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 I

Subject matter

Article 1

Subject matter

This Directive lays down measures concerning the following:

— the coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 54 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent,

— the coordination of safeguards which, for the protection of the interests of members and third parties, are required by Member States of companies within the meaning of the second paragraph of Article 54 of the Treaty, in respect of disclosure, the validity of obligations entered into by, and the nullity of, companies limited by shares or otherwise having limited liability, with a view to making such safeguards equivalent,

— the disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State,

— mergers of public limited liability companies,

— cross-border mergers of limited liability companies,

— the division of public limited liability companies.

CHAPTER II

Incorporation and nulity 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.

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.

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.

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.

CHAPTER III

Disclosure and interconnection of central, commercial and companies registers

Section 1

General provisions

Article 13

Scope

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.

Article 14

Documents and particulars to be disclosed by companies

Member States shall take the measures required to ensure compulsory disclosure by companies of at least the following documents and particulars:

(a) the instrument of constitution, and the statutes if they are contained in a separate instrument;

(b) any amendments to the instruments referred to in point (a), including any extension of the duration of the company;

(c) after every amendment of the instrument of constitution or of the statutes, the complete text of the instrument or statutes as amended to date;

(d) the appointment, termination of office and particulars of the persons who either as a body constituted pursuant to law or as members of any such body:

  (i) are authorised to represent the company in dealings with third parties and in legal proceedings; it shall be apparent from the disclosure whether the persons authorised to represent the company may do so alone or are required to act jointly;

  (ii) take part in the administration, supervision or control of the company;

(e) at least once a year, the amount of the capital subscribed, where the instrument of constitution or the statutes mention an authorised capital, unless any increase in the capital subscribed necessitates an amendment of the statutes;

(f) the accounting documents for each financial year which are required to be published in accordance with Council Directives 86/635/EEC[(1)] and 91/674/EEC[(2)] and Directive 2013/34/EU of the European Parliament and of the Council[(3)];

(g) any change of the registered office of the company;

(h) the winding-up of the company;

(i) any declaration of nullity of the company by the courts;

(j) the appointment of liquidators, particulars concerning them, and their respective powers, unless such powers are expressly and exclusively derived from law or from the statutes of the company;

(k) any termination of a liquidation and, in Member States where striking off the register entails legal consequences, the fact of any such striking off.

Article 15

Changes in documents and particulars

1 Member States shall take the measures required to ensure that any changes in the documents and particulars referred to in Article 14 are entered in the competent register referred to in the first subparagraph of Article 16(1) and are disclosed, in accordance with Article 16(3) and (5), normally within 21 days of receipt of the complete documentation regarding those

changes including, if applicable, the legality check as required under national law for entry in the file.

2 Paragraph 1 shall not apply to the accounting documents referred to in Article 14(f).

Article 16

Disclosure in the register

1 In each Member State, a file shall be opened in a central, commercial or companies register ('the register'), for each of the companies registered therein.

Member States shall ensure that companies have a unique identifier allowing them to be unequivocally identified in communications between registers through the system of interconnection of central, commercial and companies registers established in accordance with Article 22(2) ('the system of interconnection of registers'). That unique identifier shall comprise, at least, elements making it possible to identify the Member State of the register, the domestic register of origin and the company number in that register and, where appropriate, features to avoid identification errors.

2 For the purposes of this Article, 'by electronic means' shall mean that the information is sent initially and received at its destination by means of electronic equipment for the processing (including digital compression) and storage of data, and entirely transmitted, conveyed and received in a manner to be determined by Member States by wire, by radio, by optical means or by other electromagnetic means.

3 All documents and particulars which are required to be disclosed pursuant to Article 14 shall be kept in the file, or entered in the register; the subject matter of the entries in the register shall in every case appear in the file.

Member States shall ensure that the filing by companies, as well as by other persons and bodies required to make or assist in making notifications, of all documents and particulars which are required to be disclosed pursuant to Article 14 is possible by electronic means. In addition, Member States may require all, or certain categories of, companies to file all, or certain types of, such documents and particulars by electronic means.

All documents and particulars referred to in Article 14 which are filed, whether by paper means or by electronic means, shall be kept in the file, or entered in the register, in electronic form. To this end, Member States shall ensure that all such documents and particulars which are filed by paper means are converted by the register to electronic form.

The documents and particulars referred to in Article 14 that have been filed by paper means up to 31 December 2006, shall not be required to be converted automatically into electronic form by the register. Member States shall nevertheless ensure that they are converted into electronic form by the register upon receipt of an application for disclosure by electronic means submitted in accordance with the measures adopted to give effect to paragraph 4 of this Article.

4 A copy of all or any part of the documents or particulars referred to in Article 14 shall be obtainable on application. Applications may be submitted to the register by paper means or by electronic means as the applicant chooses.

Copies as referred to in the first subparagraph shall be obtainable from the register by paper means or by electronic means as the applicant chooses. This shall apply in the case of all documents and particulars already filed. However, Member States may decide that all, or certain types of, documents and particulars filed by paper means on or before a date which may not be later than 31 December 2006 shall not be obtainable from the register by electronic means if a specified period has elapsed between the date of filing and the date of the application submitted to the register. Such specified period may not be less than 10 years.

The price of obtaining a copy of the whole or any part of the documents or particulars referred to in Article 14, whether by paper means or by electronic means, shall not exceed the administrative cost thereof.

