

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 5

Rules for the increase and reduction of capital

Article 68

Decision by the general meeting on the increase of capital

1 Any increase in capital shall be decided upon by the general meeting. Both that decision and the increase in the subscribed capital shall be published in the manner laid down by the laws of each Member State, in accordance with Article 16.

2 Nevertheless, the statutes or instrument of incorporation or the general meeting, the decision of which is to be published in accordance with the rules referred to in paragraph 1, may authorise an increase in the subscribed capital up to a maximum amount which they shall fix with due regard for any maximum amount provided for by law. Where appropriate, the increase in the subscribed capital shall be decided on within the limits of the amount fixed by the company body empowered to do so. The power of such body in this respect shall be for a maximum period of five years and may be renewed one or more times by the general meeting, each time for a period not exceeding five years.

3 Where there are several classes of shares, the decision by the general meeting concerning the increase in capital referred to in paragraph 1 or the authorisation to increase the capital referred to in paragraph 2, shall be subject to a separate vote at least for each class of shareholder whose rights are affected by the transaction.

4 This Article shall apply to the issue of all securities which are convertible into shares or which carry the right to subscribe for shares, but not to the conversion of such securities, nor to the exercise of the right to subscribe.

Article 69

Paying up shares issued for consideration

Shares issued for consideration, in the course of an increase in subscribed capital, shall be paid up to at least 25 % of their nominal value or, in the absence of a nominal value, of their accountable par. Where provision is made for an issue premium, it shall be paid in full.

Article 70

Shares issued for consideration other than in cash

1 Where shares are issued for consideration other than in cash in the course of an increase in the subscribed capital, the consideration shall be transferred in full within a period of five years from the decision to increase the subscribed capital.

2 The consideration referred to in paragraph 1 shall be the subject of a report drawn up before the increase in capital is made by one or more experts who are independent of the company and appointed or approved by an administrative or judicial authority. Such experts may be natural persons as well as legal persons and companies and firms under the laws of each Member State.

Article 49(2) and (3) and Articles 50 and 51 shall apply.

3 Member States may decide not to apply paragraph 2 in the event of an increase in subscribed capital made in order to give effect to a merger, a division or a public offer for the purchase or exchange of shares and to pay the shareholders of the company which is being absorbed or divided, or which is the object of the public offer for the purchase or exchange of shares.

In the case of a merger or a division, however, Member States shall apply the first subparagraph only 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 paragraph 2 in the case of a merger or a division, they may provide that the report under 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.

4 Member States may decide not to apply paragraph 2 if all the shares issued in the course of an increase in subscribed capital are issued for a consideration other than in cash to one or more companies, on condition that all the shareholders in the company which receive the consideration have agreed not to have an experts' report drawn up and that the requirements of points (b) to (f) of Article 49(4) are met.

Article 71

Increase in capital not fully subscribed

Where an increase in capital is not fully subscribed, the capital will be increased by the amount of the subscriptions received only if the conditions of the issue so provide.

Article 72

Increase in capital by consideration in cash

1 Whenever the capital is increased by consideration in cash, the shares shall be offered on a pre-emptive basis to shareholders in proportion to the capital represented by their shares.

2 The laws of a Member State:

- a need not apply paragraph 1 to shares which carry a limited right to participate in distributions within the meaning of Article 56 and/or in the company's assets in the event of liquidation; or
- b may permit, where the subscribed capital of a company having several classes of shares carrying different rights with regard to voting, or participation in distributions within the meaning of Article 56 or in assets in the event of liquidation, is increased by issuing new shares in only one of these classes, the right of pre-emption of shareholders of the other classes to be exercised only after the exercise of this right by the shareholders of the class in which the new shares are being issued.

3 Any offer of subscription on a pre-emptive basis and the period within which this right shall be exercised shall be published in the national gazette appointed in accordance with Article 16. However, the laws of a Member State need not provide for such publication where all of a company's shares are registered. In such case, all the company's shareholders shall be informed in writing. The right of pre-emption shall be exercised within a period which shall not be less than 14 days from the date of publication of the offer or from the date of dispatch of the letters to the shareholders.

4 The right of pre-emption may not be restricted or withdrawn by the statutes or instrument of incorporation. This may, however, be done by decision of the general meeting. The administrative or management body shall be required to present to such a meeting a written report indicating the reasons for restriction or withdrawal of the right of pre-emption, and justifying the proposed issue price. The general meeting shall act in accordance with the rules for a quorum and a majority laid down in Article 83. Its decision shall be published in the manner laid down by the laws of each Member State, in accordance with Article 16.

