

# **FEE Survey on Alternatives to Capital Maintenance Regimes**

## **Background document to the FEE Discussion Paper on Alternatives to Capital Maintenance Regimes**

*Responses to the questionnaire FEE Survey on Alternatives to Capital Maintenance Regimes as circulated in May 2006*

Situation as per mid-2006

## 1. General questions and your country's regime

- a) Are IFRS applied to individual accounts that have to be filed with your country's registrar or equivalent authority:
- on a mandatory basis:
  - voluntarily:

country	public listed company <sup>1</sup>	public unlisted company <sup>1</sup>	private company <sup>1</sup>
<b>AT</b>	- mandatory: NO - voluntarily: NO	- mandatory: NO - voluntarily: NO	- mandatory: NO - voluntarily: NO
<b>BE</b>	- mandatory: NO - voluntarily: NO	- mandatory: NO - voluntarily: NO	- mandatory: NO - voluntarily: NO
<b>BG</b>			
<b>CH</b>	NO filing with authorities requested; IFRS usually not applied to individual accounts  - mandatory: N/A - voluntarily: N/A	NO filing with authorities requested; IFRS usually not applied to individual accounts  - mandatory: N/A - voluntarily: N/A	NO filing with authorities requested; IFRS usually not applied to individual accounts  - mandatory: N/A - voluntarily: N/A
<b>CY</b>	mandatory	mandatory	mandatory
<b>CZ<sup>2</sup></b>	mandatory	voluntarily: NO	voluntarily: NO
<b>DE</b>	mandatory: NO voluntarily: NO	mandatory: NO voluntarily: NO	mandatory: NO voluntarily: NO
<b>DK</b>	voluntarily (until 1 January 2009)	voluntarily (until 1 January 2009)	voluntarily (until 1 January 2009)
<b>EE</b>			

<sup>1</sup> The questionnaire concerns companies covered by the Fourth Directive Article 1.

<sup>2</sup> CZ: public listed company = public listed a.s.; public unlisted company = public unlisted a.s.; private company = private a.s., s.r.o.

<b>ES<sup>3</sup></b>	- mandatory: NO - voluntarily: NO	- mandatory: NO - voluntarily: NO	- mandatory: NO - voluntarily: NO
<b>FI</b>	voluntarily	voluntarily	voluntarily
<b>FR<sup>4</sup></b>	- voluntarily: NO - mandatory: NO	- voluntarily: NO - mandatory: NO	- voluntarily: NO - mandatory: NO
<b>GR</b>	- voluntarily: YES - mandatory: NO	- voluntarily: YES (in case its parent company is listed) - mandatory: YES	- voluntarily: NO - mandatory: NO
<b>HU</b>	voluntarily (additional)	voluntarily (additional)	voluntarily (additional)
<b>IE</b>	voluntarily	voluntarily	voluntarily
<b>IT</b>	mandatory	voluntarily	voluntarily: yes, but with some requirements
<b>LT</b>	mandatory		
<b>LU</b>			
<b>LV</b>	- voluntarily - mandatory	mandatory	mandatory
<b>MT</b>	mandatory	mandatory	mandatory
<b>NL</b>	voluntarily: YES	voluntarily: YES, but only if IFRSs are applied to the consolidated accounts, when applicable	voluntarily: YES, but only if IFRSs are applied to the consolidated accounts, when applicable
<b>NO</b>			

<sup>3</sup> ES: public company = “sociedad anónima” ;private company = “sociedad de responsabilidad limitada”

<sup>4</sup> SARL : société à responsabilité limitée ; SA : société anonyme ; SAS : société par actions simplifiée ; SCA : société en commandite par actions

<b>PL</b> <sup>5</sup>	- mandatory: * NO: for single financial statements * YES: for consolidated financial statements  - voluntarily	- voluntarily: if parent company prepares FS in accordance to IFRS	- voluntarily: if parent company prepares FS in accordance to IFRS
<b>PT</b>			
<b>RO</b>			
<b>SE</b>	- mandatory: NO - voluntarily: NO	- mandatory: NO - voluntarily: NO	- mandatory: NO - voluntarily: NO
<b>SI</b>	- mandatory: NO, except banks and insurance companies  - voluntarily	- mandatory: NO, except banks and insurance companies  - voluntarily	voluntarily
<b>SK</b>	mandatory	mandatory	mandatory
<b>UK</b>	voluntarily	voluntarily	voluntarily

<sup>5</sup> PL: According to the article 1 of the Fourth Directive for the purpose of this survey we grouped the types of the companies them in the following way:

a) for the group “public listed company” we accept following companies:

- joint-stock partnership; and
- limited joint-stock partnership

that stocks are listed on Polish regulated market (Warsaw Stock Exchange),

b) for the group “public unlisted company” we accept the issuers of securities pending admission to trading on regulated market that in Poland can be following companies:

- joint-stock partnership and
- limited joint-stock partnership.

c) for the group “private company” we accept following companies:

- limited liability company,
- registered partnership,
- limited partnership.

b) Which accounting rules are used as a basis for determining distributions: IFRS or national GAAP?

Public listed:

Public unlisted and Private:

country	public listed company	public unlisted company	private company
<b>AT</b>	national GAAP	national GAAP	national GAAP
<b>BE</b>	national GAAP	national GAAP	national GAAP
<b>BG</b>			
<b>CH</b>	national GAAP	national GAAP	national GAAP
<b>CY</b>	IFRS	IFRS	IFRS
<b>CZ</b>	IFRS - not explicitly stated in the Commercial Code, however, companies preparing IFRS accounts do not need to have national GAAP figures available	national GAAP	national GAAP
<b>DE</b>	national GAAP	national GAAP	national GAAP
<b>DK</b>	national GAAP (even if IFRS applies in the financial statement)	national GAAP (even if IFRS applies in the financial statement)	national GAAP (even if IFRS applies in the financial statement)
<b>EE</b>			
<b>ES</b>	national GAAP	national GAAP	national GAAP
<b>FI</b>	national GAAP	national GAAP	national GAAP
<b>FR</b>	French GAAP	French GAAP	French GAAP
<b>GR</b>	IFRS	IFRS or National GAAP	National GAAP
<b>HU</b>	national GAAP (Accounting Law)	national GAAP (Accounting Law)	national GAAP (Accounting Law)
<b>IE</b>	The rules under which the financial statements are prepared.	The rules under which the financial statements are prepared.	The rules under which the financial statements are prepared.

<b>IT</b>	national GAAP	national GAAP	national GAAP
<b>LT</b>	IFRS	national GAAP	national GAAP
<b>LU</b>			
<b>LV</b>	IFRS	Latvian GAAP	Latvian GAAP
<b>MT</b>	IFRS as adopted by the EU	IFRS	IFRS
<b>NL</b>	The rules used in the individual accountants. However the law contains additional rules to safeguard creditor protection.	The rules used in the individual accountants. However the law contains additional rules to safeguard creditor protection.	The rules used in the individual accountants. However the law contains additional rules to safeguard creditor protection.
<b>NO</b>			
<b>PL</b>	IFRS or national GAAP (see 1a).	IFRS or national GAAP (see 1a).	IFRS or national GAAP (see 1a).
<b>PT</b>			
<b>RO</b>			
<b>SE</b>	national GAAP	national GAAP	national GAAP
<b>SI</b>	IFRS or national GAAP	IFRS or national GAAP	IFRS or national GAAP
<b>SK</b>	IFRS	IFRS	IFRS
<b>UK</b>	whichever GAAP is adopted for statutory accounting purposes	whichever GAAP is adopted for statutory accounting purposes	whichever GAAP is adopted for statutory accounting purposes

c) Is your system *primarily* based on:

- **creditor protection:**
- **investor protection:**

country	public listed company	public unlisted company	private company
<b>AT</b>	creditor protection	creditor protection	creditor protection
<b>BE</b>	creditor protection	creditor protection	creditor protection
<b>BG</b>			
<b>CH</b>	creditor protection	creditor protection	creditor protection
<b>CY</b>	- creditor protection - investor protection: lesser degree	- creditor protection - investor protection: lesser degree	- creditor protection - investor protection: lesser degree
<b>CZ</b>	creditor protection	creditor protection	creditor protection
<b>DE</b>	creditor protection	creditor protection	creditor protection
<b>DK</b>	creditor protection	creditor protection	creditor protection
<b>EE</b>			
<b>ES</b>	creditor protection	creditor protection	creditor protection
<b>FI</b>	investor protection	creditor protection	creditor protection
<b>FR</b>	creditor protection	creditor protection	creditor protection
<b>GR</b>	- creditor protection - investor protection	- creditor protection	- creditor protection
<b>HU</b>	creditor protection	creditor protection	creditor protection
<b>IE</b>	investor protection	investor protection	investor protection
<b>IT</b>	creditor protection	creditor protection	creditor protection

<b>LT</b>	- creditor protection - investor protection	- creditor protection - investor protection	- creditor protection - investor protection
<b>LU</b>			
<b>LV</b>	creditor protection	creditor protection	creditor protection
<b>MT</b>	investor protection	investor protection	investor protection
<b>NL</b>	creditor protection	creditor protection	creditor protection
<b>NO</b>			
<b>PL</b>	- creditor protection - investor protection	- creditor protection - investor protection	- creditor protection - investor protection
<b>PT</b>			
<b>RO</b>			
<b>SE</b>	The Companies' Act includes regulation on both creditor and investor protection.	The Companies' Act includes regulation on both creditor and investor protection.	The Companies' Act includes regulation on both creditor and investor protection.
<b>SI</b>	creditor protection	creditor protection	creditor protection
<b>SK</b>	creditor protection	creditor protection	creditor protection
<b>UK</b>	creditor protection	creditor protection	creditor protection



- d) Is creditor protection set forth in:
- corporate/company law:
  - commercial/trade law:
  - national accounting principles:
  - elsewhere:

<b>country</b>	<b>public listed company</b>	<b>public unlisted company</b>	<b>private company</b>
<b>AT</b>	- corporate/company law: YES, in the Austrian Commercial Code (ACC) - commercial/trade law: YES, in the Austrian Commercial Code (ACC) - national accounting principles: YES, in the Austrian Commercial Code (ACC)	- corporate/company law: YES, in the Austrian Commercial Code (ACC) - commercial/trade law: YES, in the Austrian Commercial Code (ACC) - national accounting principles: YES, in the Austrian Commercial Code (ACC)	- corporate/company law: YES, in the Austrian Commercial Code (ACC) - commercial/trade law: YES, in the Austrian Commercial Code (ACC) - national accounting principles: YES, in the Austrian Commercial Code (ACC)
<b>BE</b>	- corporate/company law - corporate/company law - national accounting principles	- corporate/company law - corporate/company law - national accounting principles	- corporate/company law - corporate/company law - national accounting principles
<b>BG</b>			
<b>CH</b>	- corporate/company law - commercial/trade law - national accounting principles	- corporate/company law - commercial/trade law - national accounting principles	- corporate/company law - commercial/trade law - national accounting principles
<b>CY</b>	- corporate/company law - commercial/trade law - elsewhere: defaulting creditors legislation	- corporate/company law - commercial/trade law - elsewhere: defaulting creditors legislation	- corporate/company law - commercial/trade law - elsewhere: defaulting creditors legislation
<b>CZ</b>	- corporate/company law - commercial/trade law - national accounting principles - elsewhere	- corporate/company law - commercial/trade law - national accounting principles - elsewhere	- corporate/company law - commercial/trade law - national accounting principles - elsewhere
<b>DE</b>	- corporate/company law: YES, in the German Commercial Code (GCC, Handelsgesetzbuch HGB), German Stock Corporation Act (Aktiengesetz, AktG)	- corporate/company law: YES, in the German Commercial Code (GCC, Handelsgesetzbuch HGB), German Stock Corporation Act (Aktiengesetz, AktG)	- corporate/company law: YES, in the German Commercial Code (GCC, Handelsgesetzbuch, HGB), Law of the German limited Liability Company

	<ul style="list-style-type: none"> <li>- commercial/trade law: YES, in the German Commercial Code (GCC, Handelsgesetzbuch HGB)</li> <li>- national accounting principles: YES, in the German Commercial Code (GCC, Handelsgesetzbuch HGB)</li> </ul>	<ul style="list-style-type: none"> <li>- commercial/trade law: YES, in the German Commercial Code (GCC, Handelsgesetzbuch HGB)</li> <li>- national accounting principles: YES, in the German Commercial Code (GCC, Handelsgesetzbuch HGB)</li> </ul>	<p>(GmbH-Gesetz)</p> <ul style="list-style-type: none"> <li>- commercial/trade law: YES, in the German Commercial Code (GCC, Handelsgesetzbuch HGB)</li> <li>- national accounting principles: YES, in the German Commercial Code (GCC, Handelsgesetzbuch HGB)</li> </ul>
<b>DK</b>	<ul style="list-style-type: none"> <li>- corporate/company law</li> <li>- national accounting principles</li> </ul>	<ul style="list-style-type: none"> <li>- corporate/company law</li> <li>- national accounting principles</li> </ul>	<ul style="list-style-type: none"> <li>- corporate/company law</li> <li>- national accounting principles</li> </ul>
<b>EE</b>			
<b>ES</b>	<ul style="list-style-type: none"> <li>- corporate/company law</li> <li>- commercial/trade law</li> <li>- national accounting rules: NO, unless the prudence concept is regarded as a creditor protection</li> <li>- elsewhere: insolvency proceedings legislation and civil code</li> </ul>	<ul style="list-style-type: none"> <li>- corporate/company law</li> <li>- commercial/trade law</li> <li>- national accounting rules: NO, unless the prudence concept is regarded as a creditor protection</li> <li>- elsewhere: insolvency proceedings legislation and civil code</li> </ul>	<ul style="list-style-type: none"> <li>- corporate/company law</li> <li>- commercial/trade law</li> <li>- national accounting rules: NO, unless the prudence concept is regarded as a creditor protection</li> <li>- elsewhere: insolvency proceedings legislation and civil code</li> </ul>
<b>FI</b>	<ul style="list-style-type: none"> <li>- commercial/trade law: N/A</li> </ul>	<ul style="list-style-type: none"> <li>- corporate/company law: yes</li> <li>- commercial/trade law: N/A</li> <li>- national accounting principles: no (except for the prudence principle)</li> </ul>	<ul style="list-style-type: none"> <li>- corporate/company law: yes</li> <li>- commercial/trade law: N/A</li> <li>- national accounting principles: no (except for the prudence principle)</li> </ul>
<b>FR</b>	<ul style="list-style-type: none"> <li>corporate/company law : YES – in the commercial code ("Code de commerce")</li> </ul>	<ul style="list-style-type: none"> <li>corporate/company law : YES – in the commercial code ("Code de commerce")</li> </ul>	<ul style="list-style-type: none"> <li>corporate/company law : YES – in the commercial code ("Code de commerce")</li> </ul>
<b>GR</b>	<ul style="list-style-type: none"> <li>- company/corporate law</li> <li>- elsewhere: civil law</li> </ul>	<ul style="list-style-type: none"> <li>- company/corporate law</li> <li>- elsewhere: civil law</li> </ul>	<ul style="list-style-type: none"> <li>- commercial/trade law</li> <li>- elsewhere: civil law</li> </ul>
<b>HU</b>	<ul style="list-style-type: none"> <li>- corporate/company law: basically</li> <li>- national accounting principles: minimum</li> </ul>	<ul style="list-style-type: none"> <li>- corporate/company law: basically</li> <li>- national accounting principles: minimum</li> </ul>	<ul style="list-style-type: none"> <li>- corporate/company law: basically</li> <li>- national accounting principles: minimum</li> </ul>

<b>IE</b>	company law	company law	company law
<b>IT</b>	- company/corporate law - commercial/trade law - national accounting principles	- company/corporate law - commercial/trade law - national accounting principles	- company/corporate law - commercial/trade law - national accounting principles
<b>LT</b>	- corporate/company law - commercial/trade law (Securities market law) - elsewhere: civil code	- corporate/company law - commercial/trade law - elsewhere: civil code	- corporate/company law - commercial/trade law - elsewhere: civil code
<b>LU</b>			
<b>LV</b>	- commercial/trade law - national accounting principles	- commercial/trade law - national accounting principles	- commercial/trade law - national accounting principles
<b>MT</b>	- company/corporate law - commercial/trade law	- company/corporate law - commercial/trade law	- company/corporate law - commercial/trade law
<b>NL</b>	- corporate/company law: - national accounting principles: YES, In so far as in some instances the decision to form a non- distributable reserve is based on accounting rules	- corporate/company law: - national accounting principles: YES, In so far as in some instances the decision to form a non- distributable reserve is based on accounting rules	- corporate/company law: - national accounting principles: YES, In so far as in some instances the decision to form a non- distributable reserve is based on accounting rules
<b>NO</b>			
<b>PL</b>	- corporate/company law - commercial/trade law - national accounting principles	- corporate/company law - commercial/trade law - national accounting principles	- corporate/company law - commercial/trade law - national accounting principles
<b>PT</b>			
<b>RO</b>			
<b>SE</b>	- corporate/company law - national accounting principles: no, unless the prudence concept is regarded as a creditor protection.	- corporate/company law: as listed entities - commercial/trade law: as listed entities - national accounting principles: as listed entities	- corporate/company law: as listed entities - commercial/trade law: as listed entities - national accounting principles: as listed entities
<b>SI</b>	corporate/company law		

<b>SK</b>	- corporate/company law - commercial/trade law	- corporate/company law - commercial/trade law	- corporate/company law - commercial/trade law
<b>UK</b>	corporate/company law	corporate/company law	corporate/company law

- e) Is investor protection set forth in:
- corporate/company law:
  - commercial/trade law:
  - national accounting principles:
  - elsewhere:

country	public listed company	public unlisted company	private company
<b>AT</b>	- corporate/company law: N/A - commercial/trade law: N/A - national accounting principles: N/A	- corporate/company law: N/A - commercial/trade law: N/A - national accounting principles: N/A	- corporate/company law: N/A - commercial/trade law: N/A - national accounting principles: N/A
<b>BE</b>	- corporate/company law - national accounting principles	- corporate/company law - national accounting principles	- corporate/company law - national accounting principles
<b>BG</b>			
<b>CH</b>	- corporate/company law: limited extent - national accounting principles: limited extent - elsewhere: Stock Exchange Law	- corporate/company law: limited extent - national accounting principles: limited extent	- corporate/company law: limited extent - national accounting principles: limited extent
<b>CY</b>	- corporate/company law - elsewhere: Stock Exchange and Investment Legislation	- corporate/company law - elsewhere: investment legislation	- corporate/company law - elsewhere: investment legislation
<b>CZ</b>	- corporate/company law - commercial/trade law - national accounting principles - elsewhere	- corporate/company law - commercial/trade law - national accounting principles - elsewhere	- corporate/company law - commercial/trade law - national accounting principles - elsewhere
<b>DE</b>	- corporate/company law: N/A - commercial/trade law: N/A - national accounting principles: N/A	- corporate/company law: N/A - commercial/trade law: N/A - national accounting principles: N/A	- corporate/company law: N/A - commercial/trade law: N/A - national accounting principles: N/A
<b>DK</b>	- corporate/company law - stock market regulations	- corporate/company law	- corporate/company law
<b>EE</b>			

<b>ES</b>	N/A	N/A	N/A
<b>FI</b>	- corporate/company law: no - commercial/trade law: N/A - national accounting principles: no - elsewhere: special rulings for listed companies	/	/
<b>FR</b>	corporate/company law : YES – in the commercial code ("Code de commerce")	corporate/company law : YES – in the commercial code ("Code de commerce")	corporate/company law : YES – in the commercial code ("Code de commerce")
<b>GR</b>	- corporate/company law - elsewhere: Rules and Regulations of the Hellenic Capital Market Commission	- corporate/company law	- commercial/trade law
<b>HU</b>	- corporate/company law - national accounting principles: minimum	- corporate/company law - national accounting principles: minimum	- corporate/company law - national accounting principles: minimum
<b>IE</b>	- corporate/company law and takeover law - elsewhere: Stock Exchange rules	company law	company law
<b>IT</b>	- company/corporate law - commercial/trade law - national accounting principles	- company/corporate law - commercial/trade law - national accounting principles	- company/corporate law - commercial/trade law - national accounting principles
<b>LT</b>	- corporate/company law - commercial/trade law (Securities market law) - elsewhere: civil code	- corporate/company law - commercial/trade law (Securities market law) - elsewhere: civil code	- corporate/company law - commercial/trade law (Securities market law) - elsewhere: civil code
<b>LU</b>			
<b>LV</b>	company/corporate law	NO	NO
<b>MT</b>	- company/corporate law - commercial/trade law	- company/corporate law - commercial/trade law	- company/corporate law - commercial/trade law
<b>NL</b>	corporate/company law	corporate/company law	corporate/company law
<b>NO</b>			
<b>PL</b>	- corporate/company law - commercial/trade law	- corporate/company law - commercial/trade law	- corporate/company law - commercial/trade law

	- national accounting principles - elsewhere: special laws	- national accounting principles - elsewhere: special laws	- national accounting principles
<b>PT</b>			
<b>RO</b>			
<b>SE</b>	- corporate/company law - national accounting principles: no, unless the prudence concept is regarded as a creditor protection	- corporate/company law: as listed entities - commercial/trade law: as listed entities - national accounting principles: as listed entities	- corporate/company law: as listed entities - commercial/trade law: as listed entities - national accounting principles: as listed entities
<b>SI</b>	N/A	N/A	N/A
<b>SK</b>	commercial/trade law	commercial/trade law	commercial/trade law
<b>UK</b>	- corporate/company law - elsewhere: listing rules and securities legislation (see under public unlisted company)	- corporate/company law - elsewhere: securities legislation (financial services and markets act 2000)	corporate/company law

## 2. Questions regarding the founding of the company, especially in connection with contributions in kind

### 2.1. Formalities

- a) Does your country stipulate a minimum capital requirement:  
If yes, what amount?

country	public listed company	public unlisted company	private company
<b>AT</b>	YES: € 70.000	YES: € 70.000	YES: € 35.000
<b>BE</b>	YES: not less than € 61.500	YES: not less than € 61.500	YES: not less than € 18.550
<b>BG</b>			
<b>CH</b>	YES: ca. € 15.950.000	YES: ca. € 64.000 [AG/SA]	YES: ca. € 13.000 [GmbH/sarl]
<b>CY</b>	YES: € 26.3404	YES: € 26.3404	NO
<b>CZ</b>	YES: € 690.000 (different rule applies for banks and similar institutions)	YES: € 69.000 (different rule applies for banks and similar institutions)	YES: € 6.900 for s.r.o. and € 69.000 for a.s.
<b>DE</b>	Yes: € 50.000	Yes: € 50.000	Yes: € 25.000
<b>DK</b>	YES: ca. € 2.000.000	YES: ca. € 67.000	YES: ca. € 17.000
<b>EE</b>			
<b>ES</b>	YES: € 60.101,21	YES: € 60.101,21	YES: € 3.005,06
<b>FI</b>	YES: € 80.000	YES: € 80.000	YES: € 8.000
<b>FR</b>	YES: € 225.000	YES: € 225.000	YES: - SARL : amount set in the articles of incorporation - SA, SAS, SCA : € 37.000



<b>GR</b>	YES: € 1.500.000 <sup>6</sup>	YES: € 60.000 (€ 18.000 Ltd)	
<b>HU</b>	YES: ca. € 71.000	YES: ca. € 71.000	YES: ca. € 10.500
<b>IE</b>	YES: € 37.500	YES: € 37.500	NO: N/A
<b>IT</b>	YES: € 120.000	YES: € 120.000	YES: € 10.000
<b>LT</b>	YES: € 107.146	YES: € 107.146	YES: € 7.143
<b>LU</b>			
<b>LV</b>	YES * € 2.884,5: limited companies * € 36.056: stock companies * € 50.000: savings and loan company * € 5.000.000: banks * € 721.126 - € 1.422.252: insurance companies	YES * € 2.884,5: limited companies * € 36.056: stock companies * € 50.000: savings and loan company * € 5.000.000: banks * € 721.126 - € 1.422.252: insurance companies	YES * € 2.884.5: limited companies * € 36.056: stock companies * € 50.000: savings and loan company * € 5.000.000: banks * € 721.126 - € 1.422.252: insurance companies
<b>MT</b>	YES: Article 72 (1) - € 46.600	YES: Article 72 (1) - € 46.600	YES: Article 72 (1) - € 1.165
<b>NL</b>	YES: €45.000	YES: €45.000	YES: €18.000
<b>NO</b>			
<b>PL</b>	YES: ca. € 12.400 for limited joint-stock partnership and ca. € 124.000 for joint-stock partnership	YES: € 12.400 for limited joint-stock partnership and € 124.000 for joint-stock partnership	- YES: PLN 50.000 for limited liability company - NO: for other companies
<b>PT</b>			
<b>RO</b>			
<b>SE</b>	YES: ca. € 54.500	as listed entities: ca. € 54.500	as listed entities: ca. € 11.000
<b>SI</b>	YES: € 25.000	YES: € 25.000	YES: € 8.750
<b>SK</b>	YES: ca. € 27.000	YES: ca. € 27.000	YES: ca. € 27.000
<b>UK</b>	YES: ca. € 72.000	YES: ca. € 72.000	NO: N/A

<sup>6</sup> Articles 8 – 8a, L. 2190

- b) Does a minimum amount or percentage of capital have to be paid in prior to:
- the company being registered in the commercial register or equivalent?
  - before the company is permitted to start business?

*Austria*

Yes, a minimum amount or percentage of capital needs to be paid before the company is registered in the commercial register or equivalent and also before the company is permitted to start business.

*Belgium*

Yes, a minimum amount or percentage of capital needs to be paid before the company is registered in the commercial register or equivalent and also before the company is permitted to start business.

*Bulgaria*

*Cyprus*

No minimum amount or a percentage of the capital needs to be paid before the company is registered in the commercial register or equivalent. A public listed company needs to pay this before being permitted to start business. A public unlisted and a private company do not need to do this.