Paper copies supplied to an applicant shall be certified as 'true copies', unless the applicant dispenses with such certification. Electronic copies supplied shall not be certified as 'true copies', unless the applicant explicitly requests such a certification.

Member States shall take the necessary measures to ensure that certification of electronic copies guarantees both the authenticity of their origin and the integrity of their contents, by means at least of an advanced electronic signature within the meaning of Article 2(2) of Directive 1999/93/EC of the European Parliament and of the Council[(4)].

5 Disclosure of the documents and particulars referred to in paragraph 3 shall be effected by publication in the national gazette designated for that purpose by the Member State, either of the full text or of a partial text, or by means of a reference to the document which has been deposited in the file or entered in the register. The national gazette designated for that purpose may be kept in electronic form.

Member States may decide to replace publication in the national gazette with equally effective means, which shall entail at least the use of a system whereby the information disclosed can be accessed in chronological order through a central electronic platform.

6 The documents and particulars may be relied on by the company as against third parties only after they have been disclosed in accordance with paragraph 5, unless the company proves that the third parties had knowledge thereof.

However, with regard to transactions taking place before the sixteenth day following the disclosure, the documents and particulars shall not be relied on as against third parties who prove that it was impossible for them to have had knowledge thereof.

7 Member States shall take the necessary measures to avoid any discrepancy between what is disclosed in accordance with paragraph 5 and what appears in the register or file.

However, in cases of discrepancy, the text disclosed in accordance with paragraph 5 may not be relied on as against third parties; such third parties may nevertheless rely thereon, unless the company proves that they had knowledge of the texts deposited in the file or entered in the register.

Third parties may, moreover, always rely on any documents and particulars in respect of which the disclosure formalities have not yet been completed, save where non-disclosure causes them not to have effect.

Article 17

Up-to-date information on national law with regard to the rights of third parties

1 Member States shall ensure that up-to-date information is made available explaining the provisions of national law pursuant to which third parties may rely on particulars and each type of document referred to in Article 14, in accordance with Article 16(5), (6) and (7).

2 Member States shall provide the information required for publication on the European e-Justice portal (‘the portal’) in accordance with the portal's rules and technical requirements.

3 The Commission shall publish that information on the portal in all the official languages of the Union.

Article 18

Availability of electronic copies of documents and particulars

1 Electronic copies of the documents and particulars referred to in Article 14 shall also be made publicly available through the system of interconnection of registers.

2 Member States shall ensure that the documents and particulars referred to in Article 14 are available through the system of interconnection of registers in a standard message format and accessible by electronic means. Member States shall also ensure that minimum standards for the security of data transmission are respected.

3 The Commission shall provide a search service in all the official languages of the Union in respect of companies registered in the Member States, in order to make available through the portal:

a the documents and particulars referred to in Article 14;

b the explanatory labels, available in all the official languages of the Union, listing those particulars and the types of those documents.

Article 19

Fees chargeable for documents and particulars

1 The fees charged for obtaining the documents and particulars referred to in Article 14 through the system of interconnection of registers shall not exceed the administrative costs thereof.

2 Member States shall ensure that the following particulars are available free of charge through the system of interconnection of registers:

a the name and legal form of the company;

b the registered office of the company and the Member State where it is registered; and

c the registration number of the company.

In addition to those particulars, Member States may choose to make further documents and particulars available free of charge.

Article 20

Information on the opening and termination of winding-up or insolvency proceedings and on striking-off of a company from the register

1 The register of a company shall, through the system of interconnection of registers, make available, without delay, the information on the opening and termination of any winding-up or insolvency proceedings of the company and on the striking-off of the company from the register, if this entails legal consequences in the Member State of the register of the company.

2 The register of the branch shall, through the system of interconnection of registers, ensure receipt, without delay, of the information referred to in paragraph 1.

3 The exchange of information referred to in paragraphs 1 and 2 shall be free of charge for the registers.

Article 21

Language of disclosure and translation of documents and particulars to be disclosed

1 Documents and particulars to be disclosed pursuant to Article 14 shall be drawn up and filed in one of the languages permitted by the language rules applicable in the Member State in which the file referred to in Article 16(1) is opened.

2 In addition to the compulsory disclosure referred to in Article 16, Member States shall allow translations of documents and particulars referred to in Article 14 to be disclosed voluntarily in accordance with Article 16 in any official language(s) of the Union.

Member States may prescribe that the translation of such documents and particulars be certified.

Member States shall take the necessary measures to facilitate access by third parties to the translations voluntarily disclosed.

3 In addition to the compulsory disclosure referred to in Article 16, and to the voluntary disclosure provided for under paragraph 2 of this Article, Member States may allow the documents and particulars concerned to be disclosed, in accordance with Article 16, in any other language(s).

Member States may prescribe that the translation of such documents and particulars be certified.

4 In cases of discrepancy between the documents and particulars disclosed in the official languages of the register and the translation voluntarily disclosed, the latter may not be relied upon as against third parties. Third parties may nevertheless rely on the translations voluntarily disclosed, unless the company proves that the third parties had knowledge of the version which was the subject of the compulsory disclosure.

Article 22

System of interconnection of registers

1 A European central platform (‘the platform’) shall be established.

2 The system of interconnection of registers shall be composed of:

— the registers of Member States,

— the platform,

— the portal serving as the European electronic access point.

3 Member States shall ensure the interoperability of their registers within the system of interconnection of registers via the platform.

