

???????? C-116/10

État du Grand-Duché de Luxembourg

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Administration de l'enregistrement et des domaines

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**Pierre Feltgen, ??????? ?????????? ??? ??????? ??????? Bacino Charter Company
SA**

[?????? ??] Cour de cassation (?????????????)

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«???? ??????? ??? – ?????????? – ?????? 15, ?????? 4, ???????? ??, ??? 5 – ?????????? ??? ?????????? ?????????? ?????? – ??????????»

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(?????? 77/388 ??? ??????????, ??? 15, ?????? 5)

?? ?????? 15, ?????? 5, ??? ?????? ??????? 77/388, ??? ?????????????? ??? ?????????????? ??
????? ??????, ??? ??????? ?? ??? ????? ?????? ?????? ??????? ???????, ??? ?????????????? ?? ???
????? 91/680, ?????? ?? ??????????? ??? ??? ?????? ??? ? ?????????????? ??? ?????????? ???
????????? ??? ??? ??? ?????????????? ??? ??? ?????? ??? ?????? ??? ?????? ?????????? ??
????? ??????????? ??? ??? ?????? ??????? ?? ???????, ??? ????? ???????, ?? ?????? ???????
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?????????????, ?? ?????? ????. ?????? ????. ?????????????? ?????? ????. ?????????????????? ????.
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?? ?? ?????? ????????, ????????, ?????????? ?????? ?????? ?????? ?????? ?????? ?????? . ??? ??
????????????? ??? ?????, ?????? ??? ?????????? ?????, ? ?????? ??????????, ? ??????????
??? ??????? ??????? ?????? ?? ?? ?????????????? ??? ?????? ?????? ?????? ??????????
?????????????. ????????, ?? ?? ?????? ?????????????? ?? ?????? ??? ?????? ?? ?????? ??
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????? ?????? ?? ?????? 15, ?????? 5, ??? ?????? ??????.

(???. ??????? 13-14, 21 ??? ???????.)

?????? ?? ?????????? (????? ????)

?? 22?? ?????????? 2010 (*)

«???? ??????? ?? – ?????????? – ????? 15, ?????? 4, ???????? ??, ??? 5 – ?????????? ??
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? ? ?????????? ?? ?????? ??????? ?????????? ?????????? ?????? ??? ?????? 267
????, ??? ?????? ??????? ?? Cour de cassation (?????????????) ?? ??????? ??? 18??
????????? 2010, ? ?????? ??????? ?? ?????????? ??? 3 ?????? 2010, ??? ?????? ???
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État du Grand-Duché de Luxembourg,

Administration de l'enregistrement et des domaines

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Pierre Feltgen, ??????? ?????????? ??? ??????? ??????? Bacino Charter Company SA,

Bacino Charter Company SA,

? ? ?????????? (????? ????),

????????? ?? ??? K. Lenaerts, ?????? ???????, D. Šváby, R. Silva de Lapuerta, E.
Juhász ?? ?. ?????? (?????????), ????????,

?????? ??????????: N. Jääskinen

?????????: A. Calot Escobar

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– ?? État du Grand-Duché de Luxembourg ?? ? administration de l'enregistrement et des domaines, ?????????????? ??? F. Kremer ??? P.-E. Partsch, avocats,

– ? P. Feltgen, ??????? ?????????? ??? ??????? ??????? Bacino Charter Company SA, ??? ? Bacino Charter Company SA, ?????????????? ??? B. Felten, avocat,

– ? ?????????? ???????, ?????????????? ??? T. Henze, C. Blaschke ??? B. Klein,

- ?????????? ????????, ?????????????? ??? ?? ?. ?????,
- ?????????? ????????, ?????????????? ??? ?? M. Afonso,
?????? ?? ?????????? ??? ??, ??? ?????? ??? ?????? ?????????? ?? ?????? ??
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1 ? ?????? ?????????? ?????????????? ?????? ??? ??????? ?? 15,
?????? 5, ??? ?????? ??????? 77/388/???, ??? ???????????, ??? 17?? ?? 1977, ???
????????????? ??? ?????????? ??? ?????? ?????, ??? ?????????? ?? ??? ?????? ??????
????????? – ??? ?????? ?????? ??? ?????????????? ????: ?????????? ?????????? ??? (??
???. ???. 09/001, ?. 49), ??? ?????????????? ?? ??? ?????? 91/680/???, ??? ?????????? ???
16?? ?????????? 1991 (?? L 376, ?. 41, ??? ????: ??? ??????).