*Czech Republic*

Yes, a minimum amount or percentage of capital needs to be paid before the company is registered in the commercial register or equivalent and also before the company is permitted to start business. However, founders are responsible for dealing in the name of Company. Their liabilities are then (if approved) transferred to the Company.

*Denmark*

The capital has to be fully paid before the company is being registered in the commercial register or equivalent and also needs to be fully paid before the company is permitted to start business.

*Estonia*

*Finland*

A minimum amount or percentage of the capital does need to be paid before the company is registered in the commercial register or equivalent. Prior to its registration, a limited company may not acquire rights or enter into commitments nor may it apply to, sue or be sued before a court of law or other authorities. The Board of Directors may, however, represent the company in matters relating to the formation of the company and otherwise undertake measures to collect a payment for a share subscribed to.

*France*

- Public listed and public unlisted companies: Half of the amount needs to be paid before registration (whole amount in case of contributions in kind).
- Private company:
  - \* SARL : 1/5 of the amount needs to be paid before registration (whole amount in case of contributions in kind)
  - \* SA, SAS, SCA: half of the amount needs to be paid before registration (whole amount in case of contributions in kind)

*Germany*

Yes, a minimum amount or percentage of capital needs to be paid before the company is registered in the commercial register or equivalent and also before the company is permitted to start business.

Public listed and unlisted companies: §§ 36 par. 2 AktG

Private companies: § 7 par. 2 GmbHG, § 5 Abs. 1 GmbHG.

*Greece*

A minimum amount or percentage needs to be paid before being registered in the commercial register or equivalent. In case of public listed and public unlisted companies it is not needed before the company is permitted to start business. However, private companies (i.e. unlimited companies and partnerships), a minimum or percentage of the capital needs to be paid before they are permitted to start business.

*Hungary*

In case of the public listed companies and public unlisted companies, 25% (cash contribution) is being paid prior to registration in a commercial register or equivalent. For private companies, this is 50% (company law).

There is no payment required (minimum amount or percentage of capital) before the company is permitted into business.

*Ireland*

For the public listed and unlisted companies, at least 25% of the nominal value needs to be paid and any share premium needs to be fully paid before being registered in the commercial register or equivalent and the company needs to be registered before being permitted to start business. None of this counts for private companies.

*Italy*

A minimum amount or percentage needs to be paid before being registered in the commercial register or equivalent but not before the company is permitted to start business.

*Latvia*

A minimum amount or percentage needs to be paid before being registered in the commercial register or equivalent but not before the company is permitted to start business.

*Lithuania*

A minimum amount or percentage needs to be paid before being registered in the commercial register or equivalent but not before the company is permitted to start business.

*Luxembourg*

*Malta*

25 % of the capital needs to be paid prior to being registered in the commercial register (or equivalent). This counts for public listed and unlisted companies. Private companies need to pay 20 %. A minimum amount or percentage needs also to be paid before the company is permitted to start business (see Article 72.3).

*Netherlands*

The minimum amount and a percentage (see point d) have to be paid before the moment of transfer of the notarial deed of incorporation of the company. But it does not need to be paid before the company is permitted to start business (being a company in formation up until transfer of the notarial deed of incorporation of the company).

*Norway*

*Poland*

Yes, a minimum amount or percentage of capital needs to be paid before the company is registered in the commercial register or equivalent and also before the company is permitted to start business.

*Portugal*

*Romania*

*Slovak Republic*

30% of the capital needs to be paid prior to being registered in the commercial register (or equivalent) for public listed companies. For public unlisted and private companies it is not mentioned but a minimum amount or percentage of the capital needs to be paid. No amount needs to be paid before the company is permitted to start business.

*Slovenia*

A minimum amount or percentage needs to be paid before being registered in the commercial register or equivalent but not before the company is permitted to start business.

*Spain*

A minimum amount or percentage needs to be paid before being registered and before the company is permitted to start business.

*Sweden*

In case of public listed companies, a minimum amount or percentage needs to be paid before being registered in the commercial register or equivalent and also before the company is permitted to start business. In case of public unlisted companies and private companies, they need to pay a minimum amount or percentage as listed entities before being registered and before starting of the business.

*Switzerland*

Yes, a minimum amount or percentage of capital needs to be paid before the company is registered in the commercial register or equivalent and also before the company is permitted to start business.

*UK*

A minimum amount or percentage of the capital does not need to be paid before the company is registered. However, it needs to be paid before a company is permitted to start business. This counts for listed and unlisted companies, not for private companies.

- c) Is it possible to contribute in kind into a company?  
If yes, to which amount or percentage?

country	public listed company	public unlisted company	private company
<b>AT</b>	YES: 100%	YES: 100%	YES: 100%
<b>BE</b>	YES: 100%	YES: 100%	YES: 100%
<b>BG</b>			
<b>CH</b>	YES: 100%	YES: 100%	YES: 100%
<b>CY</b>	YES	YES	YES
<b>CZ</b>	NO	NO	YES, not stated
<b>DE</b>	YES: 100 % (§ 27, § 36a par. 2 AktG)	YES: 100 % (§ 27, § 36a par. 2 AktG)	YES: 100% (§ 5, § 7 par. 3 GmbHG)

<b>DK</b>	YES, no limit	YES, no limit	YES, no limit
<b>EE</b>			
<b>ES</b>	YES: 100%	YES: 100%	YES: 100%
<b>FI</b>	YES, no limit	YES, no limit	YES, no limit
<b>FR</b>	YES	YES	YES
<b>GR</b>	YES: 100%	YES: 100% (50% for Ltd)	YES: 100%
<b>HU</b>	YES: maximum 70%	YES: maximum 70%	YES: maximum 50%
<b>IE</b>	YES: without limitation	YES: without limitation	YES: without limitation
<b>IT</b>	YES: 100%	YES: 100%	YES: 100%
<b>LT</b>	NO (primary trading in securities)	YES: ¾ (but minimum capital in cash)	YES: ¾ (but minimum capital in cash)
<b>LU</b>			
<b>LV</b>	NO	NO	NO
<b>MT</b>	YES (article 73) – no maximum amount fixed by the Companies Act	YES (article 73) – no maximum amount fixed by the Companies Act	YES (article 73) – no maximum amount fixed by the Companies Act
<b>NL</b>	YES: 25% of nom. par val plus agio with a minimum of €45.000	YES: 25% of nom. par val plus agio with a minimum of €45.000	YES: 25% of nom. par val with a minimum of €18.000
<b>NO</b>			
<b>PL</b>	YES, up to 100%	YES, up to 100%	YES, up to 100%
<b>PT</b>			
<b>RO</b>			
<b>SE</b>	YES, no limit	as listed entities.	as listed entities.
<b>SI</b>	YES: 66 %	YES: 66 %	YES: 100 %
<b>SK</b>	YES: no specification	YES: no specification	YES: no specification
<b>UK</b>	YES	YES	YES

d) Is it obligatory to make an itemised description of the contribution in kind?

<b>country</b>	<b>public listed company</b>	<b>public unlisted company</b>	<b>private company</b>
<b>AT</b>	YES	YES	YES
<b>BE</b>	YES	YES	YES
<b>BG</b>			
<b>CH</b>	YES	YES	YES
<b>CY</b>	YES	YES	YES
<b>CZ</b>	N/A	N/A	YES: not specifically stated in the law, however, description of the contribution in kind is requested.
<b>DE</b>	YES (§ 27 par. 1 AktG)	YES, (§ 27 par. 1 AktG)	YES, (§ 5 par. 4 GmbHG)
<b>DK</b>	YES	YES	YES
<b>EE</b>			
<b>ES</b>	YES	YES	YES
<b>FI</b>	YES, see below	YES, see below	YES, see below
<b>FR</b>	YES	YES	YES
<b>GR</b>	YES	YES	YES
<b>HU</b>	YES	YES	YES
<b>IE</b>	NO	NO	NO
<b>IT</b>	YES	YES	YES
<b>LT</b>	/	YES	YES
<b>LU</b>			

<b>LV</b>	/	/	/
<b>MT</b>	YES, in the expert's report (article 73.5)		
<b>NL</b>	YES	YES	YES
<b>NO</b>			
<b>PL</b>	YES	YES	YES
<b>PT</b>			
<b>RO</b>			
<b>SE</b>	YES	as listed entities.	as listed entities.
<b>SI</b>	YES	YES	YES
<b>SK</b>	YES	YES	YES
<b>UK</b>	YES - within report by auditor	YES - within report by auditor	NO

- e) Does your country's legislation require a report of the contribution in kind:
- by an auditor?
  - by another expert?

<b>country</b>	<b>public listed company</b>	<b>public unlisted company</b>	<b>private company</b>
<b>AT</b>	YES - auditor	YES - auditor	YES: if the contributions in kind exceed 50% of the share capital - auditor
<b>BE</b>	auditor	auditor	auditor
<b>BG</b>			
<b>CH</b>	YES - auditor: report by the Board of Directors,	YES - auditor: report by the Board of Directors,	YES - auditor: report by the Board of Directors,



	then audited	then audited	then audited
<b>CY</b>	another expert	another expert	another expert
<b>CZ</b>	- auditor: N/A - another expert: N/A	- auditor: N/A - another expert: N/A	- auditor: NO - another expert: contribution in kind must be appraised by an expert
<b>DE</b>	NO, report is not required by an auditor. The members of the management board and the supervisory board shall audit the transaction in connection with the formation of the company (§ 33 par. 1 AktG). In addition, an audit by one or more (formation auditor) shall be made (§ 33 par. 2 AktG).  NO, no report required by another expert	(see left)	NO, report is not required by an auditor. The management has to report about the contribution in kind (§ 8 GmbHG).  NO, no report required by another expert.
<b>DK</b>	- auditor - another expert	- auditor - another expert	- auditor - another expert
<b>EE</b>			
<b>ES</b>	YES - auditor: as an expert, not as an auditor - another expert	YES - auditor: as an expert, not as an auditor - another expert	OPTIONAL - auditor: as an expert, not as an auditor - another expert
<b>FI</b>	YES: One or more approved auditors acting as independent experts shall evaluate the property devolving on the company and issue a dated and signed opinion on the property. The opinion shall be appended to the Memorandum of Association and it shall include among other things a description of the property.		
<b>FR</b>	- auditor: A registered auditor may be designated by the court as a "commissaire aux apports" but this auditor is in no case the company's statutory auditor  - another expert: A registered expert other than a registered auditor may be designated too by the court as a "commissaire aux apports"		
<b>GR</b>	YES		/

	by a three-member Committee appointed by the Ministry of Commerce (1-2 members can be auditors)		
<b>HU</b>	- auditor - expert: additional (not obligatory)	- auditor <sup>7</sup> - expert: additional (not obligatory)	- auditor - expert: additional (not obligatory)
<b>IE</b>	YES Section 30&32, Companies (Amendment) Act, 1983  - auditor - another expert	YES Section 30&32, Companies (Amendment) Act, 1983  - auditor - another expert	NO
<b>IT</b>	YES  - another expert	YES  - another expert	YES (also professional services)  - auditor
<b>LT</b>	/	YES - another expert: the independent assets valuer	YES - another expert: the independent assets valuer
<b>LU</b>			
<b>LV</b>	NO	NO	NO
<b>MT</b>	- auditor: article 73 (4) – The report has to be drawn up by an expert independent of the company and approved by the Registry. Such reports are normally prepared by the company’s auditors.  - another expert: see above		
<b>NL</b>	auditor: no report is necessary in case of fulfilment of the exemption mentioned in article 2:94a under 3 of the Dutch Civil Code.	auditor: no report is necessary in case of fulfilment of the exemption mentioned in article 2:94a under 3 of the Dutch Civil Code.	auditor: no report is necessary in case of fulfilment of the exemption mentioned in article 2:204a under 3 of the Dutch Civil Code.
<b>NO</b>			
<b>PL</b>	NO	NO	NO

<sup>7</sup> HU: There is no need for audit report if the company has annual report not older than 3 months or if the contribution in kind includes marketable securities.

<b>PT</b>			
<b>RO</b>			
<b>SE</b>	- auditor: YES - another expert: NO	- auditor: as listed entities - another expert: as listed entities	- auditor: as listed entities - another expert: as listed entities
<b>SI</b>	auditor	auditor	auditor
<b>SK</b>	another expert	another expert	another expert
<b>UK</b>	- auditor - another expert: no-but auditor may accept a valuation by an expert	- auditor - another expert: no-but auditor may accept a valuation by an expert	NO

- f) Are there other requirements regarding the foundation of a company (e.g. the composition of a forecast for the first three years in BE, court approval, public notary etc)?  
If yes, please specify briefly.

<b>country</b>	<b>public listed company</b>	<b>public unlisted company</b>	<b>private company</b>
<b>AT</b>	YES: approval of the company's register court	YES: approval of the company's register court	YES: approval of the company's register court
<b>BE</b>	YES: The company must be incorporated by notarial deed. A preliminary financial plan for a 2-year period must also be supplied. The articles of association and all documents regarding appointment of the directors and auditors must be filed with the Court of Commerce and must be published in the Belgian Official Gazette within fifteen days. The language of the documents is either French or Dutch depending on the region in which the business will be located.		
<b>BG</b>			
<b>CH</b>	YES: public notary	YES: public notary	YES: public notary
<b>CY</b>	NO	NO	NO

<b>CZ</b>	<p>YES:</p> <ul style="list-style-type: none"> <li>- Court approval</li> <li>- Initial shareholders meeting</li> <li>- Approved articles of association</li> <li>- IPO procedures were performed correctly</li> <li>- Prospectus</li> <li>- Business licence</li> </ul>	<p>YES:</p> <ul style="list-style-type: none"> <li>- Court approval</li> <li>- Initial shareholders meeting</li> <li>- Approved articles of association</li> <li>- IPO procedures were performed correctly</li> <li>- Prospectus</li> <li>- Business licence</li> </ul>	<p>YES:</p> <ul style="list-style-type: none"> <li>- Court approval</li> <li>- Articles of Foundation (Associations) signed by all representatives</li> <li>- Business license</li> </ul>
<b>DE</b>	<p>YES, e.g. notarisation of the articles of the company, announcement of the foundation in the Federal Gazette, appointment of the first supervisory board of the company and the external auditor for the first year made in the form of a notarial deed,</p>	(see left)	<p>YES, e.g the company must file for register, with the articles of association appended, the court must refuse to register the company if the formation and filing for registration are not properly effected; this also applies when contributions in kind are over valued.</p>
<b>DK</b>	N/A	YES - Registration in Danish Commerce and Companies Agency.	YES - Registration in Danish Commerce and Companies Agency.
<b>EE</b>			
<b>ES</b>	<p>YES - Public notary, registration, foundation program when securities are offered to public</p>	<p>YES - Public notary, registration, foundation program when securities are offered to public</p>	<p>YES - Public notary, registration</p>
<b>FI</b>	<p>YES</p> <p>Anyone who offers securities to the public or applies for the admission to public trading of a security shall be under an obligation to publish a prospectus relating to the securities.</p> <p>The prospectus shall provide sufficient information to the investor for the making a founded assessment on the securities and their issuer as well as on the possible guarantor. The prospectus shall contain</p>	NO	NO

	essential and sufficient information on the assets, liabilities, financial position, result and future outlook of the issuer and the possible guarantor as well as on the rights attached to the securities and other factors with a material effect on the value of the securities.		
<b>FR</b>	<ul style="list-style-type: none"> <li>- Public register</li> <li>- Capital subscription</li> <li>- Initial shareholders meeting</li> </ul> <p>If yes: certain requirements are imposed for listing purposes</p>	<ul style="list-style-type: none"> <li>- Public register</li> <li>- Capital subscription</li> <li>- Initial shareholders meeting</li> </ul> <p>If yes: specific requirements</p>	<ul style="list-style-type: none"> <li>- Public register</li> <li>- Capital subscription</li> <li>- Initial shareholders meeting</li> </ul>
<b>GR</b>	<p>YES</p> <ul style="list-style-type: none"> <li>- corporation Charter (Articles of Incorporation): agreement of at least two persons - the founders, before a public notary</li> <li>- undertaken of the Capital by the founders</li> <li>- approval and permission from the State: if all the necessary document are filed, i.e. permission for the use of the corporate name, permission from the authorities in special categories of companies etc.</li> </ul>		/
<b>HU</b>	YES - court approval (and permission for special activities)	YES - court approval (and permission for special activities)	YES - court approval (and permission for special activities)
<b>IE</b>	/	/	/
<b>IT</b>	<p>YES</p> <ul style="list-style-type: none"> <li>- capital subscription</li> <li>- respect of contributions' rules</li> <li>- authorizations and other conditions provided by specific laws</li> <li>- public notary</li> <li>- registration in the companies' registry</li> </ul>		
<b>LT</b>	YES: to prepare prospectus which should be approved by the Lithuanian Securities Commission	/	/

<b>LU</b>			
<b>LV</b>	NO	NO	NO
<b>MT</b>	YES – companies applying for listing must abide by the requirements set out in the listing rules imposed by Malta’s listing authority.	N/A	N/A
<b>NL</b>	YES - approval of Ministry of Justice and transfer of a deed of incorporation by a civil law notary.	YES - approval of Ministry of Justice and transfer of a deed of incorporation by a civil law notary.	YES - approval of Ministry of Justice and transfer of a deed of incorporation by a civil law notary.
<b>NO</b>			
<b>PL</b>	YES - there is a requirement that the articles of association have to be in the form of a notarial deed.	YES - there is a requirement that the articles of association have to be in the form of a notarial deed	YES - for limited partnership and limited liability company there is a requirement that the articles of association have to be in the form of a notarial deed.
<b>PT</b>			
<b>RO</b>			
<b>SE</b>	YES - the founder of limited company (Sw aktiebolag) can not be: under age, in bankruptcy, in trading prohibition.	as listed entities	as listed entities
<b>SI</b>	YES - the Auditor report about foundation process, founding shareholders meeting, court registration.	YES - the Auditor report about foundation process, founding shareholders meeting, court registration.	/
<b>SK</b>	NO	NO	NO
<b>UK</b>	YES - certain requirements imposed for listing purposes	NO	NO

g) Is it necessary in founding a company to have the legal entity's capital separated from founders' own capital (private equity)?

<b>country</b>	<b>public listed company</b>	<b>public unlisted company</b>	<b>private company</b>
<b>AT</b>	YES	YES	YES
<b>BE</b>	YES	YES	YES
<b>BG</b>			
<b>CH</b>	question unclear	question unclear	question unclear
<b>CY</b>	NO	NO	NO
<b>CZ</b>	N/A	N/A	N/A
<b>DE</b>	YES	YES	YES
<b>DK</b>	YES	YES	YES
<b>EE</b>			
<b>ES</b>	YES	YES	YES
<b>FI</b>	YES	YES	YES
<b>FR</b>	YES	YES	YES
<b>GR</b>	YES	YES	YES
<b>HU</b>	YES	YES	YES
<b>IE</b>	YES	YES	YES
<b>IT</b>	YES	YES	YES
<b>LT</b>	YES (until the companies registration)	YES (until the companies registration)	YES (until the companies registration)
<b>LU</b>			
<b>LV</b>	YES	YES	YES
<b>MT</b>	YES – A private limited liability company and public limited company have a separate legal personality. Once paid up, capital is that of the company and shall be kept separate from the founders' private equity.		

<b>NL</b>	YES	YES	YES
<b>NO</b>			
<b>PL</b>	YES: in the articles of association there has to be appointed which part of the total capital goes from the particular partners/owners.		
<b>PT</b>			
<b>RO</b>			
<b>SE</b>	YES	as listed entities	as listed entities
<b>SI</b>	YES	YES	YES
<b>SK</b>	NO	NO	NO
<b>UK</b>	YES	YES	YES



## 2.2. Substance

- a) If it is possible to contribute in kind, is it possible to make a contribution that does not qualify for recognition as an asset:
- under IFRS?
  - under national accounting rules?
  - for example is it possible to provide services as contribution in kind?

country	public listed company	public listed company	private company
<b>AT</b>	- under IFRS: NO (there isn't a reference to IFRS regulation)  - under national accounting rules: YES (there is a reference to the asset definition of the national accounting rules)  - in kind: NO	- under IFRS: NO (there isn't a reference to IFRS regulation)  - under national accounting rules: YES (there is a reference to the asset definition of the national accounting rules)  - in kind: NO	- under IFRS: NO (there isn't a reference to IFRS regulation)  - under national accounting rules: YES (there is a reference to the asset definition of the national accounting rules)  - in kind: NO
<b>BE</b>	- under IFRS - past services in kind: YES	- under IFRS - past services in kind: YES	- under IFRS - past services in kind: YES
<b>BG</b>			
<b>CH</b>	- under IFRS: NO - under national accounting rules: NO - in kind: NO	- under IFRS: NO - under national accounting rules: NO - in kind: NO	- under IFRS: NO - under national accounting rules: NO - in kind: NO
<b>CY</b>	- under IFRS: NO - under national accounting rules: N/A - in kind: NO	- under IFRS: NO - under national accounting rules: N/A - in kind: NO	- under IFRS: NO - under national accounting rules: N/A - in kind: NO

<b>CZ</b>	<ul style="list-style-type: none"> <li>- under IFRS: N/A</li> <li>- under national accounting rules: N/A</li> <li>- in kind: NO</li> </ul>	<ul style="list-style-type: none"> <li>- under IFRS: N/A</li> <li>- under national accounting rules: N/A</li> <li>- in kind: NO</li> </ul>	<ul style="list-style-type: none"> <li>- under IFRS: since the definition of contribution in kind is not connected to asset definition in local GAAP and IFRS it is not possible to provide explicit answer</li> <li>- under national accounting rules: Since the definition of contribution in kind is not connected to asset definition in local GAAP and IFRS it is not possible to provide explicit answer.</li> <li>- in kind: NO</li> </ul>
<b>DE</b>	<p>under IFRS: NO (there isn't a reference to IFRS regulation)</p> <ul style="list-style-type: none"> <li>- under national accounting rules: YES, contributions in kind can cover rights, but it is not allowed to provide services as contributions in kind</li> </ul>	(See left)	(see left )
<b>DK</b>			
<b>EE</b>			
<b>ES</b>	<ul style="list-style-type: none"> <li>- under IFRS: NO</li> <li>- under national accounting rules: NO, in accordance with the Companies Act a contribution in kind may only consist of goods or rights with and economic value</li> <li>- in kind: NO</li> </ul>	<ul style="list-style-type: none"> <li>- under IFRS: NO</li> <li>- under national accounting rules: NO, in accordance with the Companies Act a contribution in kind may only consist of goods or rights with and economic value</li> <li>- in kind: NO</li> </ul>	<ul style="list-style-type: none"> <li>- under IFRS: NO</li> <li>- under national accounting rules: NO, in accordance with the Companies Act a contribution in kind may only consist of goods or rights with and economic value</li> <li>- in kind: NO</li> </ul>
<b>FI</b>	NO. In accordance with the Companies Act a contribution in kind may only consist of property that has financial value to the company. A commitment to perform work or services cannot constitute a contribution in kind.	NO. In accordance with the Companies Act a contribution in kind may only consist of property that has financial value to the company. A commitment to perform work or services cannot constitute a contribution in kind.	NO. In accordance with the Companies Act a contribution in kind may only consist of property that has financial value to the company. A commitment to perform work or services cannot constitute a contribution in kind.

	<ul style="list-style-type: none"> <li>- under IFRS: companies must comply with the Companies Act. See above.</li> <li>- under national accounting rules: companies must comply with the Companies Act. See above.</li> <li>- contribution in kind: NO</li> </ul>	<ul style="list-style-type: none"> <li>- under IFRS: companies must comply with the Companies Act. See above.</li> <li>- under national accounting rules: companies must comply with the Companies Act. See above.</li> <li>- contribution in kind: NO</li> </ul>	<ul style="list-style-type: none"> <li>- under IFRS: companies must comply with the Companies Act. See above.</li> <li>- under national accounting rules: companies must comply with the Companies Act. See above.</li> <li>- contribution in kind: NO</li> </ul>
<b>FR</b>	<ul style="list-style-type: none"> <li>- under IFRS: NO</li> <li>- under national accounting rules: NO</li> <li>- in kind: NO</li> </ul>	<ul style="list-style-type: none"> <li>- under IFRS: NO</li> <li>- under national accounting rules: NO</li> <li>- in kind: NO</li> </ul>	<ul style="list-style-type: none"> <li>- under IFRS: NO</li> <li>- under national accounting rules: NO</li> <li>- in kind: NO</li> </ul>
<b>GR</b>	<ul style="list-style-type: none"> <li>- under IFRS: NO</li> <li>- under national accounting rules: NO</li> <li>- in kind: NO</li> </ul>	<ul style="list-style-type: none"> <li>- under IFRS: NO</li> <li>- under national accounting rules: NO</li> <li>- in kind: NO</li> </ul>	<ul style="list-style-type: none"> <li>- under IFRS: YES</li> <li>- under national accounting rules: YES</li> <li>- in kind: YES</li> </ul>
<b>HU</b>	<ul style="list-style-type: none"> <li>- under IFRS: NO</li> <li>- under national accounting rules: NO</li> </ul>	<ul style="list-style-type: none"> <li>- under IFRS: NO</li> <li>- under national accounting rules: NO</li> </ul>	<ul style="list-style-type: none"> <li>- under IFRS: NO</li> <li>- under national accounting rules: NO</li> </ul>
<b>IE</b>	<ul style="list-style-type: none"> <li>- under IFRS: NO</li> <li>- under national accounting rules: NO</li> </ul>	<ul style="list-style-type: none"> <li>- under IFRS: NO</li> <li>- under national accounting rules: NO</li> </ul>	<ul style="list-style-type: none"> <li>- under IFRS: NO</li> <li>- under national accounting rules: NO</li> </ul>
<b>IT</b>	<ul style="list-style-type: none"> <li>- under IFRS: NO</li> <li>- under national accounting rules: NO</li> </ul>	<ul style="list-style-type: none"> <li>- under IFRS: NO</li> <li>- under national accounting rules: NO</li> </ul>	<ul style="list-style-type: none"> <li>- under IFRS: NO</li> <li>- under national accounting rules: YES</li> <li>- in kind: YES</li> </ul>
<b>LT</b>	<ul style="list-style-type: none"> <li>- under IFRS: NO</li> <li>- under national accounting rules: NO</li> <li>- in kind: NO</li> </ul>	<ul style="list-style-type: none"> <li>- under IFRS: NO</li> <li>- under national accounting rules: NO</li> <li>- in kind: NO</li> </ul>	<ul style="list-style-type: none"> <li>- under IFRS: NO</li> <li>- under national accounting rules: NO</li> <li>- in kind: NO</li> </ul>
<b>LU</b>			
<b>LV</b>	NO	NO	NO
<b>MT</b>	<ul style="list-style-type: none"> <li>- under IFRS: Although the Companies Act makes no specific reference to IFRS in article 73 (1), it requires that assets given as consideration must be acceptable of economic assessment.</li> <li>- contribution in kind: NO – article 73 (1)</li> </ul>		

<b>NL</b>	- under IFRS: NO - under national accounting rules: NO	- under IFRS: NO - under national accounting rules: NO	- under IFRS: NO - under national accounting rules: NO
<b>NO</b>			
<b>PL</b>	NO	NO	- under national accounting rules: * NO for limited liability company * YES for other companies  - in kind: * NO for limited liability company * YES for other companies
<b>PT</b>			
<b>RO</b>			
<b>SE</b>	- under IFRS - under national accounting rules - in kind	- under IFRS: as listed entities - under national accounting rules: as listed entities - in kind: as listed entities	- under IFRS: as listed entities - under national accounting rules: as listed entities - in kind: as listed entities
<b>SI</b>	- under IFRS: NO - under national accounting rules: NO - in kind: NO	- under IFRS: NO - under national accounting rules: NO - in kind: NO	- under IFRS: NO - under national accounting rules: NO - in kind: NO
<b>SK</b>	under IFRS: NO	under IFRS: NO	under IFRS: NO
<b>UK</b>	- under IFRS - under national accounting rules - in kind: NO - in the case of services which are to be performed	- under IFRS - under national accounting rules - in kind: NO - in the case of services which are to be performed	- under IFRS - under national accounting rules - in kind: YES

b) Is it possible for the company to issue shares or options in consideration for labour or services only?