4 Member States may establish optional access points to the system of interconnection of registers. They shall notify the Commission without undue delay of the establishment of such access points and of any significant changes to their operation.

5 Access to information from the system of interconnection of registers shall be ensured through the portal and through the optional access points established by the Member States.

6 The establishment of the system of interconnection of registers shall not affect existing bilateral agreements concluded between Member States concerning the exchange of information on companies.

Article 23

Development and operation of the platform

1 The Commission shall decide to develop and/or operate the platform either by its own means or through a third party.

If the Commission decides to develop and/or operate the platform through a third party, the choice of the third party and the enforcement by the Commission of the agreement concluded with that third party shall be done in accordance with Regulation (EU, Euratom) No 966/2012.

2 If the Commission decides to develop the platform through a third party, it shall, by means of implementing acts, establish the technical specifications for the purpose of the public procurement procedure and the duration of the agreement to be concluded with that third party.

3 If the Commission decides to operate the platform through a third party, it shall, by means of implementing acts, adopt detailed rules on the operational management of the platform.

The operational management of the platform shall include, in particular:

— the supervision of the functioning of the platform,

— the security and protection of data distributed and exchanged using the platform,

— the coordination of relations between Member States' registers and the third party.

The supervision of the functioning of the platform shall be carried out by the Commission.

4 The implementing acts referred to in paragraphs 2 and 3 shall be adopted in accordance with the examination procedure referred to in Article 164(2).

Article 24

Implementing acts

By means of implementing acts, the Commission shall adopt the following:

(a) the technical specification defining the methods of communication by electronic means for the purpose of the system of interconnection of registers;

(b) the technical specification of the communication protocols;

(c) the technical measures ensuring the minimum information technology security standards for communication and distribution of information within the system of interconnection of registers;

(d) the technical specification defining the methods of exchange of information between the register of the company and the register of the branch as referred to in Articles 20 and 34;

(e) the detailed list of data to be transmitted for the purpose of exchange of information between registers, as referred to in Articles 20, 34 and 130;

(f) the technical specification defining the structure of the standard message format for the purpose of the exchange of information between the registers, the platform and the portal;

(g) the technical specification defining the set of the data necessary for the platform to perform its functions as well as the method of storage, use and protection of such data;

(h) the technical specification defining the structure and use of the unique identifier for communication between registers;

(i) the specification defining the technical methods of operation of the system of interconnection of registers as regards the distribution and exchange of information, and the specification defining the information technology services, provided by the platform, ensuring the delivery of messages in the relevant language version;

(j) the harmonised criteria for the search service provided by the portal;

(k) the payment modalities, taking into account available payment facilities such as online payment;

(l) the details of the explanatory labels listing the particulars and the types of documents referred to in Article 14;

(m) the technical conditions of availability of services provided by the system of interconnection of registers;

(n) the procedure and technical requirements for the connection of the optional access points to the platform.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 164(2).

Article 25

Financing

1 The establishment and future development of the platform and the adjustments to the portal resulting from this Directive shall be financed from the general budget of the Union.

2 The maintenance and functioning of the platform shall be financed from the general budget of the Union and may be co-financed by fees for access to the system of interconnection of registers charged to its individual users. Nothing in this paragraph shall affect fees at the national level.

3 By means of delegated acts and in accordance with Article 163, the Commission may adopt rules on whether to co-finance the platform by charging fees, and, in that case, the amount of the fees charged to individual users in accordance with paragraph 2 of this Article.

4 Any fees imposed in accordance with paragraph 2 of this Article shall be without prejudice to the fees, if any, charged by Member States for obtaining documents and particulars as referred to in Article 19(1).

5 Any fees imposed in accordance with paragraph 2 of this Article shall not be charged for obtaining the particulars referred to in Article 19(2)(a), (b) and (c).

6 Each Member State shall bear the costs of adjusting its domestic registers, as well as their maintenance and functioning costs resulting from this Directive.

Article 26

Information on letters and order forms

Member States shall prescribe that letters and order forms, whether they are in paper form or use any other medium, are to state the following particulars:

(a) the information necessary in order to identify the register in which the file referred to in Article 16 is kept, together with the number of the company in that register;

(b) the legal form of the company, the location of its registered office and, where appropriate, the fact that the company is being wound up.

Where, in those documents, mention is made of the capital of the company, the reference shall be to the capital subscribed and paid up.

Member States shall prescribe that company websites are to contain at least the particulars referred to in the first paragraph and, if applicable, a reference to the capital subscribed and paid up.

Article 27

Persons carrying out disclosure formalities

Each Member State shall determine by which persons the disclosure formalities are to be carried out.

Article 28

Penalties

Member States shall provide for appropriate penalties at least in the case of:

(a) failure to disclose accounting documents as required by Article 14(f);

(b) omission from commercial documents or from any company website of the compulsory particulars provided for in Article 26.

Section 2

Disclosure rules applicable to branches of companies from other Member States

Article 29

Disclosure of documents and particulars relating to a branch

1 Documents and particulars relating to a branch opened in a Member State by a company of a type listed in Annex II, which is governed by the law of another Member State, shall be disclosed pursuant to the law of the Member State of the branch, in accordance with Article 16.

2 Where disclosure requirements in respect of the branch differ from those in respect of the company, the branch's disclosure requirements shall take precedence with regard to transactions carried out with the branch.

