

KLÉPIERRE

**INTERNAL CHARTER
RELATING TO
THE CLASSIFICATION
OF AGREEMENTS**



KLÉPIERRE

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This charter (the “**Charter**”) follows recommendation no. 2012-05 of the French Financial Markets Authority (“AMF”) dated July 2, 2012, as amended on October 5, 2018, and more specifically proposal no. 4.1, which recommends:

- *“To introduce an internal charter within companies for the classification of agreements and to make each of them subject to the procedure applicable to regulated agreements. This charter would define the criteria adopted by the company, adapting the CNCC¹ guide to its own situation, in agreement with its Statutory Auditors; and*
- *To submit this charter for the approval of the company’s Board² and to publish it on its website.”*

Its purpose is to give details of the rules used internally to classify the various agreements likely to be concluded within the Klépierre Group (the “**Group**”). In general, the classification of an agreement will be assessed on a case-by-case basis by the Group’s Finance Department, with the help of the Group Legal Department and, where appropriate, of the Statutory Auditors and of any third party able to bring his expertise taking into consideration the purpose of the agreement concerned.

The Charter applies to any French company in the Group which by virtue of its form is subject to the legislation or regulations on regulated agreements³.

It was submitted to Klépierre SA’s Statutory Auditors and then reviewed by the Audit Committee, before being approved by the Supervisory Board at its meeting on February 4, 2020. It is available on the website www.klépierre.com.

¹ French National Association of Statutory Auditors.

² In the particular case of Klépierre SA, this is its Supervisory Board

³ I.e., as of the date hereof, any public limited companies with a unitary or a dual board structure, limited partnerships by shares, simplified joint-stock companies, limited liability companies, non-trading private corporate bodies engaged in an economic activity and the associations referred to in Article L. 612-4 of the French Commercial Code.

“REGULATED” AGREEMENTS

1. DÉFINITION

In summary, an agreement is classified as a “regulated” agreement when it is concluded, directly or through an intermediary, between a company and:

- Any of its directors;
- Any of its shareholders owning more than 10% of the voting rights or a company controlling it within the meaning of Article L. 233-33 of the French Commercial Code;
- An indirectly interested person (even if that person is not a direct party to the agreement, in particular any person profiting from that agreement or who is likely to benefit from its conclusion due to the connections between that person and the parties or because of that person’s power to influence the conduct of the agreement); or
- Another company having a director in common.

Annex 1 contains details of the criteria used to classify an agreement as a “regulated” agreement depending on the form of the company that is party to the agreement. This Annex will be automatically up-dated in case of modification of the rules that are included therein or of introduction of new rules applicable to “regulated” agreements.

2. EXAMPLES

The “regulated” agreements involving Klépierre SA that are still in force on the date hereof are as follows:

- The tax representation agreement concluded between Klépierre SA and the company Simon Property Group, a shareholder representing more than 10% of the voting rights of Klépierre SA via the company Simon Global Development B.V.;
- The commitments entered into by Klépierre SA for the benefit of the Chairman of the Executive Board and a member of the Executive Board concerning a mechanism relating to the compensation due or that might be due by reason of their forced departure from Klépierre SA (pursuant to Article L. 225-90 of the French Commercial Code);
- An intra-group loan granted by Klépierre SA to the company Nordica Holdco AB, indirectly owned as to 56.1% by Klépierre SA (in an amount in excess of €70 million as at December 31, 2018); and
- An intra-group loan granted by Klépierre SA and the company APG Strategic Real Estate Pool NV to the company Nordica Holdco AB, indirectly owned as to 56.1% by Klépierre SA (in an amount of about €20 million as at December 31, 2018).

The following examples of “regulated” agreements are contained in the study entitled “Regulated and day-to-day agreements” published by the French National Association of Statutory Auditors in February 2014 (a non-exhaustive list)⁴:

- A cash-pooling agreement with a waiver of interest;
- An agreement for the waiver of debts, grants and loans without interest;
- An agreement to pay for a guarantee in cases where (i) a guarantee is given by a parent company for the benefit of a third party on behalf of any of its subsidiaries that is not wholly-owned; and where (ii) a payment other than on the usual market terms is granted by company benefiting from the guarantee to the parent company to pay for the guarantee provided; and
- The assumption of responsibility by a group company for environmental damage caused by its subsidiary.

3. THE PROCEDURE APPLICABLE TO A “REGULATED” AGREEMENT

In the case of a “regulated” agreement, the “regulated” agreements procedure applicable to the corporate form of each of the entities concerned should be applied, as provided for by the French regulations.

