

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

TITLE I

GENERAL PROVISIONS AND THE ESTABLISHMENT AND FUNCTIONING OF LIMITED LIABILITY COMPANIES

CHAPTER IV

Capital maintenance and alteration

Section 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.