2 ? ?????? ??? ?????????? ??? ?????? ?????????? ?????? ??? État du Grand-
Duché de Luxembourg ??? ?? Administration de l'enregistrement et des domaines (?? ???:
????????? ???) ???, ????????, ??? ?. Feltgen, ??????? ?????????? ??? ??????
????????? Bacino Charter Company SA, ??????? ?????????????? ?????? (?? ???:
Bacino), ??? ??? ??????? ????, ?? ??? ??? ?????? ?? ?????? ??? ??? ??? ???
????????????? ??? (?? ???: ???), ? ?????? ?????????????? ??? ??????????????
????????? ??? 1998 ?? 1999.

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3 ?? ??? ??? «????????? ??? ?????? ??? ?????? ??? ???????, ??? ?? ???????????, ??
????????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ???????», ?? ??? 15 ?? ???:
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«?? ??? ?????????? ??? ?????? ?????????? ??? ???????, ?? ??? ??? ?????? ??? ???????????, ?? ??
????????????? ??? ???????, ??? ?? ?????????? ??? ?????? ??? ?????? ??? ?????? ???
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4. ??? ?????????? ????, ?? ??? ?????? ?????????? ??? ??????????:

?) ??? ?????? ??? ?????????????? ??? ?????????? ??? ?????? ??? ??????? ??? ??????????
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?) ?????????????? ??? ?????? ?????? ?????????? ??? ???????, ??? ?????? ??? ??????
????????? ??? ???????, ?????????? ??? ?????? ?????? ??? ?? ??? ?????? ??? ?????? ??? ???????
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5. ??? ?????????? ???, ?????????? ???, ?????????? ???, ?????????? ???, ?????????? ???

? ?????????? ??????? ?????????, ?????????????? ??? ?????????????? 4, ??? ???? ???? ???? ???? ????
??????????, ??????????, ?????????? ??? ????????? ?????????????? ??????????????
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4 ???? ???? ?????? ?????????????? ??? ?????????????????? ?????? ??? ???? ???? ???? 12??
?????????? 1979, ??? ???? ???? ?????????????? ?????? (??? ????: ??????????????????
?????). ?? ?????? 43, ?????????? 1, ??????? i, ??????? ?????????, ??? ?????? ?????, ??
????? ??? ???? ?????? ??? ?????????? ?????????????? ??? ?????? ?????, ?????????? ??? ??
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?? ??????? ??? ?????? ???.

5 ?? ??? 7, ?????????? 2, ??????? a, ????? ???????, ??? ?????????? ??? ???? ?????????? ???
?????? ?????, ??? 16?? ?????? 1999, ??? ???? ?????????? ??? ??? ?????? ??????????????
????? ??? ?????? ???????, ?????????????? ???, ?? ??????? ?????????? ???
????????????????? ??? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????? ?????? ???
????? 43, ?????????? ?? ?????????? ??? ?????????? ?????, ?????? ??? ?????????? ??? ???
????? ???????, ?? ????? ?????????????? ??? ?????????? ??? ?????????? ??? ?????????? ???
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6 ?????? 10?? ?????? 1998 ??? 8?? ?????????? 1999, ? ?????? Bacino ???????
??????, ?????? ??????, ?????? ?????????? ??? ?????? ??? ?????? ?? ?????? ???????
?? ?????? ?????????????? ?????? ?????? ?????? ?????? ??????. ?????????? ??? ? ??????
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7 ? ?????????? ???, ?????????? ??? ??? ?????? ?? ?????????? ? ?????????? ??? ???
??? ??? ?????? 43, ?????????? 1, ??????? i, ??????? ???????, ??? ??????????????
?????, ??????? ?? ?? ??? ?????? ??? ?????????? ?????????? ?????, ??? ?????????? ??? ???
????? ??? ?????????? ??? ?????? ?????, ??? ?????????? ??? ?????? 5 ??? ???????
?????????, ?????????? ??? ?????? Bacino, ??? ???? ?????? ??? 2001, ??????????????
????????? ??? ?? ?????????? ??? 1998 ??? 1999, ??? ??? ?????? ?????????? ??
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8 ?????? ?????????? ? ???? ??? ??????????, ? ?????? Bacino ?????????? ??
????????? ??? ?????? ??? tribunal d'arrondissement ??? ??????????????, ??????????????
??? ? ?? ??? ?????? ?????? ?????? ??? ?????? ?????? ??? ?????? 43, ?????????? 1, ???????
i, ?????? ??????, ??? ?????????????? ???.