3 The documents and particulars referred to in Article 30(1) shall be made publicly available through the system of interconnection of registers. Article 18 and Article 19(1) shall apply *mutatis mutandis*.

4 Member States shall ensure that branches have a unique identifier allowing them to be unequivocally identified in communications between registers through the system of interconnection of registers. That unique identifier shall comprise, at least, elements making it possible to identify the Member State of the register, the domestic register of origin and the branch number in that register, and, where appropriate, features to avoid identification errors.

Article 30

Documents and particulars to be disclosed

1 The compulsory disclosure provided for in Article 29 shall cover the following documents and particulars only:

a the address of the branch;

b the activities of the branch;

c the register in which the company file referred to in Article 16 is kept, together with the registration number in that register;

d the name and legal form of the company and the name of the branch, if that is different from the name of the company;

e the appointment, termination of office and particulars of the persons who are authorised to represent the company in dealings with third parties and in legal proceedings:
   — as a company organ constituted pursuant to law or as members of any such organ, in accordance with the disclosure by the company as provided for in Article 14(d),
   — as permanent representatives of the company for the activities of the branch, with an indication of the extent of their powers;

f — the winding-up of the company, the appointment of liquidators, particulars concerning them and their powers and the termination of the liquidation in accordance with disclosure by the company as provided for in Article 14(h), (j) and (k),
   — insolvency proceedings, arrangements, compositions, or any analogous proceedings to which the company is subject;

g the accounting documents in accordance with Article 31;

h the closure of the branch.

2 The Member State in which the branch has been opened may provide for the disclosure, as referred to in Article 29, of

a the signature of the persons referred to in points (e) and (f) of paragraph 1 of this Article;

b the instruments of constitution and the memorandum and articles of association if they are contained in a separate instrument, in accordance with points (a), (b) and (c) of Article 14, together with amendments to those documents;

c an attestation from the register referred to in point (c) of paragraph 1 of this Article relating to the existence of the company;

d an indication of the securities on the company's property situated in that Member State, provided such disclosure relates to the validity of those securities.

Article 31

Limits on the compulsory disclosure of accounting documents

The compulsory disclosure provided for by Article 30(1)(g) shall be limited to the accounting documents of the company as drawn up, audited and disclosed pursuant to the law of the Member State by which the company is governed in accordance with Directive 2006/43/EC of the European Parliament and of the Council[(5)] and Directive 2013/34/EU.

Article 32

Language of disclosure and translation of documents to be disclosed

The Member State in which the branch has been opened may stipulate that the documents referred to in Article 30(2)(b) and Article 31 are to be published in another official language of the Union and that the translations of such documents are to be certified.

Article 33

Disclosure in cases of multiple branches in a Member State

Where a company has opened more than one branch in a Member State, the disclosure referred to in Article 30(2)(b) and Article 31 may be made in the register of the branch of the company's choice.

In the case referred to in the first paragraph, compulsory disclosure by the other branches shall cover the particulars of the branch register of which disclosure was made, together with the number of that branch in that register.

Article 34

Information on the opening and termination of winding-up or insolvency proceedings and on striking-off of the company from the register

1 Article 20 shall apply to the register of the company and to the register of the branch respectively.

2 Member States shall determine the procedure to be followed upon receipt of the information referred to in Article 20(1) and (2). Such procedure shall ensure that, where a company has been dissolved or otherwise struck off the register, its branches are likewise struck off the register without undue delay.

3 The second sentence of paragraph 2 shall not apply to branches of companies that have been struck off the register as a consequence of any change in the legal form of the company concerned, a merger or division, or a cross-border transfer of its registered office.

Article 35

Information on letters and order forms

Member States shall prescribe that letters and order forms used by a branch shall state, in addition to the information prescribed by Article 26, the register in which the file in respect of the branch is kept together with the number of the branch in that register.

Section 3

Disclosure rules applicable to branches of companies from third countries

Article 36

Disclosure of documents and particulars relating to a branch

1 Documents and particulars concerning a branch opened in a Member State by a company which is not governed by the law of a Member State but which is of a legal form comparable with the types of company listed in Annex II, shall be disclosed in accordance with the law of the Member State of the branch as laid down in Article 16.

2 Article 29(2) shall apply.

Article 37

Compulsory documents and particulars to be disclosed

The compulsory disclosure provided for in Article 36 shall cover at least the following documents and particulars:

(a) the address of the branch;

(b) the activities of the branch;

(c) the law of the State by which the company is governed;

(d) where that law so provides, the register in which the company is entered and the registration number of the company in that register;

(e) the instruments of constitution, and memorandum and articles of association if they are contained in a separate instrument, with all amendments to those documents;

(f) the legal form of the company, its principal place of business and its object and, at least annually, the amount of subscribed capital if those particulars are not given in the documents referred to in point (e);

(g) the name of the company and the name of the branch if that is different from the name of the company;

(h) the appointment, termination of office and particulars of the persons who are authorised to represent the company in dealings with third parties and in legal proceedings:

— as a company organ constituted pursuant to law or as members of any such organ,

— as permanent representatives of the company for the activities of the branch.

The extent of the powers of the persons authorised to represent the company shall be stated, as well as whether those persons may represent the company alone or are required to act jointly;

(i) — the winding-up of the company and the appointment of liquidators, particulars concerning them and their powers and the termination of the liquidation,

— insolvency proceedings, arrangements, compositions or any analogous proceedings to which the company is subject;

(j) the accounting documents in accordance with Article 38;

(k) the closure of the branch.