Thus, **Annex 1** sets out the “regulated” agreements procedure depending on the type of company. This Annex will be automatically up-dated in case of modification of the rules that are included therein or of introduction of new rules applicable to “regulated” agreements.

Note:

- *When an agreement is concluded between two or more companies, the “regulated” agreements procedure is liable to apply to each of the contracting parties.*
- *The “regulated” agreements procedure applies (i) prior to the conclusion of an agreement but also (ii) whenever a previously concluded “regulated” agreement is amended, renewed, extended or terminated.*

⁴ **Annex 3** contains the whole of the study entitled “Regulated and day-to-day agreements” published by the French National Association of Statutory Auditors in February 2014, which is the version applicable on the date hereof. This Annex will be automatically up-dated in case of modification of this version.

“UNREGULATED” AGREEMENTS

1. DÉFINITION

An agreement is classified as “unregulated” in the following circumstances:

- The agreement is concluded between a company and any of its directly or indirectly wholly-owned subsidiaries; or
- The agreement matches the definition of a “regulated” agreement but relates to day-to-day operations and is concluded on normal terms.

In the latter case, it will therefore be necessary to assess specifically, on a case-by-case basis:

- **The day-to-day nature of the operation:** Several criteria are reviewed to determine the day-to-day nature of an operation, and in particular the normal nature of the operation in view of the business performed by the company, its legal importance or its economic consequences. In practice, if the operation concerned appears to be one-off, to have substantial internal consequences or to involve exceptional economic stakes, it should not be classified as a day-to-day operation.
- **The normal terms of the operation:** Terms that are usually applied by the company with third parties can be regarded as normal provided that, in addition, they are in line with the practices of third-party companies engaged in the same business. Conversely, by way of example, terms may be abnormal if the agreement being reviewed contains preferential clauses (exclusivity clause, special conditions not granted to all customers, etc.) or if the economic data of the agreement reviewed are dissimilar to those of agreements usually concluded with third parties.

Day-to-day nature and normal terms are cumulative criteria: if either of them is absent, the agreement will be subject to the “regulated” agreements procedure.

2. EXAMPLES

The following non-exhaustive list contains a number of examples of “unregulated” agreements concluded by Klépierre SA:

- Bonds, endorsements and guarantees given by Klépierre SA, on the understanding that these commitments are subject to the authorization of the Supervisory Board pursuant to Article L. 225-68 paragraph 2 of the Commercial Code;
- Cash management and/or loan/current account/borrowing operations.

The following non-exhaustive list contains a number of examples of “unregulated” agreements likely to be concluded within the Group:

- With regard to assets under development, property development/project management/delegated project management agreements and property management or operations management contracts;
- Asset management agreements, agreements for the provision of services or technical support, management agreements and property/facility management agreements;
- Tax consolidation agreements;
- Invoicing between Group subsidiaries relating to services in the area of human resources, IT, management, communication, finance, legal, accounting or purchasing, or re-invoicing of the cost of bonus shares;
- Acquisitions and/or assignments of debts at their market value;
- Undertakings and guarantees to subscribe for a capital increase carried out by a Group company.

3. THE PROCEDURE APPLICABLE TO AN “UNREGULATED” AGREEMENT

In the case of an “unregulated” agreement, the French regulations make no provision for an advance authorization procedure.

Nevertheless, it is recalled that the internal regulations of the Supervisory Board published on the website www.klepierre.com provide that the prior authorization Klépierre SA’s Supervisory Board is required for any agreement relating to: *“the following transactions insofar as they exceed €8,000,000 each or its exchange value in any currencies:*

- *To directly or indirectly purchase or sell any assets (including real estate or investments), with the exception of any transactions between Klépierre Group entities;*
- *In the event of litigation, to enter into any agreements and settlements and to accept any compromise.”*

Finally, with regard to agreements concluded by Klépierre SA which are classified as “unregulated” because they relate to day-to-day operations concluded on normal terms, the “Internal procedure applicable to agreements relating to day-to-day operations concluded on normal terms”, published on the website www.klepierre.com, should be applied.

“PROHIBITED” AGREEMENTS

In principle, loan agreements, current account overdrafts and any bond or endorsement of commitments to third parties between a company and its senior executives, are prohibited. For example, this concerns the following:

- **With regard to Klépierre SA:** The members of the Executive Board and Supervisory Board other than legal persons. The same prohibition applies to the permanent representatives of legal persons that are members of the Supervisory Board;
- **With regard to the Group’s SAS:** The Chairman of the SAS and any of its other senior executives who are natural persons, including the permanent representatives of legal persons;
- **With regard to the Group’s SARLs:** The Manager or Managers and shareholders who are natural persons.

