capital; Majority: 2/3 of the share capital present or represented at the meeting. <u>Second call:</u>
-------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

²⁸⁵ Decree of the Prime Minister 10 June 2004.

	<p>Quorum: 1/3 + 1 of the legal capital; Majority: 2/3 of the share capital present or represented at the meeting.</p> <p><u>Third call:</u></p> <p>Quorum: 20% of the share capital. Majority: 2/3 of the share capital present or represented at the meeting.</p>
--	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Specific conditions:

<p>Article 2 (2) of the Italian Privatization Law grants the right to withdraw to shareholders dissenting with the decision to introduce the Special Right under Article 2 (1) (c).</p>

5) Are there ongoing disclosure requirements regarding such CEM?

The bylaws of Italian companies are public and must be filed with the Register of Enterprises and this provides for an ongoing disclosure readily accessible by third parties.

Short form answer:

<input checked="" type="checkbox"/> Yes	<p><input checked="" type="checkbox"/> Special Reports in case of modification to the bylaws must be filed with Register of Enterprises (Article 2436 of the Italian Civil Code) and Consob (Article 92 of the Regulation on Issuer) and made public at the registered office of the company and the Italian Stock Exchange (Article 72 of the Regulation on Issuer).</p>
-----------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

6) When a CEM is implemented, on what substantive grounds may such decision be challenged?

The use of the Special Rights can be challenged if it was not aimed at protecting the “vital interests of the State.”

The introduction of the Special Rights can be challenged, pursuant to Article 2377 and 2379 of the Italian Civil Code, as either voidable or null and void.

Voidable. Pursuant to Article 2377 of the Italian Civil Code, absent, abstaining and/or dissenting shareholders holding at least one-thousandth of the company’s share capital as well as directors and/or statutory auditors may challenge shareholders’ meetings resolutions on the grounds that the relevant resolution was not adopted in compliance with the law or the bylaws of the company. Shareholders holding less than one-thousandth of the company’s share capital (or shareholder’s holding shares with no voting rights) cannot challenge the resolution and can only claim damages suffered in connection thereto.

Null and Void. Pursuant to Article 2379 of the Italian Civil Code any person who has an interest in the challenge may request that the resolution be declared null and void in limited circumstances, including when (i) the meeting has been held in the absence of any invitation, (ii) no minutes of the meeting have been prepared and (iii) the subject matter of the resolution is either impossible or illegal.

Short form answer:

- Pursuant to Article 2377 and 2379 of the Italian Civil Code, resolutions of the shareholders meeting can be challenged as either voidable or null and void.
- Resolutions of the general meeting can be challenged if they are in fraud on the minority and without any significant corporate interest, or if they violate the principle of equal treatment.
- The use of the CEM can be challenged if it was not aimed at protecting the vital interests of the state.

PARTNERSHIPS LIMITED BY SHARES

1) Is this CEM available?

Partnerships limited by shares (*società in accomandita per azioni*) are permitted under Italian company law (Articles 2452-2461 of the Italian Civil Code).

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)

2) Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.

Articles 2452 -2461 of the Italian Civil Code provide for a specific, although not complete, regulation of this corporate form. Pursuant to Article 2454 of the Italian Civil Code, rules on joint stock companies (*società per azioni*) should be applied as far as possible to all matters not regulated by specific provisions for partnerships limited by shares.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule
------------------------------------------	--------------------------------------------------

3) If this CEM is available, is it subject to any restrictions?

The following entities may not be incorporated in the form of a partnership limited by shares:

- banks (Article 14 (1) Italian Banking Act);
- financial intermediaries (Article 19 (1) Italian Securities Act);
- fund management companies (Article 34 (1) Italian Securities Act); and
- insurance companies (Article 14 (1) Italian Insurance Code²⁸⁶).

Short form answer

<input checked="" type="checkbox"/> Others	Not permitted for certain kinds of entities.
--------------------------------------------	----------------------------------------------

4) Who decides whether this CEM should be implemented, and under what conditions?

Shareholders may decide to incorporate a partnerships limited by shares.

Italian law allows a joint stock company to transform itself into a partnership limited by shares; this decision must be approved not only by the “extraordinary” general meeting with the usual quorum and majority, but also by all shareholders who will have unlimited liability after the transformation (as can be argued from Article 2500-*sexies* (1) of the Italian Civil Code).

²⁸⁶ Legislative Decree n. 209 of 7 September 2005.

