

# Act No 26/2004 on European Companies

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Unofficial translation

from Icelandic

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## Act No. 26/2004 on European Companies

### Chapter I

#### General Provisions

##### Article 1

###### *Scope*

The provisions of Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European company (SE) shall have the force of law in this country in conformity with protocol I on horizontal adaptations of the Agreement on the European Economic Area, cf. Act No. 2/1993 on the European Economic Area where the protocol is given the force of law. The regulation on European companies, European public limited companies, is printed as enclosure to this Act.

In conformity with the regulation on European companies (the European company regulation) this Act stipulates detailed provisions on European companies. Unless otherwise provided these provisions only cover European companies which are registered in Iceland.

##### Article 2

###### *Book-keeping and annual accounts*

Unless otherwise provided in the European company regulation a European company which is registered in this country shall keep its books and prepare its annual accounts in conformity with the Act on Book-Keeping and the Act on Annual Accounts. A European company may receive the authorization of the Register of Annual Accounts to keep its books in a foreign currency in conformity with legal provisions on book-keeping and prepare and disclose its annual account in a foreign currency in conformity with the Act on Annual Accounts.

If a European company has a registered office in another state within the European economic area while carrying out activities in the form of a branch in this country, the book-keeping and annual account of the branch shall be in conformity with the Act on Book-Keeping and the Act on Annual Accounts. The authorization under subparagraph 2 of paragraph 1 also applies to these branches.

##### Article 3

###### *Name*

A European company shall include the abbreviation SE in its name. The company is entitled to use, besides the abbreviation, the words European company in its name, as well as to use the abbreviation SE/Ef. Ef. is an abbreviation of the Icelandic word Evrópufélag which means European company. The name shall be clearly distinguishable from the name of another European company registered with the Register of Limited Companies, cf. Article 8.

More detailed provisions on the name of a European Company can be found in Article 11 of the European company regulation and in the legislation on firms.

##### Article 4

###### *Employee participation in European companies*

The Act on Employee Participation in European Companies applies to the participation of employees in the companies.

## Chapter II

### Formation of a European Company

#### Article 5

##### *Participation in the formation of a European company*

Unless otherwise provided in the European company regulation a public or private limited company having its head office in a state outside the European economic area is allowed to take part in the formation of a European company if the public or private limited company:

- (1) is formed under the laws of a state within the European economic area;
- (2) has a registered office in a state referred to in subparagraph (1) and
- (3) has real and continuous relations with the economy of a state within the European economic area.

The provisions of paragraph 1 on public and private limited companies also apply to legal bodies engaged in economic operations under paragraph 3 of Article 2 of the European company regulation regarding the formation of subsidiaries of a European company.

#### Article 6

##### *Participation of financial enterprises in the formation of a European company by merger*

An enterprise supervised by the Financial Supervisory Authority is not allowed to take part in the formation of a European company under paragraph 1 of Article 2 of the European company regulation regarding the formation of a European company by merger if the Financial Supervisory Authority, upon an examination, is opposed thereto on grounds of public interest provided the authority declares its opposition before the issue of a certificate under paragraph 2 of Article 25 of the European company regulation attesting the completion of all acts and formalities prior to the formation of a European company by merger.

The enterprise shall submit an application for an examination of the Financial Supervisory Authority under paragraph 1. In case there are hindrances against the carrying out of the examination the Financial Supervisory Authority shall give the enterprise an opportunity to express itself within a certain time limit or make improvements. If the enterprise does not do so its application shall be dismissed.

The Register of Limited Companies shall deny an application for a permit to carry out a merger plan providing for the formation of the European company by merger if the Financial Supervisory Authority has not examined an application under paragraph 2 or the Financial Supervisory Authority has, after having completed such an examination, opposed the merger.

If an application under paragraph 3 cannot be approved due to the fact that an examination under paragraph 2 is being carried out and is expected to be completed shortly, the application shall pend up to six months.

#### Article 7

##### *The issue of a certificate upon the formation of a European company by merger*

The Register of Limited Companies shall issue a certificate under paragraph 2 of Article 25 of the European company regulation attesting the completion of all acts and formalities prior to the formation of a European company by merger when the Register has:

- (1) given a public limited company a permit to carry into operation either a legal decision of a shareholders' meeting to participate in the formation of a company by merger under Article 124 of Act No. 2/1995 on Public Limited Companies or

(2) a board decision on the same matter under Articles 124 and 129 of the same Act.