Article 38

Limits of compulsory disclosure of accounting documents

1 The compulsory disclosure provided for by Article 37(j) shall apply to the accounting documents of the company as drawn up, audited and disclosed pursuant to the law of the State

which governs the company. Where they are not drawn up in accordance with or in a manner equivalent to Directive 2013/34/EU, Member States may require that accounting documents relating to the activities of the branch be drawn up and disclosed.

2 Articles 32 and 33 shall apply.

Article 39

Information on letters and order forms

Member States shall prescribe that letters and order forms used by a branch state the register in which the file in respect of the branch is kept together with the number of the branch in that register. Where the law of the State by which the company is governed requires entry in a register, the register in which the company is entered, and the registration number of the company in that register shall also be stated.

Section 4

Application and implementing arrangements

Article 40

Penalties

Member States shall provide for appropriate penalties in the event of failure to disclose the matters set out in Articles 29, 30, 31, 36, 37 and 38 and of omission from letters and order forms of the compulsory particulars provided for in Articles 35 and 39.

Article 41

Persons carrying out disclosure formalities

Each Member State shall determine who shall carry out the disclosure formalities provided for in Sections 2 and 3.

Article 42

Exemptions to provisions on disclosure of accounting documents for branches

1 Articles 31 and 38 shall not apply to branches opened by credit institutions and financial institutions covered by Council Directive 89/117/EEC[(6)].

2 Pending subsequent coordination, the Member States need not apply Articles 31 and 38 to branches opened by insurance companies.

Article 43

Contact Committee

The Contact Committee set up pursuant to Article 52 of Council Directive 78/660/EEC[7] shall also:

(a) facilitate, without prejudice to Articles 258 and 259 of the Treaty, the harmonised application of the provisions of Sections 2, 3 and this Section, through regular meetings dealing, in particular, with practical problems arising in connection with their application;

(b) advise the Commission, if necessary, on any additions or amendments to the provisions of Sections 2, 3 and this Section.

CHAPTER IV

Capital maintenance and alteration

Section 1

Capital requirements

Article 44

General provisions

1 The coordination measures prescribed by this Chapter 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.

2 The Member States may decide not to apply the provisions of this Chapter 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.

Article 45

Minimum capital

1 The laws of the Member States shall require that, in order for a company to be incorporated or obtain authorisation to commence business, a minimum capital shall be subscribed the amount of which shall be not less than EUR 25 000.

2 Every five years the European Parliament and the Council, acting on a proposal from the Commission in accordance with Article 50(1) and Article 50(2)(g) of the Treaty, shall examine and, if need be, revise the amount expressed in paragraph 1 in euro in the light of economic and monetary trends in the Union and of the tendency to allow only large and medium-sized undertakings to opt for the types of company listed in Annex I.

Article 46

Assets

Subscribed capital may be formed only of assets capable of economic assessment. However, an undertaking to perform work or supply services may not form part of those assets.

Article 47

Issuing price of shares

Shares may not be issued at a price lower than their nominal value, or, where there is no nominal value, their accountable par.

However, Member States may allow those who undertake to place shares in the exercise of their profession to pay less than the total price of the shares for which they subscribe in the course of this transaction.

Article 48

Paying up of shares issued for a consideration

Shares issued for consideration shall be paid up at the time the company is incorporated or is authorised to commence business at not less than 25 % of their nominal value or, in the absence of a nominal value, their accountable par.

However, where shares are issued for consideration other than in cash at the time the company is incorporated or is authorised to commence business, the consideration shall be transferred in full within five years of that time.

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[(8)] 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

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.

Section 3

Rules on distribution

Article 56

General rules on distribution

1 Except for cases of reductions of subscribed capital, no distribution to shareholders may be made when on the closing date of the last financial year the net assets as set out in the company's annual accounts are or, following such a distribution, would become, lower than the amount of the subscribed capital plus those reserves which may not be distributed under the law or the statutes of the company.

2 Where the uncalled part of the subscribed capital is not included in the assets shown in the balance sheet, that amount shall be deducted from the amount of subscribed capital referred to in paragraph 1.

3 The amount of a distribution to shareholders may not exceed the amount of the profits at the end of the last financial year plus any profits brought forward and sums drawn from reserves available for this purpose, less any losses brought forward and sums placed to reserve in accordance with the law or the statutes.

4 The term ‘distribution’ used in paragraphs 1 and 3 includes, in particular, the payment of dividends and of interest relating to shares.

5 When the laws of a Member State allow the payment of interim dividends, at least the following conditions shall apply:

a interim accounts shall be drawn up showing that the funds available for distribution are sufficient;

b the amount to be distributed may not exceed the total profits made since the end of the last financial year for which the annual accounts have been drawn up, plus any profits brought forward and sums drawn from reserves available for this purpose, less losses

brought forward and sums to be placed to reserve pursuant to the requirements of the law or the statutes.

6 Paragraphs 1 to 5 shall not affect the provisions of the Member States as regards increases in subscribed capital by capitalisation of reserves.

7 The laws of a Member State may provide for derogation from paragraph 1 in the case of investment companies with fixed capital.

For the purposes of this paragraph, the term ‘investment company with fixed capital’ means only companies:

a 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; and

b which offer their own shares for subscription by the public.