The prohibition also applies to the spouse, ascendants and descendants of the persons referred to above, as well as to any intermediary.

Annex 2 contains a detailed list of the criteria used to identify “prohibited” agreements depending on the type of company. This Annex will be automatically up-dated in case of modification of the rules that are included therein or of introduction of new rules applicable to “prohibited” agreements.

Annex 1

Criteria used to identify “regulated” agreements and the applicable procedure depending on the type of company

PUBLIC LIMITED COMPANY WITH A BOARD OF DIRECTORS

Article L. 225-38 of the Commercial Code

As amended by [Order no. 2014-863 of July 31, 2014 - Art. 5](#)

Any agreement entered into directly or through an intermediary between a company and its Chief Executive Officer, any of its Deputy Chief Executive Officers, any of its directors, any of its shareholders holding in excess of 10% of its voting rights, or, in the case of a company shareholder, the company controlling it within the meaning of Article [L. 233-3](#), must be authorized in advance by the Board of Directors.

The same shall apply to agreements in which any of the persons referred to in the previous paragraph is indirectly interested.

Agreements entered into between a company and a business must also be authorized in advance if the Chief Executive Officer, any of the Deputy Chief Executive Officers or any of the directors of the company is an owner, partner with unlimited liability, manager, director, member of the Supervisory Board, or, in general, officer, of that business.

The Board of Directors shall give reasons for its advance authorization demonstrating the company's interest in the agreement, in particular specifying the financial conditions attached thereto.

Article L. 225-40 of the Commercial Code

As amended by [Law no. 2019-486 of May 22, 2019 - Art. 20 \(V\)](#)

As amended by [Law no. 2019-486 of May 22, 2019 - Art. 198 \(V\)](#)

A person directly or indirectly interested in the agreement must inform the Board as soon as that person becomes aware that it is an agreement to which Article L. 225-38 applies. That person cannot take part either in the deliberations or in the vote on the authorization sought.

The Chairman of the Board of Directors shall notify the Statutory Auditors, if any, of all agreements authorized and concluded, and shall submit them for the approval of the General Meeting.

The Statutory Auditors, or, if none have been appointed, the Chairman of the Board of Directors, shall present a special report on those agreements to the General Meeting, which shall make a decision on that report.

A person directly or indirectly interested in the agreement cannot take part in the vote and that person's shares shall not be taken into account in the calculation of the majority.

Article L. 225-40-1 of the Commercial Code

As amended by [Law no. 2019-486 of May 22, 2019 - Art. 20 \(V\)](#)

Agreements concluded and authorized in previous financial years which have continued to be performed during the last financial year shall be reviewed every year by the Board of Directors and notified to the Statutory Auditor, if any, for the purposes of preparing the report provided for in the third paragraph of Article [L. 225-40](#).

Article L. 225-40-2 of the Commercial Code

Créé par [Law no. 2019-486 of May 22, 2019 - Art. 198 \(V\)](#)

Companies whose shares are admitted for trading on a regulated market shall publish information on their website on the agreements mentioned in Article L. 225-38, at the latest at the time that they are concluded.

Any interested party can ask the presiding judge of the court, in summary proceedings, to order the Board of Directors to publish this information, if necessary subject to a fine for failure to comply.

A list of such information shall be determined by a Decree of the Council of State.

Article L. 225-41 of the Commercial Code

As amended by [Law no. 2001-420 of May 15, 2001 - Art. 111](#)

Agreements approved by the General Meeting and those which it disapproves shall continue to take effect as regards third parties, except when they are annulled in cases of fraud.

Even in the absence of fraud, the interested party and potentially the other members of the Board of Directors can be held liable for the damaging consequences for the company of agreements that are disapproved.

Article L. 225-42 of the Commercial Code

As amended by [Law no. 2019-486 of May 22, 2019 - Art. 20 \(V\)](#)

Without prejudice to the liability of the interested party, agreements referred to in [Article L. 225-38](#) which are concluded without the prior authorization of the Board of Directors can be annulled if they have had damaging consequences for the company.

Actions for annulment shall become time-barred three years after the date of the agreement. However, if the agreement was concealed, the start of the limitation period shall be postponed until the date on which the agreement was disclosed.

Annulment can be covered by a vote of the General Meeting acting on a special report of the Statutory Auditors, or, if none has been appointed, of the Chairman of the Board of Directors, explaining the circumstances in which the authorization procedure was not followed. The provisions of the fourth paragraph of [Article L. 225-40](#) shall apply.