5) Are there ongoing disclosure requirements regarding such CEM?

The bylaws of Italian companies are public and must be filed with the Register of Enterprises. This provides for an ongoing disclosure readily accessible by third parties. The business name of a partnership limited by shares (*società in accomandita per azioni*) should include the indication of the type and the name of at least one of the shareholders with unlimited liability (Article 2453 of the Italian Civil Code).

6) When a CEM is implemented, on what substantive grounds may such decision be challenged?

Pursuant to Article 2377 and 2379 of the Italian Civil Code, resolutions of the shareholders' meeting can be challenged as either voidable or null and void.

Voidable. Pursuant to Article 2377 of the Italian Civil Code, absent, abstaining and/or dissenting shareholders holding at least one-thousandth of the company's share capital as well as directors and/or statutory auditors may challenge shareholders' meetings resolutions on the grounds that the relevant resolution was not adopted in compliance with the law or the bylaws of the company. Shareholders holding less than one-thousandth of the company's share capital (or shareholder's holding shares with no voting rights) cannot challenge the resolution and can only claim damages suffered in connection thereto.

Null and Void. Pursuant to Article 2379 of the Italian Civil Code any person who has an interest in the challenge may request that the resolution be declared null and void in limited circumstances, including when (i) the meeting has been held in the absence of any invitation, (ii) no minutes of the meeting have been prepared and (iii) the subject matter of the resolution is either impossible or illegal.

Pursuant to Article 2500-bis of the Italian Civil Code, a deed of transformation can not be declared invalid and therefore the transformation can not be reversed, once the relevant deed has been registered with the Registry of Enterprises.

Short form answer:

Pursuant to Article 2377 and 2379 of the Italian Civil Code, resolutions of the shareholders meeting can be challenged as either voidable or null and void.

Resolutions of the general meeting can be challenged if they are in fraud on the minority, and without any significant corporate interest, or if they violate the principle of equal treatment.

CROSS-SHAREHOLDINGS

1) Is this CEM available?

Under Italian law, the rules regarding cross-shareholdings differ depending on whether (a) cross-shareholdings are created at the moment of the incorporation or through a capital increase, or (b) cross-shareholdings occur by effect of a subsequent cross-acquisition of shares.

a) Cross-subscription.

Article 2360 of the Italian Civil Code prohibits cross-shareholdings created by reciprocal cross subscription at the moment either of the incorporation or through a capital increase. Any subscription in violation of the aforementioned rules can be voided.²⁸⁷

Similarly, pursuant to Article 2359-*quinquies* of the Italian Civil Code, controlled companies cannot subscribe a capital increase of their controlling company. The shares subscribed in violation of this rule are deemed subscribed and must be paid by the directors of the controlled company, unless they prove that they are not at fault.

b) Subsequent cross-acquisition.

Subsequent cross-acquisitions are regulated differently depending of whether a control relationship already exists between the two companies.

A) Control.

Pursuant to Article 2359-*bis* of the Italian Civil Code, a controlled company may acquire a shareholding in its controlling company within the limits set for the acquisition of its own shares. In particular, (i) only fully paid-up shares may be acquired; (ii) such acquisition can be carried out only within the limits of available profits and distributable reserves as set forth in the last approved financial statements; (iii) the general meeting of the shareholders must authorize the acquisition; (iv) the par value of the shares acquired (together with the other shares in the controlling company held by the companies belonging to the group) may not exceed 10% of the share capital of the controlling company; and (v) the controlled company cannot vote in the shareholders meeting of the controlling company.

The acquisition of the shares of the controlling company should be carried out following the principle of equal treatment of shareholders (Article 132 (2) of the Italian Securities Act) and the procedures provided for by Article 144-*bis* of the Regulation on Issuers.

B) No Control.

If there is no control relationship between the two companies and at least one of them is listed, Article 121 of the Italian Securities Act applies to the acquisition. In this case, Italian law provides a maximum threshold to the cross-acquisition of shares. In particular, if both companies are listed, a company may purchase up to a maximum of 2% of the voting shares of another company which in turn holds more than 2% of its voting share capital. If only one company is listed, then the cross-holding limit is 10% of the voting share capital of the non-listed company and 2% of the voting share capital of the listed company. If the threshold provided for by Article 121 of the Italian Securities Act is exceeded: (a) the voting rights relating to the shareholding in excess of the maximum threshold is suspended; (b) the shareholding in excess of the maximum threshold must be disposed within 12 months; and (c) if the shareholding is not disposed within the 12 month-period, the voting rights relating to the entire shareholding are suspended. If it is unknown or unclear which of the two companies crossed the threshold first, the voting right is suspended for both companies.

