

Company law: formation of public limited companies, maintenance and alteration of their capital (amend. Directive 77/91/EEC)

2004/0256(COD) - 06/09/2006 - Final act

PURPOSE: to update and modernise Directive 77/91/EEC.

LEGISLATIVE ACT: Directive 2006/68/EC of the European Parliament and of the Council amending Council Directive 77/91/EEC as regards the formation of public limited liability companies and the maintenance and alteration of their capital.

CONTENT: the purpose of this Directive is to amend the second Council Directive 77/91/EEC on public limited liability companies and the maintenance and alteration of their capital. The amendment is being done on the back of a modernisation programme, which seeks to promote business efficiency and competitiveness, without reducing the protection offered to shareholders and creditors.

The new provisions inserted into Directive 77/91/EEC are as follows:

- Allowing public limited liability companies to allot shares without requiring them to obtain a special expert valuation. The right of minority shareholders to require a valuation will, however, remain.
- Allowing public limited liability companies to acquire their own shares up to the limit of the company's distributable reserves. The period for which such an acquisition may be authorised has been increased in a bid to guarantee better flexibility and to reduce the administrative burden on companies.
- Allowing public limited liability companies to grant financial assistance for the acquisition of their shares by a third party – up to a limit of the company's distributable reserves. This allows for increased flexibility vis-à-vis changes in the ownership structure of the share capital of companies. In the interest of protecting both shareholders and third parties this provision is subject to various safeguards.
- Allowing creditors to resort, under certain conditions, to judicial or administrative proceedings where their claims are at stake as a result of reduced capital in a public limited liability company.
- To help prevent market abuse, the Member States are asked to take account of related Community legislation on: insider dealing; buy-back programmes and stabilisation of financial instruments; accepted market practices; the definition of insider information in relation to derivatives on commodities; the drawing up of lists of insiders, the notification of managers' transactions and the notification of suspicious transactions.

ENTRY INTO FORCE: 15 October 2006.

TRANSPOSITION: 15 April 2008.