<b>country</b>	<b>public listed company</b>	<b>public unlisted company</b>	<b>private company</b>
<b>AT</b>	NO	NO	NO
<b>BE</b>	YES	YES	YES
<b>BG</b>			
<b>CH</b>	not directly; not at incorporation	not directly; not at incorporation	not directly; not at incorporation
<b>CY</b>	YES	YES	YES
<b>CZ</b>	NO	NO	NO
<b>DE</b>	NO	NO	NO
<b>DK</b>	NO	NO	NO
<b>EE</b>			
<b>ES</b>	NO	NO	NO
<b>FI</b>	NO	NO	NO
<b>FR</b>	NO	NO	YES only in SNC and SARL
<b>GR</b>	YES	YES	NO
<b>HU</b>	YES	YES	YES
<b>IE</b>	YES	YES	YES
<b>IT</b>	YES	YES	YES
<b>LT</b>	NO	NO	NO
<b>LU</b>			
<b>LV</b>	NO - it was possible during the privatization process	NO - it was possible during the privatization process	NO - it was possible during the privatization process
<b>MT</b>	NO – article 73 (1)	NO – article 73 (1)	NO – article 73 (1)

<b>NL</b>	no regarding shares	no regarding shares	no regarding shares
<b>NO</b>			
<b>PL</b>	NO (the entity may only issue registered promoter certificates as remuneration for the services provided upon creation of the company).	NO (the entity may only issue registered promoter certificates as remuneration for the services provided upon creation of the company).	NO
<b>PT</b>			
<b>RO</b>			
<b>SE</b>	YES	as listed entities	as listed entities
<b>SI</b>	NO	NO	NO
<b>SK</b>	NO	NO	NO
<b>UK</b>	- YES for options. - YES for shares where services have been performed	- YES for options. - YES for shares where services have been performed	YES

c) Is the size of the capital related to the future activities of the company (e.g. size, working capital, expected cash flows, risk involved in business)?

<b>country</b>	<b>public listed company</b>	<b>public unlisted company</b>	<b>private company</b>
<b>AT</b>	NO	NO	NO
<b>BE</b>	YES	YES	YES
<b>BG</b>			
<b>CH</b>	NO	NO	NO
<b>CY</b>	NO	NO	NO
<b>CZ</b>	NO	NO	NO
<b>DE</b>	NO	NO	NO
<b>DK</b>	NO	NO	No
<b>EE</b>			
<b>ES</b>	NO	NO	NO
<b>FI</b>	YES, but on voluntary basis. The Companies Act stipulates only a minimum capital requirement.		
<b>FR</b>	NO	NO	NO
<b>GR</b>	YES	YES	NO
<b>HU</b>	YES: some activities	YES: some activities	YES: some activities
<b>IE</b>	not required to be	not required to be	not required to be
<b>IT</b>	YES	YES	YES
<b>LT</b>	NO (it depends on the company itself)	NO (it depends on the company itself)	NO (it depends on the company itself)
<b>LU</b>			
<b>LV</b>	NO	NO	NO
<b>MT</b>	NO	NO	NO

<b>NL</b>	NO	NO	NO
<b>NO</b>			
<b>PL</b>	NO	NO	NO
<b>PT</b>			
<b>RO</b>			
<b>SE</b>	YES	as listed entities	as listed entities
<b>SI</b>	NO	NO	NO
<b>SK</b>	NO	NO	NO
<b>UK</b>	no fixed rules	no fixed rules	no fixed rules

d) Are founders in some way liable to third parties for transactions in the name of the company or for a shortfall in equity?

<b>country</b>	<b>public listed company</b>	<b>public unlisted company</b>	<b>private company</b>
<b>AT</b>	NO, but founders are liable to the company for any damage resulting from any gross negligent or intentional misconduct in founding the company.		
<b>BE</b>	YES	YES	YES
<b>BG</b>			
<b>CH</b>	NO	NO	NO
<b>CY</b>	NO	NO	NO
<b>CZ</b>	YES	YES	YES
<b>DE</b>	<b>Transaction in the name of the company to third parties: NO</b>	see left	<b>Transaction in the name of the company to third parties: NO</b>  <b>Shortfall in equity: YES, share capital/</b>



	<p><b>Shortfall in equity:</b> NO, but: If it becomes obvious when preparing the annual balance sheet or an interim balance sheet or if in the exercise of proper judgement, it must be assumed that the company has incurred a loss that is one half of the share capital, the management board shall promptly call a shareholders meeting (§ 92 AktG).</p> <p><b>Other liabilities:</b> e.g. the incorporators shall be jointly and severally liable towards the company for the accuracy and completeness of the statements made for purpose of formation the company and relating to subscription to shares, payments on shares, appropriation of amounts paid in, formation expenses, contributions in kind (§ 46 AktG).</p>		<p>registered capital must be preserved, that means: company assets required to preserve the share capital may not be distributed to shareholders. Payments which are effected contrary to this provision shall be reimbursed to the company ( 30 ff. GmbHG).</p>
<b>DK</b>	NO	NO	NO
<b>EE</b>			
<b>ES</b>	YES	YES	YES
<b>FI</b>	The same as private company	The same as private company	<p>YES</p> <p><b>Transactions in the name of the company:</b></p> <p>Liability for an obligation resulting from an act undertaken on behalf of the company prior to its registration shall, jointly or severally, lie with the persons who have participated in or decided on the said act. Liability for an obligation based</p>

			<p>on the Memorandum of Association or incurred after the meeting of formation shall, however, pass to the company when the company is registered.</p> <p>A founder shall be liable to compensate all damage caused to the company. The same shall apply to damage caused to a shareholder or a third person by an act infringing the Companies Act or the Articles of Association.</p> <p>In accordance with the Companies Act the shareholders of a company shall not be personally liable for the obligations of the company.</p> <p><b>Shortfall in equity:</b> If the share is not paid in time, the Board of Directors shall without delay claim the delayed amount. The Board of Directors may note that the right to a share is forfeited. Before notifying the company for registration, the Board of Directors shall invalidate the shares that have not been paid up in full.</p>
<b>FR</b>	NO - liable for pre-incorporation contracts and limited to those contracts which are not endorsed by the company	NO - same situation	NO - same situation
<b>GR</b>	NO	NO	YES
<b>HU</b>	YES	YES	YES
<b>IE</b>	NO	NO	NO

<b>IT</b>	YES - till the moment of registration	YES - till the moment of registration	YES - till the moment of registration
<b>LT</b>	YES: if such transactions are not approved by companies managers		
<b>LU</b>			
<b>LV</b>	NO	NO	NO
<b>MT</b>	NO – only to the extent of the unpaid portion of their subscribed share capital		
<b>NL</b>	<p>YES: the founder/director can be held liable by third parties</p> <ol style="list-style-type: none"> <li>1. in case of bankruptcy, if the board of directors did fulfil its duties indecent and this is a reasonable cause of the bankruptcy</li> <li>2. in case of tort liability</li> <li>3. for legal acts performed by one of the directors binding the company before the company was registered, if the minimum capital necessary for incorporation has not been paid up yet and if 25% of the issued share capital has not been paid up yet</li> <li>4. if by the annual accounts, by the interim figures or by the annual report a misleading image of the company has been presented.</li> </ol>		
<b>NO</b>			
<b>PL</b>	- NO for joint-stock action - YES for limited joint-stock partnership	- NO for joint-stock action) - YES for limited joint-stock partnership	- NO for limited liability company - YES for other companies
<b>PT</b>			
<b>RO</b>			
<b>SE</b>	NO	as listed entities	as listed entities
<b>SI</b>	YES	YES	YES
<b>SK</b>	NO	NO	NO
<b>UK</b>	Liable for pre-incorporation contracts but otherwise not liable in the ordinary course of business		

- e) What is the rough total amount in Euros or as a percentage of the costs according to the rules on founding companies (e.g. costs of making up a description, notary costs, auditor's costs, registration costs, stamp duty and listing costs)?

country	public listed company	public unlisted company	private company
AT	no detailed information available	no detailed information available	no detailed information available
BE	The estimates may differ. The components of the setting up costs are: 1) The notary fees which are calculated as a decreasing percentage on the subscribed capital. 2) The costs of publication in the <a href="#">Official Gazette</a> .		/
BG			
CH	???	€ 5.000	€ 3.000
CY	about € 20.000 plus stamp duty as in private companies	about € 4.000 plus stamp duty as in private companies	minimum registration fee of € 600 plus 0,6% on the nominal capital of the company
CZ	Due to the volatile amount of certain fees (for example notary fees are stated as a percentage from the amount if capital) the amount is impossible to estimate.	Due to the volatile amount of certain fees (for example notary fees are stated as a percentage from the amount if capital) the amount is impossible to estimate.	Due to the volatile amount of certain fees (for example notary fees are stated as a percentage from the amount if capital) the amount is impossible to estimate.
DE	no detailed information available	no detailed information available	no detailed information available
DK	Due to volatile amount of certain fees (for example notary fees are stated as a percentage from the amount of capital) the amount is impossible to estimate.		
EE			
ES	About a 3%-5% of share capital, depending on the total share capital (some costs are fixes, some variables)		
FI	- registration fee: € 330 - a certificate of the auditors concerning the payment of the share capital: fee according to an agreement		
FR	information non available	same situation	same situation
GR	It depends on the amount of capital, e.g. for capital of € 60.000 the rough amount is about		€ 500

	€ 2.500.		
<b>HU</b>	APPR. 7%	APPR. 6%	APPR. 5%
<b>IE</b>	/	/	/
<b>IT</b>	/	/	/
<b>LT</b>	- registration costs: € 35 - admission plus annual listing fees: € 6950	registration costs: € 35	registration costs: € 35
<b>LU</b>			
<b>LV</b>	€ 2,844.5	€ 2,844.5	€ 284 - SIA
<b>MT</b>	- share capital up to € 4,659 = € 350 - share capital between € 4,659 and € 11,647 = € 350 + € 23 per € 2,329 additional share capital - share capital between € 11,647 and € 58,234 = € 419 + € 11.64 per € 11,647 additional share capital - share capital between € 58,234 and € 232,937 = € 625 + € 11.64 per e 11,647 additional share capital - share capital over € 232,937 = € 827 + € 11.64 per € 11,647 additional share capital, subject to a maximum of € 1,747		
<b>NL</b>	€5.000 - €20.000	€5.000 - €20.000	€5.000 - €20.000
<b>NO</b>			
<b>PL</b>	N/A	N/A	N/A
<b>PT</b>			
<b>RO</b>			
<b>SE</b>	impossible to make a general estimate	impossible to make a general estimate	€ 1.500
<b>SI</b>	N/A	N/A	N/A
<b>SK</b>	/	/	/
<b>UK</b>	/	/	/

- f) Which of the rules to found a company are particularly burdensome for a company and why (i.e. are there rules that do not have a necessary function)?

<b>country</b>	<b>public listed company</b>	<b>public unlisted company</b>	<b>private company</b>
<b>AT</b>	NONE	NONE	NONE
<b>BE</b>	NONE	NONE	NONE
<b>BG</b>			
<b>CH</b>	requirement for notary public	requirement for notary public	requirement for notary public
<b>CY</b>	The rules are fair and simple. In any way this legislation will soon be brought up to date and there will be changes.		
<b>CZ</b>	Necessity to obtain business licence in connection with the foundation of the Company	Necessity to obtain business licence in connection with the foundation of the Company	Necessity to obtain business licence in connection with the foundation of the Company. Complication in connection with the contribution in kind – enterprise.
<b>DE</b>	NONE	NONE	NONE
<b>DK</b>	N/A	N/A	N/A
<b>EE</b>			
<b>ES</b>	NONE	NONE	NONE
<b>FI</b>	NONE	NONE	NONE
<b>FR</b>	N/A	N/A	N/A
<b>GR</b>	In our opinion, all rules as regards the foundation of a company do have a necessary function. However, the procedures for the implementation of those rules should be simplified into a much easier form.		/
<b>HU</b>	It depends on – for example – the nature of activity and/or whether there is contribution in kind		
<b>IE</b>	/	/	/

<b>IT</b>	/	/	/
<b>LT</b>	/	/	/
<b>LU</b>			
<b>LV</b>	/	/	/
<b>MT</b>	N/A	N/A	N/A
<b>NL</b>	None, however some are of the opinion that the rules about contribution in kind are burdensome.		
<b>NO</b>			
<b>PL</b>	unavailable	unavailable	unavailable
<b>PT</b>			
<b>RO</b>			
<b>SE</b>	none in particular	as listed entities	as listed entities
<b>SI</b>	N/A	N/A	N/A
<b>SK</b>	NO	NO	NO
<b>UK</b>	/	/	/

g) Which of the rules to found a company do you particularly find helpful and why?

- **Electronic access to forms;**
- **Valuation report;**
- **Protection of creditors, investors and 3<sup>rd</sup> parties;**
- **Foundation procedures(time and costs).**

country	public listed company	public unlisted company	private company
<b>AT</b>	ALL	ALL	ALL
<b>BE</b>	The check of contributions in kind by a statutory auditor because this is a guarantee for third parties		
<b>BG</b>			
<b>CH</b>	NONE	NONE	NONE
<b>CY</b>	All rules are helpful.	All rules are helpful.	All rules are helpful.
<b>CZ</b>	electronic access to all necessary forms	electronic access to all necessary forms	electronic access to all necessary forms
<b>DE</b>	ALL	ALL	ALL
<b>DK</b>	valuation report requirement	valuation report requirement	valuation report requirement
<b>EE</b>			
<b>ES</b>	All of rules are useful.	All of the rules are useful.	All of the rules are useful.
<b>FI</b>	NONE	NONE	NONE
<b>FR</b>	single electronic access to forms	Identical	identical
<b>GR</b>	In our opinion, all rules as regards the foundation of a company do have a necessary function. However, the procedures for the implementation of those rules should be simplified into a much easier form.		/
<b>HU</b>	Under the new company law, coming into force July 1, 2006, the necessary time and administrative costs for foundation were reduced. One window system is used. The opportunity of electronic arrangements became wider.		
<b>IE</b>	/	/	/
<b>IT</b>	The form and the content of the statute allow the protection of the shareholders, creditors and third parties.		



<b>LT</b>	/	/	/
<b>LU</b>			
<b>LV</b>	/	/	Simple Chapter of the Company, low stamp duties, fast registration procedures
<b>MT</b>	Rules on contributions in kind are very clear and concise.		
<b>NL</b>	Minimum capital rules. It forces founders to be aware of the fact that they should assign equity to a separate entity.		
<b>NO</b>			
<b>PL</b>	unavailable	Unavailable	unavailable
<b>PT</b>			
<b>RO</b>			
<b>SE</b>	none in particular	as listed entities	as listed entities
<b>SI</b>	N/A	N/A	N/A
<b>SK</b>	NO	NO	NO
<b>UK</b>	/	/	/

### 3. Questions regarding reserves

Please note that reference is made only to reserves that are part of equity.

#### 3.1. Formalities

- a) Are annual net profits required to be transferred to reserves as a result of:
- corporate/company law?
  - commercial/trade law?
  - articles of incorporation/constitutional documents?

country	public listed company	public unlisted company	private company <sup>8</sup>
AT	<p>- corporate/company law: YES, up to 10% of the shareholder's capital</p> <p>- articles of incorporation/ constitutional documents: maybe</p>	<p>- corporate/company law: YES, up to 10% of the shareholder's capital</p> <p>- articles of incorporation/ constitutional documents: maybe</p>	<p>- corporate/company law: YES, up to 10% of the shareholder's capital, but it applies only to large private companies</p> <p>- articles of incorporation/ constitutional documents: maybe</p>
BE	<p>- corporate/company law: A company must first allocate 5% of its net profits for each financial year, after deduction of previous losses [if any], to a legal reserve fund until such fund amounts to at least 10% of the company's share capital. Once the legal reserve has been funded and in the absence of any provisions to the contrary in the company's articles of association, any remaining profits may in principle be freely distributed as dividends. However, no such distribution may be made if the net assets are below the company's share capital as increased by the non-distributable reserves.</p> <p>- commercial/trade law: NO</p> <p>- articles of incorporation/constitutional documents: depends on the company</p>		
BG			

<sup>8</sup> GR : N/A (no rules regarding reserves)

<b>CH</b>	- corporate/company law - articles of incorporation/constitutional documents: maybe	- corporate/company law - articles of incorporation/constitutional documents: maybe	- corporate/company law - articles of incorporation/constitutional documents: maybe
<b>CY</b>	- corporate/company law: NO - commercial/trade law: NO - articles of incorporation/constitutional documents: NO	- corporate/company law: NO - commercial/trade law: NO - articles of incorporation/constitutional documents: NO	- corporate/company law: NO - commercial/trade law: NO - articles of incorporation/constitutional documents: NO
<b>CZ</b>	- corporate/company law: YES - commercial/trade law: YES - maybe articles of incorporation/constitutional documents		
<b>DE</b>	corporate/company law: YES (§ 150 AktG)  commercial/trade law: YES (§ 272 HGB)  articles of incorporation/constitutional documents: YES.	see left	corporate/company law: NO  commercial/trade law: YES (§ 272 HGB)  articles of incorporation/constitutional documents: YES.
<b>DK</b>	- corporate/company law - articles of incorporation/constitutional documents (maybe, depending on articles of incorporation)		
<b>EE</b>			
<b>ES</b>	- company/corporate law: YES, 10% of net profit up to 20% of share capital  - articles of incorporation/ constitutional documents: MAYBE, depending on articles of incorporation		
<b>FI</b>	- corporate/company law: YES, e.g. sales profit obtained from the sale of the company's own shares or shares of the parent company shall be transferred to the premium fund  - commercial/trade law: N/A  - articles of incorporation/ constitutional documents: maybe		
<b>FR</b>	- corporate/company law: YES – In the commercial code ("Code de commerce")	- corporate/company law: YES – In the commercial code ("Code de commerce")	- corporate/company law: YES – In the commercial code ("Code de commerce")

	Legal reserve needs an annual transfer of 5 % of net profits until the reserve's amount equals 10 % of capital amount  - commercial/trade law: NO  - articles of incorporation/constitutional documents: YES MAYBE	Legal reserve needs an annual transfer of 5 % of net profits until the reserve's amount equals 10 % of capital amount  - commercial/trade law: NO  - articles of incorporation/constitutional documents: YES MAYBE	Legal reserve needs an annual transfer of 5 % of net profits until the reserve's amount equals 10 % of capital amount (only for SARL, SA, SAS, SCA)  - commercial/trade law: NO  - articles of incorporation/constitutional documents: YES MAYBE
<b>GR</b>	- corporate/company law - articles of incorporation/ constitutional documents: maybe	- corporate/company law - articles of incorporation/ constitutional documents: maybe	
<b>HU</b>	- corporate/company law - articles of incorporation/ constitutional documents: maybe	- corporate/company law - articles of incorporation/ constitutional documents: maybe	- corporate/company law - articles of incorporation/ constitutional documents: maybe
<b>IE</b>	- corporate/company law - articles of incorporation/ constitutional documents/ government agencies: maybe	- corporate/company law - articles of incorporation/ constitutional documents/ government agencies: maybe	- corporate/company law - articles of incorporation/ constitutional documents/ government agencies: maybe
<b>IT</b>	- corporate/company law - commercial/trade law - articles of incorporation/constitutional documents: statute	- corporate/company law - commercial/trade law - articles of incorporation/constitutional documents: statute	- corporate/company law - commercial/trade law - articles of incorporation/constitutional documents: statute
<b>LT</b>	- corporate/company law - articles of incorporation/constitutional documents	- corporate/company law - articles of incorporation/constitutional documents	- corporate/company law - articles of incorporation/constitutional documents
<b>LU</b>			
<b>LV</b>	commercial/trade law	commercial/trade law	commercial/trade law
<b>MT</b>	corporate/company law	corporate/company law	corporate/company law
<b>NL</b>	- corporate/company law - articles of incorporation/constitutional documents: maybe	- corporate/company law - articles of incorporation/constitutional documents: maybe	- corporate/company law - articles of incorporation/constitutional documents: maybe
<b>NO</b>			

<b>PL</b>	- commercial/trade law - articles of incorporation/ constitutional documents: maybe	- commercial/trade law - articles of incorporation/ constitutional documents: maybe	- articles of incorporation/ constitutional documents: maybe
<b>PT</b>			
<b>RO</b>			
<b>SE</b>	- company/corporate law: The general rule is that net profits can be distributed but if the Board does not recommend a full distribution the profit must be carried forward.  - articles of incorporation/constitutional documents: maybe	- company/corporate law: as listed entities.  - commercial/trade law: as listed entities  - articles of incorporation/constitutional documents: as listed entities	- company/corporate law: as listed entities  - commercial/trade law: as listed entities  - articles of incorporation/constitutional documents: as listed entities
<b>SI</b>	- corporate/company law - articles of incorporation/ constitutional documents: maybe	- corporate/company law - articles of incorporation/ constitutional documents: maybe	- corporate/company law - articles of incorporation/ constitutional documents: maybe
<b>SK</b>	- corporate/company law: NO - commercial/trade law: NO - articles of incorporation/constitutional documents: NO	- corporate/company law: NO - commercial/trade law: NO - articles of incorporation/constitutional documents: NO	- corporate/company law: NO - commercial/trade law: NO - articles of incorporation/constitutional documents: NO
<b>UK</b>	- corporate/company law: no-although retained net profits would be shown as profit and loss account reserve  - articles of incorporation/constitutional documents: maybe	- corporate/company law: no-although retained net profits would be shown as profit and loss account reserve  - articles of incorporation/constitutional documents: maybe	- corporate/company law: no-although retained net profits would be shown as profit and loss account reserve  - articles of incorporation/constitutional documents: maybe

b) What kind of reserves are required in your country? For each of the following categories please describe (if applicable) how they are determined and how they can be used/applied:

- profit reserves (Retained Earnings):
- share premium reserves (paid in capital):
- other:

country	public listed company	public unlisted company	private company
<b>AT</b>	<ul style="list-style-type: none"> <li>- profit reserves: YES, see a)</li> <li>- share premium reserves</li> <li>- other: reserve for own shares: If a company has own shares (treasury stock), a reserve at the amount of book value of the own shares must be recognized</li> </ul>	<ul style="list-style-type: none"> <li>- profit reserves: YES, see a)</li> <li>- share premium reserves</li> <li>- other: reserve for own shares: If a company has own shares (treasury stock), a reserve at the amount of book value of the own shares must be recognized</li> </ul>	<ul style="list-style-type: none"> <li>- profit reserves: YES, see a)</li> <li>- share premium reserves</li> <li>- other: reserve for own shares: If a company has own shares (treasury stock), a reserve at the amount of book value of the own shares must be recognized</li> </ul>
<b>BE</b>	<ul style="list-style-type: none"> <li>- profit reserves: YES - see above</li> <li>- share premium reserves: YES - see above</li> </ul>	<ul style="list-style-type: none"> <li>- profit reserves: YES - see above</li> <li>- share premium reserves: YES - see above</li> </ul>	<ul style="list-style-type: none"> <li>- profit reserves: YES - see above</li> <li>- share premium reserves: YES - see above</li> </ul>
<b>BG</b>			
<b>CH</b>	<ul style="list-style-type: none"> <li>- profit reserves</li> <li>- share premium reserves</li> <li>- other: distribution reserves; reserves for own shares; re-evaluation reserves</li> </ul>	<ul style="list-style-type: none"> <li>- profit reserves</li> <li>- share premium reserves</li> <li>- other: distribution reserves; reserves for own shares; re-evaluation reserves</li> </ul>	<ul style="list-style-type: none"> <li>- profit reserves</li> <li>- share premium reserves</li> </ul>
<b>CY</b>	<ul style="list-style-type: none"> <li>- profit reserves</li> <li>- share premium reserves</li> <li>- other</li> </ul>	<ul style="list-style-type: none"> <li>- profit reserves</li> <li>- share premium reserves</li> <li>- other</li> </ul>	<ul style="list-style-type: none"> <li>- profit reserves</li> <li>- share premium reserves</li> <li>- other</li> </ul>
<b>CZ</b>	<ul style="list-style-type: none"> <li>- profit reserves: undistributed profits are transferred to retained earnings. It can be used for distribution, covering losses.</li> <li>- share premium reserves: Possibly in the form of special reserve fund</li> <li>- other: <ul style="list-style-type: none"> <li>* legal reserve fund – percentage of the profit stated by the law is yearly transferred to this fund. Can be used only to cover losses.</li> </ul> </li> </ul>		