In so far as the laws of Member States make use of the option they shall:

a require such companies to include the term ‘investment company’ in all documents indicated in Article 26;

b not permit any such company whose net assets fall below the amount specified in paragraph 1 to make a distribution to shareholders when on the closing date of the last financial year the company's total assets as set out in the annual accounts are, or following such distribution would become, less than one-and-a-half times the amount of the company's total liabilities to creditors as set out in the annual accounts; and

c require any such company which makes a distribution when its net assets fall below the amount specified in paragraph 1 to include in its annual accounts a note to that effect.

Article 57

Recovery of distributions unlawfully made

Any distribution made contrary to Article 56 shall be returned by shareholders who have received it if the company proves that those shareholders knew of the irregularity of the distributions made to them, or could not in view of the circumstances have been unaware of it.

Article 58

Serious loss of the subscribed capital

1 In the case of a serious loss of the subscribed capital, a general meeting of shareholders shall be called within the period laid down by the laws of the Member States, to consider whether the company should be wound up or any other measures taken.

2 The amount of a loss deemed to be serious within the meaning of paragraph 1 shall not be set by the laws of Member States at a figure higher than half the subscribed capital.

Section 4

Rules on companies' aquisitions of their own shares

Article 59

No subscription of own shares

1 The shares of a company may not be subscribed for by the company itself.

2 If the shares of a company have been subscribed for by a person acting in his or her own name, but on behalf of the company, the subscriber shall be deemed to have subscribed for them for his or her own account.

3 The persons or companies or firms referred to in point (i) of Article 4 or, in cases of an increase in subscribed capital, the members of the administrative or management body shall be liable to pay for shares subscribed in contravention of this Article.

However, the laws of a Member State may provide that any such person may be released from his or her obligation if they prove that no fault is attributable to them personally.

Article 60

Acquisition of own shares

1 Without prejudice to the principle of equal treatment of all shareholders who are in the same position, and to Regulation (EU) No 596/2014, Member States may permit a company to acquire its own shares, either itself or through a person acting in his or her own name but on the company's behalf. To the extent that the acquisitions are permitted, Member States shall make such acquisitions subject to the following conditions:

a authorisation is given by the general meeting, which shall determine the terms and conditions of such acquisitions, and, in particular, the maximum number of shares to be acquired, the duration of the period for which the authorisation is given, the maximum length of which shall be determined by national law without, however, exceeding five years, and, in the case of acquisition for value, the maximum and minimum consideration. Members of the administrative or management body shall satisfy themselves that, at the time when each authorised acquisition is effected, the conditions referred to in points (b) and (c) are respected;

b the acquisitions, including shares previously acquired by the company and held by it, and shares acquired by a person acting in his or her own name but on the company's behalf, cannot have the effect of reducing the net assets below the amount referrred to in Article 56(1) and (2); and

c only fully paid-up shares can be included in the transaction.

Furthermore, Member States may subject acquisitions within the meaning of the first subparagraph to any of the following conditions:

a the nominal value or, in the absence thereof, the accountable par of the acquired shares, including shares previously acquired by the company and held by it, and shares acquired by a person acting in his own name but on the company's behalf, does not exceed a limit to be determined by Member States; this limit may not be lower than 10 % of the subscribed capital;

b the power of the company to acquire its own shares within the meaning of the first subparagraph, the maximum number of shares to be acquired, the duration of the period for which the power is given and the maximum or minimum consideration are laid down in the statutes or in the instrument of incorporation of the company;

c the company complies with appropriate reporting and notification requirements;

d certain companies, as determined by Member States, can be required to cancel the acquired shares provided that an amount equal to the nominal value of the shares cancelled is included in a reserve which cannot be distributed to the 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;

e the acquisition does not prejudice the satisfaction of creditors' claims.

2 The laws of a Member State may provide for derogations from the first sentence of point (a) of the first subparagraph of paragraph 1 where the acquisition of a company's own shares is necessary to prevent serious and imminent harm to the company. In such a case, the next general meeting shall be informed by the administrative or management body of the reasons for and nature of the acquisitions effected, of the number and nominal value or, in the absence of a nominal value, the accountable par, of the shares acquired, of the proportion of the subscribed capital which they represent, and of the consideration for those shares.

3 Member States may decide not to apply the first sentence of point (a) of the first subparagraph of paragraph 1 to shares acquired by either the company itself or by a person acting in his or her own name but on the company's behalf, for distribution to that company's employees or to the employees of an associate company. Such shares shall be distributed within 12 months of their acquisition.

Article 61

Derogation from rules on acquisition of own shares

1 Member States may decide not to apply Article 60 to:

a shares acquired in carrying out a decision to reduce capital, or in the circumstances referred to in Article 82;

b shares acquired as a result of a universal transfer of assets;

c fully paid-up shares acquired free of charge or by banks and other financial institutions as purchasing commission;

d shares acquired by virtue of a legal obligation or resulting from a court ruling for the protection of minority shareholders in the event, particularly, of a merger, a change in the company's object or form, transfer abroad of the registered office, or the introduction of restrictions on the transfer of shares;

e shares acquired from a shareholder in the event of failure to pay them up;

f shares acquired in order to indemnify minority shareholders in associated companies;

g fully paid-up shares acquired under a sale enforced by a court order for the payment of a debt owed to the company by the owner of the shares; and

h fully paid-up shares issued by an investment company with fixed capital, as defined in the second subparagraph of Article 56(7), and acquired at the investor's request by that company or by an associate company. Point (a) of the third subparagraph of Article 56(7) shall apply. Such acquisitions may not have the effect of reducing the net assets below the amount of the subscribed capital plus any reserves the distribution of which is forbidden by law.