9 ?????? ? ?????? ??? ?????????? ? ?????? ??????????, ? ?????? Bacino ?????? ?????? ?????? ???
cour d'appel, ?? ??? ?????? ??? ?????? ?? ??????. ?? ?????????? ???, ?????? ???, ?????? ???
?????? ?????? ?????? ?????????? ?????? ?? ?????? ??? ?????????? ?????? ?????????? ?????? ???????.
?? ?? ??? ?????? ??????, ??? ?????? ??? ?? ??????, ?? ?????? ??? ?????? ?????? ??????
Bacino, ?????????????? ??? ?????? ?????? ?????? ?????? ??? ? ?????? ?????? ?????? ??????
????????????? ?????? ??????, ??? ???? ?????? ??? ?????? ?????? ?????? ?????? ??????

????????? ????????????????, ??? ???? ?? ??????????? ?? ??? ?????????????? ??? ?????????? ???
????? 15, ?????? 5, ??? ???? ?????.

10 ? ??????????? ??? ?????? ?????? ?????? ?????? ??? Cour de cassation, ?? ????,
????????? ??? ? ?????? ??? ?????? ??? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ???
????? ??? ??????, ?????????? ?? ?????????? ??? ?????? ??? ?????? ??? ?????????? ??? ??
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«????? ?? ?????????? ?? ?????? ?????? ? ?????? ?????? ? ?????? ?????? ?? ?????? ??? ??
????? ???, ?????? ??????, ??? ?????? ?????? ?????? ?? ?????? ?????? 15, [?????] 5,
????? ?????? ?????? [...], ?? ?? ?????? ?????? ??? ?????? ?????? ?????? ?????? ?????? ??????
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11 ?? ?? ?????? ??, ?? ?????? ?????????? ???, ???' ??????, ??? ?? ?????? 15, ??????
5, ??? ?????? ?????? ??? ?????? ?? ?????????? ??? ?????? ?????? ??? ? ?????? ??? ??
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??? ?????? ?????? ?? ??????, ??? ?????? ??????, ?? ?????? ?????? ?????? ??? ?????? ??????
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12 ??????, ?????? ?? ?????????? ? ?????? ?????????? ??? ??????????????, ??? ?? ??????
??? ??? ?????????? ?????????? ??? ?????????? ??????, ?????? ?? ?????????? ??? ??
????? ?? ?????? ???, ??? ?? ?????? ??? ?????? ?????? ?????????? ??? ?? ?????? ???
????????? ?? ?? ?????? ??? ?????? ?????? ?????? (??., ??????, ?????????? ?? 17??
????????? 1983, 292/82, Merck, ?????? 1983, ?. 3781, ????? 12- ?? 1?? ?????? 2007,
C?34/05, Schouten, ?????? 2007, ?. I?1687, ????? 25, ??? ?? 3?? ?????????? 2009,
C?433/08, Yaesu Europe, ?????? 2009, ?. ?-11487, ????? 24).

13 ?????????? ?????? ?? ?????????? ??? ? ??? ?????? ?????? ?????????? ??? ?????? 15,
????? 5, ??? ?????? ??????, ? ?????? ?????????? ??? ?????? 15, ?????? 4, ?????????? ?,
????? ?? ?????????? ??? ?????? ??? ?????????? ??? ?????????? ??? ?????????? ??????????,
?? ?????? ?????? ??? ?????? ?????? ?????? ?????? ??? ?????? ?? ?? ?????? ?????? ??????????,
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14 ??????, ??, ??? ?????? ?????? ??? ?????? ?????, ?? ?????? ?????????????? ??
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????? ?????? ?? ?????? 15, ?????? 5, ??? ?????? ??????.

15 ??? ?? ?????, ?????? ?? ?????????? ??? ? ??? ?????? 15, ?????? 5, ??? ????
????????? ?????????? ???, ?????????? ??? ? ??? ?????? 15, ?????? 4, ?????????? ?, ??
????????? ?????????? ??? ?????? ?????? ?????? ?????????? ???, ?????? ??? ??????
????????? ??????, ?????????? ??? ?????? ?????? ?????? ??? ?? ??? ?????? ?????? ??????????
?????????. ??????, ?? ?????????? ?????? ??? ?????? ??? ?????? ?????? ?????? ??? ??
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16 ? ?????? ? ?????? ?????????????? ??? ?????? 13 ??? 14 ??? ?????? ??????????

???????????????, ????????, ??? ??? ?????? ??? ???????????? ??? ??????????? ?????? ????????,
????????? ?? ?????? 15 ??? ????? ???????, ? ??????, ??? ?????? ??? ?????? ?????? ??? ???????, ???
??????, ??? ?????????????? ??? ?????? ?????? ??????? ??? ??? ?????? ???????, ??? ???????,
???? ?????? ??? ?????? ??? ?????????????? ??? ?????? ?????? ?????? ? ?????????? ?????? ???
????????? ??? (?. ??????? ??? 18?? ?????????? 2007, C997/06, Navicon, ??????? 2007, ?. I-8755, ?????? 29).