²⁸⁷

See Tribunal of Milan (*Tribunale Milano*) 11 December 1975.

Pursuant to Article 121 (2) of the Italian Securities Act, the threshold of 2% can be increased to 5% through an agreement authorized by the shareholders' meeting of both companies.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation) Article 2359- <i>bis</i> of the Italian Civil Code Article 121 of the Italian Securities Act	Cross-shareholdings are possible under Italian law, although within limits.
--------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------

2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.**

The prohibition on cross-subscription provided for by Article 2360 of the Italian Civil Code is binding.

The provisions on subsequent cross-shareholdings are binding within the limits described above.

Short form answer:

<input checked="" type="checkbox"/> Laws	<input checked="" type="checkbox"/> Binding Rule
------------------------------------------	--------------------------------------------------

3) **If this CEM is available, is it subject to any restrictions?**

Pursuant to Article 121 (5) of the Italian Securities Act, if no control relationship exists, the limits on cross-shareholdings do not apply if the thresholds are exceeded by way of a takeover-bid launched on at least 60% of the voting shares.

Short form answer:

<input checked="" type="checkbox"/> Application of a Breakthrough Rule

4) **Who decides whether this CEM should be implemented, and under what conditions?**

In all cases the decision to purchase shares of another company must be taken by the board of directors.

The decision of a company to purchase shares of its holding company must be authorized by the shareholders' meeting.

If two companies want to raise the threshold placed by the law to 5% of the shares, they should sign an agreement which should be authorized by the shareholders' meeting.

Short form answer:

<u>Who decides:</u> <input checked="" type="checkbox"/> Decision by the Board of Directors	<input checked="" type="checkbox"/> Autonomous decision. <input checked="" type="checkbox"/> Upon authorization of the shareholders in case of acquisition of the share of the holding	
-----------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

	company.	
		<p>If the shareholders may authorize the Board or the Chairman or the GM to implement the CEM:</p> <p><input checked="" type="checkbox"/> For how long would the authorization be valid (maximum duration):</p> <p>18 months pursuant to Article 2359 <i>bis</i>-(2) of the Italian Civil Code referring to Article 2357 (2) of the Italian Civil Code.</p>

5) Are there ongoing disclosure requirements regarding such CEM?

Pursuant to Article 120 (2) of the Italian Securities Act any acquisition of voting shares exceeding 2% of the share capital of a listed company must be communicated to the company and to the Consob within five days from the date of the trade.

Pursuant to Article 86 of the Regulation on Issuers, listed companies should provide the market, within 30 days, with the text, of any agreement which allows the increase up to 5% and of the shareholders meeting's resolution approving it.

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Special Report (press release filed with Consob pursuant to Articles 144- <i>bis</i> (3) and 66 (3) of the Regulation on Issuers and sent to the Italian Stock Exchange and at least two press agencies). Such press release must be published on the issuer's website.
-----------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

6) When a CEM is implemented, on what substantive grounds may such decision be challenged?

A) Control: the shareholding purchased in violation of article 2359-*bis* of the Italian Civil Code must be disposed within 12 months; after this deadline the shareholding should be annulled and the share capital should be correspondently reduced.

B) No control: the shareholding purchased in violation of article 121 of the Italian Securities Act must be disposed within 12 months; after this deadline the voting rights relating to the entire shareholding are suspended.

SHAREHOLDERS' AGREEMENTS

1) **Is this CEM available?**

Shareholders' agreements are allowed under Italian company law.²⁸⁸ Such agreements are not binding for third persons and for the company.²⁸⁹

Article 122 of the Italian Securities Law regulates the following shareholders' agreements, pertaining to a listed company or to the companies which have control over a listed company:

- a) voting agreements and consultation agreements;
- b) agreements which limit the transfer of the shares of the company, or the transfer of financial instruments granting the right to purchase or subscribe the shares of the company;
- c) agreements concerning the purchase of the shares of the company, or of the transfer of financial instruments granting the right to purchase or subscribe the shares of the company;
- d) agreements whose object or effect is the exercise of a dominant influence on the company.

