

Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (codification) (Text with EEA relevance)

TITLE I

**GENERAL PROVISIONS AND THE ESTABLISHMENT AND FUNCTIONING OF LIMITED LIABILITY COMPANIES**

*CHAPTER II*

***Incorporation and nality of the company and validity of its obligations***

*Section 1*

***Incorporation of the public liability company***

*Article 2*

**Scope**

1 The coordination measures prescribed by this Section shall apply to the provisions laid down by law, regulation or administrative action in Member States relating to the types of company listed in Annex I. The name for any company of the types listed in Annex I shall comprise or be accompanied by a description which is distinct from the description required of other types of companies.

2 Member States may decide not to apply this Section to investment companies with variable capital and to cooperatives incorporated as one of the types of company listed in Annex I. In so far as the laws of the Member States make use of this option, they shall require such companies to include the words ‘investment company with variable capital’, or ‘cooperative’ in all documents indicated in Article 26.

The term ‘investment company with variable capital’, within the meaning of this Directive, means only those companies:

- the exclusive object of which is to invest their funds in various stocks and shares, land or other assets with the sole aim of spreading investment risks and giving their shareholders the benefit of the results of the management of their assets,
- which offer their own shares for subscription by the public, and
- the statutes of which provide that, within the limits of a minimum and maximum capital, they may at any time issue, redeem or resell their shares.

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### *Article 3*

#### **Compulsory information to be provided in the statutes or instruments of incorporation**

The statutes or the instrument of incorporation of a company shall always give at least the following information:

- (a) the type and name of the company;
- (b) the objects of the company;
- (c) where the company has no authorised capital, the amount of the subscribed capital;
- (d) where the company has an authorised capital, the amount thereof and also the amount of the capital subscribed at the time the company is incorporated or is authorised to commence business, and at the time of any change in the authorised capital, without prejudice to Article 14(e);
- (e) in so far as they are not legally determined, the rules governing the number of, and the procedure for, appointing members of the bodies responsible for representing the company vis-à-vis third parties, administration, management, supervision or control of the company and the allocation of powers among those bodies;
- (f) the duration of the company, except where this is indefinite.

### *Article 4*

#### **Compulsory information to be provided in the statutes or instruments of incorporation or separate documents**

The following information at least shall appear in either the statutes or the instrument of incorporation or a separate document published in accordance with the procedure laid down in the laws of each Member State in accordance with Article 16:

- (a) the registered office;
- (b) the nominal value of the shares subscribed and, at least once a year, the number thereof;
- (c) the number of shares subscribed without stating the nominal value, where such shares may be issued under national law;
- (d) the special conditions, if any, limiting the transfer of shares;
- (e) where there are several classes of shares, the information referred to in points (b), (c) and (d) for each class and the rights attaching to the shares of each class;
- (f) whether the shares are registered or bearer, where national law provides for both types, and any provisions relating to the conversion of such shares unless the procedure is laid down by law;
- (g) the amount of the subscribed capital paid up at the time the company is incorporated or is authorised to commence business;

- (h) the nominal value of the shares or, where there is no nominal value, the number of shares issued for a consideration other than in cash, together with the nature of the consideration and the name of the person providing the consideration;
- (i) the identity of the natural or legal persons or companies or firms by which or in whose name the statutes or the instrument of incorporation, or where the company was not formed at the same time, the drafts of those documents, have been signed;
- (j) the total amount, or at least an estimate, of all the costs payable by the company or chargeable to it by reason of its formation and, where appropriate, before the company is authorised to commence business;
- (k) any special advantage granted, at the time the company is formed or up to the time it receives authorisation to commence business, to anyone who has taken part in the formation of the company or in transactions leading to the grant of such authorisation.

#### *Article 5*

##### **Authorisation for commencing business**

1 Where the laws of a Member State prescribe that a company may not commence business without authorisation, they shall also make provision for responsibility for liabilities incurred by or on behalf of the company during the period before such authorisation is granted or refused.

2 Paragraph 1 shall not apply to liabilities under contracts concluded by the company conditionally upon its being granted authorisation to commence business.

