

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 IV*

*Capital maintenance and alteration*

*Section 2*

*Safeguards as regards statutory capital*

*Article 49*

**Experts' report on consideration other than in cash**

1 A report on any consideration other than in cash shall be drawn up before the company is incorporated or is authorised to commence business, by one or more independent experts appointed or approved by an administrative or judicial authority. Such experts may be natural persons as well as legal persons and companies or firms under the laws of each Member State.

2 The experts' report referred to in paragraph 1 shall contain at least a description of each of the assets comprising the consideration as well as of the methods of valuation used and shall state whether the values arrived at by the application of those methods correspond at least to the number and nominal value or, where there is no nominal value, to the accountable par and, where appropriate, to the premium on the shares to be issued for them.

3 The experts' report shall be published in the manner laid down by the laws of each Member State, in accordance with Article 16.

4 Member States may decide not to apply this Article where 90 % of the nominal value, or where there is no nominal value, of the accountable par, of all the shares is issued to one or more companies for a consideration other than in cash, and where the following requirements are met:

- a with regard to the company in receipt of such consideration, the persons referred to in point (i) of Article 4 have agreed to dispense with the experts' report;
- b such agreement has been published as provided for in paragraph 3;
- c the companies furnishing such consideration have reserves which may not be distributed under the law or the statutes and which are at least equal to the nominal value or, where there is no nominal value, the accountable par of the shares issued for consideration other than in cash;
- d the companies furnishing such consideration guarantee, up to an amount equal to that indicated in point (c), the debts of the recipient company arising between the time

the shares are issued for a consideration other than in cash and one year after the publication of that company's annual accounts for the financial year during which such consideration was furnished. Any transfer of such shares shall be prohibited during that period;

- e the guarantee referred to in point (d) has been published as provided for in paragraph 3; and
- f the companies furnishing such consideration shall place a sum equal to that indicated in point (c) into a reserve which may not be distributed until three years after publication of the annual accounts of the recipient company for the financial year during which such consideration was furnished or, if necessary, until such later date as all claims relating to the guarantee referred to in point (d) which are submitted during this period have been settled.

5 Member States may decide not to apply this Article to the formation of a new company by way of merger or division where a report by one or more independent experts on the draft terms of merger or division is drawn up.

Where Member States decide to apply this Article in the cases referred to in the first subparagraph, they may provide that the report drawn up under paragraph 1 of this Article and the report by one or more independent experts on the draft terms of merger or division may be drawn up by the same expert or experts.

#### *Article 50*

#### **Derogation from the requirement for an experts' report**

1 Member States may decide not to apply Article 49(1), (2) and (3) where, upon a decision of the administrative or management body, transferable securities as defined in point 44 of Article 4(1) of Directive 2014/65/EU of the European Parliament and of the Council<sup>(4)</sup> or money-market instruments as defined in point 17 of Article 4(1) of that Directive are contributed as consideration other than in cash, and those securities or money-market instruments are valued at the weighted average price at which they have been traded on one or more regulated markets as defined in point 21 of Article 4(1) of that Directive during a sufficient period, to be determined by national law, preceding the effective date of the contribution of the respective consideration other than in cash.

However, where that price has been affected by exceptional circumstances that would significantly change the value of the asset at the effective date of its contribution, including situations where the market for such transferable securities or money-market instruments has become illiquid, a revaluation shall be carried out on the initiative and under the responsibility of the administrative or management body.

For the purposes of such revaluation, Article 49(1), (2) and (3) shall apply.

2 Member States may decide not to apply Article 49(1), (2) and (3) where, upon a decision of the administrative or management body, assets, other than the transferable securities and money-market instruments referred to in paragraph 1 of this Article, are contributed as consideration other than in cash which have already been subject to a fair value opinion by a recognised independent expert and where the following conditions are fulfilled:

- a the fair value is determined for a date not more than six months before the effective date of the asset contribution; and

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- b the valuation has been performed in accordance with generally accepted valuation standards and principles in the Member State which are applicable to the kind of assets to be contributed.

In the case of new qualifying circumstances that would significantly change the fair value of the asset at the effective date of its contribution, a revaluation shall be carried out on the initiative and under the responsibility of the administrative or management body.

For the purposes of the revaluation referred to in the second subparagraph, Article 49(1), (2) and (3) shall apply.