Short form answer:

<input checked="" type="checkbox"/> Yes (Clear Situation)	The Italian Securities Law regulates the most significant shareholders' agreements.
-----------------------------------------------------------	-------------------------------------------------------------------------------------

2) **Please specify the type of Rule which either explicitly or implicitly (i) prohibits or (ii) authorizes and regulates the use of this CEM and indicate whether such Rules are binding or non binding. Significant Court Decisions should also be mentioned.**

Shareholders' agreements are explicitly allowed by the Italian Civil Code and by the Italian Securities Law; both the Italian Civil Code and the Italian Securities Act contain binding rules.

Short form answer:

<input checked="" type="checkbox"/> Laws Articles 2341-bis and 2341-ter of the Italian Civil Code Articles 122 and 123 of the Italian Securities Act	<input checked="" type="checkbox"/> Binding Rules
------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------

²⁸⁸ *Cassazione*, 20.9.1995, n. 9975.

²⁸⁹ *Cassazione*, 23.11.2001, n. 14865.

3) If this CEM is available, is it subject to any restrictions?

Shareholders' agreements should: (i) be communicated to Consob within 5 days from their execution; (ii) be published on newspapers within 10 days from their execution; and (iii) be deposited at the registry of enterprises within 15 days from their execution. If the timing and disclosure requirements are not complied with, the shareholders' agreement is null and void and the voting right of the participants to the shareholders' agreement is suspended.

According to Article 122 (2) of the Italian Securities Law, shareholders' agreements cannot have a time limit exceeding 3 years, but they can be renewed after this deadline. If the agreement does not have an express termination date, each participating shareholder has a right to withdraw from the agreement.

If a tender offer is launched upon the shares of the company, the participants to a shareholders' agreement listed in Article 122 of the Italian Securities Act can withdraw from the agreement and tender their shares (Article 123 (3) of the Italian Securities Act).

Short form answer:

<input checked="" type="checkbox"/> Application of a Breakthrough Rule	
<input checked="" type="checkbox"/> Others	Expiring date provided by the law: 3 years. Sanctions are provided for violation of disclosure obligations.

4) Who decides whether this CEM should be implemented, and under what conditions?

The shareholders.

A mandatory tender offer should be launched by persons who purchase more than 30% of the share capital with voting right on the appointment and removal of directors or on their liability. The same rule applies if the acquisition of the relevant threshold is made jointly by several persons acting in concert.

5) Are there ongoing disclosure requirements regarding such CEM?

Shareholders' agreements on the shares of listed companies and indicated by Article 122 of Italian Securities Act are communicated to Consob, published in at least one national newspaper and deposited at the registry of enterprises.

Short form answer:

<input checked="" type="checkbox"/> Yes	<input checked="" type="checkbox"/> Special Reports filed with Consob, published in at least one national newspaper and filed with the registry of enterprises, pursuant to Articles 127 and following of the Regulation on Issuers.
-----------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

6) When a CEM is implemented, on what substantive grounds may such decision be challenged?

If the timing and disclosure requirements provided by Article 122 of the Italian Securities Act are not complied with, the shareholders' agreement is null and void and the voting right of the participants to the shareholders' agreement is suspended (Article 122 (2) (3) of the Italian Securities Act).

B – GENERAL BACKGROUND QUESTIONS

1) What are the rules for board elections? How many corporate votes are required to appoint or remove corporate directors?

Following the implementation of the Italian Corporate Reform, Italian companies may adopt one of the following governance models: (i) the “traditional” model (board of directors plus board of statutory auditors), (ii) the “monistic” model (board of directors only, with internal audit committee) and (iii) the “dualistic” model (board of directors plus supervisory board).

In case a company has adopted the “traditional” or the “monistic” model, the board is elected by the ordinary shareholders’ meeting, with simple majority.

In case a company has adopted “dualistic” model the board of directors is appointed by the supervisory board, which is elected by the shareholders’ meeting, with simple majority.

The Italian Securities Act (Article 147-ter) provides that the members of the board of directors should be elected on the basis of lists of candidates. The Articles of association should indicate the minimum percentage of shares necessary to submit a list of candidates. At least one of the members of the board should belong to the minority list which obtained the most votes.

In the past, Article 147-ter of the Italian Securities Act required a minimum shareholding equal to 1/40 of the share capital to submit a list and mandated that the relevant vote be cast by secret ballot; pursuant to a recent reform (legislative decree 29 December 2006, n. 303); however, the above rules have been amended, eliminating the secret ballot and authorizing Consob to specify the minimum percentage of shares required to present a list.