5 The laws of a Member State may provide that the statutes, the instrument of incorporation or the general meeting, acting in accordance with the rules for a quorum, a majority and publication set out in paragraph 4 of this Article, may give the power to restrict or withdraw the right of pre-emption to the company body which is empowered to decide on an increase in subscribed capital within the limit of the authorised capital. This power may not be granted for a longer period than the power for which provision is made in Article 68(2).

6 Paragraphs 1 to 5 shall apply to the issue of all securities which are convertible into shares or which carry the right to subscribe for shares, but not to the conversion of such securities, nor to the exercise of the right to subscribe.

7 The right of pre-emption is not excluded for the purposes of paragraphs 4 and 5 where, in accordance with the decision to increase the subscribed capital, shares are issued to banks or other financial institutions with a view to their being offered to shareholders of the company in accordance with paragraphs 1 and 3.

Article 73

Decision by the general meeting on reduction in the subscribed capital

Any reduction in the subscribed capital, except under a court order, shall be subject at least to a decision of the general meeting acting in accordance with the rules for a quorum and a majority laid down in Article 83 without prejudice to Articles 79 and 80. Such decision shall be published in the manner laid down by the laws of each Member State in accordance with Article 16.

The notice convening the meeting shall specify at least the purpose of the reduction and the way in which it is to be carried out.

Article 74

Reduction in the subscribed capital in case of several classes of shares

Where there are several classes of shares, the decision by the general meeting concerning a reduction in the subscribed capital shall be subject to a separate vote, at least for each class of shareholders whose rights are affected by the transaction.

Article 75

Safeguards for creditors in case of reduction in the subscribed capital

1 In the event of a reduction in the subscribed capital, at least the creditors whose claims antedate the publication of the decision on the reduction shall at least have the right to obtain security for claims which have not fallen due by the date of that publication. Member States may not set aside such a right unless the creditor has adequate safeguards, or unless such safeguards are not necessary having regard to the assets of the company.

Member States shall lay down the conditions for the exercise of the right provided for in the first subparagraph. In any event, Member States shall ensure that the creditors are authorised to apply to the appropriate administrative or judicial authority for adequate safeguards provided that they can credibly demonstrate that due to the reduction in the subscribed capital the satisfaction of their claims is at stake, and that no adequate safeguards have been obtained from the company.

2 The laws of the Member States shall also stipulate at least that the reduction shall be void, or that no payment may be made for the benefit of the shareholders, until the creditors have obtained satisfaction or a court has decided that their application should not be acceded to.

3 This Article shall apply where the reduction in the subscribed capital is brought about by the total or partial waiving of the payment of the balance of the shareholders' contributions.

Article 76

Derogation from safeguards for creditors in case of reduction in the subscribed capital

1 Member States need not apply Article 75 to a reduction in the subscribed capital the purpose of which is to offset losses incurred or to include sums of money in a reserve provided

that, following this operation, the amount of such reserve is not more than 10 % of the reduced subscribed capital. Except in the event of a reduction in the subscribed capital, this reserve may not be distributed to shareholders; it may be used only for offsetting losses incurred or for increasing the subscribed capital by the capitalisation of such reserve, in so far as the Member States permit such an operation.

2 In the cases referred to in paragraph 1, the laws of the Member States shall at least provide for the measures necessary to ensure that the amounts deriving from the reduction of subscribed capital may not be used for making payments or distributions to shareholders, or discharging shareholders from the obligation to make their contributions.

Article 77

Reduction in the subscribed capital and the minimum capital

The subscribed capital may not be reduced to an amount less than the minimum capital laid down in accordance with Article 45.

However, Member States may permit such a reduction if they also provide that the decision to reduce the subscribed capital may take effect only when the subscribed capital is increased to an amount at least equal to the prescribed minimum.

Article 78

Redemption of subscribed capital without reduction

Where the laws of a Member State authorise total or partial redemption of the subscribed capital without reduction of the latter, they shall at least require that the following conditions are observed:

- (a) where the statutes or instrument of incorporation provide for redemption, the latter shall be decided on by the general meeting voting at least under the usual conditions of quorum and majority; where the statutes or instrument of incorporation do not provide for redemption, the latter shall be decided upon by the general meeting acting at least under the conditions of quorum and majority laid down in Article 83; the decision shall be published in the manner prescribed by the laws of Member States, in accordance with Article 16;
- (b) only sums which are available for distribution within the meaning of Article 56(1) to (4) may be used for redemption purposes;
- (c) shareholders whose shares are redeemed shall retain their rights in the company, with the exception of their rights to the repayment of their investment and participation in the distribution of an initial dividend on unredeemed shares.

