

No-Par Shares Working in European LLCs

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Abstract : Capital companies are based on monetary capital. In the traditional model, the capital is the sum of the nominal values of all shares issued. For a few years within the European countries, the limited liability companies' (LLC) regulations are leaning towards liberalization of the capital structure in order to provide higher degree of autonomy regarding the intra-corporate governance. Reforms were based primarily on the legal system of the USA. In the USA, the tradition of no-par shares is well-established. Thus, as a point of reference, the American legal system is being chosen. Regulations of Germany, Great Britain, France, Netherlands, Finland, Poland and the USA will be taken into consideration. The analysis of the share capital is important for the development of science not only because the capital structure of the corporation has significant impact on the shareholders' rights, but also it reflects on relationships between creditors of the company and the company itself. Multi-level comparative approach towards the problem will allow to present a wide range of the possible outcomes stemming from the novelization. The dogmatic method was applied. The analysis was based on the statutes, secondary sources and judicial awards. Both the substantive and the procedural aspects of the capital structure were considered. In Germany, as a result of the regulatory competition, typical for the EU, the structure of LLCs was reshaped. New LLC – Unternehmergesellschaft, which does not require a minimum share capital, was introduced. The minimum share capital for Gesellschaft mit beschränkter Haftung was lowered from 25 000 to 10 000 euro. In France the capital structure of corporations was also altered. In 2003, the minimum share capital of société à responsabilité limitée (S.A.R.L.) was repealed. In 2009, the minimum share capital of société par actions simplifiée – in the “simple” version of S.A.R.L. was also changed – there is no minimum share capital required by a statute. The company has to, however, indicate a share capital without the legislator imposing the minimum value of said capital. In Netherlands the reform of the Besloten Vennootschap met beperkte aansprakelijkheid (B.V.) was planned with the following change: repeal of the minimum share capital as the answer to the need for higher degree of autonomy for shareholders. It, however, preserved shares with nominal value. In Finland the novelization of yksityinen osakeyhtiö took place in 2006 and as a result the no-par shares were introduced. Despite the fact that the statute allows shares without face value, it still requires the minimum share capital in the amount of 2 500 euro. In Poland the proposal for the restructuring of the capital structure of the LLC has been introduced. The proposal provides among others: devaluation of the capital to 1 PLN or complete liquidation of the minimum share capital, allowing the no-par shares to be issued. In conclusion: American solutions, in particular, balance sheet test and solvency test provide better protection for creditors; European no-par shares are not the same as American and the existence of share capital in Poland is crucial.

Keywords : balance sheet test, limited liability company, nominal value of shares, no-par shares, share capital, solvency test

Conference Title : ICCG 2018 : International Conference on Corporate Governance

Conference Location : Prague, Czechia

Conference Dates : July 09-10, 2018