

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

TITLE I

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

*CHAPTER II*

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

*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.

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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.