Article L. 225-42-1 of the Commercial Code

As amended by [Order no. 2019-697 of July 3, 2019 - Art. 3](#)

In companies whose shares are admitted for trading on a regulated market, obligations assumed for the benefit of their Chairmen, Chief Executive Officers or Deputy Chief Executive Officers, whether by the company itself or by any company that it controls or by which it is controlled within the meaning of [Article L. 233-16](#) II and III, and which relate to items of compensation, payments or benefits due or that might be due by reason of termination or a change of such functions, or after such functions, or defined benefits pension obligations having the characteristics of the schemes mentioned in [Article L. 137-11](#) and [Article L. 137-11-2](#) of the Social Security Code, shall be subject to the provisions of [Articles L. 225-38](#) and [L. 225-40 à L. 225-42 of this Code](#).

Items of compensation, payments, benefits and rights granted to the Chairman, Chief Executive Officer or Deputy Chief Executive Officers in respect of the pension obligations mentioned in the first paragraph of this Article and the benefit of which is not subject to compliance with conditions concerning the performance of the beneficiary, assessed having regard to that of the company of which that person is Chairman of the Board of Directors or is Chief Executive Officer or Deputy Chief Executive Officer, are prohibited.

The authorization given by the Board of Directors pursuant to [Article L. 225-38](#) shall be published in the manner and within time limits determined by a Decree of the Council of State.

Submissions for the approval of the General Meeting pursuant to [Article L. 225-40](#) shall be the subject of a specific resolution for each beneficiary. Such approval shall be required upon each renewal of the office held by the persons mentioned in the first paragraph.

No payment of any kind whatever can be made before the Board of Directors has recorded compliance with the conditions provided, at the time of or after the termination or effective change of functions. This decision shall be published in the manner and within time limits determined by a Decree of the Council of State. Any payment made in breach of the provisions of this paragraph shall automatically be null and void.

Obligations relating to payments in consideration of a clause prohibiting the beneficiary from exercising a competing professional activity contrary to the interests of the company after the termination of that beneficiary's functions in the company are only subject to the provisions of the first paragraph. This is also the case of obligations having the characteristics of the collective and compulsory retirement and welfare schemes referred to in [Article L. 242-1](#) of the Social Security Code.

Annually, before the Ordinary General Meeting convened to approve the accounts for the last financial year ended, the Board of Directors shall check that the conditions laid down have been observed and shall determine the increase in rights for the benefit of the Chairman, Chief Executive Officer or Deputy Chief Executive Officers in respect of that financial year under the defined benefits schemes mentioned in [Articles L. 137-11](#) and [L. 137-11-2](#) of the Social Security Code.

Conditional rights under the defined benefits schemes mentioned in [Article L. 137-11](#) of the Social Security Code cannot increase annually by an amount in excess of 3% of the annual compensation used as the reference for the calculation of the annuity paid in the context of those schemes.

No conditional right in respect of the office of Chairman, Chief Executive Officer or Deputy Chief Executive Officer can be granted if that person does not satisfy the conditions laid down in the seventh and penultimate paragraphs.

PUBLIC LIMITED COMPANY WITH AN EXECUTIVE BOARD AND A SUPERVISORY BOARD

Article L. 225-86 of the Commercial Code

As amended by [Order no. 2014-863 of the 31 July 2014 - Art. 8](#)

Any agreement entered into directly or through an intermediary between a company and any of the members of its Executive Board or Supervisory Board, a shareholder holding in excess of 10% of its voting rights, or, in the case of a company shareholder, the company controlling it within the meaning of Article [L. 233-3](#) must be authorized in advance by the Supervisory Board.

The same shall apply to agreements in which any of the persons referred to in the previous paragraph is indirectly interested.

Agreements entered into between a company and a business must also be authorized in advance if any of the members of the Executive Board or Supervisory Board of the company is an owner, partner with unlimited liability, manager, director, member of the Supervisory Board, or, in general, officer, of that business.

The Supervisory Board shall give reasons for its advance authorization demonstrating the company's interest in the agreement, in particular specifying the financial conditions attached thereto.

Article L. 225-88 of the Commercial Code

As amended by [Law no. 2019-486 of May 22, 2019 - Art. 20 \(V\)](#)

As amended by [Law no. 2019-486 of May 22, 2019 - Art. 198 \(V\)](#)

A person directly or indirectly interested in an agreement must inform the Supervisory Board as soon as that person becomes aware that it is an agreement to which [Article L. 225-86](#) applies. If that person sits on the Supervisory Board, that person cannot take part either in the deliberations or in the vote on the authorization sought.