	* other funds – determined by the articles of association and can be used in compliance with them only.		
<b>DE</b>	<p><b>profit reserves (Retained Earnings):</b> YES Only those amounts may be shown as earnings reserves that result from the returns of the fiscal year or a prior fiscal year. This includes statutory reserves or reserves based on the articles of association formed from the returns and other earnings reserves (§ 272 par. 3 HGB). Profit reserves can be used e.g. for distribution or covering losses, increase in capital.</p> <p><b>share premium reserves (paid in capital):</b> YES, the following shall be shown as capital reserves:</p> <ol style="list-style-type: none"> <li>1. amount realised by the issuance of shares above the nominal value</li> <li>2. the amount realised pursuant to a sale of conversion rights and option rights for share acquisition in connection with the issuance of bonds</li> <li>3. amount of additional payments made by shareholders for a guaranteed preference for their shares</li> <li>4. amount of other additional payments made by shareholders into equity (see § 272 HGB).</li> </ol> <p><b>other:</b> YES</p> <ul style="list-style-type: none"> <li>- Reserve for own shares (treasury stock): If a company has own shares, a reserve at the amount of book value of the own shares must be recognized. The reserves may be dissolved only under certain</li> </ul>	See left	See left (except for § 150 AktG)

	<p>conditions (§ 272 HGB).</p> <ul style="list-style-type: none"> <li>- Statutory/ legal reserves required by § 150 AktG (determined by a special method).</li> <li>- Reserves provided for by the articles of association</li> <li>- Reserves built up by the General Meeting of the Shareholders.</li> </ul>		
<b>DK</b>	<ul style="list-style-type: none"> <li>- profit reserves</li> <li>- other: revaluation reserve, reserve for net revaluation according the equity method, reserve for treasury shares, reserve for fair value of investment assets, reserve for fair value of biological assets</li> </ul>		
<b>EE</b>			
<b>ES</b>	<ul style="list-style-type: none"> <li>- profit reserves: profit minus lawful reserve provision minus dividends</li> <li>- share premium reserves: voluntarily</li> <li>- other: <b>lawful reserve</b>, up to 20% of share capital; can be used only to cover losses, if other reserve are not enough. Reserve for own shares, when the Company has own shares, at the amount of total acquisition cost; it has to be maintain until own shares are sold or amortized.</li> </ul>		
<b>FI</b>	The same as private company	The same as private company	<ul style="list-style-type: none"> <li>- profit reserves: Consists of profit or loss brought forward from previous years. Retained earnings shall be included in the non-restricted equity.</li> <li>- share premium reserves: Share premium reserves shall be included in the restricted equity. E.g. the following shall be transferred to the share premium reserve: 1) the amount paid for a subscription right</li> </ul>



			<p>based on an option right or a convertible loan;</p> <p>2) the amount exceeding the nominal value paid for shares in a new issue;</p> <p>3) the amount by which the share capital is lowered and which is not used to cover an adopted loss, transferred to a fund to be used in accordance with the decision of the General Meeting of the Shareholders or distributed to the shareholders;</p> <p>4) sales profit obtained from the sale of the company's own shares or shares of the parent company.</p> <p>The amount in the Share Premium Reserve may be lowered by a decision of the General Meeting of the Shareholders e.g.</p> <p>1) in order to cover a loss shown on an adopted balance sheet if the loss cannot be covered by non-restricted equity; or</p> <p>2) to be used to raise the share capital by a bonus issue or a new issue</p> <p>- <i>other</i>:</p> <p><b>revaluation reserve</b> (restricted equity): The difference between the probable sales price and the undepreciated balance of the acquisition cost of land and waters or a security which is not a financial instrument may be brought to the balance sheet. The revaluation must be reversed if it can no longer be justified.</p> <p>A revaluation reserve shall only be used to a bonus issue or a transfer to the share</p>
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			<p>capital.</p> <p><b>fair value reserve:</b> Financial instruments can be measured at their fair value. Changes in the fair value are recognised as income or expense in the income statement or recorded in the fair value reserve in the balance sheet.</p> <p><b>reserve fund (restricted equity):</b> The Articles of Association may stipulate or the General Meeting of the Shareholders may decide that a certain portion of the non-restricted equity shown on the balance sheet shall be transferred to the reserve fund.</p> <p>The amount in the Reserve fund may be lowered by a decision of the General Meeting of the Shareholders e.g.</p> <ol style="list-style-type: none"> <li>1) in order to cover a loss shown on an adopted balance sheet if the loss cannot be covered by non-restricted equity; or</li> <li>2) to be used to raise the share capital by a bonus issue or a new issue</li> </ol> <p><b>reserves provided for by the articles of association</b></p> <p><b>reserves built up by the General Meeting of the Shareholders</b></p>
<b>FR</b>	<p>- profit reserves</p> <ul style="list-style-type: none"> <li>* How they are determined: Undistributed profits are transferred annually to retained earnings.</li> <li>* How they can be used: future distributions, increase in capital.</li> </ul> <p>- share premium reserves:</p>		

	<ul style="list-style-type: none"> <li>* How they are determined: Difference between the amount received and the face value of the newly issued shares.</li> <li>* According to the French Supreme Court ("Cour de Cassation"), the share premium is not a reserve but an additional contribution. Nevertheless, it is presented in the equities in the accounts.</li> <li>* How they can be used: costs of an increase in capital may be charged to the share premium, wipe off of losses, future distributions, increase in capital.</li> </ul> <p>- other:</p> <ul style="list-style-type: none"> <li>* Legal reserve: see above</li> <li>* Re-evaluation reserves</li> <li>* Reserves determined by the articles of incorporation</li> </ul>		
<b>GR</b>	<ul style="list-style-type: none"> <li>- profit reserves: legal reserve: 5% of the profits</li> <li>- share premium reserves: the amount paid by investors, in excess of nominal capital</li> <li>- other: any reserves required according to the articles of the company's incorporation</li> </ul>		
<b>HU</b>	<ul style="list-style-type: none"> <li>- profit reserves<sup>9</sup></li> <li>- other: REVALUATION RESERVE - Unmovable (fixed) reserves</li> </ul>		
<b>IE</b>	<ul style="list-style-type: none"> <li>- profit reserves</li> <li>- share premium reserves</li> <li>- capital redemption reserve fund</li> <li>- reserves required by Article of Association</li> </ul>		
<b>IT</b>	<p>- <u>legal reserves</u>: The reserve is made up by deducting from annual net profits an amount not lower than their twentieth part (i.e. 5%) and such that the reserve amounts to at least 1/5 of the capital stock. The legal reserve can be used solely for repaying losses.</p> <p>- <u>profit reserves</u>: These reserves are made up of non-</p>	<p>- <u>legal reserves</u>: The reserve is made up by deducting from annual net profits an amount not lower than their twentieth part (i.e. 5%) and such that the reserve amounts to at least 1/5 of the capital stock. The legal reserve can be used solely for repaying losses.</p> <p>- <u>profit reserves</u>: These reserves are made up of non-</p>	<p>- <u>legal reserves</u>: The reserve is made up by deducting from annual net profits an amount not lower than their twentieth part (i.e. 5%) and such that the reserve amounts to at least 1/5 of the capital stock. The legal reserve can be used solely for repaying losses.</p> <p>- <u>profit reserves</u>: These reserves are made up of non-</p>

<sup>9</sup> Defined by the accounting law

<sup>10</sup> IT: Companies in this group are required by law to apply IAS/IFRS. Therefore, the value of the purchased own shares should be subtracted directly from the company's capital stock.

<sup>11</sup> IT: see note 2

	<p>distributed operating profits. They can be used for increasing capital stock, repaying losses and distribution to stockholders.</p> <p>- <u>share premium reserves</u>: These reserves are made up by the amounts received by the company in connection with the sale of newly issued shares at a price higher than their face value. The reserves can be used for increasing capital stock, repaying losses and distribution to stockholders provided the legal reserve is at least equal to the minimum amount of 1/5 of the capital stock.</p> <p>- <u>revaluation surplus</u>: *The reserve is made up by applying the revaluation model foreseen in a number of IAS/IFRS (e.g., IAS 16 and IAS 38 for, respectively, tangible and intangible assets). The reserve is unavailable.</p> <p>*The reserve originates from the revaluation of certain assets (such as fixed assets and holdings). The revaluation is determined according to a specific State Law. The reserve is unavailable.</p>	<p>distributed operating profits. They can be used for increasing capital stock, repaying losses and distribution to stockholders.</p> <p>- <u>share premium reserves</u>: These reserves are made up by the amounts received by the company in connection with the sale of newly issued shares at a price higher than their face value. The reserves can be used for increasing capital stock, repaying losses and distribution to stockholders provided the legal reserve is at least equal to the minimum amount of 1/5 of the capital stock.</p> <p>- <u>revaluation surplus</u>: *The reserve is made up by applying the revaluation model foreseen in a number of IAS/IFRS (e.g., IAS 16 and IAS 38 for, respectively, tangible and intangible assets). The reserve is unavailable. *YES, if they apply IAS/IFRS *NO, if they don't apply IAS/IFRS</p> <p>*The reserve originates from the revaluation of certain assets (such as fixed assets and holdings). The revaluation is determined according to a specific State Law. The reserve is</p>	<p>distributed operating profits. They can be used for increasing capital stock, repaying losses and distribution to stockholders.</p> <p>- <u>share premium reserves</u>: These reserves are made up by the amounts received by the company in connection with the sale of newly issued shares at a price higher than their face value. The reserves can be used for increasing capital stock, repaying losses and distribution to stockholders provided the legal reserve is at least equal to the minimum amount of 1/5 of the capital stock.</p> <p>- <u>revaluation surplus</u>: *The reserve is made up by applying the revaluation model foreseen in a number of IAS/IFRS (e.g., IAS 16 and IAS 38 for, respectively, tangible and intangible assets). The reserve is unavailable. *YES, if they apply IAS/IFRS *NO, if they don't apply IAS/IFRS</p> <p>*The reserve originates from the revaluation of certain assets (such as fixed assets and holdings). The revaluation is determined according to a specific State Law. The reserve is</p>
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<sup>12</sup> IT: see note 2

	<p>NO</p> <p>- <u>treasure (own share) reserve</u><sup>10</sup>: of the company's own shares. The reserve needs to be kept (for an amount equal to the buy-back) until the own shares are transferred or cancelled. Until then, the reserve is unavailable.</p> <p>- <u>statutory reserve</u>: The reserve originates from the deductions from net profits provided for in the company's statute. The reserve may be used for the purposes foreseen by that same document.</p>	<p>unavailable. *YES, if they apply IAS/IFRS *NO, if they don't apply IAS/IFRS</p> <p>- <u>treasure (own share) reserve</u><sup>11</sup>: of the company's own shares. The reserve needs to be kept (for an amount equal to the buy-back) until the own shares are transferred or cancelled. Until then, the reserve is unavailable.</p> <p>- <u>statutory reserve</u>: The reserve originates from the deductions from net profits provided for in the company's statute. The reserve may be used for the purposes foreseen by that same document.</p>	<p>unavailable. *YES, if they apply IAS/IFRS *NO, if they don't apply IAS/IFRS</p> <p>- <u>treasure (own share) reserve</u><sup>12</sup>: of the company's own shares. The reserve needs to be kept (for an amount equal to the buy-back) until the own shares are transferred or cancelled. Until then, the reserve is unavailable.</p> <p>- <u>statutory reserve</u>: The reserve originates from the deductions from net profits provided for in the company's statute. The reserve may be used for the purposes foreseen by that same document.</p>
<p><b>LT</b></p>	<p>- profit reserves: It is the unappropriated profit at the end of the financial year.</p> <p>- share premium reserves: Share premium (the amount above nominal value) is a part of the equity capital of the company equal to the difference between the issue price and the nominal value of shares. Share premium may be used to increase the statutory capital and to cover the losses of the company.</p> <p>- other: <u>The legal reserve</u> shall be formed from the profit available for appropriation. It must</p>	<p>- profit reserves: as PLC - share premium reserves: as PLC - other: as PLC</p>	<p>- profit reserves: as PLC - share premium reserves: as PLC - other: as PLC</p>

	<p>be at least equal to 1/10 of the amount of the statutory capital and may only be used to cover the losses of the company. The portion of the legal reserve above the 1/10 of the statutory capital may be redistributed when the profit of the next financial year is appropriated. After the legal reserve was used to cover the losses, the amount thereof shall be restored from the profit available for appropriation.</p> <p><u>The reserve for own shares</u> shall be formed from the profit available for appropriation. A company may purchase own shares if the reserve for own shares is formed in the company and the amount thereof is not less than the sum total of the acquisition values of own shares.</p> <p><u>The revaluation reserve</u> is the amount of the increase in the value of tangible long-term assets and financial assets resulting after the revaluation of assets. The revaluation reserve shall be reduced when the re-valued assets are written down, written off, depreciated or transferred into the ownership of third parties. The statutory capital may be increased by the portion of the revaluation reserve formed after the revaluation of tangible assets. The revaluation reserve may not be used to reduce losses. When the financial assets are re-valued, the revaluation amount transferred to the revaluation reserve may not be used for the increase of the statutory capital.</p>		
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	<u>Other reserves</u> shall be formed from the profit available for appropriation and shall be used for the implementation of the specific objects of the company.		
<b>LU</b>			
<b>LV</b>	profit reserves: not less than 10% from the share capital		
<b>MT</b>	<p>The Third schedule of the Companies Act requires the following reserves:</p> <ul style="list-style-type: none"> <li>- share premium</li> <li>- revaluation reserve</li> <li>- capital redemption reserve</li> <li>- reserve for own shares</li> <li>- reserves provided for by the articles of association (where applicable)</li> <li>- other reserves (if any)</li> <li>- profit and loss account</li> </ul> <p>- <u>profit reserves</u>: Profits are determined in accordance with IFRS (article 167) however, only realised profits (net of realised losses) may be distributed (article 192).</p> <p>- <u>share premium reserves</u>: Article 114 – Any premium received on the issue of shares is transferred to a share premium account, which can only be applied in paying up bonuses issues, or to write off preliminary expenses and expenses incurred on the issue of debentures, or to provide for the premium payable on redemption of any redeemable preference shares and debentures.</p> <p>- <u>other</u>: Article 115 (1) (e) – When preference shares are redeemed otherwise than out of the proceeds of a fresh issue, a sum equal to the nominal amount of the shares redeemed shall be transferred to a Capital Redemption Reserve from retained earnings available for distribution.</p>		
<b>NL</b>	<p>- profit reserves: decision of shareholders meeting and/or based on articles of association after creating the necessary legal/ un distributable reserves</p> <p>- share premium reserves: based on conditions of issuing shares above par value</p> <p>- other reserves: legal/non-distributable reserves are based on rules in the companies act</p>		
<b>NO</b>			

<p><b>PL</b></p>	<p>- profit reserves: YES (its name in PL is “net profit/loss from previous year”. It can be used up for e.g. covering net loss, turning into equity</p> <p>- share premium reserves: NO (there is no separate “Share Premium reserve”. Share Premium is one of the components of the “Supplementary reserve”).</p> <p>- other: <b>supplementary reserve</b> It can be used up for e.g. covering net loss, turning into equity, turning into “Reserve capital”</p> <p><b>revaluation reserve</b> this type of reserve is created as the effect of the revaluation of the assets and is used up when the company gets rid of them</p> <p><b>reserve capital</b> This type of reserve is voluntarily for companies and may be created for many purposes (e.g. covering possible in future years’ losses).</p>	<p>- profit reserves: YES (its name in PL is “net profit/loss from previous year”. It can be used up for e.g. covering net loss, turning into equity</p> <p>- share premium reserves: NO (there is no separate “Share Premium reserve”. Share Premium is one of the components of the “Supplementary reserve”).</p> <p>- other: <b>supplementary reserve</b> It can be used up for e.g. covering net loss, turning into equity, turning into “Reserve capital”</p> <p><b>revaluation reserve</b> this type of reserve is created as the effect of the revaluation of the assets and is used up when the company gets rid of them</p> <p><b>reserve capital</b> This type of reserve is voluntarily for companies and may be created for many purposes (e.g. covering possible in future years’ losses).</p>	<p>- profit reserves: YES (its name in PL is “net profit/loss from previous year”. It can be used up for e.g. covering net loss, turning into equity</p> <p>- share premium reserves: NO (there is no separate “Share Premium reserve”. Share Premium is one of the components of the “Supplementary reserve” – for limited liability company). N/A for other companies</p> <p>- other: <b>supplementary reserve</b> It can be used up for e.g. covering net loss, turning into equity, turning into “Reserve capital” – for limited liability company). - N/A for other companies</p> <p><b>revaluation reserve</b> this type of reserve is created as the effect of the revaluation of the assets and is used up when the company gets rid of them (for limited liability company) - N/A for other companies</p> <p><b>reserve capital</b> this type of reserve is voluntarily for companies and may be created for many purposes (e.g. covering possible in future years’ losses – for limited liability company) - N/A for other companies</p>
<p><b>PT</b></p>			
<p><b>RO</b></p>			



<p style="text-align: center;"><b>SE</b></p>	<p>- profit reserves: Profit reserves are basically accumulated P/L through the Income statement. To profit reserves however are also assigned translation differences from foreign branches. Profit reserves can be used for distributions, stock dividend and transfer to other reserves. Profit reserves can not be distributed if the distribution will have a negative effect on the business considering its size, risks etc.</p> <p>- share premium reserves: The difference between the issue price and the ratio value of the new shares must be allocated to the Share premium Reserve (Sw. överkursfond). This reserve is a non-restricted reserve and can be distributed.</p> <p>- other: 1) A revaluation-increase of an asset's book value is allocated to a revaluation reserve (less deferred tax liability), which is a restricted reserve and therefore can not be distributed. The revaluation reserve can be used to off-set losses or be used in a stock dividend. Other wise the revaluation reserve is transferred to profit reserves to offset depreciation/write downs/gains/losses on the appreciated book value. 2) Some revaluations of financial assets to fair value must be allocated directly to a</p>	<p>- profit reserves: as listed entities - share premium reserves: as listed entities - other: as listed entities</p>	<p>- profit reserves: as listed entities - share premium reserves: as listed entities - other: as listed entities</p>
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	special unrestricted reserve which is available for distribution.		
<b>SI</b>	<ul style="list-style-type: none"> <li>- profit reserves:</li> <li>* legal reserves, (can be used only for covering net loss)</li> <li>* reserves for own shares,</li> <li>* statutory reserves (can be used only for purposes, determined in statute)</li> <li>* other reserves</li> </ul> <ul style="list-style-type: none"> <li>- share premium reserves:</li> <li>can be used only for covering net loss or increases of capital</li> </ul>	<ul style="list-style-type: none"> <li>- profit reserves:</li> <li>* legal reserves, (can be used only for covering net loss)</li> <li>* reserves for own shares,</li> <li>* statutory reserves (can be used only for purposes, determined in statute)</li> <li>* other reserves</li> </ul> <ul style="list-style-type: none"> <li>- share premium reserves:</li> <li>can be used only for covering net loss or increases of capital</li> </ul>	<ul style="list-style-type: none"> <li>- profit reserves:</li> <li>* legal reserves, (can be used only for covering net loss)</li> <li>* reserves for own shares,</li> <li>* statutory reserves (can be used only for purposes, determined in statute)</li> <li>* other reserves</li> </ul> <ul style="list-style-type: none"> <li>- share premium reserves:</li> <li>can be used only for covering net loss or increases of capital</li> </ul>
<b>SK</b>	<ul style="list-style-type: none"> <li>- profit reserves: YES (not determined)</li> <li>- share premium reserves: YES (not determined)</li> </ul>		
<b>UK</b>	<ul style="list-style-type: none"> <li>- profit reserves</li> <li>- share premium reserves: created where shares issued at a premium over nominal value</li> <li>- other: capital redemption reserve – where capital is redeemed out of profits</li> </ul>		

- c) Which of the above reserves:
- must be built up as required by law:
  - are built up voluntarily:

country	public listed company	public unlisted company	private company
<b>AT</b>	- by law: profit reserves (see a) - voluntarily: all the rest	- by law: profit reserves (see a) - voluntarily: all the rest	- by law: profit reserves (see a) - voluntarily: all the rest
<b>BE</b>	- by law: profit reserves - voluntarily: share premium reserves	- by law: profit reserves - voluntarily: share premium reserves	- by law: profit reserves - voluntarily: share premium reserves
<b>BG</b>			
<b>CH</b>	- by law: all mentioned - voluntarily: possible	- by law: all mentioned - voluntarily: possible	- by law: all mentioned - voluntarily: possible
<b>CY</b>	- by law: share premium reserves - voluntarily: retained earnings and revaluation reserve	- by law: share premium reserves - voluntarily: retained earnings and revaluation reserve	- by law: share premium reserves - voluntarily: retained earnings and revaluation reserve
<b>CZ</b>	- by law: legal reserve fund, retained earnings - voluntarily: other funds, share premium reserve	- by law: legal reserve fund, retained earnings - voluntarily: other funds, share premium reserve	- by law: legal reserve fund, retained earnings - voluntarily: other funds, share premium reserve
<b>DE</b>	By law: - profit reserve - capital reserves - reserve for own shares - legal/ statutory reserves ( § 150 AktG)  Voluntarily: - Reserves provided for by the articles of association - Reserves built up by the General Meeting of the Shareholders.	See left	See left (except for legal/ statutory reserves)

<b>DK</b>	All the above reserves are required by law and it is possible to built further reserves voluntarily.	All the above reserves are required by law and it is possible to built further reserves voluntarily.	All the above reserves are required by law and it is possible to built further reserves voluntarily.
<b>EE</b>			
<b>ES</b>	- by law: lawful reserve, reserve for own shares - voluntarily: Profit reserve, share premium reserve	- by law: lawful reserve, reserve for own shares - voluntarily: Profit reserve, share premium reserve	- by law: lawful reserve, reserve for own shares - voluntarily: Profit reserve, share premium reserve
<b>FI</b>	- by law: retained earnings, share premium reserve, revaluation reserve, fair value reserve - voluntarily: reserve fund, reserves provided for by the articles of association, reserves build up by the general meeting of the shareholders		
<b>FR</b>	- by law: legal reserve and re-evaluation reserve - voluntarily: for all the rest	- by law: legal reserve and re-evaluation reserve - voluntarily: for all the rest	- by law: legal reserve and re-evaluation reserve - voluntarily: for all the rest
<b>GR</b>	by law: profit reserves and share premium reserves		
<b>HU</b>	voluntarily	voluntarily	voluntarily
<b>IE</b>	- by law: 2-4 - voluntarily: 1	- by law: 2-4 - voluntarily: 1	- by law: 2-4 - voluntarily: 1
<b>IT</b>	- by law: legal reserve, share premium reserves (paid in capital), revaluation surplus, treasure (own share) reserve - voluntarily: profit reserves (Retained Earnings), statutory reserve		
<b>LT</b>	- by law: profit reserves, share premium, legal reserve, reserve for own shares, revaluation reserve - voluntarily: other reserves	- by law: as PLC - voluntarily: as PLC	- by law: as PLC - voluntarily: as PLC
<b>LU</b>			
<b>LV</b>	- by law	- by law	- by law

	- voluntarily	- voluntarily	- voluntarily
<b>MT</b>	- by law: all of the above reserves are required by law as applicable - voluntarily: other reserves may be created as provided for by the articles of association		
<b>NL</b>	- by law: legal/non-distributable reserves - voluntarily: retained earnings	- by law: legal/non-distributable reserves - voluntarily: retained earnings	- by law: legal/non-distributable reserves - voluntarily: retained earnings
<b>NO</b>			

<b>PL</b>	- by law: supplementary capital and revaluation capital (as the effect of assets revaluation if this revaluation was in place)  - voluntarily: net profit/loss from previous year and reserve capital.	- by law: supplementary capital and revaluation capital (as the effect of assets revaluation if this revaluation was in place)  - voluntarily: net profit/loss from previous year and reserve capital.	- by law: supplementary capital (for limited liability company) and revaluation capital (as the effect of assets revaluation if this revaluation was in place)  - voluntarily: net profit/loss from previous year and reserve capital (for limited liability company) - N/A for other companies
<b>PT</b>			
<b>RO</b>			
<b>SE</b>	- by law: The law does only require reserves to be built up if: * profit reserve if the net profit is not distributed, * revaluation reserve only if a revaluation is decided, * fair value reserve only if the fair value principle is applied by the company, * share premium reserve only if shares are issued in excess of ratio value.	- by law: as listed entities	- by law: as listed entities
<b>SI</b>	- by law: share Premium reserves, legal reserves and reserves for own shares  - voluntarily: other	- by law: share Premium reserves, legal reserves and reserves for own shares  - voluntarily: other	- by law: share Premium reserves, legal reserves and reserves for own shares  - voluntarily: other
<b>SK</b>	- by law: profit reserves - voluntarily: share premium reserves	- by law: profit reserves - voluntarily: share premium reserves	- by law: profit reserves - voluntarily: share premium reserves
<b>UK</b>	by law: all of the above	by law: all of the above	by law: all of the above

- d) Who has the authority to determine which reserves will be created:
- the shareholders' meeting/AGM:
  - the board of directors/the executive directors:
  - the supervisory board/the non-executive directors:

country	public listed company	public unlisted company	private company
<b>AT</b>	- shareholders' meeting/ AGM: YES, but only if the supervisory board does not form a conclusion about the financial statements  - board of directors/executive directors  - supervisory board/non-executive directors	- shareholders' meeting/ AGM: YES, but only if the supervisory board does not form a conclusion about the financial statements  - board of directors/executive directors  - supervisory board/non-executive directors	- shareholders' meeting/ AGM  - board of directors/ executive directors: NO, except the articles of incorporation include such an opportunity  - supervisory board/non-executive directors: NO, except the articles of incorporation include such an opportunity
<b>BE</b>	shareholders' meeting/AGM	shareholders' meeting/AGM	shareholders' meeting/AGM
<b>BG</b>			
<b>CH</b>	shareholders' meeting/AGM	shareholders' meeting/AGM	shareholders' meeting/AGM
<b>CY</b>	board of directors/executive directors	board of directors/executive directors	board of directors/executive directors
<b>CZ</b>	shareholders' meeting/AGM	shareholders' meeting/AGM	shareholders' meeting/AGM
<b>DE</b>	<b>shareholders' meeting/ AGM:</b> YES, but only if the supervisory and management board have decided that the AGM shall approve the annual financial statements. (under "normal" circumstances the annual financial statements are to approved by the supervisory board) (§ 58, § 172, § 173 AktG)  <b>board of directors/executive directors:</b>	See left	<b>shareholders' meeting/ AGM:</b> YES (§ 46 GmbHG)  <b>board of directors/executive directors:</b> NO  <b>supervisory board/non-executive directors:</b> NO

	YES, if they approve the annual financial accounts (§ 58, § 172, § 173 AktG)		
	<b>supervisory board/non-executive directors: YES</b>		
<b>DK</b>	shareholders' meeting/AGM	shareholders' meeting/AGM	shareholders' meeting/AGM
<b>EE</b>			
<b>ES</b>	shareholders' meeting/AGM	shareholders' meeting/AGM	shareholders' meeting/AGM
<b>FI</b>	- shareholders' meeting/ AGM - board of directors/executive directors - supervisory board/non-executive directors	- shareholders' meeting/ AGM - board of directors/executive directors - supervisory board/non-executive directors	- shareholders' meeting/ AGM - board of directors/executive directors - supervisory board/non-executive directors
<b>FR</b>	shareholders' meeting/AGM	shareholders' meeting/AGM	shareholders' meeting/AGM
<b>GR</b>	shareholders' meeting/AGM	shareholders' meeting/AGM	shareholders' meeting/AGM
<b>HU</b>	- shareholders' meeting/ AGM - board of directors/executive directors: with limitations	- shareholders' meeting/ AGM - board of directors/executive directors: with limitations	- shareholders' meeting/ AGM - board of directors/executive directors: with limitations
<b>IE</b>	- board of directors/executive directors: YES, other than reserves 2-4 above	- board of directors/executive directors: YES, other than reserves 2-4 above	- board of directors/executive directors: YES, other than reserves 2-4 above
<b>IT</b>	shareholder's meeting	shareholder's meeting	shareholder's meeting
<b>LT</b>	shareholders' meeting	shareholders' meeting	shareholders' meeting
<b>LU</b>			
<b>LV</b>	shareholder's meeting/AGM	shareholder's meeting/AGM	shareholder's meeting/AGM
<b>MT</b>	Who has the authority to determine which reserves will be created? The Companies Act mandates what reserves shall be created -shareholders' meeting/AGM: YES – The shareholders' meeting may create other reserves through the Articles of Association. - board of directors/executive directors: YES – The Board of Directors may also be empowered by the Articles of Association to create other reserves.		