2 Shares acquired in the cases listed in points (b) to (g) of paragraph 1 shall, however, be disposed of within not more than three years of their acquisition unless the nominal value or, in the absence of a nominal value, the accountable par of the shares acquired, including shares which the company may have acquired through a person acting in his own name but on the company's behalf, does not exceed 10 % of the subscribed capital.

3 If the shares are not disposed of within the period laid down in paragraph 2, they shall be cancelled. The laws of a Member State may make this cancellation subject to a corresponding reduction in the subscribed capital. Such a reduction shall be prescribed where the acquisition of shares to be cancelled results in the net assets having fallen below the amount specified in Article 56(1) and (2).

Article 62

Consequences of illegal acquisition of own shares

Shares acquired in contravention of Articles 60 and 61 shall be disposed of within one year of their acquisition. If they are not disposed of within that period, Article 61(3) shall apply.

Article 63

Holding of own shares and annual report in case of acquisition of own shares

1 Where the laws of a Member State permit a company to acquire its own shares, either itself or through a person acting in his or her own name but on the company's behalf, they shall make the holding of these shares at all times subject to at least the following conditions:

a among the rights attaching to the shares, the right to vote attaching to the company's own shares must in any event be suspended;

b if the shares are included among the assets shown in the balance sheet, a reserve of the same amount, unavailable for distribution, shall be included among the liabilities.

2 Where the laws of a Member State permit a company to acquire its own shares, either itself or through a person acting in his or her own name but on the company's behalf, they shall require the annual report to state at least:

a the reasons for acquisitions made during the financial year;

b the number and nominal value or, in the absence of a nominal value, the accountable par of the shares acquired and disposed of during the financial year and the proportion of the subscribed capital which they represent;

c in the case of acquisition or disposal for a value, the consideration for the shares;

d the number and nominal value or, in the absence of a nominal value, the accountable par of all the shares acquired and held by the company and the proportion of the subscribed capital which they represent.

Article 64

Financial assistance by a company for acquisition of its shares by a third party

1 Where Member States permit a company to, either directly or indirectly, advance funds or make loans or provide security, with a view to the acquisition of its shares by a third party, they shall make such transactions subject to the conditions set out in paragraphs 2 to 5.

2 The transactions shall take place under the responsibility of the administrative or management body at fair market conditions, especially with regard to interest received by the company and with regard to security provided to the company for the loans and advances referred to in paragraph 1.

The credit standing of the third party or, in the case of multiparty transactions, of each counterparty thereto shall have been duly investigated.

3 The transactions shall be submitted by the administrative or management body to the general meeting for prior approval, whereby the general meeting shall act in accordance with the rules for a quorum and a majority laid down in Article 83.

The administrative or management body shall present a written report to the general meeting, indicating:

a the reasons for the transaction;

b the interest of the company in entering into such a transaction;

c the conditions on which the transaction is entered into;

d the risks involved in the transaction for the liquidity and solvency of the company; and

e the price at which the third party is to acquire the shares.

This report shall be submitted to the register for publication in accordance with Article 16.

4 The aggregate financial assistance granted to third parties shall at no time result in the reduction of the net assets below the amount specified in Article 56(1) and (2), taking into account also any reduction of the net assets that may have occurred through the acquisition, by the company or on behalf of the company, of its own shares in accordance with Article 60(1).

The company shall include, among the liabilities in the balance sheet, a reserve, unavailable for distribution, of the amount of the aggregate financial assistance.

5 Where a third party by means of financial assistance from a company acquires that company's own shares within the meaning of Article 60(1) or subscribes for shares issued in the course of an increase in the subscribed capital, such acquisition or subscription shall be made at a fair price.

6 Paragraphs 1 to 5 shall not apply to transactions concluded by banks and other financial institutions in the normal course of business, nor to transactions effected with a view to the acquisition of shares by or for the company's employees or the employees of an associate company.

However, these transactions may not have the effect of reducing the net assets below the amount specified in Article 56(1).

7 Paragraphs 1 to 5 shall not apply to transactions effected with a view to acquisition of shares as described in of Article 61(1)(h).

Article 65

Additional safeguards in case of related party transactions

In cases where individual members of the administrative or management body of the company being party to a transaction referred to in Article 64(1) of this Directive, or of the administrative or management body of a parent undertaking within the meaning of Article 22 of Directive 2013/34/EU or such parent undertaking itself, or individuals

acting in their own name, but on behalf of the members of such bodies or on behalf of such undertaking, are counterparties to such a transaction, Member States shall ensure through adequate safeguards that such transaction does not conflict with the company's best interests.

Article 66

Acceptance of the company's own shares as security

1 The acceptance of the company's own shares as security, either by the company itself or through a person acting in his own name but on the company's behalf, shall be treated as an acquisition for the purposes of Article 60, Article 61(1), and Articles 63 and 64.

2 The Member States may decide not to apply paragraph 1 to transactions concluded by banks and other financial institutions in the normal course of business.

Article 67

Subscription, acquisition or holding of shares by a company in which the public limited liability company holds a majority of the voting rights or on which it can exercise a dominant influence

1 The subscription, acquisition or holding of shares in a public limited liability company by another company of a type listed in Annex II in which the public limited liability company directly or indirectly holds a majority of the voting rights or on which it can directly or indirectly exercise a dominant influence shall be regarded as having been effected by the public limited liability company itself.