### **Chapter III**

#### **Formation of European Companies, etc.**

##### Article 8

###### *Registration authority*

The Register of Limited Companies, operated by the Director of Internal Revenue, registers European companies. The registration of the companies by the Register of Limited Companies is subject to the provisions of the Act on Public Limited Companies and, as appropriate, other legal provisions, including provisions on the currency of the capital, cf. Article 4 and paragraph 1 of Article 67 of the European company regulation. European companies engaged in financial market activities are, as concerns the registration of the companies as necessary, subject to provisions of laws in that area and, as appropriate, other legal provisions.

The provisions of the Act on Additional State Revenues concerning public limited companies apply to fees for the registration of European companies. The provisions of the same act apply to additional notifications, etc. The Minister of Finance may lay down, by means of regulations, provisions on the formation of European companies, additional to general provisions on public limited companies, including the organization of the registration, the operation of the register, access to the register and the collection of charges, i.a. for the issue of certificates and the use of information which the register has in computerized form. The register collects charges on account of disclosure in the Legal Gazette in conformity with laws and regulations thereon, as well as charges on account of disclosure of information on the registration and deregistration of European companies in the Official Journal of the European Communities, cf. Article 14 of the European company regulation.

##### Article 9

###### *Disclosure of proposals for various decisions*

The management organ of a European company with a two-tier board system or the administrative organ of a European company with a one-tier board system shall submit to the Register of Limited Companies proposals for decisions under paragraph 2 of Article 8 of the European company regulation, on the transfer of a registered office, paragraph 2 of Article 32 of the regulation, on the formation of a European company which is a holding company, paragraph 4 of Article 37 of the regulation, on the conversion of an active public limited company into a European company, and finally paragraph 3 of Article 66 of the regulation, on the conversion of a European company into a public limited company in that EEA state where the European company has a registered office. Information on registrations shall without delay be printed in the Legal Gazette, the cost being borne by the notifier. If a proposal is not disclosed in its entirety it shall be disclosed in the notification where access to the proposal may be gained.

### **Chapter IV**

#### **The Transfer of the Registered Office of a European Company**

##### Article 10

###### *The right of the Financial Supervisory Authority to oppose a transfer*

An enterprise, supervised by the Financial Supervisory Authority, may not transfer its registered office from Iceland if the Authority opposes the transfer within two months as from the disclosure of a proposal for transfer in the Legal Gazette under paragraph 6 of Article 8 of the European company regulation. At the latest two weeks after the disclosure of the proposal for transfer the enterprise shall submit an application for the examination of the Financial Supervisory Authority under paragraph 14 of Article 8 of the European company regulation, on opposition to the transfer of a registered office. The Financial Supervisory Authority can only oppose the transfer on grounds of public interest.

In case there are hindrances against the carrying out of the examination the Financial Supervisory Authority shall give the enterprise an opportunity to express itself within a certain time limit or make improvements. If the enterprise does not do so its application shall be dismissed.

##### Article 11

###### *Information of a European company to creditors on the transfer of the company*

If a shareholders' meeting of a European company approves, under Article 8 of the European company regulation, to transfer the registered office of the company to another state within the European Economic Area, the company shall notify the decision in writing to known creditors of the company.

The notification shall contain information on the right of the creditors of the company on the basis of the paragraph 4 of Article 8 of the European company regulation to examine the proposal for a transfer as well as the report under paragraph 3 of Article 8 of the regulation. Furthermore, the notification shall contain information on the right of creditors under Article 13 of this Act to oppose the transfer.

## Article 12

### *Application for a transfer permit*

A European company shall apply to the Register of Limited Companies for a permit to transfer the registered office to another EEA state. An application shall be submitted within one month as from the decision of the shareholders' meeting of the company.