#### *Article 6*

##### **Multiple-member companies**

1 Where the laws of a Member State require a company to be formed by more than one member, the fact that all the shares are held by one person or that the number of members has fallen below the legal minimum after incorporation of the company shall not lead to the automatic dissolution of the company.

2 If, in the cases referred to in paragraph 1, the laws of a Member State permit the company to be wound up by order of the court, the judge having jurisdiction shall be able to give the company sufficient time to regularise its position.

3 Where a winding-up order as referred to in paragraph 2 is made, the company shall enter into liquidation.

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## *Section 2*

### ***Nullity of the limited liability company and validity of its obligations***

#### *Article 7*

##### **General provisions and joint and several liability**

1 The coordination measures prescribed by this Section shall apply to the laws, regulations and administrative provisions of the Member States relating to the types of company listed in Annex II.

2 If, before a company being formed has acquired legal personality, action has been carried out in its name and the company does not assume the obligations arising from such action, the persons who acted shall, without limit, be jointly and severally liable therefor, unless otherwise agreed.

#### *Article 8*

##### **Effects of disclosure with respect to third parties**

Completion of the formalities of disclosure of the particulars concerning the persons who, as an organ of the company, are authorised to represent it, shall constitute a bar to any irregularity in their appointment being relied upon as against third parties, unless the company proves that such third parties had knowledge thereof.

#### *Article 9*

##### **Acts of the organs of a company and its representation**

1 Acts done by the organs of the company shall be binding upon it even if those acts are not within the objects of the company, unless such acts exceed the powers that the law confers or allows to be conferred on those organs.

However, Member States may provide that the company shall not be bound where such acts are outside the objects of the company, if it proves that the third party knew that the act was outside those objects or could not in view of the circumstances have been unaware of it. Disclosure of the statutes shall not of itself be sufficient proof thereof.

2 The limits on the powers of the organs of the company, arising under the statutes or from a decision of the competent organs, may not be relied on as against third parties, even if they have been disclosed.

3 If national law provides that authority to represent a company may, in derogation from the legal rules governing the subject, be conferred by the statutes on a single person or on several persons acting jointly, that law may provide that such a provision in the statutes may be relied on as against third parties on condition that it relates to the general power of representation; the question whether such a provision in the statutes can be relied on as against third parties shall be governed by Article 16.

### *Article 10*

#### **Drawing up and certification of the instrument of constitution and the company statutes in due legal form**

In all Member States whose laws do not provide for preventive administrative or judicial control, at the time of formation of a company, the instrument of constitution, the company statutes and any amendments to those documents shall be drawn up and certified in due legal form.

### *Article 11*

#### **Conditions for nullity of a company**

The laws of the Member States may not provide for the nullity of companies otherwise than in accordance with the following provisions:

- (a) nullity must be ordered by decision of a court of law;
- (b) nullity may be ordered only on the grounds:
  - (i) that no instrument of constitution was executed or that the rules of preventive control or the requisite legal formalities were not complied with;
  - (ii) that the objects of the company are unlawful or contrary to public policy;
  - (iii) that the instrument of constitution or the statutes do not state the name of the company, the amount of the individual subscriptions of capital, the total amount of the capital subscribed or the objects of the company;
  - (iv) of failure to comply with provisions of national law concerning the minimum amount of capital to be paid up;
  - (v) of the incapacity of all the founder members;
  - (vi) that, contrary to the national law governing the company, the number of founder members is less than two.

Apart from the grounds of nullity referred to in the first paragraph, a company shall not be subject to any cause of non-existence, absolute nullity, relative nullity or declaration of nullity.

### *Article 12*

#### **Consequences of nullity**

1 The question whether a decision of nullity pronounced by a court of law may be relied on as against third parties shall be governed by Article 16. Where the national law entitles a third party to challenge the decision, he may do so only within six months of public notice of the decision of the court being given.

2 Nullity shall entail the winding-up of the company, as may dissolution.

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3 Nullity shall not of itself affect the validity of any commitments entered into by or with the company, without prejudice to the consequences of the company's being wound up.

4 The laws of each Member State may make provision for the consequences of nullity as between members of the company.

5 Holders of shares in the capital of a company shall remain obliged to pay up the capital agreed to be subscribed by them but which has not been paid up, to the extent that commitments entered into with creditors so require.