<b>NL</b>	<ul style="list-style-type: none"> <li>- shareholders' meeting/AGM: AGM if not delegated in the articles of assoc. to an other organ</li> <li>- board of directors/executive directors: see above</li> <li>- supervisory board/non-executive directors: see above</li> </ul>	<ul style="list-style-type: none"> <li>- shareholders' meeting/AGM: AGM if not delegated in the articles of assoc. to an other organ</li> <li>- board of directors/executive directors: see above</li> <li>- supervisory board/non-executive directors: see above</li> </ul>	<ul style="list-style-type: none"> <li>- shareholders' meeting/AGM: AGM if not delegated in the articles of assoc. to an other organ</li> <li>- board of directors/executive directors: see above</li> <li>- supervisory board/non-executive directors: see above</li> </ul>
<b>NO</b>			
<b>PL</b>	shareholders' meeting: for reserves not required by law.	shareholders' meeting: for reserves not required by law	shareholders' meeting: for reserves not required by law (for limited liability company) - N/A for other companies
<b>PT</b>			
<b>RO</b>			
<b>SE</b>	<ul style="list-style-type: none"> <li>- the shareholders' meeting/AGM: partially</li> <li>- the board of directors/ executive directors: partially</li> <li>- supervisory board/ non-executive directors: N/A</li> </ul>	<ul style="list-style-type: none"> <li>- the shareholders' meeting/AGM: as listed entities</li> <li>- the board of directors/ executive directors: as listed entities</li> <li>- the supervisory board/the non-executive directors: N/A</li> </ul>	<ul style="list-style-type: none"> <li>- the shareholders' meeting/AGM: as listed entities</li> <li>- the board of directors/ executive directors: as listed entities</li> <li>- the supervisory board/the non-executive directors: N/A</li> </ul>
<b>SI</b>	<ul style="list-style-type: none"> <li>- shareholders' meeting/ AGM</li> <li>- board of directors/ executive directors</li> <li>- supervisory board/ non-executive directors</li> </ul>	<ul style="list-style-type: none"> <li>- shareholders' meeting/ AGM</li> <li>- board of directors/ executive directors</li> <li>- supervisory board/ non-executive directors</li> </ul>	<ul style="list-style-type: none"> <li>- shareholders' meeting/ AGM</li> <li>- board of directors/ executive directors</li> <li>- supervisory board/ non-executive directors</li> </ul>
<b>SK</b>	shareholders' meeting/AGM	/	/
<b>UK</b>	<ul style="list-style-type: none"> <li>- shareholders' meeting/AGM: shareholders could change articles of incorporation to require a transfer</li> <li>- board of directors/ executive directors</li> <li>- supervisory board/ non-executive directors: N/A</li> </ul>	<ul style="list-style-type: none"> <li>- shareholders' meeting/AGM: shareholders could change articles of incorporation to require a transfer</li> <li>- board of directors/ executive directors</li> <li>- supervisory board/ non-executive directors: N/A</li> </ul>	<ul style="list-style-type: none"> <li>- shareholders' meeting/AGM: shareholders could change articles of incorporation to require a transfer</li> <li>- the board of directors/ executive directors</li> <li>- supervisory board/ non-executive directors: N/A</li> </ul>



### 3.2. Substance

a) How are the reserves below calculated? (Please make reference to national law with internet link in English if available)

- Profit reserves (Retained Earnings)
- Share Premium reserves (paid in capital)
- Other

country	public listed company	public unlisted company	private company
<b>AT</b>	- profit reserves: section 130 Aktiengesetz (stock corporation act) - share premium reserves: section 229 ACC - other: reserve for own shares: section 225 ACC	- profit reserves: section 130 Aktiengesetz (stock corporation act) - share premium reserves: section 229 ACC - other: reserve for own shares: section 225 ACC	- profit reserves: section 23 GmbH-Gesetz (private company act) - share premium reserves: section 225 ACC - other: reserve for own shares: section 225 ACC
<b>BE</b>	/	/	/
<b>BG</b>			
<b>CH</b>	- profit reserves: 5% (up to 20% of nominal share capital) - share premium reserves: 100% (up to 50% of nominal share capital) - other: 10% of dividends exceeding 5% of nominal share capital (up to 50% of the nominal share capital)	- profit reserves: 5% (up to 20% of nominal share capital) - share premium reserves: 100% (up to 50% of nominal share capital) - other: 10% of dividends exceeding 5% of nominal share capital (up to 50% of the nominal share capital)	- profit reserves: 5% (up to 20% of nominal share capital) - share premium reserves: 100% (up to 50% of nominal share capital) - other: 10% of dividends exceeding 5% of nominal share capital (up to 50% of the nominal share capital)
<b>CY</b>	- profit reserves: First Schedule, Table A, Regulation 117 - share premium reserves: Section 55 of the Companies Law	- profit reserves: First Schedule, Table A, Regulation 117 - share premium reserves: Section 55 of the Companies Law	- profit reserves: First Schedule, Table A, Regulation 117 - share premium reserves: Section 55 of the Companies Law
<b>CZ</b>	- profit reserves: non-distributed retained earnings	- profit reserves: non-distributed retained earnings	- profit reserves: non-distributed retained earnings

	<p>- share premium reserves: amount of share premium transferred to special reserve fund</p> <p>- other: *legal reserve fund - in the first year when profit is realised at least 20% of net profit (maximum 10% of basic capital), in subsequent years at least 5% of net profit (up to amount of 20% of basic capital)</p>	<p>- share premium reserves: amount of share premium transferred to special reserve fund</p> <p>- other: *legal reserve fund - in the first year when profit is realised at least 20% of net profit (maximum 10% of basic capital), in subsequent years at least 5% of net profit (up to amount of 20% of basic capital)</p>	<p>- share premium reserves: amount of share premium transferred to special reserve fund</p> <p>- other: *legal reserve fund - - in the first year when profit is realised at least 20% of net profit (maximum 10% of basic capital), in subsequent years at least 5% of net profit (up to amount of 20% of basic capital) – for a.s. *legal reserve fund - - in the first year when profit is realised at least 10% of net profit (maximum 5% of basic capital), in subsequent years at least 5% of net profit (up to amount of 10% of basic capital) – for s.r.o.</p>
<b>DE</b>	<p><b>profit reserves (retained earnings):</b> amounts that result from the returns of the fiscal year or a prior fiscal year (§ 272 par. 3 HGB).</p> <p>Reserves built up by the General Meeting of the Shareholders: In connection with the approval of the annual financial statements the shareholders meeting may transfer to profit reserves only those amounts which are required to be transferred to scuh reserves pursuant to law or the articles (§ 173 AktG)</p> <p><b>share premium reserves (paid in capital):</b> 1. amount realised by the issuance of shares</p>	See left	See left (except for § 150, § 173 AtkG)

	<p>above the nominal value</p> <p>2. the amount realised pursuant to a sale of conversion rights and option rights for share acquisition in connection with the issuance of bonds</p> <p>3. amount of additional payments made by shareholders for a guaranteed preference for their shares</p> <p>4. amount of other additional payments made by shareholders into equity (see § 272 HGB).</p> <p><b>other:</b></p> <ul style="list-style-type: none"> <li>- Reserve for own shares (treasury stock): An amount shall be allocated to this reserve that corresponds to the amount of treasury shares assessed on the assets side of the balance sheet (§ 272 HGB).</li> <li>- Statutory/ legal reserves required by § 150 AktG (determined by a special method).</li> <li>- Reserves provided for by the articles of association</li> </ul> <p>(See also copies for § 272 HGB, § 150 AktG, § 173 AktG).</p>		
<b>DK</b>	<ul style="list-style-type: none"> <li>- profit reserves: residual amount</li> <li>- share premium reserves: N/A</li> <li>- other: The Danish Financial Statements Act available in English:</li> </ul> <p><a href="http://www.eogs.dk/graphics/Regnskab/Re">http://www.eogs.dk/graphics/Regnskab/Re</a></p>	<ul style="list-style-type: none"> <li>- profit reserves: residual amount</li> <li>- share premium reserves: N/A</li> <li>- other: The Danish Financial Statements Act available in English:</li> </ul> <p><a href="http://www.eogs.dk/graphics/Regnskab/Re">http://www.eogs.dk/graphics/Regnskab/Re</a></p>	<ul style="list-style-type: none"> <li>- profit reserves: residual amount</li> <li>- share premium reserves: N/A</li> <li>- other: The Danish Financial Statements Act available in English:</li> </ul> <p><a href="http://www.eogs.dk/graphics/Regnskab/Re">http://www.eogs.dk/graphics/Regnskab/Re</a></p>

	<a href="#">gnskabslov_en.html</a> Refer to section 35, section 38 subsection 5, section 41 subsection 3, section 46 and section 84 subsection 4.	<a href="#">gnskabslov_en.html</a> Refer to section 35, section 38 subsection 5, section 41 subsection 3, section 46 and section 84 subsection 4	<a href="#">gnskabslov_en.html</a> Refer to section 35, section 38 subsection 5, section 41 subsection 3, section 46 and section 84 subsection 4
<b>EE</b>			

<b>ES</b>	<ul style="list-style-type: none"> <li>- profit reserves: profit less lawful reserve provision, less dividends (art. 213 of Company law)</li> <li>- share premium reserves: voluntarily</li> <li>- other (lawful reserve): 10% net profit up to 20% share capital (art. 214 of Company law)</li> </ul>	<ul style="list-style-type: none"> <li>- profit reserves: profit less lawful reserve provision, less dividends (art. 213 of Company law)</li> <li>- share premium reserves: voluntarily</li> <li>- other: 10% net profit up to 20% share capital (art. 214 of Company law)</li> </ul>	<ul style="list-style-type: none"> <li>- profit reserves: profit less lawful reserve provision, less dividends (art. 213 of Company law)</li> <li>- share premium reserves: voluntarily</li> <li>- other: 10% net profit up to 20% share capital (art. 214 of Company law)</li> </ul>
<b>FI</b>	see above	see above	see above
<b>FR</b>	<a href="http://www.legifrance.gouv.fr">www.legifrance.gouv.fr</a> <ul style="list-style-type: none"> <li>- profit reserves: commercial code</li> <li>- share premium reserve : commercial code</li> <li>- other : Commercial code and articles of incorporation</li> </ul>		
<b>GR</b>	<ul style="list-style-type: none"> <li>- profit reserves: legal reserve: 5% of the profits of each year – max: 1/3 of the capital</li> <li>- share premium reserves: the amount paid by investors, in excess of nominal capital</li> <li>- other: any reserves required according to the articles of the company's incorporation</li> </ul>		
<b>HU</b>	<a href="http://www.p-m.hu">www.p-m.hu</a> and <a href="http://www.mkvk.hu">www.mkvk.hu</a> <ul style="list-style-type: none"> <li>- profit reserves: accounting law</li> <li>- other: revaluation reserve</li> </ul>	<a href="http://www.p-m.hu">www.p-m.hu</a> and <a href="http://www.mkvk.hu">www.mkvk.hu</a> <ul style="list-style-type: none"> <li>- profit reserves: accounting law</li> <li>- other: revaluation reserve</li> </ul>	<a href="http://www.p-m.hu">www.p-m.hu</a> and <a href="http://www.mkvk.hu">www.mkvk.hu</a> <ul style="list-style-type: none"> <li>- profit reserves: accounting law</li> <li>- other: revaluation reserve</li> </ul>
<b>IE</b>	<ul style="list-style-type: none"> <li>- share premium reserves: Section 208, Companies Act, 1990</li> <li>- capital redemption reserves fund: Section 208, Companies Act, 1990</li> </ul>		
<b>IT</b>	<ul style="list-style-type: none"> <li>- legal reserve: deduction of 5% of the net annual profits, until reaching an amount equal to 1/5 of capital stock</li> <li>- profit shares: according to the shareholder's meeting will.</li> </ul>	<ul style="list-style-type: none"> <li>- legal reserve: deduction of 5% of the net annual profits, until reaching an amount equal to 1/5 of capital stock</li> <li>- profit shares: according to the shareholder's meeting will.</li> <li>- share premium reserve: difference between the amount received and the face value of the newly issued shares</li> </ul>	

	<ul style="list-style-type: none"> <li>- share premium reserve: difference between the amount received and the face value of the newly issued shares</li> <li>- revaluation surplus: difference between the current fair value and the net carrying value before revaluation</li> <li>- treasure (own share) reserve: see note 2</li> </ul>	<ul style="list-style-type: none"> <li>- revaluation surplus: difference between the current fair value and the net carrying value before revaluation</li> <li>- treasure (own share) reserve: for companies that do not apply IAS/IFRS, the reserve is equal to the price paid for the purchase of the company's own shares.</li> </ul>	
<b>LT</b>	<p>the Law of the Republic of Lithuania on Companies</p> <p><a href="http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=233471">http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_l?p_id=233471</a></p>	as PLC	as PLC
<b>LU</b>			
<b>LV</b>	profit reserves: 5% from the annual profit minimum	profit reserves: 5% from the annual profit minimum	profit reserves: 5% from the annual profit minimum
<b>MT</b>	<p>See answer 3.1 (b)</p> <p>Internet link:</p> <p><a href="http://docs.justice.gov.mt/lom/legislation/english/leg/vol_11/chapt386.pdf">http://docs.justice.gov.mt/lom/legislation/english/leg/vol_11/chapt386.pdf</a></p>		
<b>NL</b>	<ul style="list-style-type: none"> <li>- profit reserves: profit minus allocations to legally non-distributable reserves, based on law and minus dividend based on decision of AGM</li> <li>- share premium reserves: paid in capital minus par value of the issued shares and minus reclassification based on decision of AGM minus repaid share premium based on decision of AGM</li> <li>- other: legally non-distributable reserves can not be distributed reserves regulated by the articles of association can not be distributed in other way than indicated in the articles</li> </ul>		
<b>NO</b>			
<b>PL</b>	- profit reserves It is a result of the activity of the company in a previous years not distributed	- profit reserves It is a result of the activity of the company in a previous years not distributed	- profit reserves It is a result of the activity of the company in a previous years not distributed



	<p>- share premium reserves There is no separate “Share Premium reserve”. Share Premium is one of the components of the “Supplementary reserve”.</p> <p>- other</p> <p>* <u>supplementary reserves</u>: A supplementary reserve shall be created so that loss can be financed; at least 8% of the profits for a given financial year shall be transferred to the supplementary reserve until such reserve reaches at least one third of the share capital.</p> <p>* <u>revaluation reserve</u>: There are specific law requirements how to calculate this reserve depends on what was revaluated.</p> <p>* <u>reserve capital</u>: There are no law requirements how to calculate this reserve (it depends on the articles of incorporation/constitutional documents).</p>	<p>- share premium reserves There is no separate “Share Premium reserve”. Share Premium is one of the components of the “Supplementary reserve”.</p> <p>- other</p> <p>* <u>supplementary reserves</u>: A supplementary reserve shall be created so that loss can be financed; at least 8% of the profits for a given financial year shall be transferred to the supplementary reserve until such reserve reaches at least one third of the share capital.</p> <p>* <u>revaluation reserve</u>: There are specific law requirements how to calculate this reserve depends on what was revaluated.</p> <p>* <u>reserve capital</u>: There are no law requirements how to calculate this reserve (it depends on the articles of incorporation/constitutional documents).</p>	<p>- share premium reserves There is no separate “Share Premium reserve”. Share Premium is one of the components of the “Supplementary reserve”.</p> <p>- other</p> <p>* <u>supplementary reserves</u>: There is no law requirements how to calculate this reserve; it depends on the articles of incorporation/ constitutional documents (for limited liability company. - N/A for other companies</p> <p>* <u>revaluation reserve</u>: There are specific law requirements how to calculate this reserve depends on what was revaluated.</p> <p>* <u>reserve capital</u>: There are no law requirements how to calculate this reserve; it depends on the articles of incorporation/constitutional documents – for limited liability company). - N/A for other companies</p>
<b>PT</b>			
<b>RO</b>			
<b>SE</b>	<p>- profit reserves: Companies Act and Annual Accounts Act; a number of different rules.</p> <p>- share premium reserves: Annual Accounts Act Ch 3 § 5a</p> <p>- other: Annual Accounts Act Ch 4 § 6 (revaluation reserve) and Annual Accounts</p>	<p>- profit reserves: as listed entities</p> <p>- share premium reserves: as listed entities</p> <p>- other: as listed entities</p>	<p>- profit reserves: as listed entities</p> <p>- share premium reserves: as listed entities</p> <p>- other: as listed entities</p>

	Act Ch 4 § 14 d (fair value reserve)		
<b>SI</b>	<ul style="list-style-type: none"> <li>- profit reserves: <ul style="list-style-type: none"> <li>* Legal reserves must be at least 10% of called capital.</li> <li>* Reserves for own shares must be in the amount of purchase value of own shares.</li> </ul> </li> <li>- share premium reserves: as a surplus</li> </ul>	<ul style="list-style-type: none"> <li>- profit reserves: <ul style="list-style-type: none"> <li>* Legal reserves must be at least 10% of called capital.</li> <li>* Reserves for own shares must be in the amount of purchase value of own shares.</li> </ul> </li> <li>- share premium reserves: as a surplus</li> </ul>	<ul style="list-style-type: none"> <li>- profit reserves: <ul style="list-style-type: none"> <li>* Legal reserves must be at least 10% of called capital.</li> <li>* Reserves for own shares must be in the amount of purchase value of own shares.</li> </ul> </li> <li>- share premium reserves: as a surplus</li> </ul>
<b>SK</b>	no specification	/	/
<b>UK</b>	<ul style="list-style-type: none"> <li>- profit reserves: by transfer of retained profits (i.e. those not distributed)</li> <li>- share premium reserves: in accordance with S130 companies act 1985</li> <li>- other: in accordance with S170 companies act 1985</li> </ul>	<ul style="list-style-type: none"> <li>- profit reserves: by transfer of retained profits (i.e. those not distributed)</li> <li>- share premium reserves: in accordance with S130 companies act 1985</li> <li>- other: in accordance with S170 companies act 1985</li> </ul>	<ul style="list-style-type: none"> <li>- profit reserves: by transfer of retained profits (i.e. those not distributed)</li> <li>- share premium reserves: in accordance with S130 companies act 1985</li> <li>- other: in accordance with S170 companies act 1985</li> </ul>

b) Is the distribution from any of the above reserves restricted?:

- Profit reserves (Retained Earnings):
- Share Premium reserves (paid in capital)
- Other:

country	public listed company	public unlisted company	private company
<b>AT</b>	- profit reserves: in part - share premium reserves: in part - other: in part	- profit reserves: in part - share premium reserves: in part - other: in part	- profit reserves: in part - share premium reserves: in part - other: in part
<b>BE</b>	- profit reserves: restricted (art. 617 C.C.) - share premium reserves: restricted (art. 617 C.C.)	- profit reserves: restricted (art. 617 C.C.) - share premium reserves: restricted (art. 617 C.C.)	- profit reserves: restricted (art. 617 C.C.) - share premium reserves: restricted (art. 617 C.C.)
<b>BG</b>			
<b>CH</b>	- profit reserves - share premium reserves: up to 50% of nominal share capital - other: up to 50% of nominal share capital	- profit reserves - share premium reserves: up to 50% of nominal share capital - other: up to 50% of nominal share capital	- profit reserves - share premium reserves: up to 50% of nominal share capital - other: up to 50% of nominal share capital
<b>CY</b>	- profit reserves: NO - share premium reserves: YES - other: YES	- profit reserves: NO - share premium reserves: YES - other: YES	- profit reserves: NO - share premium reserves: YES - other: YES
<b>CZ</b>	- profit reserves: Only by amount of remaining net equity (see bellow 4.2. e)  - share premium reserves: Legal reserve fund up to 20% of basic capital can be used only to cover losses  - other: *Legal reserve fund up to 20% of basic capital can be used only to cover losses.	- profit reserves: Only by amount of remaining net equity (see bellow 4.2. e)  - share premium reserves: Legal reserve fund up to 20% of basic capital can be used only to cover losses  - other: * Legal reserve fund up to 20% of basic capital can be used only to cover losses.	- profit reserves: Only by amount of remaining net equity (see bellow 4.2. e)  - share premium reserves: Legal reserve fund up to 10% of basic capital can be used only to cover losses – s.r.o. Legal reserve fund up to 20% of a basic capital can be used to cover losses – a.s.  - other: * Legal reserve fund up to 10% of basic capital can be used only to cover losses –

	<p>*Legal reserve fund created for own shares must be kept unless own shares are dismissed.</p> <p>* Other restrictions based on the articles of associations</p>	<p>*Legal reserve fund created for own shares must be kept unless own shares are dismissed.</p> <p>* Other restrictions based on the articles of associations</p>	<p>s.r.o.</p> <p>*Legal reserve fund up to 20% of basic capital can be used only to cover losses</p> <p>* Legal reserve fund created for own shares must be kept unless own shares are dismissed. – a.s.</p> <p>* Other restrictions based on the articles of associations</p>
<b>DE</b>	<p><b>profit reserves:</b> in part</p> <p><b>share premium reserves:</b> in part (§ 272 HGB)</p> <p><b>other:</b></p> <p><b>legal/ statutory reserves:</b> YES (§ 150 AktG)</p> <p><b>Reserve for own shares/ treasury shares:</b> YES (§ 272 HGB)</p>	See left	See left (except for § 150 AktG)
<b>DK</b>	<p>- profit reserves: NO (except that the dividend shall not exceed an amount which is reasonable in consideration of the financial position of the company and, in parent companies, the financial position of the group).</p> <p>- share premium reserves: NO</p> <p>- other: YES (the abovementioned reserves can not be distributed)</p>		
<b>EE</b>			
<b>ES</b>	<p>- profit reserves: YES, as long as the total net accounting equity is not, or shall not result, lower than the share capital</p> <p>- share premium reserves: YES, as long as the total net accounting equity is not, or shall not result, lower than the share capital</p> <p>- other (lawful reserve): YES</p>		

<b>FI</b>	see above	see above	see above
<b>FR</b>	- profit reserves: except for the legal reserve, restriction can be applied in part - share premium reserves: Except for the legal reserve, restriction can be applied in part		
<b>GR</b>	- profit reserve - share premium reserves - other: maybe	- profit reserve - share premium reserves - other: maybe	/
<b>HU</b>	- profit reserves - share premium reserves - other	- profit reserves - share premium reserves - other	- profit reserves - share premium reserves - other
<b>IE</b>	- profit reserves: maybe - share premium reserves: YES - capital redemption reserves fund: YES	- profit reserves: maybe - share premium reserves: YES - capital redemption reserves fund: YES	- profit reserves: maybe - share premium reserves: YES - capital redemption reserves fund: YES
<b>IT</b>	- legal reserves - share premium reserves - revaluation surplus - treasure (own share) reserve	- legal reserves - share premium reserves - revaluation surplus - treasure (own share) reserve	- legal reserves - share premium reserves - revaluation surplus - treasure (own share) reserve
<b>LT</b>	- share premium reserves: see 3.1. b) - other: see 3.1. B)	- profit reserves: as PLC - share premium reserves: as PLC - other: as PLC	- profit reserves: as PLC - share premium reserves: as PLC - other: as PLC
<b>LU</b>			
<b>LV</b>	- profit reserves - share premium reserves - other: depends on the purpose of the reserve	- profit reserves - share premium reserves - other: depends on the purpose of the reserve	- profit reserves - share premium reserves - other: depends on the purpose of the reserve
<b>MT</b>	- profit reserves: only realised profits may be distributed - share premium reserves: vide reply to question 3.1 (b) - other: capital redemption reserve – vide 3.1 (b)		
<b>NL</b>	- profit reserves: NO, not formally however it can be a violence of good faith - share premium reserve: NO, not formally however it can be a violence of good faith		