The first subparagraph shall also apply where the other company is governed by the law of a third country and has a legal form comparable to those listed in Annex II.

However, where the public limited liability company holds a majority of the voting rights indirectly or can exercise a dominant influence indirectly, Member States need not apply the first and the second subparagraphs if they provide for the suspension of the voting rights attached to the shares in the public limited liability company held by the other company.

2 In the absence of coordination of national legislation on groups of companies, Member States may:

a define the cases in which a public limited liability company shall be regarded as being able to exercise a dominant influence on another company; if a Member State exercises this option, its national law shall in any event provide that a dominant influence can be exercised if a public limited liability company:

(i) has the right to appoint or dismiss a majority of the members of the administrative organ, of the management organ or of the supervisory organ, and is at the same time a shareholder or member of the other company; or

(ii) is a shareholder or member of the other company and has sole control of a majority of the voting rights of its shareholders or members under an agreement concluded with other shareholders or members of that company.

Member States shall not be obliged to make provision for any cases other than those referred to in points (i) and (ii) of the first subparagraph;

b define the cases in which a public limited liability company shall be regarded as indirectly holding voting rights or as able indirectly to exercise a dominant influence;

c specify the circumstances in which a public limited liability company shall be regarded as holding voting rights.

3 Member States need not apply the first and second subparagraphs of paragraph 1 where the subscription, acquisition or holding is effected on behalf of a person other than the person subscribing, acquiring or holding the shares, who is neither the public limited liability company referred to in paragraph 1 nor another company in which the public limited liability company directly or indirectly holds a majority of the voting rights or on which it can directly or indirectly exercise a dominant influence.

4 Member States need not apply the first and second subparagraphs of paragraph 1 where the subscription, acquisition or holding is effected by the other company in its capacity and in the context of its activities as a professional dealer in securities, provided that it is a member of a stock exchange situated or operating within a Member State, or is approved or supervised by an authority of a Member State competent to supervise professional dealers in securities which, within the meaning of this Directive, may include credit institutions.

5 Member States need not apply the first and second subparagraphs of paragraph 1 where shares in a public limited liability company held by another company were acquired before the relationship between the two companies corresponded to the criteria laid down in paragraph 1.

However, the voting rights attached to those shares shall be suspended and the shares shall be taken into account when it is determined whether the condition laid down in Article 60(1)(b) is fulfilled.

6 Member States need not apply Article 61(2) or (3) or Article 62 where shares in a public limited liability company are acquired by another company on condition that they provide for:

a the suspension of the voting rights attached to the shares in the public limited liability company held by the other company; and

b the members of the administrative or the management organ of the public limited liability company to be obliged to buy back from the other company the shares referred to in Article 61(2) and (3) and Article 62 at the price at which the other company acquired them; this sanction shall be inapplicable only where the members of the administrative or the management organ of the public limited liability company prove that that company played no part whatsoever in the subscription for or acquisition of the shares in question.

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:

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.

Section 6

Application and implementing arrangements

Article 84

Derogation from certain requirements

1 Member States may derogate from the first paragraph of Article 48, the first sentence of Article 60(1)(a) and Articles 68, 69 and 72 to the extent that such derogations are necessary for the adoption or application of provisions designed to encourage the participation of employees, or other groups of persons defined by national law, in the capital of undertakings.

2 Member States may decide not to apply the first sentence of Article 60(1)(a) and Articles 73, 74 and 79 to 82 to companies incorporated under a special law which issue both capital shares and workers' shares, the latter being issued to the company's employees as a body, who are represented at general meetings of shareholders by delegates having the right to vote.

3 Member States shall ensure that Article 49, Articles 58(1) and 68(1), (2) and (3), the first subparagraph of Article 70(2), Articles 72 to 75, 79, 80 and 81 do not apply in the case of use of the resolution tools, powers and mechanisms provided for in Title IV of Directive 2014/59/EU of the European Parliament and of the Council[(9)].

Article 85

Equal treatment of all shareholders who are in the same position

For the purposes of the implementation of this Chapter, the laws of the Member States shall ensure equal treatment to all shareholders who are in the same position.

Article 86

Transitional provisions

Member States may decide not to apply points (g), (i), (j) and (k) of Article 4 to companies already in existence at the date of entry into force of the laws, regulations

and administrative provisions adopted in order to comply with Council Directive 77/91/EEC[(10)].

(**1**) Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions (OJ L 372, 31.12.1986, p. 1).

(**2**) Council Directive 91/674/EEC of 19 December 1991 on the annual accounts and consolidated accounts of insurance undertakings (OJ L 374, 31.12.1991, p. 7).

(**3**) Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

(**4**) Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures (OJ L 13, 19.1.2000, p. 12).

(**5**) Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (OJ L 157, 9.6.2006, p. 87).

(**6**) Council Directive 89/117/EEC of 13 February 1989 on the obligations of branches established in a Member State of credit institutions and financial institutions having their head offices outside that Member State regarding the publication of annual accounting documents (OJ L 44, 16.2.1989, p. 40).

(**7**) Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies (OJ L 222, 14.8.1978, p. 11).

(**8**) 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).

(**9**) Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 190).

(**10**) Second Council Directive 77/91/EEC of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent (OJ L 26, 31.1.1977, p. 1).