To the application the following shall be attached:

- (1) two copies of the minutes of the shareholders' meeting where a decision on the transfer was taken;
- (2) one copy of the proposal for transfer;
- (3) one copy of a report under paragraph 3 of Article 8 of the European company regulation;
- (4) a certificate from the management organ of a European company with a two-tier board system, the administrative organ of a European company with a one-tier board system or the manager of a European company attesting that the known creditors of the company have been given information under Article 11 and
- (5) a conformation from the Financial Supervisory Authority as regards enterprises under Article 10 attesting that the Authority has examined an application under that article and has not opposed a transfer.

If a European company has not attached documents under paragraph 2 to an application or there are other hindrances in the examination of an application the Register of Limited Companies shall give the company an opportunity to express itself within a certain time limit or make improvements. If the company does not do so the Register of Limited Companies shall dismiss the company's application.

## Article 13

### *Procedure in transfer proceedings before the Register of Limited Companies*

If the Register of Limited Companies has initiated an examination of an application for a transfer permit under Article 12 the register shall issue a call to the creditors of the European company.

A notification under paragraph 1 shall provide that those who oppose the transfer of a registered office shall inform thereof in writing at the latest two weeks after the disclosure of a transfer proposal in the Legal Gazette.

The call shall be disclosed in the Legal Gazette. The Register of Limited Companies shall send a special notification of the call to the sheriff in the district where the registered office of the company is located.

## Article 14

If a creditor, who has received a call under Article 13, opposes within a certain time limit that a company transfer a registered office, the Register of Limited Companies shall send the case to the court of first instance in the district where the company has a registered office. If no creditor has opposed the transfer the register shall give the company the requested transfer permit.

## Article 15

### *Procedure in transfer proceedings before a court of first instance*

If an application for the transfer of the registered office of a European company to another EEA state has been sent to a court of first instance the court shall grant a transfer permit provided the company approve that the claims of the creditors have been fully paid or a satisfactory security has been given as regards the payments of those claims which have antedated the day specified under paragraph 2 of Article 13. Otherwise the court shall deny the application of the company.

The court of first instance shall at its own initiative inform the Register of Limited Companies on the conclusion in the transfer proceedings before the court.

#### Article 16

##### *Issue of a transfer certificate*

The Register of Limited Companies shall issue a certificate under paragraph 8 of Article 8 of the European company regulation as regards the conclusion of acts and formalities for a transfer when:

- (1) the register has given the transfer permit under Article 14 or
- (2) the court of first instance has given a transfer permit under Article 15.

### **Chapter V**

#### **The Organization of European Companies**

#### Article 17

##### *European companies with a two-tier board system*

The following provisions apply to European companies with a two-tier board system under Articles 39-42 of the European companies regulation:

- (1) Unless otherwise provided in the regulation legal provisions on public limited companies, and, as appropriate, other legal provisions, on the board or board members shall also apply to the management organs or the members of the management organs of these European companies, as well as to the supervisory organs or members of the supervisory organs, as appropriate.
- (2) Beside obligations under the provisions of the European company regulation a supervisory organ shall submit to the annual general meeting a report with information on the issues which matter in the evaluation of the annual account of the company and of the report of auditors or inspectors. Paragraph 4 of Article 88 of Act No. 2/1995 on Public Limited Companies shall govern the submission and dispatch of the report to registered shareholders. Article 22 of this act contains more detailed provisions on the activities of the supervisory organ.

#### Article 18

In case a member of the supervisory organ be nominated to act as a member of the management organ under paragraph 3 of Article 39 of the European company regulation the nomination shall not exceed three months.

#### Article 19

##### *European companies with a one-tier board system*

Unless otherwise provided in the European company regulation the legal provisions on public limited companies, and, as appropriate, other legal provisions, on the board and the board members shall also apply on the administrative organs or the members of the administrative organs of European companies with a one-tier board system under Articles 43-45 of the regulation.

#### Article 20

##### *Number of members in the governing organs of European companies*

If a European company has a two-tier board system under Articles 39-42 of the European company regulation at least three men shall sit on the management organ and at least three men on the supervisory organ.

If the European company has a one-tier board system under Articles 43-45 of the European company regulation at least three men shall sit on the administrative organ of the company.

#### Article 21

##### *The managing director of a European company*

A European company shall have a managing director.