	- other: N/A		
<b>NO</b>			
<b>PL</b>	<p>- share premium reserve: There is no separate “Share Premium reserve”. Share Premium is one of the components of the “Supplementary reserve”.</p> <p>- other: * <b>supplementary reserve:</b> A supplementary reserve shall be created so that loss can be financed; at least 8% of the profits for a given financial year shall be transferred to the supplementary reserve until such reserve reaches at least one third of the share capital. The rest of this reserve can be used up without any restrictions.</p> <p>* <b>revaluation reserve:</b> This reserve is created by the specific method of the revaluation of the assets and may be only used up when the company gets rid of these assets (company must not transfer this reserve into e.g. supplementary capital at any moment).</p> <p>* <b>reserve capital:</b> There are no restrictions in distribution from this reserve (this type of reserve is voluntarily for companies).</p>	<p>- share premium reserve: There is no separate “Share Premium reserve”. Share Premium is one of the components of the “Supplementary reserve”.</p> <p>- other: * <b>supplementary reserve:</b> A supplementary reserve shall be created so that loss can be financed; at least 8% of the profits for a given financial year shall be transferred to the supplementary reserve until such reserve reaches at least one third of the share capital. The rest of this reserve can be used up without any restrictions.</p> <p>* <b>revaluation reserve:</b> This reserve is created by the specific method of the revaluation of the assets and may be only used up when the company gets rid of these assets (company must not transfer this reserve into e.g. supplementary capital at any moment).</p> <p>* <b>reserve capital:</b> There are no restrictions in distribution from this reserve (this type of reserve is voluntarily for companies).</p>	<p>- share premium reserve: There is no separate “Share Premium reserve”. Share Premium is one of the components of the “Supplementary reserve” (for limited liability company). - N/A for other companies</p> <p>- other: * <b>supplementary reserve:</b> NO (for limited liability company). - N/A (for other companies).</p> <p>* <b>revaluation reserve:</b> This reserve is created by the specific method of the revaluation of the assets and may be only used up when the company gets rid of these assets. Company must not transfer this reserve into e.g. supplementary capital at any moment (for limited liability company). - N/A (for other companies).</p> <p>* <b>reserve capital:</b> There are no restrictions in distribution from this reserve. This type of reserve is voluntarily for companies (for limited liability company). - N/A (for other</p>

			companies).
<b>PT</b>			
<b>RO</b>			
<b>SE</b>	<ul style="list-style-type: none"> <li>- profit reserves: NO, the main rule is that the profit reserve is available for distribution but only if it does not harm the company's future business</li> <li>- share premium reserves: as above</li> <li>- other: revaluation reserve</li> </ul>	<ul style="list-style-type: none"> <li>- profit reserves: as listed entities</li> <li>- share premium reserves: as listed entities</li> <li>- other: as listed entities</li> </ul>	<ul style="list-style-type: none"> <li>- profit reserves: as listed entities</li> <li>- share premium reserves: as listed entities</li> <li>- other: as listed entities</li> </ul>
<b>SI</b>	see 3.1.b	see 3.1.b	see 3.1.b
<b>SK</b>	NO	/	/
<b>UK</b>	<ul style="list-style-type: none"> <li>- profit reserves: YES where these are regarded as unrealised via rules on which profits constitute accumulated realised profits</li> <li>- share premium reserves</li> <li>- other</li> </ul>	<ul style="list-style-type: none"> <li>- profit reserves: YES where these are regarded as unrealised via rules on which profits constitute accumulated realised profits</li> <li>- share premium reserves</li> <li>- other</li> </ul>	<ul style="list-style-type: none"> <li>- profit reserves: YES where these are regarded as unrealised via rules on which profits constitute accumulated realised profits</li> <li>- share premium reserves</li> <li>- other</li> </ul>

#### 4. Questions regarding the distribution of profit and increases in equity

##### 4.1. Formalities

a) Are there other bases for distribution of profits other than the individual accounts?

country	public listed company	public listed company	private company <sup>13</sup>
AT	NO	NO	NO
BE	NO	NO	NO
BG			
CH	NO	NO	NO
CY	NO	NO	NO
CZ	NO	NO	NO
DE	NO	NO	NO
DK	NO	NO	NO
EE			
ES	NO	NO	NO
FI	NO	NO	NO
FR	NO	NO	NO
GR	NO	NO	
HU	NO	NO	NO
IE	NO	NO	NO
IT	NO	NO	NO

<sup>13</sup> GR: no rules regarding this issue



<b>LT</b>	NO	NO	NO
<b>LU</b>			
<b>LV</b>	NO	NO	NO
<b>MT</b>	NO	NO	NO
<b>NL</b>	NO	NO	NO
<b>NO</b>			
<b>PL</b>	NO	NO	NO (for limited liability company)
<b>PT</b>			
<b>RO</b>			
<b>SE</b>	NO	as listed entities	as listed entities
<b>SI</b>	NO	NO	NO
<b>SK</b>	YES	YES	YES
<b>UK</b>	NO	NO	NO

- b) Is it possible in your legislation for the shareholders meeting to change the individual accounts made up by management even if management disagrees?

If so, which are the company's individual accounts used for profit distribution?

country	public listed company	public unlisted company	private company
<b>AT</b>	YES, but only if the supervisory board does not form a conclusion about the financial statements and assigns this to the shareholder's meeting  The Account is the so-called "Bilanzgewinn" (unappropriated retained earnings)	YES, but only if the supervisory board does not form a conclusion about the financial statements and assigns this to the shareholder's meeting  The Account is the so-called "Bilanzgewinn" (unappropriated retained earnings)	YES  The Account is the so-called "Bilanzgewinn" (unappropriated retained earnings)
<b>BE</b>	NO If so: N/A	NO If so: N/A	NO If so: N/A
<b>BG</b>			
<b>CH</b>	YES (never happens): retained earnings; profit of business year; statutory reserves to the extent they exceed 50% of nominal share capital	YES: retained earnings; profit of business year; statutory reserves to the extent they exceed 50% of nominal share capital	YES: retained earnings; profit of business year; statutory reserves to the extent they exceed 50% of nominal share capital
<b>CY</b>	NO	NO	NO
<b>CZ</b>	NO, shareholders meeting may disapprove financial statements; however, it cannot change it.	NO, shareholders meeting may disapprove financial statements; however, it cannot change it.	NO, shareholders meeting may disapprove financial statements; however, it cannot change it.
<b>DE</b>	YES, but only when management and supervisory board have decided that the annual financial statements shall be approved by the shareholders meeting (§ 58, § 173 AktG). In addition, the shareholders meeting	See left	YES (§ 46 GmbHG)

	<p>resolves on the appropriation of distributable profits (§ 58, § 174 AktG).</p> <p>A change in the annual accounts is allowed only for important reasons and if there is a fault in the annual accounts. (Annual accounts without fault may only be changed if there are material legal, economic or tax-based reasons and the right on profit distribution must not be reduced)</p> <p>In case of a change of the individual accounts, each balance sheet item effected by the change has to be corrected.</p> <p>If there is a change in the audited individual accounts, a new audit of the modified annual accounts is required. An unqualified auditors report/ opinion is necessary that the new annual accounts become legally effective.</p>		
<b>DK</b>	<p>NO, but the shareholders can decide to reduce the proposed distribution.</p> <p>If so: N/A</p>	<p>NO, but the shareholders can decide to reduce the proposed distribution.</p> <p>If so: N/A</p>	<p>NO, but the shareholders can decide to reduce the proposed distribution.</p> <p>If so: N/A</p>
<b>EE</b>			
<b>ES</b>	<p>NO. The Shareholders' meeting may refuse to approve de individual accounts and management shall then have to restate them and submit them again to the Shareholders' meeting.</p> <p>If so: Accounts approved by shareholders meeting.</p>		
<b>FI</b>	NO	NO	NO
<b>FR</b>	YES		

	If so: The profit distribution will be based on the individual accounts as modified by the shareholders meeting		
<b>GR</b>	YES If so: The amended by the shareholders meeting		
<b>HU</b>	YES, (essentially) P/L Statement and Balance Sheet	YES, (essentially) P/L Statement and Balance Sheet	YES, (essentially) P/L Statement and Balance Sheet
<b>IE</b>	NO If so: N/A	NO If so: N/A	NO If so: N/A
<b>IT</b>	YES: the one which is approved	YES: the one which is approved	YES: the one which is approved
<b>LT</b>	NO	NO	NO
<b>LU</b>			
<b>LV</b>	NO	NO	NO
<b>MT</b>	YES – It is possible for the shareholders to change the individual accounts. Article 181 provides an obligation on the directors to lay before the members in General Meeting the annual accounts for their approval. The shareholders also may apply to the Court for assistance in providing a remedy for example to stop the carrying out of an action, by evoking Article 402 of the Act.  If so: those approved by the General Meeting		
<b>NL</b>	YES, the AGM can reject the individual accounts, if they do not agree. The AGM can order management to adjust the accounts.  If so: AGM approved		
<b>NO</b>			
<b>PL</b>	NO (in PL the shareholders, not the management board, decide about the distribution of the profit).	NO (in PL the shareholders, not the management board, decide about the distribution of the profit).	NO (in PL the shareholders, not the management board, decide about the distribution of the profit - for limited liability company) - N/A (for other companies).
<b>PT</b>			
<b>RO</b>			

<b>SE</b>	YES: The individual accounts finally adopted by the shareholders are used for profit distribution.	as listed entities	as listed entities
<b>SI</b>	YES	YES	YES
<b>SK</b>	YES	YES	YES
<b>UK</b>	NO	NO	NO

c) If it is necessary to have individual accounts for distribution of profit, can those individual accounts be changed?

If so, what happens if there is a change?

<b>country</b>	<b>public listed company</b>	<b>public unlisted company</b>	<b>private company</b>
<b>AT</b>	YES, but only for important reasons All procedures which were based on the changed individual accounts have to be corrected as well.		
<b>BE</b>	NO If so: N/A	NO If so: N/A	NO If so: N/A
<b>BG</b>			
<b>CH</b>	YES: AGM gives instructions to Board of Directors; Review by Auditors	YES: AGM gives instructions to Board of Directors; Review by Auditors	YES: AGM gives instructions to Board of Directors; Review by Auditors
<b>CY</b>	NO	NO	NO
<b>CZ</b>	It cannot be changed once approved and published.	It cannot be changed once approved and published	It cannot be changed once approved and published
<b>DE</b>	See answer to b)	See left	See left

<b>DK</b>	N/A	N/A	N/A
<b>EE</b>			
<b>ES</b>	NO, accounts approved by shareholders meeting must be registered and cannot be changed. If so: N/A		
<b>FI</b>	YES. It is necessary to have individual accounts for distribution of profit. According to the Accounting Board corrections to previous year financial statements shall be booked to retained earnings.		
<b>FR</b>	YES If so: The modified individual accounts need to be audited and registered		
<b>GR</b>	YES: by decision of the Shareholders' General Assembly If so: The new accounts must be published and filed		
<b>HU</b>	- new financial statements - new audit report	- new financial statements - new audit report	- new financial statements - new audit report
<b>IE</b>	Not once formally approved by Board of Directors and circulated to shareholders. If so: N/A	Not once formally approved by Board of Directors and circulated to shareholders. If so: N/A	Not once formally approved by Board of Directors and circulated to shareholders. If so: N/A
<b>IT</b>	YES	YES	YES
<b>LT</b>	NO	NO	NO
<b>LU</b>			
<b>LV</b>	NO	NO	NO
<b>MT</b>	YES – see 4.1 (b) above If so: Those accounts approved by the General Meeting are used to determine whether or not to accept the director's proposal to distribute dividends.		
<b>NL</b>	NO, not after approval by AGM, however enterprise chamber of high court in Amsterdam can decide to make the accounts invalid and order to restate the individual accounts.		

	If so: N/A (judge can decide on the consequences)		
<b>NO</b>			
<b>PL</b>	YES: In PL the distribution of the profit is valid when the financial statements have been audited. Before an audit of the financial statements there can not be any resolutions of the shareholders' meeting about the distribution of the profit (because it could occur that a situation as a result of the audit there is no profit). So, there can not be any change of the approved (by the shareholders' meeting) financial statements (upon which the decision of the distribution of the profit is taken).		
<b>PT</b>			
<b>RO</b>			
<b>SE</b>	YES: The changed and finally adopted individual accounts will be the final basis for distribution. If a distribution based on overstated unrestricted reserves in the first individual accounts should result in negative unrestricted earnings in the second accounts, the legal situation must be carefully investigated. There is no general answer to such a situation.	as listed entities	as listed entities
<b>SI</b>	Accounts, accepted by shareholders	Accounts, accepted by shareholders	Accounts, accepted by shareholders
<b>SK</b>	NO	NO	NO
<b>UK</b>	YES: if they are considered to be defective. If there is a change: statutory rules apply as to how the accounts are to be revised	YES: if they are considered to be defective. If there is a change: statutory rules apply as to how the accounts are to be revised	YES: if they are considered to be defective. If there is a change: statutory rules apply as to how the accounts are to be revised

d) Is it possible to distribute interim dividends?

If so, under what conditions? Please describe briefly.

<b>country</b>	<b>public listed company</b>	<b>public unlisted company</b>	<b>private company</b>
<b>AT</b>	Not ruled, however certain interim payments can be made (taken into account when final dividends are distributed)	Not ruled, however certain interim payments can be made (taken into account when final dividends are distributed)	Not ruled, however certain interim payments can be made (taken into account when final dividends are distributed)
<b>BE</b>	<p>YES - The articles of association may authorise the board to declare and distribute an interim dividend provided the following conditions are met:</p> <p>1) Such distributions may be made only from the profits of the current financial year adjusted to take into account profits or losses carried forward;</p> <p>2) No distribution may be made from the legal reserves created by the articles of association;</p> <p>3) The board of directors has established, on the basis of interim accounts (verified by the company's statutory auditors), that the current profits are sufficient for the distribution of an interim dividend;</p> <p>4) The decision of the board of directors to distribute an interim dividend is taken within two months of the date of the interim accounts;</p> <p>No distribution can be decided upon less than six months after the closing of the preceding financial year and before the approval of the annual accounts relating to that year.</p>		/
<b>BG</b>			
<b>CH</b>	NO	NO	NO
<b>CY</b>	<p>YES</p> <p>(a) They should only be made out of profits available for distribution.</p> <p>(b) They should not be less than share capital plus the reserves not available for distribution.</p>		
<b>CZ</b>	NO	NO	NO
<b>DE</b>	YES, interim payments in form of advanced payments of distributable profits are allowed; such payments have to be taken into account when final dividends are	See left	Yes.



	distributed, but it required that the articles authorize the management board in this respect (§ 59 AktG).		
<b>DK</b>	<p>YES: Following the presentation of the company's first annual report, the annual general meeting of shareholders can authorise the Supervisory Board to declare an extraordinary distribution of dividend.</p> <p>The Supervisory Board's resolution to that effect must be accompanied by the following documents:</p> <p>1) An interim balance sheet showing that that the funds necessary for the distribution of dividend are available. If the company is subject to an audit requirement according to the Danish Financial Statements Act, the interim balance sheet must have been reviewed by an auditor.</p> <p>2) A statement by the Supervisory Board to the effect that the extraordinary dividend does not exceed an amount that is reasonable considering the company's and – in parent companies, the group's – financial position.</p>		
<b>EE</b>			
<b>ES</b>	YES - Enough liquidity and interim dividend not bigger than net profit of the interim period less prior years losses less lawful and statutory reserves provision.		
<b>FI</b>	YES: the same as a private company	YES: the same as a private company	<p>YES: In some cases a parent company and a subsidiary can enter an interim dividend (from the subsidiary to the parent company) in the books as income/receivable and cost/liability:</p> <p>e.g. when the Shareholders Meeting has made a proposal for distribution of dividend in advance and the proposal is realistic (does not exceed the probable future distributable profit) and the General Meeting of the Shareholders decides on the distribution of profit again when the balance sheet has been adopted.</p>
<b>FR</b>	<p>YES</p> <p>If so:</p>		

	<ul style="list-style-type: none"> <li>- When a balance sheet established during or at the end of the financial year shows that the company, since the end of the previous financial year, after allowing for the necessary depreciation and reserves, having deducted, if applicable, the previous losses and the sums to be entered in reserve pursuant to the law or articles of association and taking into account the profits carried forward, has made a profit.</li> <li>- The interim balance sheet must be audited by an auditor.</li> </ul>		
<b>GR</b>	YES <ul style="list-style-type: none"> <li>• The individual accounts shall be drawn up and published</li> <li>• The amount to be distributed may not exceed the ½ of the interim period profits</li> </ul>		
<b>HU</b>	Interim balance sheet shall be prepared. If profit after tax shown in it meets the requirements.	Interim balance sheet shall be prepared. If profit after tax shown in it meets the requirements.	Interim balance sheet shall be prepared. If profit after tax shown in it meets the requirements.
<b>IE</b>	YES	YES	YES
<b>IT</b>	YES under specific conditions: * provided by Statute * approved by Board of Directors * realization of a profit in the previous period * others	NO	NO
<b>LT</b>	NO	NO	NO
<b>LU</b>			
<b>LV</b>	NO	NO	NO
<b>MT</b>	YES – The Articles of Association of a company may from time to time allow the directors to pay to the members such interim dividends as appear to the directors to be justified by the profits of the company. Interim accounts would probably need to be prepared and file with the Registry of Companies in the case of Public companies.		
<b>NL</b>	YES: articles of association permits, and interim financial statements show sufficient free reserves (after more than six months are passed).	YES: articles of association permits, and interim financial statements show sufficient free reserves (after more than six months are passed).	YES: articles of association permits. and interim financial statements show sufficient free reserves.

<b>NO</b>			
<b>PL</b>	<p>YES: The statutes may authorize the management board to pay the shareholders an advance on the dividends expected at the end of the financial year if the company has sufficient funds for such payment. The payment of the advance shall require the consent of the supervisory board.</p> <p>The company may pay the advance on the expected dividends if its approved financial report for the previous financial year shows profits. The advance may amount to not more than half of the profits earned from the end of the previous financial year, shown in the financial report audited by the auditor, increased by the reserve capitals created out of profits which may be administered by the management board for the payment of the advances, and reduced by the uncovered losses and own shares.</p>	<p>YES: The statutes may authorize the management board to pay the shareholders an advance on the dividends expected at the end of the financial year if the company has sufficient funds for such payment. The payment of the advance shall require the consent of the supervisory board.</p> <p>The company may pay the advance on the expected dividends if its approved financial report for the previous financial year shows profits. The advance may amount to not more than half of the profits earned from the end of the previous financial year, shown in the financial report audited by the auditor, increased by the reserve capitals created out of profits which may be administered by the management board for the payment of the advances, and reduced by the uncovered losses and own shares.</p>	<p>YES (for limited liability company) - NO (for other companies)</p> <p>The articles of association may authorize the management board to pay the shareholders an advance on the expected dividends for the financial year if the company has sufficient funds for such payment.</p> <p>The company may pay the advance on the expected dividends if its approved financial report for the previous financial year shows profits. The advance may amount to not more than half of the profits earned from the end of the previous financial year, increased by the reserve capitals created out of profits which the management board may administer for the purpose of the payment of the advance, and reduced by uncovered losses and own shares.</p>
<b>PT</b>			
<b>RO</b>			
<b>SE</b>	YES: but only from unrestricted reserves adopted at the latest annual meeting.	as listed entities	as listed entities
<b>SI</b>	YES: If this option is foreseen in statute, annual net profit is expected, and management get a permission from supervisory board	YES: If this option is foreseen in statute, annual net profit is expected, and management get a permission from supervisory board	YES: If this option is foreseen in statute, annual net profit is expected, and management get a permission from supervisory board
<b>SK</b>	NO	NO	NO
<b>UK</b>	YES	YES	YES

	<p>The directors may pay interim dividends where they are justified by the profits available for distribution by the company. Where previous annual accounts do not show sufficient profits, interim accounts must be prepared on the same bases as are used for preparation of annual accounts and filed with companies registry.</p>	<p>The directors may pay interim dividends where they are justified by the profits available for distribution by the company. Where previous annual accounts do not show sufficient profits, interim accounts must be prepared on the same bases as are used for preparation of annual accounts and filed with companies registry.</p>	<p>The directors may pay interim dividends where they are justified by the profits available for distribution by the company. Where previous annual accounts do not show sufficient profits, interim management accounts must be prepared on the same bases as are used for preparation of annual accounts. The directors may pay interim dividends where they are justified by the profits available for distribution by the company. Where previous annual accounts do not show sufficient profits, interim accounts must be prepared on the same bases as are used for preparation of annual accounts and filed with companies registry.</p>
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e) Who has the authority to determine the appropriation of the individual net profit:

- the shareholders' meeting?
- the board of directors/the executive directors?
- the supervisory board/non-executive directors?

Please specify.

country	public listed company	public unlisted company	private company
AT	<p>- shareholders' meeting: if the supervisory board approves the F/S prepared by the board of directors → NO, otherwise YES</p> <p>- board of directors/executive directors: NO, but it has to prepare</p> <ul style="list-style-type: none"> <li>- a proposal for the distribution of a dividend subject to approval by the shareholder's meeting</li> <li>- the financial statements incl. any appropriations of reserves subject to approval by the supervisory board or the shareholder's meeting</li> </ul> <p>- supervisory board/non-executive directors: YES, see above</p>	<p>- shareholders' meeting: if the supervisory board approves the F/S prepared by the board of directors → NO, otherwise YES</p> <p>- board of directors/executive directors: NO, but it has to prepare</p> <ul style="list-style-type: none"> <li>- a proposal for the distribution of a dividend subject to approval by the shareholder's meeting</li> <li>- the financial statements incl. any appropriations of reserves subject to approval by the supervisory board or the shareholder's meeting</li> </ul> <p>- supervisory board/non-executive directors: YES, see above</p>	<p>- shareholders' meeting: but only if the articles of association provide this decision power to the meeting, otherwise the total net profit has to be distributed to the shareholders</p> <p>- board of directors/executive directors: NO, but – only if the articles of association provide this power of decision - it has to prepare</p> <ul style="list-style-type: none"> <li>- a proposal for the distribution of a dividend subject to approval by the shareholder's meeting</li> <li>- the financial statements incl. any appropriations of reserves subject to approval by the shareholder's meeting</li> </ul> <p>- supervisory board/non-executive directors: Yes, but only if the articles of association provide this power of decision, see above</p>
BE	- the shareholders' meeting	- the shareholders' meeting	- the shareholders' meeting
BG			

<b>CH</b>	- shareholders' meeting - board of directors/executive directors: proposal - combination: proposal by Board of Directors; resolution by shareholders' meeting		
<b>CY</b>	board of directors/executive directors	board of directors/executive directors	board of directors/executive directors
<b>CZ</b>	shareholders' meeting	shareholders' meeting	shareholders' meeting
<b>DE</b>	<p><b>the shareholders' meeting:</b>          YES, one right of the shareholders meeting is to resolve on the appropriation of distributable profits (Bilanzgewinn) (§ 58, § 119, § 174 AktG).</p> <p><b>the board of directors/the executive directors:</b>          NO. But the management board has to submit the annual financial statements, the managements/annual report and the proposal for appropriation of distributable profits to the supervisory board (§ 170 AktG).</p> <p><b>the supervisory board/non-executive directors:</b>          NO.</p>		
<b>DK</b>	- shareholders' meeting - combination: the annual general meeting of shareholders can authorise the Supervisory Board to declare an extraordinary distribution of dividend.		
<b>EE</b>			
<b>ES</b>	- shareholders' meeting		

	- supervisory board/non-executive directors: NO, directors only have to prepare the proposal for the distribution of net profit to approval by the shareholder's meeting		
	-combination: N/A		
<b>FI</b>	The same as a private company - the shareholders' meeting	The same as a private company - the shareholders' meeting	The General Meeting of the Shareholders shall decide on the distribution of profit. The General Meeting of the Shareholders may decide to distribute an amount greater than that proposed or approved by the Board of Directors only where it is under an obligation to do so under the Companies Act of the Articles of Association.  - the shareholders' meeting
<b>FR</b>	- shareholders' meeting: YES, after the accounts are approved - board of directors/executive directors: NO, except for interim dividends - supervisory board/non-executive directors: NO		
<b>GR</b>	- shareholders' meeting - combination: The Board of Directors suggests and the Shareholders' General Assembly approves	/	/
<b>HU</b>	shareholders' meeting		
<b>IE</b>	- shareholder's meeting: YES, but cannot exceed amount recommended by directors - board of directors/executive directors: see above - combination: N/A		
<b>IT</b>	- shareholder's meeting: approval - board of directors/executive directors: proposal	- shareholder's meeting: approval - board of directors/executive directors: proposal	- shareholder's meeting: approval - board of directors/executive directors: proposal
<b>LT</b>	shareholders' meeting	shareholders' meeting	shareholders' meeting
<b>LU</b>			
<b>LV</b>	shareholders' meeting	shareholders' meeting	shareholders' meeting