Article 79

Reduction in the subscribed capital by compulsory withdrawal of shares

1 Where the laws of a Member State allow companies to reduce their subscribed capital by compulsory withdrawal of shares, they shall require that at least the following conditions are observed:

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- a compulsory withdrawal must be prescribed or authorised by the statutes or instrument of incorporation before the shares which are to be withdrawn are subscribed for;
 - b where the compulsory withdrawal is authorised merely by the statutes or instrument of incorporation, it shall be decided upon by the general meeting unless it has been unanimously approved by the shareholders concerned;
 - c the company body deciding on the compulsory withdrawal shall fix the terms and manner thereof, where they have not already been fixed by the statutes or instrument of incorporation;
 - d Article 75 shall apply except in the case of fully paid-up shares which are made available to the company free of charge or are withdrawn using sums available for distribution in accordance with Article 56(1) to (4); in these cases, an amount equal to the nominal value or, in the absence thereof, to the accountable par of all the withdrawn shares must be included in a reserve; except in the event of a reduction in the subscribed capital, this reserve may not be distributed to shareholders; it can be used only for offsetting losses incurred or for increasing the subscribed capital by the capitalisation of such reserve, in so far as Member States permit such an operation; and
 - e the decision on compulsory withdrawal shall be published in the manner laid down by the laws of each Member State in accordance with Article 16.
- 2 The first paragraph of Article 73 and Articles 74, 76 and 83 shall not apply to the cases to which paragraph 1 of this Article refers.

Article 80

Reduction in the subscribed capital by the withdrawal of shares acquired by the company itself or on its behalf

- 1 In the case of a reduction in the subscribed capital by the withdrawal of shares acquired by the company itself or by a person acting in his own name but on behalf of the company, the withdrawal shall always be decided on by the general meeting.
- 2 Article 75 shall apply unless the shares are fully paid up and are acquired free of charge or using sums available for distribution in accordance with Article 56(1) to (4); in these cases an amount equal to the nominal value or, in the absence thereof, to the accountable par of all the shares withdrawn shall be included in a reserve. Except in the event of a reduction in the subscribed capital, this reserve may not be distributed to shareholders. It may be used only for offsetting losses incurred or for increasing the subscribed capital by the capitalisation of such reserve, in so far as the Member States permit such an operation.
- 3 Articles 74, 76 and 83 shall not apply to the cases to which paragraph 1 of this Article refers.

Article 81

Redemption of the subscribed capital or its reduction by withdrawal of shares in case of several classes of shares

In the cases covered by Article 78, Article 79(1)(b) and Article 80(1), when there are several classes of shares, the decision by the general meeting concerning redemption of the subscribed capital or its reduction by withdrawal of shares shall be subject to a separate vote, at least for each class of shareholders whose rights are affected by the transaction.

Article 82

Conditions for redemption of shares

Where the laws of a Member State authorise companies to issue redeemable shares, they shall require that the following conditions, at least, are complied with for the redemption of such shares:

- (a) redemption must be authorised by the company's statutes or instrument of incorporation before the redeemable shares are subscribed for;
- (b) the shares must be fully paid up;
- (c) the terms and the manner of redemption must be laid down in the company's statutes or instrument of incorporation;
- (d) redemption can be only effected by using sums available for distribution in accordance with Article 56(1) to (4) or the proceeds of a new issue made with a view to effecting such redemption;
- (e) an amount equal to the nominal value or, in the absence thereof, to the accountable par of all the redeemed shares must be included in a reserve which cannot be distributed to the shareholders, except in the event of a reduction in the subscribed capital; it may be used only for the purpose of increasing the subscribed capital by the capitalisation of reserves;
- (f) point (e) shall not apply to redemption using the proceeds of a new issue made with a view to effecting such redemption;
- (g) where provision is made for the payment of a premium to shareholders in consequence of a redemption, the premium may be paid only from sums available for distribution in accordance with Article 56(1) to (4), or from a reserve other than that referred to in point (e) of this Article which may not be distributed to shareholders except in the event of a reduction in the subscribed capital; this reserve may be used only for the purposes of increasing the subscribed capital by the capitalisation of reserves or for covering the costs referred to in point (j) of Article 4 or the cost of issuing shares or debentures or for the payment of a premium to holders of redeemable shares or debentures;
- (h) notification of redemption shall be published in the manner laid down by the laws of each Member State in accordance with Article 16.

Article 83

Voting requirements for the decisions of the general meeting

The laws of the Member States shall provide that the decisions referred to in Article 72(4) and (5) and Articles 73, 74, 78 and 81 are to be taken at least by a majority of not less than two thirds of the votes attaching to the securities or the subscribed capital represented.

The laws of the Member States may, however, lay down that a simple majority of the votes specified in the first paragraph is sufficient when at least half the subscribed capital is represented.