If the company has a two-tier board system under Articles 39-42 of the European company regulation the management organ shall engage the managing director. In such a case the managing director cannot be a member of the supervisory organ. If the company has a one-tier board system under Articles 43-45 of the European company regulation the administrative organ shall engage the managing director.

More detailed provisions on the managing director and his tasks are contained in the Act on Public Limited Companies.

#### Article 22

##### *Supervision in European companies with a two-tier board system*

In a European company with a two-tier board system under Articles 39-42 of the European company regulation both the supervisory organ and the management organ shall supervise the work of the managing director. The provisions of Articles 40 and 41 of the regulation on the supervision by the supervisory organ of the work of the management board shall also apply to the supervision by the supervisory organ and the management organ of the work of the managing director.

Each member of the supervisory organ has the right to receive from the management organ and the managing director necessary information so as to enable him to supervise the work of the management organ under paragraph 1 of Article 40 of the European company regulation, as well as to supervise the work of the managing director under paragraph 1 of this article. Any member of the management organ has the right to receive from the managing director necessary information so as to enable the former to supervise the latter's work.

#### Article 23

##### *Supervision in European companies with a one-tier board system*

The provisions of Article 22 on the supervision by the management organ in a European company with a two-tier board system of the work of the managing director and the right of the organ to obtain information from the managing director shall apply to the supervision by the administrative organ of the managing director in a European company with a one-tier board system under Articles 43-45 of the European company regulation.

### **Chapter VI**

#### **Other Provisions**

#### Article 24

##### *Shareholders' right to submit proposals*

A shareholder has, without regard to his share, the right to demand that one or more new matters be put to the agenda of a shareholders' meeting.

A shareholder who wants to have a matter taken up at a shareholders' meeting shall submit a written demand thereon to the management organ of a European company with a two-tier board system, or to the administrative organ of a European company with a one-tier board system.

A matter shall be taken for consideration at a shareholders' meeting if the demand has been received:

(1) at the latest five weeks before the shareholders' meeting, cf. Article 88 of Act No. 2/1995 on Public Limited Companies or

(2) later than specified in subparagraph 1, but early enough so as to include the matter in the calling of shareholders' meeting.

#### Article 25

##### *An authority calls a shareholders' meeting*

If a shareholders' meeting in a European company is not called according to the European company regulation, the company statutes or a decision of a shareholders' meeting, an appropriate authority according to the Act on Public Limited Companies shall call a shareholders' meeting according to Article 87 of Act No. 2/1995 on Public Limited Companies if a demand thereon has been received from a member of the management organ or a member of the supervisory organ of a European company with a two-tier board system, a member of the administrative organ of a European company with a one-tier board system, a managing director, an auditor, an inspector or a shareholder.

#### Article 26

##### *Measures against a European company with a registered office*

##### *and head office in different EEA states*

If a European company does not meet its obligations under Article 7 of the European company regulation, providing that the registered office and the head office of the company be in the same EEA state, the Register of Limited Companies shall attest that fact with a special decision. Thereupon the register shall order the company to make improvements without undue delay.

If the European company does not follow the instruction under paragraph 1 the appropriate authority under Article 107 of Act No. 2/1995 on Public Limited Companies shall demand that the company be subjected to administration.

#### Article 27

##### *Appeal*

The decision of the Register of Limited Companies as regards the registration of a European company may be appealed to a court of first instance within two months as from the date of the decision. The same applies to the decision of the register to dismiss an application of the company for a transfer permit, cf. Article 12.

The decision of the Register of Limited Companies under paragraph 1 of Article 26, on the location of offices, may be appealed to a court of first instance within one month as from the date when the European company obtained knowledge of the decision. The decision of an authority under paragraph 2 of Article 26 may be appealed to the court of first instance within one month as from the date of the decision.

The decisions of the Financial Supervisory Authority under Article 6, on merger, and Article 10, on transfer, may be appealed to a court of first instance.

#### Article 28

##### *Penalties*

The provisions of Chapter XVIII of Act No. 2/1995 on Public Limited Companies, on penalties et al., apply in the same manner to, for instance, those who govern European companies registered in this country, including the provisions on penalties for negligence as to the dispatch of announcements to the Register of Limited Companies.

#### Article 29

##### *Entry into force*

This act enters into force on 8 October 2004.