The Chairman of the Supervisory Board shall notify the Statutory Auditors, if any, of all agreements authorized and concluded, and shall submit them for the approval of the General Meeting.

The Statutory Auditors, or, if none have been appointed, the Chairman of the Board of Directors, shall present a special report on those agreements to the General Meeting, which shall make a decision on that report.

A person directly or indirectly interested in the agreement cannot take part in the vote and that person's shares shall not be taken into account in the calculation of the majority.

Article L. 225-88-1 of the Commercial Code

As amended by [Law no. 2019-486 of May 22, 2019 - Art. 20 \(V\)](#)

Agreements concluded and authorized in previous financial years which have continued to be performed during the last financial year shall be reviewed every year by the Supervisory Board and notified to the Statutory Auditor, if any, for the purposes of preparing the report provided for in the third paragraph of Article [L. 225-88](#).

Article L. 225-88-2 of the Commercial Code

Created by [Law no. 2019-486 of May 22, 2019 - Art. 198 \(V\)](#)

Companies whose shares are admitted for trading on a regulated market shall publish information on their website on the agreements mentioned in Article L. 225-86, at the latest at the time that they are concluded.

Any interested party can ask the presiding judge of the court, in summary proceedings, to order the Executive Board to publish this information, if necessary subject to a fine for failure to comply.

A list of such information shall be determined by a Decree of the Council of State.

Article L. 225-89 of the Commercial Code

As amended by [Law no. 2001-420 of May 15, 2001 - Art. 111](#)

Agreements approved by the General Meeting and those which it disapproves shall continue to take effect as regards third parties, except when they are annulled in cases of fraud.

Even in the absence of fraud, the interested party and potentially the other members of the Executive Board can be held liable for the damaging consequences for the company of agreements that are disapproved.

Article L. 225-90 of the Commercial Code

As amended by [Law no. 2019-486 of May 22, 2019 - Art. 20 \(V\)](#)

Without prejudice to the liability of the interested party, agreements referred to in [Article L. 225-86](#) which are concluded without the prior authorization of the Supervisory Board can be annulled if they have had damaging consequences for the company.

Actions for annulment shall become time-barred three years after the date of the agreement. However, if the agreement was concealed, the start of the limitation period shall be postponed until the date on which the agreement was disclosed.

Annulment can be covered by a vote of the General Meeting acting on a special report of the Statutory Auditors, or, if none has been appointed, of the Chairman of the Board of Directors, explaining the circumstances in which the authorization procedure was not followed. The provisions of the fourth paragraph of [Article L. 225-88](#) shall apply.

Article L. 225-90-1 of the Commercial Code

As amended by [Order no. 2019-697 of the 3 July 2019 - Art. 3](#)

In companies whose shares are admitted for trading on a regulated market, obligations assumed for the benefit of a member of the Executive Board, whether by the company itself or by any company that it controls or by which it is controlled within the meaning of [Article L. 233-16](#) II and III, and which relate to items of compensation, payments or benefits due or that might be due by reason of termination or a change of such functions, or after such functions, or defined benefits pension obligations having the characteristics of the schemes mentioned in [Article L. 137-11](#) and [Article L. 137-11-2](#) of the Social Security Code, shall be subject to the provisions of [Articles L. 225-86](#) and [Articles L. 225-88 à L. 225-90 of this Code](#).

Items of compensation, payments, benefits and rights granted to the members of the Executive Board in respect of the pension obligations mentioned in the first paragraph of this Article and the benefit of which is not subject to compliance with conditions concerning the performance of the beneficiary, assessed having regard to that of the company of which that person is a member of the Executive Board, are prohibited.

The authorization given by the Supervisory Board pursuant to [Article L. 225-86](#) shall be published in the manner and within time limits determined by a Decree of the Council of State.

Submissions for the approval of the General Meeting pursuant to [Article L. 225-88](#) shall be the subject of a specific resolution for each beneficiary. Such approval shall be required upon each renewal of the office held by the persons mentioned in the first paragraph.

No payment of any kind whatever can be made before the Supervisory Board has recorded compliance with the conditions provided, at the time of or after the termination or effective change of functions. This decision shall be published in the manner and within time limits determined by a Decree of the Council of State. Any payment made in breach of the provisions of this paragraph shall automatically be null and void.

Obligations relating to payments in consideration of a clause prohibiting the beneficiary from exercising a competing professional activity contrary to the interests of the company after the termination of that beneficiary's functions in the company are only subject to the provisions of the first paragraph. This is also the case of obligations having the characteristics of the collective and compulsory retirement and welfare schemes referred to in [l'article L. 242-1](#) of the Social Security Code.