<b>MT</b>	<p>combination: The directors may, before recommending any dividend, set aside out of the profits of the company such sums as they think proper as a reserve or reserves which shall, at the discretion of the directors, be applicable for any purpose to which the profits of the company may be properly applied, and pending such application may, at the like discretion, either be employed in the business of the company or be invested in such investments, other than shares of the company, as the directors may from time to time think fit.</p> <p>The company in general meeting may declare dividends, but no dividend shall exceed the amount recommended by the directors.</p>		
<b>NL</b>	<p>- shareholders' meeting: YES, but possible to mitigate in articles of assoc. supervisory board or executives can propose  - board of directors/executive directors: see above  - supervisory board/non-executive directors: see above</p>		
<b>NO</b>			
<b>PL</b>	shareholders' meeting	shareholders' meeting	<p>- shareholders' meeting: for limited liability company  In other companies owners/partners determine the appropriation of the individual net profit.</p>
<b>PT</b>			
<b>RO</b>			
<b>SE</b>	<p>- shareholders' meeting  - supervisory board/non-executive directors: N/A</p>	<p>- shareholders' meeting: as listed entities  - board of directors/executive directors: as listed entities  - supervisory board/non-executive directors: N/A</p>	
<b>SI</b>	combination: the shareholders' meeting only if the individual accounts are not accepted by the supervisory board		
<b>SK</b>	shareholders' meeting	shareholders' meeting	shareholders' meeting
<b>UK</b>	<p>- shareholders' meeting: see below  - board of directors/the executive directors: the directors may pay interim dividends on their own authority. see below regarding final dividends  - supervisory board/non-executive directors: N/A  - combination: the directors make recommendations to shareholders, regarding final dividends, which shareholders are asked to approve</p>		



- f) What part of the equity is not available for distribution:
- minimum capital? YES/NO
  - specific reserves? YES/NO
  - other? YES/NO

country	public listed company	public unlisted company	private company
<b>AT</b>	- minimum capital - specific reserves - other	- minimum capital - specific reserves - other	- minimum capital - specific reserves - other
<b>BE</b>	- minimum capital: NO (not distributed) - specific reserves: NO - other: ...	- minimum capital: NO - specific reserves: NO - other: ...	- minimum capital: NO - specific reserves: NO - other: ...
<b>BG</b>			
<b>CH</b>	- minimum capital - specific reserves: YES (general statutory reserves up to 50% of nominal share capital) - other: other statutory reserves		
<b>CY</b>	- minimum capital - specific reserves - other	- minimum capital - specific reserves - other	- minimum capital - specific reserves - other
<b>CZ</b>	- minimum capital: not available - specific reserves: not available - other: legal reserve fund and other funds based on articles of associations not available		
<b>DE</b>	- minimum capital - specific reserves - other	See left	See left
<b>DK</b>	- minimum capital - specific reserves - other: depending on the articles of incorporation		
<b>EE</b>			

<b>ES</b>	<ul style="list-style-type: none"> <li>- minimum capital</li> <li>- specific reserves: MAYBE, depending on articles of incorporation</li> <li>- other: lawful reserve</li> </ul>		
<b>FI</b>	<ul style="list-style-type: none"> <li>- minimum capital</li> </ul>	<ul style="list-style-type: none"> <li>- minimum capital</li> </ul>	<ul style="list-style-type: none"> <li>- minimum capital</li> <li>- specific reserves: premium fund, reserve fund and revaluation reserve</li> </ul>
<b>FR</b>	<ul style="list-style-type: none"> <li>- minimum capital</li> <li>- specific reserves</li> </ul>	<ul style="list-style-type: none"> <li>- minimum capital</li> <li>- specific reserves</li> </ul>	<ul style="list-style-type: none"> <li>- minimum capital</li> <li>- specific reserves</li> </ul>
<b>GR</b>	<ul style="list-style-type: none"> <li>- minimum capital</li> <li>- specific reserves</li> <li>- other</li> </ul>	<ul style="list-style-type: none"> <li>- minimum capital</li> <li>- specific reserves</li> <li>- other</li> </ul>	/
<b>HU</b>	<ul style="list-style-type: none"> <li>- minimum capital</li> <li>- specific reserves</li> <li>- other: profit after tax and profit reserve are available</li> </ul>		
<b>IE</b>	<ul style="list-style-type: none"> <li>- minimum capital</li> <li>- specific reserves</li> <li>- other: maybe</li> </ul>	<ul style="list-style-type: none"> <li>- minimum capital</li> <li>- specific reserves</li> <li>- other: maybe</li> </ul>	<ul style="list-style-type: none"> <li>- minimum capital</li> <li>- specific reserves</li> <li>- other: maybe</li> </ul>
<b>IT</b>	<ul style="list-style-type: none"> <li>- minimum capital</li> <li>- specific reserves</li> </ul>	<ul style="list-style-type: none"> <li>- minimum capital</li> <li>- specific reserves</li> </ul>	<ul style="list-style-type: none"> <li>- minimum capital</li> <li>- specific reserves</li> </ul>
<b>LT</b>	<ul style="list-style-type: none"> <li>- minimum capital: ½ minimum capital</li> <li>- specific reserves</li> </ul>	<ul style="list-style-type: none"> <li>- minimum capital: ½ minimum capital</li> <li>- specific reserves</li> </ul>	<ul style="list-style-type: none"> <li>- minimum capital: ½ minimum capital</li> <li>- specific reserves</li> </ul>
<b>LU</b>			
<b>LV</b>	<ul style="list-style-type: none"> <li>- minimum capital</li> <li>- specific reserves</li> <li>- other: depends on the purpose of the reserve</li> </ul>	<ul style="list-style-type: none"> <li>- minimum capital</li> <li>- specific reserves</li> <li>- other: depends on the purpose of the reserve</li> </ul>	<ul style="list-style-type: none"> <li>- minimum capital</li> <li>- specific reserves</li> <li>- other: depends on the purpose of the reserve</li> </ul>
<b>MT</b>	<ul style="list-style-type: none"> <li>- minimum capital</li> <li>- specific reserves</li> <li>- other: capital redemption reserve and share premium as explained above</li> </ul>		
<b>NL</b>	<ul style="list-style-type: none"> <li>- minimum capital: YES (this means “not available”)</li> </ul>	<ul style="list-style-type: none"> <li>- minimum capital: YES</li> </ul>	<ul style="list-style-type: none"> <li>- minimum capital: YES</li> </ul>

	- specific reserves: YES, legally non-distributable reserves and if so prescribed, reserves as mentioned in the articles of association  - other: NO (this means “available”)	- specific reserves: YES, legally non-distributable reserves and if so prescribed, reserves as mentioned in the articles of association  - other: NO	- specific reserves: YES, legally non-distributable reserves and if so prescribed, reserves as mentioned in the articles of association  - other: NO
<b>NO</b>			
<b>PL</b>	- minimum capital  - specific reserves: the sums to be divided among the shareholders  - other: may not exceed the profits for the previous financial year, increased by the undivided profits from previous years and by the sums drawn from the supplementary reserve and reserve capitals created out of profits which may be allocated for dividends. That amount shall be reduced by uncovered losses, own shares and by the sums which according to the law or the statutes should be allocated, from the profits for the previous financial year, to the supplementary reserve or reserve capitals.	- minimum capital  - specific reserves: the sums to be divided among the shareholders  - other: may not exceed the profits for the previous financial year, increased by the undivided profits from previous years and by the sums drawn from the supplementary reserve and reserve capitals created out of profits which may be allocated for dividends. That amount shall be reduced by uncovered losses, own shares and by the sums which according to the law or the statutes should be allocated, from the profits for the previous financial year, to the supplementary reserve or reserve capitals.	- minimum capital  - specific reserves: the sums to be divided among the shareholders  - other: may not exceed the profits for the previous financial year, increased by the undivided profits from previous years and by the sums drawn from the supplementary reserve and reserve capitals created out of profits which may be divided. That amount shall be reduced by uncovered losses, own shares and by the sums which according to the law or the articles of association should be allocated, from the profits for the previous financial year, to the supplementary reserve or reserve capitals (for limited liability company). - N/A (for other companies).
<b>PT</b>			
<b>RO</b>			
<b>SE</b>	- minimum capital - specific reserves	- minimum capital: as listed entities - specific reserves: as listed entities	- minimum capital: as listed entities - specific reserves: as listed entities
<b>SI</b>	- minimum capital - specific reserves	- minimum capital - specific reserves	- minimum capital - specific reserves

<b>SK</b>	minimum capital	minimum capital	minimum capital
<b>UK</b>	- minimum capital - specific reserves: yes-share premium account and capital redemption reserve	- minimum capital - specific reserves: yes-share premium account and capital redemption reserve	- minimum capital - specific reserves: yes-share premium account and capital redemption reserve

g) Are the shareholders entitled to the remaining annual net profit after building up reserves? YES/NO

<b>country</b>	<b>public listed company</b>	<b>public unlisted company</b>	<b>private company</b>
<b>AT</b>	YES	YES	YES
<b>BE</b>	YES (not automatically)	YES	YES
<b>BG</b>			
<b>CH</b>	YES	YES	YES
<b>CY</b>	YES	YES	YES
<b>CZ</b>	YES, if requirements regarding minimum amount of equity is met (refer to 4.2.e)	YES, if requirements regarding minimum amount of equity is met (refer to 4.2.e)	YES, if requirements regarding minimum amount of equity is met (refer to 4.2.e)
<b>DE</b>	YES	YES	YES
<b>DK</b>	YES	YES	YES
<b>EE</b>			
<b>ES</b>	YES, but restricted to the amount the directors will recommend for distribution		
<b>FI</b>	Not automatically, the shareholders' meeting decides on the distribution of profit.		
<b>FR</b>	YES	YES	YES
<b>GR</b>	YES	YES	/
<b>HU</b>	YES	YES	YES
<b>IE</b>	YES, subject to limit at (e) above	YES, subject to limit at (e) above	YES, subject to limit at (e) above
<b>IT</b>	YES	YES	YES
<b>LT</b>	YES	YES	YES
<b>LU</b>			
<b>LV</b>	YES	YES	YES
<b>MT</b>	YES – but only to the extent of dividends proposed by the directors.		

<b>NL</b>	YES, but can be mitigated.	YES, but can be mitigated.	YES, but can be mitigated.
<b>NO</b>			
<b>PL</b>	YES	YES	YES
<b>PT</b>			
<b>RO</b>			
<b>SE</b>	YES: but restricted to the amount the Board will recommend for distribution or the possibly lower amount that can be distributed without affecting the company's future business in a negative way. In special circumstances a distribution can exceed the Board's recommendation if a minority of shareholders so require.	as listed entities	as listed entities
<b>SI</b>	YES	YES	YES
<b>SK</b>	YES	/	/
<b>UK</b>	NO	NO	NO

h) Are the rules regarding the purchase of own shares related to the rules for distribution of profit?

country	public listed company	public unlisted company	private company
<b>AT</b>	YES	YES	YES
<b>BE</b>	YES	YES	YES
<b>BG</b>			
<b>CH</b>	indirectly yes	indirectly yes	indirectly yes
<b>CY</b>	NO	NO	NO
<b>CZ</b>	Special legal reserve fund must be created to cover the amount of own shares. It cannot be used for any other purposes.	Special legal reserve fund must be created to cover the amount of own shares. It cannot be used for any other purposes.	* s.r.o: N/A * a.s.: special legal reserve fund must be created to cover the amount of own shares. It cannot be used for any other purposes
<b>DE</b>	YES	YES	YES
<b>DK</b>	YES	YES	YES
<b>EE</b>			
<b>ES</b>	YES	YES	YES
<b>FI</b>	YES	YES	YES
<b>FR</b>	YES - The acquisition of the company's shares shall not have the effect of reducing the share capital to an amount below that of the capital plus the non-distributable reserves. - The company must have reserves, in addition to the statutory reserve, of an amount at least equal to the value of all the shares it holds. - The shares held by the company do not give entitlement to dividends.		
<b>GR</b>	YES	YES	
<b>HU</b>	YES	YES	YES
<b>IE</b>	YES	YES	YES

<b>IT</b>	YES	YES	YES
<b>LT</b>	YES	YES	YES
<b>LU</b>			
<b>LV</b>	YES	YES	YES
<b>MT</b>	YES – Article 106 (e) states that it shall not be possible for the company to acquire any of its own shares except out of the proceeds of a fresh issue of shares made specifically for the purpose or out of profits available for distribution.		
<b>NL</b>	more or less	more or less	more or less
<b>NO</b>			
<b>PL</b>	NO	NO	NO (for limited liability company) - N/A (for other companies).
<b>PT</b>			
<b>RO</b>			
<b>SE</b>	YES	as listed entities	as listed entities
<b>SI</b>	YES	YES	YES
<b>SK</b>	NO	NO	NO
<b>UK</b>	YES – purchase of own shares must be out of distributable profits or the proceed of a fresh issue of shares	YES – purchase of own shares must be out of distributable profits or the proceed of a fresh issue of shares	NO



i. What part of the equity is not available for distribution?

country	public listed company	public unlisted company	private company
<b>AT</b>	see f) above	see f) above	see f) above
<b>BE</b>	share capital + legal reserve + reserve for own shares		
<b>BG</b>			
<b>CH</b>	nominal share capital; general statutory reserves up to 50% of nominal share capital; other statutory reserves		
<b>CY</b>	The original or increased share capital (including share premium) except in cases of reduction of capital.		
<b>CZ</b>	Refer to 4.1.f	refer to 4.1.f	refer to 4.1.f
<b>DE</b>	see f) above	see f) above	see f) above
<b>DK</b>	<p>The following is not available for distribution:</p> <ul style="list-style-type: none"> <li>- Revaluation reserve</li> <li>- Reserve for net revaluation according to the equity method</li> <li>- Reserve for treasury shares</li> <li>- Reserve for fair value of investment assets</li> </ul> <p>Reserve for fair value of biological assets</p>		
<b>EE</b>			
<b>ES</b>	Related to h): reserves by an amount equal to the acquisition cost of own shares are not available for distribution.		
<b>FI</b>	share capital, premium fund, reserve fund and revaluation reserve		
<b>FR</b>	capital, legal reserves, statutory reserves as determined in the articles of incorporation		
<b>GR</b>	The amount necessary to cover up: specific reserves that may not be reduced and the company's own shares purchased	The amount necessary to cover up: The capital, specific reserves that may not be reduced and the company's own shares purchased, plus the amount of expenses on the balance sheet	
<b>HU</b>	see question f	see question f	see question f
<b>IE</b>	see question f	see question f	see question f

<b>IT</b>	see question f	see question f	see question f
<b>LT</b>	see question f	see question f	see question f
<b>LU</b>			
<b>LV</b>	see question f	see question f	see question f
<b>MT</b>	see question f		
<b>NL</b>	The par value of the share increased with the amount of the legally non-distributable reserves and the reserves mentioned in the articles of assoc.		
<b>NO</b>			
<b>PL</b>	<p>see question f</p> <p>- minimum capital</p> <p>- specific reserves and other: The sums to be divided among the shareholders may not exceed the profits for the previous financial year, increased by the undivided profits from previous years and by the sums drawn from the supplementary reserve and reserve capitals created out of profits which may be allocated for dividends. That amount shall be reduced by uncovered losses, own shares and by the sums which according to the law or the statutes should be allocated, from the profits for the previous financial year, to the supplementary reserve or reserve capitals.</p>	<p>see question f</p> <p>- minimum capital</p> <p>- specific reserves and other: The sums to be divided among the shareholders may not exceed the profits for the previous financial year, increased by the undivided profits from previous years and by the sums drawn from the supplementary reserve and reserve capitals created out of profits which may be allocated for dividends. That amount shall be reduced by uncovered losses, own shares and by the sums which according to the law or the statutes should be allocated, from the profits for the previous financial year, to the supplementary reserve or reserve capitals.</p>	<p>see question f</p> <p>- minimum capital: YES for limited liability company - N/A for other companies</p> <p>- specific reserves and other: The sums to be divided among the shareholders may not exceed the profits for the previous financial year, increased by the undivided profits from previous years and by the sums drawn from the supplementary reserve and reserve capitals created out of profits which may be divided. That amount shall be reduced by uncovered losses, own shares and by the sums which according to the law or the articles of association should be allocated, from the profits for the previous financial year, to the supplementary reserve or reserve capitals (for limited liability company). - N/A for other companies</p>
<b>PT</b>			

<b>RO</b>			
<b>SE</b>	share capital, revaluation reserve and legal fund (no further appropriations required from 2006)	as listed entities	as listed entities
<b>SI</b>	capital and legal reserves; statutory reserves as determined in statute	capital and legal reserves; statutory reserves as determined in statute	capital and legal reserves; statutory reserves as determined in statute
<b>SK</b>	minimum capital	minimum capital	minimum capital
<b>UK</b>	unrealised profits	unrealised profits	unrealised profits

j. Is there a direct relation between distributable reserves and profit? **YES/NO**

<b>country</b>	<b>public listed company</b>	<b>public unlisted company</b>	<b>private company</b>
<b>AT</b>	YES	YES	YES
<b>BE</b>	NO	NO	NO
<b>BG</b>			
<b>CH</b>	YES	YES	YES
<b>CY</b>	YES	YES	YES
<b>CZ</b>	YES	YES	YES
<b>DE</b>	YES	YES	YES
<b>DK</b>	NO	NO	NO
<b>EE</b>			
<b>ES</b>	NO, only there is a indirect relation	NO, only there is a indirect relation	NO, only there is a indirect relation

<b>FI</b>	YES	YES	YES
<b>FR</b>	<p>YES</p> <ul style="list-style-type: none"> <li>- The distributable profit consists of the profit for the period, less the losses brought forward, plus the sums carried forward pursuant to the law or the memorandum and articles of association, plus the profit brought forward.</li> <li>- The general meeting may, moreover, decide to distribute sums taken from the reserves available to it. In which case, the decision expressly indicates the reserve headings from which they are taken. The dividends are nevertheless taken primarily from the distributable profit for the period.</li> </ul>		
<b>GR</b>	YES	YES	/
<b>HU</b>	YES	YES	YES
<b>IE</b>	NO	NO	NO
<b>IT</b>	NO	NO	NO
<b>LT</b>	YES	YES	YES
<b>LU</b>			
<b>LV</b>	NO	NO	NO
<b>MT</b>	YES – Article 192 (3) – Only realised profits may be distributed to the extent that a distribution does not result in the net assets of the company being less than the aggregate of its called-up issued share capital and un-distributable reserves (article 193.1)		YES – Article 192 (3) – only realised profits may distributed
<b>NL</b>	NO	NO	NO
<b>NO</b>			
<b>PL</b>	A supplementary reserve shall be created so that loss can be financed; at least 8% of the profits for a given financial year shall be transferred to the supplementary reserve until such reserve reaches at least one third of the share capital. This part of the supplementary reserve must not be distributed.		- NO for limited liability company - N/A for other companies
<b>PT</b>			
<b>RO</b>			
<b>SE</b>	NO, the distribution must first pass a test that the distribution will affect the	as listed entities	as listed entities

	company's future business in a negative way.		
<b>SI</b>	YES	YES	YES
<b>SK</b>	NO	NO	NO
<b>UK</b>	YES	YES	YES

k) Do the rules (the conditions) differ regarding the class of shares (e.g. for ordinary shares and preference shares)? YES/NO

<b>country</b>	<b>public listed company</b>	<b>public unlisted company</b>	<b>private company</b>
<b>AT</b>	YES, preference shares receive a preferred dividend	YES, preference shares receive a preferred dividend	NO, preference shares are not allowed
<b>BE</b>	NO	NO	NO
<b>BG</b>			
<b>CH</b>	NO	NO	NO
<b>CY</b>	YES	YES	YES
<b>CZ</b>	YES	YES	YES – a.s. N/A – s.r.o.
<b>DE</b>	YES, e.g. preference shares receive a preferred dividend	YES, see left	YES.
<b>DK</b>	MAYBE, depending on the articles of incorporation	MAYBE, depending on the articles of incorporation	MAYBE, depending on the articles of incorporation
<b>EE</b>			
<b>ES</b>	YES	YES	YES
<b>FI</b>	YES. The Articles of Association may stipulate that the company shall or may have shares with different rights. The shares of different		

	classes may differ from each other with regard to one of the following two rights: 1) the number of votes attached to the share or 2) the right attached to the share in the distribution of the assets of the company.		
<b>FR</b>	YES / MAYBE	YES / MAYBE	YES / MAYBE
<b>GR</b>	YES	YES	/
<b>HU</b>	YES	YES	YES
<b>IE</b>	Preference shares are only entitled to a specified amount/rate regardless of how profitable the company is. Preference dividends may be cumulative.		
<b>IT</b>	YES	YES	YES
<b>LT</b>	YES	YES	YES
<b>LU</b>			
<b>LV</b>	YES	YES	YES
<b>MT</b>	If the term “rules” in the question is referring to general distribution rules prescribed by law, there are no differences regarding classes of shares.		
<b>NL</b>	NO, depends on the conditions related to preference shares	NO, depends on the conditions related to preference shares	NO, depends on the conditions related to preference shares
<b>NO</b>			
<b>PL</b>	YES	YES	- YES for limited liability company - NO for other companies
<b>PT</b>			
<b>RO</b>			
<b>SE</b>	YES	as listed entities	as listed entities
<b>SI</b>	YES	YES	YES
<b>SK</b>	NO	NO	NO
<b>UK</b>	usually YES (where there are different classes of shares)	usually YES (where there are different classes of shares)	usually YES (where there are different classes of shares)

1) Who is liable in case of violation of the rules relating to distribution of profit:

- the board of directors/the executive directors? YES/NO
- the supervisory board/non executive directors? YES/NO
- shareholders? YES/NO
- others?

country	public listed company	public unlisted company	private company
<b>AT</b>	- board of directors/executive directors: YES, to the company  - supervisory board/non executive directors: YES, to the company, together with the board of directors	- board of directors/executive directors: YES, to the company  - supervisory board/non executive directors: YES, to the company, together with the board of directors	- board of directors/executive directors: YES, to the company  - supervisory board/non executive directors: YES, to the company, together with the board of directors
<b>BE</b>	- board of directors/executive directors: YES (on their proposal to the general meeting of shareholders)  - supervisory board/non executive directors	- board of directors/executive directors: YES (on their proposal to the general meeting of shareholders)  - supervisory board/non executive directors	- board of directors/executive directors: YES (on their proposal to the general meeting of shareholders)  - supervisory board/non executive directors
<b>BG</b>			
<b>CH</b>	- board of directors/the executive directors - shareholders: reimbursement - other: auditors	- board of directors/the executive directors - shareholders: reimbursement - other: auditors	- board of directors/the executive directors - shareholders: reimbursement - other: auditors
<b>CY</b>	board of directors/executive directors	board of directors/executive directors	board of directors/executive directors
<b>CZ</b>	- board of directors/executive directors: e.g. responsible for fraudulent accounting  - supervisory board/non-executive	- board of directors/executive directors: e.g. responsible for fraudulent accounting  - supervisory board/non-executive	- board of directors/the executive directors: e.g. responsible for fraudulent accounting  - supervisory board/non-executive

	<p>directors: e.g. responsible for fraudulent accounting</p> <p>- shareholders: e.g. responsible for fraudulent accounting (rare cases)</p>	<p>directors: e.g. responsible for fraudulent accounting</p> <p>- shareholders: e.g. responsible for fraudulent accounting (rare cases)</p>	<p>directors: e.g. responsible for fraudulent accounting</p> <p>- shareholders: e.g. responsible for fraudulent accounting (rare cases)</p>
<b>DE</b>	<p><b>board of directors/executive directors/management board:</b> YES, to the company (Members of the management board who violate their duties shall be jointly and severally liable to the company for any resulting damage, § 93 AktG).</p> <p><b>supervisory board/non executive directors:</b> YES, towards the company (§ 93 AktG analog)</p>	<p>See left.</p>	<p><b>board of directors/executive directors/management board:</b> Yes, towards the company. (managing directors who are in breach of their duties are jointly and severally liable to the company for damages sustained (§ 43 GmbHG).</p>
<b>DK</b>	<p>- supervisory board/non-executive directors</p> <p>- shareholders: if the shareholders realised or ought to have realised that the payment was illegal</p>	<p>- supervisory board/non-executive directors</p> <p>- shareholders: if the shareholders realised or ought to have realised that the payment was illegal</p>	<p>- supervisory board/non-executive directors</p> <p>- shareholders: if the shareholders realised or ought to have realised that the payment was illegal</p>
<b>EE</b>			
<b>ES</b>	<p>- board of directors/executive directors</p> <p>- supervisory board/non executive directors</p> <p>- shareholders: YES, as long as they were aware of the violation or, under circumstances, they could not ignore the violation.</p> <p>- others: N/A</p>	<p>- board of directors/executive directors</p> <p>- supervisory board/non executive directors</p> <p>- shareholders: YES, as long as they were aware of the violation or, under circumstances, they could not ignore the violation.</p> <p>- others: N/A</p>	<p>- board of directors/executive directors</p> <p>- supervisory board/non executive directors</p> <p>- shareholders: YES, as long as they were aware of the violation or, under circumstances, they could not ignore the violation.</p> <p>- others: N/A</p>



<b>FI</b>	A shareholder shall be liable to return any assets he has obtained from the company against the provisions of this Act together with an annual interest unless he had a justified reason to assume that the distribution of the funds took place in accordance with this Act.		
	Liability for any deficiency existing after the repayment shall lie with those who have participated in the making or implementation of the decision to distribute the assets or in the preparation or adoption of the faulty balance sheet.		
<b>FR</b>	- board of directors/the executive directors: YES - supervisory board/non executive directors: NO - shareholders: NO - Except in case of majority abuse although, in practical terms it is rarely recognized by case law		
<b>GR<sup>14</sup></b>	- board of directors/executive directors: YES, if they present faulty accounts - supervisory board/non-executive directors: YES, if they present faulty accounts - shareholders: Yes, if they knew about the violation of the rules - others: auditors		
<b>HU</b>	- board of directors/ executive directors - supervisory board/ non-executive directors - others: auditor	- board of directors/ executive directors - supervisory board/ non-executive directors - others: auditor	- board of directors/ executive directors - supervisory board/ non-executive directors - others: auditor
<b>IE</b>	others: YES, if 'knew or had reasonable grounds for believing' that distribution was unlawful.	others: YES, if 'knew or had reasonable grounds for believing' that distribution was unlawful.	others: YES, if 'knew or had reasonable grounds for believing' that distribution was unlawful.
<b>IT</b>	- board of directors/executive directors - supervisory board/non executive directors	- board of directors/executive directors - supervisory board/non executive directors	- board of directors/executive directors - supervisory board/non executive directors
<b>LT</b>	others	others	others
<b>LU</b>			
<b>LV</b>	- board of directors/executive directors - supervisory board/non-executive directors - shareholders	- board of directors/executive directors - supervisory board/non-executive directors - shareholders	- board of directors/executive directors - supervisory board/non-executive directors - shareholders
<b>MT</b>	- board of directors/ executive directors - supervisory board/non-executive directors: where supervisory/non-executive directors have been appointed these may be exposed to		

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<sup>14</sup> GR : article 57

	proceedings for professional negligence. - shareholders: corporate veil may be lifted by the courts and the shareholders may be exposed to personal liability proceedings by third party creditors.		
<b>NL</b>	- board of directors/executive directors - supervisory board/non-executive directors - shareholders: no, however if they did or ought to know they can be held liable	- board of directors/executive directors - supervisory board/non-executive directors - shareholders: no, however if they did or ought to know they can be held liable	- board of directors/executive directors - supervisory board/non-executive directors - shareholders: no, however if they did or ought to know they can be held liable
<b>NO</b>			
<b>PL</b>	- board of directors/executive directors - supervisory board/ non-executive directors  - shareholders: NO (unless shareholders are directors/the executive directors/members of the supervisory board/non executive directors)  - other: employee of the company who violated the rules	- board of directors/executive directors - supervisory board/ non-executive directors  - shareholders: NO (unless shareholders are directors/the executive directors/members of the supervisory board/non executive directors)  - other: employee of the company who violated the rules	- board of directors/executive directors  - supervisory board/ non-executive directors: YES (for limited liability company) - N/A (for other companies).  - shareholders: NO (unless shareholders are directors/the executive directors/members of the supervisory board/non executive directors).  - other: employee of the company who violated the rules
<b>PT</b>			
<b>RO</b>			
<b>SE</b>	- board of directors/executive directors - supervisory board/non executive directors - shareholders - others	- board of directors/executive directors: as listed entities - supervisory board/non executive directors: as listed entities - shareholders: as listed entities - others: as listed entities	- board of directors/executive directors: as listed entities - supervisory board/non executive directors: as listed entities - shareholders: as listed entities - others: as listed entities
<b>SI</b>	- board of directors/executive directors: where the directors are shareholders they are liable to repay dividends where they know that they are illegal. Also see m and n below		

	- supervisory board/non executive directors: yes, to the company		
	- shareholders: are liable to repay dividends where they know that they are illegal		
<b>SK</b>	board of directors/executive directors	board of directors/executive directors	board of directors/executive directors
<b>UK</b>	shareholders are liable to repay dividends but only when they know that they are illegal		

m) What are the civil and or criminal sanctions if the rules regarding distributions are violated?