Members of the board can be removed at any time by the same corporate body which is competent to appoint them. The removed member has the right to be compensated for suffered damages, if the removal was not based on a legitimate ground (Articles 2383 (3) and 2409-novies (5) of the Italian Civil Code).

Short form answer:

<p><input checked="" type="checkbox"/> Majority required for board election: Simple majority</p> <p>For board removal: Simple majority</p> <p>Quorum required for shareholders' meetings proceeding with the election or removal of board members:</p> <p>First call: 50% of the share capital</p> <p>Second call: no quorum.</p> <p><input checked="" type="checkbox"/> Specific mechanisms (such as cumulative voting) authorize minority shareholders to be represented at the board</p> <p>The Italian Securities Act provides that the members of the board of directors should be elected on the basis of lists of candidates.</p>	<p><input checked="" type="checkbox"/> Boards members may be removed only if revocation is on the agenda</p> <p>According to Article 126-bis of the Italian Securities Act, minority shareholders representing 1/40 of the share capital can include any new matter in the agenda of the meeting.</p> <p>Board members can be removed without a specific cause and notice, but they have a right to damages if the removal was not based on a legitimate ground.</p>
	<p><input checked="" type="checkbox"/> Minority shareholders representing 10% of the share capital, or the lower percentage indicated in the Articles of association, are entitled to require a general meeting of shareholders to be convened (Art. 2367 (1) of the Italian Civil Code).</p>

	<input checked="" type="checkbox"/> Proxy solicitation is authorized and cannot be excluded by the Articles of association of a listed company (Italian Securities Law, Article 137). The intermediary who carries out the solicitation is entitled to obtain: a) from the central securities depository, the names of the depositaries and the quantity of shares of the company registered on their respective accounts; b) from the depositaries, the names and the number of shares held by the shareholders who have not expressly forbidden the disclosure of their data; and c) from the company, the data contained in the shareholder book and in the other documents received pursuant to law or regulations (Article 134 (9) of the Regulation on Issuers ²⁹⁰).
--	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

2) What shareholders' decisions require a vote from more than a simple majority?

Defensive measures against tender offers: favorable vote of 30% of the share capital; quorum and majority for ordinary or extraordinary shareholders' meeting, depending on the nature of the resolution, also apply (Article 104 of the Italian Securities Act).

Limitation to pre-emptive right in case of capital increase, subject to the requirement that such limitation is "necessary for the interest of the company": $\frac{1}{2}$ of the share capital (Article 2441 (5) of the Italian Civil Code).

Limitation to pre-emptive right in case of capital increase granting more than $\frac{1}{4}$ of the newly issued shares to workers of the company or of the group: $\frac{1}{2}$ of the share capital (Article 2441 (8) of the Italian Civil Code).

Furthermore, pursuant to Article 2365 (1) of the Italian Civil Code, decisions concerning: (a) modifications to the Articles of Association, (b) election, substitution and powers of the liquidators, or (c) any other issue mentioned by the law, must be resolved by the extraordinary shareholders meeting:

First call: Quorum: 50% of the share capital; Majority: $\frac{2}{3}$ of the share capital present or represented at the meeting.

Second call: Quorum: $\frac{1}{3} + 1$ of the legal capital; Majority: $\frac{2}{3}$ of the share capital present or represented at the meeting

Third call: Quorum: 20% of the share capital; Majority: $\frac{2}{3}$ of the share capital present or represented at the meeting.

Cooperative companies: the articles of association determines quorum and majorities, based on the "one head – one vote" principle (Article 2538 (5) of the Italian Civil Code).

Shareholders present at the meeting but abstaining from the vote are counted in the denominator of the fraction required for the resolution to be passed, as if they had voted "no," unless such shareholders are in conflict of interest, in which case the relevant vote is not counted (Article 2368 (3) of the Italian Civil Code).

²⁹⁰ Consob Regulation n. 11971 of 14 May 1999, as amended.

Short form answer:

<input checked="" type="checkbox"/> All changes in bylaws / articles of associations.	<input checked="" type="checkbox"/> Change of nationality of the company
<input checked="" type="checkbox"/> Issuance of shares / bonds / other financial instruments	<input checked="" type="checkbox"/> Change of corporate purpose
<input checked="" type="checkbox"/> Mergers	