Annually, before the Ordinary General Meeting convened to approve the accounts for the last financial year ended, the Supervisory Board shall check that the conditions laid down have been observed and shall determine the increase in rights for the benefit of the members of the Executive Board in respect of that financial year under the defined benefits schemes mentioned in [Articles L. 137-11](#) and [L. 137-11-2](#) of the Social Security Code.

Conditional rights under the defined benefits schemes mentioned in [Article L. 137-11](#) of the Social Security Code cannot increase annually by an amount in excess of 3% of the annual compensation used as the reference for the calculation of the annuity paid in the context of those schemes.

No conditional right in respect of the office of member of the Executive Board can be granted if that person does not satisfy the conditions laid down in the seventh and penultimate paragraphs.

PARTNERSHIP

The Commercial Code makes no provision for any procedure.

LIMITED PARTNERSHIP

The Commercial Code makes no provision for any procedure.

LIMITED LIABILITY COMPANY

Article L. 223-19 of the Commercial Code

The manager or the Statutory Auditor, if any, shall present the meeting or attach to the documents provided to the shareholders in the case of a written consultation, a report on the agreements entered into directly or through intermediaries between the company and any of its managers or shareholders. The meeting shall make a decision on this report. The interested manager or shareholder cannot take part in the vote and their shares shall not be taken into account for the calculation of the quorum and the majority.

However, if there is no Statutory Auditor, agreements concluded by a manager who is not a shareholder shall be submitted for prior approval by the meeting.

By way of derogation from the provisions of the first paragraph, if the company only has one shareholder and the agreement is concluded with that shareholder, this shall only be mentioned in the record of decisions.

Agreements that are not approved shall nevertheless take effect, subject to the contracting manager and, if applicable, shareholder being individually or jointly liable, as the case may be, for any consequences of the agreement that are damaging for the company.

The provisions of this Article shall also apply to agreements entered into with a company of which a partner with unlimited liability, manager, director, Chief Executive Officer, member of the Executive Board or member of the Supervisory Board is simultaneously a manager or shareholder of the limited liability company.

PARTNERSHIP LIMITED BY SHARES

Article L. 226-10 of the Commercial Code

As amended by [Law no. 2003-706 of August 1, 2003 - Art. 123 JORF August 2, 2003](#)

The provisions of [articles L. 225-38 à L. 225-43](#) apply to agreements entered into directly or through an intermediary between the company and any of its managers, any of the members of its Supervisory Board, any of its shareholders holding in excess of 10% of its voting rights, or, in the case of a company shareholder, the company controlling it within the meaning of [Article L. 233-3](#). Those provisions are also applicable to agreements in which any of those persons is indirectly interested.

They also apply to agreements entered into between a company and a business if any of the managers or members of the Supervisory Board of the company is an owner, partner with unlimited liability, manager, director, Chief Executive Officer, member of the Executive Board or member of the Supervisory Board of that business.

The authorization provided for in the first paragraph of Article L. 225-38 shall be given by the Supervisory Board.

SIMPLIFIED LIMITED LIABILITY COMPANY

Article L. 227-10 of the Commercial Code

As amended by [Order no. 2017-747 of May 4, 2017 - Art. 4](#)

The Statutory Auditor or, if none has been appointed, the Chairman of the company, shall present a report to the shareholders on the agreements entered into directly or through an intermediary between the company and its Chairman, any of its senior executives, any of its shareholders owning more than 10% of the voting rights, or, in the case of a company shareholder, the company controlling it within the meaning of [Article L. 233-3](#).

The shareholders shall make a decision on this report.

Agreements that are not approved shall nevertheless take effect, subject to the interested party and potentially the Chairman and other senior executives being liable for any damaging consequences such agreements may have for the company.

By way of derogation from the provisions of the first paragraph, if the company only has one shareholder, the record of decisions shall only mention agreements entered into directly or through intermediaries between the company and its senior executive, its sole shareholder, or, in the case of a company shareholder, the company controlling it within the meaning of [Article L. 233-3](#).

INVESTMENT COMPANY HAVING AN ECONOMIC ACTIVITY

Article L. 612-5 of the Commercial Code

As amended by [Order no. 2008-1345 of December 18, 2008 - Art. 11 \(V\)](#)

The legal representative or the Statutory Auditor, if any, of a non-trading private legal person having an economic activity or of an association referred to in Article L. 612-4 shall present the decision-making body, or, in the absence of a decision-making body, shall attach to the documents provided to the members, a report on the agreements entered into directly or through an intermediary between the legal person and any of its directors or persons having the role of a corporate officer.