17 ??? ??? ?????????? ??????, ? ?????????????? ??? ?????? 15, [?????] 5, ??? ?????? ??????
????????? ??? ?????? ??? ?????????? ?????????????? ?????????? ?? ?????? ?????????? ?????????? ??
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???????, ?? ?????? ??????????.

18 ?????????? ?????? ??? ? ?????????????? ?????? ? ?????? ?????????????? ??? ?????? ?????????? ??? ?????? ??????????
??? ?????? ?????? ??? ?????????? ??? ?????????? ??? ?????? ?????????? ??? ?????? ?????? ??? ?????? ????,
??? ?????? ?? ??? ?????? ?????? ?????? ?????? – ?????? ?????? ?????? ?????? ??????????????
?????: ?????????? ?????????? ???, ??? ?????? ?????? ? ?????? ??? ??????????
????????? ??? ?????????? ??? ?????????? ?????? ?????????? ??? 29 ?????? 1973, ??????????
????? ??? ?? ?????? ?????????? ?????????????? ??? ?????????????? ??? ?????? 15, ?????? 5, ???
?????? ?????? ?????????? ???, ??? ?? ?????????? ?????? ?????? ?????????? ??????????
????????? ?????? ??? ?????? ???, ?????? ??? ?????????? ??? ?????? ????. ? ?????????? ????
????? ?????????????? ??? ? ?????? ?????????? ?????????? ?????? ??? ?????????? ??? ??????
????????? ????????????, ?? ?????? ??? ?????????? ??? ?????? ????????, ??????????????
?? ?????? ?????????? ??? ?????????? ???.

20 ??????????, ? ??????? ? ?????? ?????????????????? ??? ?????? 13 ??? 14 ??? ??????????
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????? ??????, ? ?????? ??? ?????? ?????? ??? ?????? ??? ?????? ??? ?????? ?? ?????? ???
????????? ??? ?? ?????? ?????????? ??????. ???????????, ??? ?? ?????????? ???
????????? ???, ??????????, ??? ??? ?????? 27 ??? 28 ??? ?????????????? ??????????
Navicon, ? ?????? ??? ?????? ??? ?????? ??? ?????????????? ??? ?????? ??? ?????? 15, ?????? 5, ???
????? ??????, ?????????? ??? ? ?????? ??? ?????? ?????????????? ?????? ??? ?????? ??? ??
????????? ??? ??? ?????? ??? ?????? ?? ?????????? ??? ??? ?????????????? ??? ?????? ???
????? ??? ?????? ??????, ??????, ??? ?????? ??????????, ??????, ?????? ???
????????? ??? ?????? 15, ?? ?????? ??? ?????????????? ??? ?????????????? ???
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21 ??????? ?? ?????, ??? ???????, ??? ???????, ?????? ?? ???? ? ???? ? ???? ??
????? 15, ?????? 5, ??? ?????? ??????? ?????? ?? ?????????? ??? ??? ?????? ??? ???? ?
????????????? ??? ??????? ??? ??????? ??? ??????? ??? ??? ??? ??? ?????????? ?? ???? ?
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22 ?????????? ??? ? ??????? ?????????? ??? ???? ???? ???? ?????????? ??? ???? ????
??? ??????? ?????????????? ??? ?????? ?????? ??? ?????? ??? ?????? ??????????, ?' ????
????????????? ?? ?????????? ??? ??? ?????????? ??????. ?? ?????? ??? ?????? ??????????????
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?? ?????? 15, ?????? 5, ??? ?????? ??????? 77/388/??? ??? ???????????, ??? 17?? ???
1977, ??? ?????????????? ??? ?????????? ??? ?????????? ??? ??????, ??? ?????????? ?? ???
?????? ??????? ??????? - ??? ?????? ??????? ?????? ??????????????? ????: ??????????
?????????? ????, ??? ??????????????? ?? ??? ?????? 91/680/??? ??? ??????????,
??? 16?? ?????????? 1991, ??? ?? ??? ??????? ??? ?????? ??? ??? ?????? ??? ?
?????????? ??? ?????? ??? ??????? ??? ?????? ??? ?????? ??? ?????? ??? ??????????? ?? ???
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??????, ?? ?????? ??????? ??? ?????? ?????????? ??? ?????? ??????? ???????.

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* ??????? ??????????????: ? ???????.