In the absence of such a revaluation, one or more shareholders holding an aggregate percentage of at least 5 % of the company's subscribed capital on the date the decision on the increase in the capital is taken, may demand a valuation by an independent expert, in which case Article 49(1), (2) and (3) shall apply.

Such shareholder(s) may submit a demand up until the effective date of the asset contribution, provided that, at the date of the demand, the shareholder(s) in question still hold(s) an aggregate percentage of at least 5 % of the company's subscribed capital, as it was on the date the decision on the increase in the capital was taken.

3 Member States may decide not to apply Article 49(1), (2) and (3) where, upon a decision of the administrative or management body, assets, other than the transferable securities and money-market instruments referred to in paragraph 1 of this Article, are contributed as consideration other than in cash the fair value of which is derived from the value of an individual asset from the statutory accounts of the previous financial year provided that the statutory accounts have been subject to an audit in accordance with Directive 2006/43/EC.

The second to fifth subparagraphs of paragraph 2 of this Article shall apply *mutatis mutandis*.

#### *Article 51*

#### **Consideration other than in cash without an experts' report**

1 Where consideration other than in cash as referred to in Article 50 is provided without an experts' report as referred to in Article 49(1), (2) and (3), in addition to the requirements set out in point (h) of Article 4 and within one month of the effective date of the asset contribution, a declaration containing the following shall be published:

- a a description of the consideration other than in cash at issue;
- b its value, the source of this valuation and, where appropriate, the method of valuation;
- c a statement whether the value arrived at corresponds at least to the number, to the nominal value or, where there is no nominal value, the accountable par and, where appropriate, to the premium on the shares to be issued for such consideration; and
- d a statement that no new qualifying circumstances with regard to the original valuation have occurred.

The publication of the declaration shall be effected in the manner laid down by the laws of each Member State in accordance with Article 16.

2 Where consideration other than in cash is proposed to be provided without an experts' report, as referred to in Article 49(1), (2) and (3), in relation to an increase in the capital proposed to be made under Article 68(2), an announcement containing the date when the decision on the

increase was taken and the information listed in paragraph 1 of this Article shall be published, in the manner laid down by the laws of each Member State in accordance with Article 16, before the contribution of the asset as consideration other than in cash is to become effective. In that event, the declaration pursuant to paragraph 1 of this Article shall be limited to the statement that no new qualifying circumstances have occurred since the aforementioned announcement was published.

3 Each Member State shall provide for adequate safeguards ensuring compliance with the procedure set out in Article 50 and in this Article where a contribution for a consideration other than in cash is provided without an experts' report as referred to in Article 49(1), (2) and (3).

#### *Article 52*

### **Substantial acquisitions after incorporation or authorisation to commence business**

1 If, before the expiry of a time limit laid down by national law of at least two years from the time the company is incorporated or is authorised to commence business, the company acquires any asset belonging to a person or company or firm referred to in point (i) of Article 4 for a consideration of not less than one-tenth of the subscribed capital, the acquisition shall be examined and details of it published in the manner provided for in Article 49(1), (2) and (3), and it shall be submitted for the approval of a general meeting.

Articles 50 and 51 shall apply *mutatis mutandis*.

Member States may also require these provisions to be applied when the assets belong to a shareholder or to any other person.

2 Paragraph 1 shall not apply to acquisitions effected in the normal course of the company's business, to acquisitions effected at the instance or under the supervision of an administrative or judicial authority, or to stock exchange acquisitions.

#### *Article 53*

### **Shareholders' obligation to pay up contributions**

Subject to the provisions relating to the reduction of subscribed capital, the shareholders may not be released from the obligation to pay up their contributions.

#### *Article 54*

### **Safeguards in the event of conversion**

Pending coordination of national laws at a subsequent date, Member States shall adopt the measures necessary to require provision of at least the same safeguards as are laid down in Articles 3 to 6 and Articles 45 to 53 in the event of the conversion of another type of company into a public limited liability company.

### *Article 55*

#### **Modification of the statutes or of the instrument of incorporation**

Articles 3 to 6 and Articles 45 to 54 shall be without prejudice to the provisions of Member States on competence and procedure relating to the modification of the statutes or of the instrument of incorporation.

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- (1) Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU ([OJ L 173](#), 12.6.2014, p. 349).