This shall also be the case for agreements entered into between this legal person and another legal person of which a partner with unlimited liability, manager, director, Chief Executive Officer, Deputy Chief Executive Officer, member of the Executive Board or of the Supervisory Board, or shareholder owning more than 10% of the voting rights is simultaneously a director or has the role of a corporate officer of that legal person.

The decision-making body shall make a decision on this report.

The manner in which the report is prepared shall be specified in a Decree of the Council of State.

An agreement that is not approved shall nevertheless take effect. The director or the person having the role of a corporate officer may be held individually or jointly liable, as the case may be, for any damaging consequences for the legal person resulting from such an agreement.

The provisions of this Article are not applicable to day-to-day agreements concluded on normal terms which, by reason of their purpose or financial implications, are not significant for any of the parties.

SPECIAL CASE: DAMAGE CAUSED TO THE ENVIRONMENT

Article L. 233-5-1 of the Commercial Code

Created by [Law no. 2010-788 of July 12, 2010 - Art. 227](#)

Decisions whereby a company owning more than half of the capital of another company within the meaning of Article L. 233-1, which owns a stake within the meaning of Article L. 233-2 or which exercises control of a company within the meaning of Article L. 233-3 undertakes to assume responsibility, in the event of default by the company associated with it, for all or part of the prevention and repair obligations imposed on the latter pursuant to Articles [L. 162-1](#) à [L. 162-9](#) of the Environmental Code, shall be subject, depending on the form of the company, to the procedure mentioned in Articles [L. 223-19](#), [L. 225-38](#), [L. 225-86](#), [L. 226-10](#) or [L. 227-10](#) of this Code.

SPECIAL CASE: LOANS GRANTED TO THIRD PARTIES

Article L. 511-6 du Code monétaire et financier

As amended by [Order no. 2019-698 of July 3, 2019 - Art. 7](#)

Without prejudice to the special provisions applicable to them, the prohibitions defined in Article [L. 511-5](#) do not concern the institutions and services listed in Article [L.518-1](#), businesses governed by the Insurance Code, reinsurance companies, provident institutions governed by Title III of Book IX of the Social Security Code, approved organizations subject to the provisions of Book II of the Mutual Societies Code, the supplementary occupational pension funds mentioned in Article [L. 381-1](#) of the Insurance Code, the supplementary occupational pension mutual societies or unions mentioned in Article [L. 214-1](#) of the Mutual Societies Code, the supplementary occupational pension institutions mentioned in Article [L. 942-1](#) of the Social Security Code, investment firms, electronic money institutions, payment institutions, approved organizations mentioned in the second paragraph of Article [L. 313-1](#) of the Construction and Housing Code in the case of the transactions provided for by the Construction and Housing Code, UCITS or AIFs covered by paragraphs 1, 2, 3 and 6 of sub-section 2, and by sub-sections 3, 4 and 5 of section 2 of Chapter IV of Title I of Book II, or AIFs that have been authorized to use the name “ELTIF” pursuant to Regulation (EU) 2015/760 of the European Parliament and of the Council of April 29, 2015 on European long-term investment funds, or the management companies that manage them.

The prohibition relating to credit operations does not apply:

/.../

3 b. To commercial companies whose accounts for the last financial year ended have been certified by a Statutory Auditor or which have voluntarily appointed a Statutory Auditor under the conditions defined in Article [L. 823-3](#) II of the Commercial Code and which, in a manner incidental to their main activity, grant loans of less than three years to very small, small, medium or mid-cap businesses with which they have economic links justifying such loans. The grant of a loan cannot have the effect of imposing payment deadlines on a commercial partner that do not comply with the legal limits defined in Articles [L. 441-10](#) to [L. 441-13](#) of the Commercial Code. The manner in which these companies can grant such loans and their limits shall be determined by a Decree of the Council of State.

Loans granted in this way shall be formalized in a loan agreement subject, as the case may be, to Articles [L. 225-38](#) à [L. 225-40](#) or to Articles [L. 223-19](#) et [L. 223-20](#) of the same Code. The amount of the loans granted shall be given in the management report and shall be certified by a Statutory Auditor in accordance with the procedures provided by a Decree of the Council of State.

Annex 2

Criteria used to identify “prohibited” agreements depending on the type of company

PUBLIC LIMITED COMPANY WITH A BOARD OF DIRECTORS

Article L225-43 of the Commercial Code

As amended by [Law no. 2009-323 of March 25, 2009 - Art. 8 \(V\)](#)

Directors other than legal persons are prohibited from contracting loans in any form whatever from the company, from arranging to be granted overdrafts by the company, whether on current account or otherwise, and from having their obligations to third parties guaranteed or endorsed by the company, under penalty of the nullity of such contracts.

However, if the company operates a banking or financial institution, this prohibition shall not apply to the day-to-day transactions of that business concluded on normal terms.

The same prohibition shall apply to the Chief Executive Officer, Deputy Chief Executive Officers and permanent representatives of legal persons that are directors and shall also apply to the spouse, ascendants and descendants of the persons referred to in this Article and to any intermediary.

Article L225-44 of the Commercial Code

As amended by [Law no. 2019-486 of May 22, 2019 - Art. 103 \(V\)](#)

Subject to [Articles L. 225-21-1, L. 225-22, L. 225-23, L. 225-27 et L. 225-27-1](#), directors cannot receive any compensation from the company, whether permanent or otherwise, other than that provided for by [Articles L. 225-45, L. 225-46, L. 225-47 and L. 225-53](#) of this Code. They can also be allocated the warrants mentioned in Article [163 bis G-II of the General Taxation Code](#).

Any clause to the contrary in the Articles of Association shall be deemed not to exist and any decision to the contrary shall be null and void.

PUBLIC LIMITED COMPANY WITH AN EXECUTIVE BOARD AND A SUPERVISORY BOARD

Article L225-91 of the Commercial Code

As amended by [Law no. 2009-323 of March 25, 2009 - Art. 8 \(V\)](#)

Members of the Executive Board and members of the Supervisory Board other than legal persons are prohibited from contracting loans in any form whatever from the company, from arranging to be granted overdrafts by the company, whether on current account or otherwise, and from having their obligations to third parties guaranteed or endorsed by the company, under penalty of the nullity of such contracts.

The prohibition shall apply to the permanent representatives of legal persons that are members of the Supervisory Board and shall also apply to the spouse, ascendants and descendants of the persons referred to in this Article and to any intermediary.

However, if the company operates a banking or financial institution, this prohibition shall not apply to the day-to-day transactions of that business concluded on normal terms.

PARTNERSHIP

The Commercial Code makes no provision for any procedure. The ordinary law shall apply (for example, the manager of a partnership can be found criminally liable for the offense of breach of trust if he arranges to have his personal expenses paid by the company).

LIMITED PARTNERSHIP

Article L222-6 of the Commercial Code

A limited partner cannot carry out any act of external management, even pursuant to a power of attorney.

In the event of breach of the prohibition provided by the previous paragraph, a limited partner shall be jointly liable with the general partners for the debts and obligations of the company resulting from the prohibited acts. Depending on the number or size of those debts and obligations, the limited partner may be declared jointly liable for all the company's obligations or only for some of them.

LIMITED LIABILITY COMPANY

Article L223-21 of the Commercial Code

Managers other than legal persons are prohibited from contracting loans in any form whatever from the company, from arranging to be granted overdrafts by the company, whether on current account or otherwise, and from having their obligations to third parties guaranteed or endorsed by the company, under penalty of the nullity of such contracts.

The prohibition also applies to the spouse, ascendants and descendants of the persons referred to above, as well as any intermediary.

However, if the company operates a financial institution, this prohibition shall not apply to the day-to-day transactions of that business concluded on normal terms.

PARTNERSHIP LIMITED BY SHARES

Article L226-10 of the Commercial Code

As amended by [Law no. 2003-706 of August 1, 2003 - Art. 123 JORF August 2, 2003](#)

The provisions of [L. 225-38 to L. 225-43](#) apply to agreements entered into directly or through an intermediary between the company and any of its managers, any of the members of its Supervisory Board, any of its shareholders holding in excess of 10% of its voting rights, or, in the case of a company shareholder, the company controlling it within the meaning of Article [L. 233-3](#). Those provisions are also applicable to agreements in which any of those persons is indirectly interested.

They shall also apply to agreements entered into between a company and a business if any of the managers or any of the members of the Supervisory Board of the company is an owner, partner with unlimited liability, manager, director, Chief Executive Officer, member of the Executive Board or member of the Supervisory Board of that business.

The authorization provided for in the first paragraph of Article L. 225-38 is given by the Supervisory Board.

SIMPLIFIED LIMITED LIABILITY COMPANY

Article L227-12 of the Commercial Code

The prohibitions provided by [l'article L. 225-43](#) shall apply to the Chairman and senior executives of the company under the conditions determined by this Article.

Annex 3

Study entitled “*Regulated and day-to-day agreements*” published by the French National Association of Statutory Auditors in February 2014