<b>country</b>	<b>public listed company</b>	<b>public unlisted company</b>	<b>private company</b>
<b>AT</b>	compensation for damages	compensation for damages	compensation for damages
<b>BE</b>	pecuniary and criminal sanctions may be imposed	pecuniary and criminal sanctions may be imposed	pecuniary and criminal sanctions may be imposed
<b>BG</b>			
<b>CH</b>	civil liability	civil liability	civil liability
<b>CY</b>	There are specific provisions for specific sanctions in the Companies Law, the Criminal Code and the Civil Wrongs Law		
<b>CZ</b>	Members of supervisory and statutory bodies are responsible for damages caused to company in accordance with the commercial law. Criminal sanctions are in accordance with the criminal code.		
<b>DE</b>	compensation for damages/ civil liability	See elft	See left
<b>DK</b>	In the event that distributions have been made to the shareholders in contravention of the provisions of the The Danish Public Companies Act, such shareholders shall repay the amounts received plus interest. With respect to the payment of dividend, these rules shall only apply if the shareholder realised or ought to have realised that the payment was illegal.		
<b>EE</b>			
<b>ES</b>	The board of directors is responsible of the violations of the rules, in civil, commercial or criminal way; the sanctions are different depending on the violation and the claim way. The shareholders should reimburse the amounts unduly received as long as they were aware of the violation or, under circumstance, they could not ignore the violation.		
<b>FI</b>	A founder, a member of the Board of Directors or a Supervisory Board and the Managing Director shall be liable to compensate all		

	<p>damage caused to the company in office either wilfully or negligently. The same shall apply to damage caused to a shareholder or a third person by an act infringing the Companies Act or the Articles of Association.</p> <p>A shareholder shall be liable to compensate a damage caused to the company, a shareholder or a third person to which he has contributed through a wilful or grossly negligent act infringing the Companies Act or the Articles of Association.</p> <p>The adjustment of damages as well as the allocation of the liability in damages among two or more persons liable for the damages shall be governed by the provisions of the Damages Act.</p>		
<b>FR</b>	civil liability and criminal sanctions provided by the code of commerce		
<b>GR</b>	- directors: imprisonment and penal sum - shareholders: returning of dividends	/	
<b>HU</b>	It depends on the type and size of errors.	It depends on the type and size of errors.	It depends on the type and size of errors.
<b>IE</b>	If shareholder 'knew' he/she must repay dividend/s.	If shareholder 'knew' he/she must repay dividend/s.	If shareholder 'knew' he/she must repay dividend/s.
<b>IT</b>	relating to civil liability for damages to shareholders and creditors and third parties and criminal liability (1 year of arrest)		
<b>LT</b>	criminal sanctions with the possibility of imprisonment	criminal sanctions with the possibility of imprisonment	criminal sanctions with the possibility of imprisonment
<b>LU</b>			
<b>LV</b>	/	/	/
<b>MT</b>	<p>* exposure to civil proceedings for professional negligence, misconduct</p> <p>* exposure to criminal proceedings in cases of fraudulent activity, wrongful trading</p> <p>* punishments range from a fine of € 46,587 or imprisonment for a term of not more than 3 years or to both fine and imprisonment, or a fine of € 232,937 or imprisonment for a term not more than 5 years or both. Article 147 also provides that the directors are generally jointly and severally personally liable in damages for any breach of duty.</p>		
<b>NL</b>	No criminal action other than in case of bankruptcy if swindle can be proved, otherwise civil liability		
<b>NO</b>			
<b>PL</b>	<p>- On the ground of the civil code the law court may require the company to pay the due amount (plus interest).</p> <p>- On the grounds of the criminal law the following sanctions may be imposed: fine, limitation of the liberty or imprisonment for a term.</p>		
<b>PT</b>			

<b>RO</b>			
<b>SE</b>	Civil sanctions only; received distribution shall be repaid and anyone who has participated in the decision to distribute shall cover any loss in the recovery of the distribution.	/	/
<b>SI</b>	civil law suit	civil law suit	civil law suit
<b>SK</b>	board of directors	board of directors	board of directors
<b>UK</b>	no specific sanctions, though where a company goes into liquidation, the liquidator may pursue the directors for the funds paid out	no specific sanctions, though where a company goes into liquidation, the liquidator may pursue the directors for the funds paid out	no specific sanctions, though where a company goes into liquidation, the liquidator may pursue the directors for the funds paid out

- n) Have third parties any possibilities for legal action against:
- the board of directors/the executive directors? YES/NO
  - the supervisory board/non executive directors? YES/NO
  - the company? YES/NO

<b>country</b>	<b>public listed company</b>	<b>public unlisted company</b>	<b>private company</b>
<b>AT</b>	NO, only the company itself has such possibilities (in cases of any violations of the rules regarding distributions)	NO, only the company itself has such possibilities (in cases of any violations of the rules regarding distributions)	NO, only the company itself has such possibilities (in cases of any violations of the rules regarding distributions)
<b>BE</b>	- board of directors/executive directors: A director is liable to the company and third parties for negligent acts made in the course of his duties. Directors are jointly and severally liable for violation of the articles of association and the Companies Code.	- board of directors/executive directors: A director is liable to the company and third parties for negligent acts made in the course of his duties. Directors are jointly and severally liable for violation of the articles of association and the Companies Code.	- board of directors/executive directors: A director is liable to the company and third parties for negligent acts made in the course of his duties. Directors are jointly and severally liable for violation of the articles of association and the Companies Code.

	- supervisory board/non executive directors - company	- supervisory board/non executive directors - company	- supervisory board/non executive directors - company
<b>BG</b>			
<b>CH</b>	- board of directors/executive directors: YES (in case of bankruptcy) - supervisory board/non executive directors: NO / YES (in case of bankruptcy)	- board of directors/executive directors: YES (in case of bankruptcy) - supervisory board/non executive directors: NO / YES (in case of bankruptcy)	- board of directors/executive directors: YES (in case of bankruptcy) - supervisory board/non executive directors: NO / YES (in case of bankruptcy)
<b>CY</b>	- board of directors/executive directors - supervisory board/non-executive directors - company	- board of directors/executive directors - supervisory board/non-executive directors - company	- board of directors/executive directors - supervisory board/non-executive directors - company
<b>CZ</b>	- board of directors/executive directors: YES - supervisory board/non-executive directors: YES - company: YES	- board of directors/executive directors: YES - supervisory board/non-executive directors: YES - company: YES	- board of directors/executive directors: YES - the supervisory board/non-executive directors: YES - company: YES
<b>DE</b>	NO, only the company itself has such possibilities (e.g. in cases of any violations of the rules regarding distributions)  In cases of damages, those parties suffering a loss have to address their claims for compensation for damages directly to the company, and in turn, the company itself can claim compensation for damages from the (management/supervisory) board members.	See left	See left.
<b>DK</b>	supervisory board/non-executive directors	supervisory board/non-executive directors	supervisory board/non-executive directors

<b>EE</b>			
<b>ES</b>	- board of directors/executive directors - supervisory board/non executive directors	- board of directors/executive directors - supervisory board/non executive directors	- board of directors/executive directors - supervisory board/non executive directors
<b>FI</b>	- board of directors/executive directors: see above - supervisory board/non-executive directors: see above - company: yes	- board of directors/executive directors: see above - supervisory board/non-executive directors: see above - company: yes	- board of directors/executive directors: see above - the supervisory board/non-executive directors: see above - the company: yes
<b>FR</b>	- board of directors/executive directors: YES - Only in the case of personal misconduct or failure of the directors. In other cases, action should be launched against the company - supervisory board/non executive directors: NO - company: YES		
<b>GR</b>	company	company	/
<b>HU</b>	company	company	company
<b>IE</b>	/	/	/
<b>IT</b>	- board of directors/the executive directors - supervisory board/non executive directors - company	- board of directors/the executive directors - supervisory board/non executive directors - company	- board of directors/executive directors - supervisory board/non executive directors - company
<b>LT</b>	- board of directors/executive director: if their rights are violated - supervisory board/non executive directors: if their rights are violated - company: if their rights are violated	- board of directors/executive director: if their rights are violated - supervisory board/non executive directors: if their rights are violated - company: if their rights are violated	- board of directors/executive director: if their rights are violated - supervisory board/non executive directors: if their rights are violated - company: if their rights are violated
<b>LU</b>			
<b>LV</b>	- board of directors/executive director - supervisory board/non executive - company	- board of directors/executive director - supervisory board/non executive - company	- board of directors/executive director - supervisory board/non executive - company

<b>MT</b>	<ul style="list-style-type: none"> <li>- board of directors/executive directors</li> <li>- supervisory board/ non-executive directors</li> <li>- company</li> </ul>		
<b>NL</b>	<ul style="list-style-type: none"> <li>- board of directors/executive directors</li> <li>- supervisory board/ non-executive directors</li> <li>- company</li> </ul>	<ul style="list-style-type: none"> <li>- board of directors/executive directors</li> <li>- supervisory board/ non-executive directors</li> <li>- company</li> </ul>	<ul style="list-style-type: none"> <li>- board of directors/executive directors</li> <li>- supervisory board/ non-executive directors</li> <li>- company</li> </ul>
<b>NO</b>			
<b>PL</b>	<ul style="list-style-type: none"> <li>- board of directors/executive directors</li> <li>- supervisory board/ non-executive directors</li> <li>- company</li> </ul>	<ul style="list-style-type: none"> <li>- board of directors/executive directors</li> <li>- supervisory board/ non-executive directors</li> <li>- company</li> </ul>	<ul style="list-style-type: none"> <li>- board of directors/executive directors</li> <li>- supervisory board/ non-executive directors</li> <li>- company: YES for limited liability companies - NO for other companies</li> </ul>
<b>PT</b>			
<b>RO</b>			
<b>SE</b>	<ul style="list-style-type: none"> <li>- board of directors/executive directors</li> <li>- supervisory board/non executive directors: N/A</li> </ul>	<ul style="list-style-type: none"> <li>- board of directors/executive directors: as listed entities</li> <li>- supervisory board/non executive directors: as listed entities</li> <li>- company: as listed entities</li> </ul>	<ul style="list-style-type: none"> <li>- board of directors/executive directors: as listed entities</li> <li>- supervisory board/non executive directors: as listed entities</li> <li>- company: as listed entities</li> </ul>
<b>SI</b>	<ul style="list-style-type: none"> <li>- board of directors/executive directors</li> <li>- supervisory board/non executive directors</li> <li>- company</li> <li>- indirectly with the law suite against the company</li> </ul>	<ul style="list-style-type: none"> <li>- board of directors/executive directors</li> <li>- supervisory board/non executive directors</li> <li>- company</li> <li>- indirectly with the law suite against the company</li> </ul>	<ul style="list-style-type: none"> <li>- board of directors/executive directors</li> <li>- supervisory board/non executive directors</li> <li>- company</li> <li>- indirectly with the law suite against the company</li> </ul>
<b>SK</b>	board of directors/executive directors	board of directors/executive directors	board of directors/executive directors
<b>UK</b>	as above	as above	as above



o) In relation to increases in equity:

- are there any drawing rights? (e.g. do existing shareholders have the right to subscribe capital before new shareholders)? YES/NO
- what are the valuation concepts?

<b>country</b>	<b>public listed company</b>	<b>public unlisted company</b>	<b>private company</b>
<b>AT</b>	- drawing rights - valuation concepts: not explicitly ruled	- drawing rights - valuation concepts: not explicitly ruled	- drawing rights - valuation concepts: not explicitly ruled
<b>BE</b>	- by drawing rights - valuation concepts: not defined in the law	- by drawing rights - valuation concepts: not defined in the law	- by drawing rights - valuation concepts: not defined in the law
<b>BG</b>			
<b>CH</b>	- drawing rights - valuation concepts: fair values if drawing rights are excluded	- drawing rights - valuation concepts: fair values if drawing rights are excluded	- drawing rights - valuation concepts: fair values if drawing rights are excluded
<b>CY</b>	drawing rights	drawing rights	drawing rights
<b>CZ</b>	- drawing rights: with certain limitations - valuation concepts: drawing rights in proportion to the share on the basic capital	- drawing rights: with certain limitations - valuation concepts: drawing rights in proportion to the share on the basic capital	- drawing rights: with certain limitations - valuation concepts: drawing rights in proportion to the share on the basic capital
<b>DE</b>	- drawing rights: YES - valuation concept: drawing rights in proportion to the share on the basic capital to avoid reserves dilution.	See left	See left
<b>DK</b>	YES, the existing shareholders have the right to subscribe capital before new shareholders.	YES, the existing shareholders have the right to subscribe capital before new shareholders.	YES, the existing shareholders have the right to subscribe capital before new shareholders.
<b>EE</b>			
<b>ES</b>	- drawing rights - valuation concepts: to avoid reserves dilution	- drawing rights - valuation concepts: to avoid reserves dilution	- drawing rights - valuation concepts: to avoid reserves dilution

<b>FI</b>	<p>YES. When the share capital is raised as well as when option rights are issued or a convertible loan is taken, the shareholders of the company shall have a pre-emptive right to all the new shares as well as to the option rights and convertible loans in proportion to their prior holdings of shares in the company (pre-emptive subscription right).</p> <p>In the case of a new issue as well as when option rights are issued or a convertible loan is taken, the General Meeting of the Shareholders may decide to deviate from the pre-emptive right of subscription if the deviation is justified because of a weighty financial reason of the company.</p>		
<b>FR</b>	<p>- by drawing rights</p> <p>- valuation concepts: Is the question related to the valuation of drawing rights or to the valuation of the company in order to determine the share's subscription price and, thus, the share premium amount ?</p>		
<b>GR</b>	by drawing rights		
<b>HU</b>	/	drawing rights	drawing rights
<b>IE</b>	by drawing rights: YES, but shareholders can give directors authority to waive this for a particular allotment or for a specified amount.	by drawing rights: YES, but shareholders can give directors authority to waive this for a particular allotment or for a specified amount.	by drawing rights: YES, but shareholders can give directors authority to waive this for a particular allotment or for a specified amount.
<b>IT</b>	- drawing rights - valuation concepts: to maintain unchanged the shareholders' interest in the company's capital stock	- drawing rights - valuation concepts: to maintain unchanged the shareholders' interest in the company's capital stock	- drawing rights - valuation concepts: to maintain unchanged the shareholders' interest in the company's capital stock
<b>LT</b>	- drawing rights - valuation concepts: shareholders decision / market price	- drawing rights - valuation concepts: shareholders decision / market price	- drawing rights - valuation concepts: shareholders decision / market price
<b>LU</b>			
<b>LV</b>	drawing rights: NO (excluding preferred stocks)	drawing rights: NO (excluding preferred stocks)	drawing rights: YES
<b>MT</b>	- drawing rights: YES – article 88 - valuation concepts: NO mention in the Companies Act, therefore existing	- drawing rights: YES – article 88 - valuation concepts: NO mention in the Companies Act, therefore existing	- drawing rights: NO specific mention in the Companies Act, however the shareholders of the company may insert the right to pre-emption in the Articles of

	shareholders may buy the new shares on a pre-emptive basis at the issue price.	shareholders may buy the new shares on a pre-emptive basis at the issue price	Association. - valuation concepts: NO mention in the Companies Act, therefore existing shareholders may buy the new shares on a pre-emptive basis at the issue price
<b>NL</b>	- drawing rights - valuation concepts: not regulated	- drawing rights - valuation concepts: not regulated	- drawing rights - valuation concepts: not regulated
<b>NO</b>			
<b>PL</b>	- drawing rights  - valuation concepts: The shares may not be subscribed for below their nominal value (PLN 0,01). Share capital is the nominal value of the shares. If a share is subscribed for at a price higher than the nominal value, the balance shall be transferred to the supplementary reserve.	- drawing rights  - valuation concepts: The shares may not be subscribed for below their nominal value (PLN 0,01). Share capital is the nominal value of the shares. If a share is subscribed for at a price higher than the nominal value, the balance shall be transferred to the supplementary reserve.	- drawing rights: YES (for limited liability company) – NO for other companies  - valuation concepts: The shares may not be subscribed for below their nominal value (PLN 50). Share capital is the nominal value of the shares. If a share is subscribed for at a price higher than the nominal value, the balance shall be transferred to the supplementary reserve (for limited liability company) - N/A for other companies
<b>PT</b>			
<b>RO</b>			
<b>SE</b>	- drawing rights: but with some exemptions - valuation concepts: the valuation of the stock issue price is decided by the general meeting; the valuation concept is not stipulated by law.	- drawing rights: as listed entities - valuation concepts: as listed entities	- drawing rights: as listed entities - valuation concepts: as listed entities
<b>SI</b>	drawing rights	drawing rights	drawing rights
<b>SK</b>	drawing rights: NO	drawing rights: NO	drawing rights: NO
<b>UK</b>	- drawing rights: YES	- drawing rights: YES	- drawing rights: YES, though companies can choose to override them via the

			articles of incorporation
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p) Does a minimum amount or percentage of capital have to be paid in case of increase in equity? YES/NO

country	public listed company	public unlisted company	private company
<b>AT</b>	YES	YES	YES
<b>BE</b>	NO	NO	NO
<b>BG</b>			
<b>CH</b>	NO	NO	NO
<b>CY</b>	YES	YES	YES
<b>CZ</b>	YES	YES	YES
<b>DE</b>	YES	YES	YES
<b>DK</b>	YES (100% have to be paid)	YES (100% have to be paid)	YES (100% have to be paid)
<b>EE</b>			
<b>ES</b>	YES	YES	YES
<b>FI</b>	YES. The amount of payable for the shares as a raise to be registered shall be in the ownership and possession of the company before the amount of the raise can be notified for registration. The share capital shall be deemed to have been raised by the raised lot when the raised lot has been registered.		
<b>FR</b>	YES - 1/4 of nominal value and the whole share premium, if any	YES - 1/4 of nominal value and the whole share premium, if any	YES - SARL: 1/5 of nominal value - SA, SAS, SCA: 1/4 of nominal value and the whole share premium, if any
<b>GR</b>	YES (25%)	YES (25%)	

<b>HU</b>	NO	NO	NO
<b>IE</b>	25% of nominal value of shares and 100% of any premium	25% of nominal value of shares and 100% of any premium	NO
<b>IT</b>	YES (25%)	YES (25%)	YES (25%)
<b>LT</b>	/	/	/
<b>LU</b>			
<b>LV</b>	NO	NO	NO
<b>MT</b>	YES – at least 25 % (article 86)	YES – at least 25 % (article 86)	YES – at least 20 % (article 87)
<b>NL</b>	YES	YES	YES
<b>NO</b>			
<b>PL</b>	YES	YES	- YES for limited liability company - N/A for other companies
<b>PT</b>			
<b>RO</b>			
<b>SE</b>	NO	as listed entities	as listed entities
<b>SI</b>	YES	YES	YES
<b>SK</b>	YES	YES	YES
<b>UK</b>	YES	YES	NO

q) How are dilutions of value safeguarded in a case of a contribution of capital?

<b>country</b>	<b>public listed company</b>	<b>public unlisted company</b>	<b>private company</b>
<b>AT</b>	via drawing rights (see o above)	via drawing rights (see o above)	via drawing rights (see o above)

<b>BE</b>	In some cases, there should be a report by an independent expert and a special decision by the General Assembly [with a special quorum]		
<b>BG</b>			
<b>CH</b>	resolution of shareholders' meeting required; in case of authorised capital: responsibility / liability of board of directors	resolution of shareholders' meeting required; in case of authorised capital: responsibility / liability of board of directors	resolution of shareholders' meeting required
<b>CY</b>	There is no provision.	There is no provision.	There is no provision.
<b>CZ</b>	/	/	/
<b>DE</b>	via drawing rights (see o above)	See left	See left
<b>DK</b>	by regulation in the Danish Company Act (and voting regulations in articles of incorporation)		
<b>EE</b>			
<b>ES</b>	by preferential rights of subscription (drawing rights)		
<b>FI</b>	/	/	/
<b>FR</b>	drawing rights	drawing rights	drawing rights
<b>GR</b>	The amount must be deposited in a special bank account, the Board of Directors must confirm the deposit and the contributions in kind must be evaluated.		
<b>HU</b>	/	/	/
<b>IE</b>	/	/	/
<b>IT</b>	through share premium reserves	through share premium reserves	through share premium reserves
<b>LT</b>	/	/	/
<b>LU</b>			
<b>LV</b>	/	/	/
<b>MT</b>	NO mention in the Companies Act		
<b>NL</b>	by the drawing rights and the need for approval of issuing shares by the AGM		
<b>NO</b>			

<b>PL</b>	<p>A share capital of the limited joint-stock partnership shall be at least PLN 50.000; a minimum share capital of the joint stock company shall be at least PLN 500.000.</p> <p>If the balance sheet drawn up by the management board shows a loss exceeding the aggregate of the supplementary and the reserve capitals and one third of the share capital, the management board shall immediately convene the general assembly so that a resolution on the continued existence of the company can be adopted.</p> <p>The sums to be divided among the shareholders may not exceed the profits for the previous financial year, increased by the undivided profits from previous years and by the sums drawn from the supplementary reserve and reserve capitals created out of profits which may be allocated for dividends. That amount shall be reduced by uncovered losses, own shares and by the sums which according to the law or the statutes should be allocated, from the profits for the previous financial year, to the supplementary reserve or reserve capitals.</p>	<p>A share capital of the limited joint-stock partnership shall be at least PLN 50.000; a minimum share capital of the joint stock company shall be at least PLN 500.000.</p> <p>If the balance sheet drawn up by the management board shows a loss exceeding the aggregate of the supplementary and the reserve capitals and one third of the share capital, the management board shall immediately convene the general assembly so that a resolution on the continued existence of the company can be adopted.</p> <p>The sums to be divided among the shareholders may not exceed the profits for the previous financial year, increased by the undivided profits from previous years and by the sums drawn from the supplementary reserve and reserve capitals created out of profits which may be allocated for dividends. That amount shall be reduced by uncovered losses, own shares and by the sums which according to the law or the statutes should be allocated, from the profits for the previous financial year, to the supplementary reserve or reserve capitals.</p>	<p>A minimum share capital of the company shall be at least PLN 50.000.</p> <p>* for limited liability companies If the balance sheet drawn up by the management board shows a loss exceeding the aggregated supplementary and reserve capitals and half of the share capital, the management board shall immediately convene the general meeting so that a resolution on the continued existence of the company can be adopted</p> <p>The sums to be divided among the shareholders may not exceed the profits for the previous financial year, increased by the undivided profits from previous years and by the sums drawn from the supplementary reserve and reserve capitals created out of profits which may be divided. That amount shall be reduced by uncovered losses, own shares and by the sums which according to the law or the articles of association should be allocated, from the profits for the previous financial year, to the supplementary reserve or reserve capitals</p> <p>* for other companies: N/A</p>
<b>PT</b>			
<b>RO</b>			
<b>SE</b>	The general meeting may not adopt any resolution which is likely to provide an undue advantage to a shareholder or	as listed entities	as listed entities

	another person to the disadvantage of the company or another shareholder.		
<b>SI</b>	The value of a share, that must be paid, must not be less than minimal nominal value of the share	The value of a share, that must be paid, must not be less than minimal nominal value of the share	The value of a share, that must be paid, must not be less than minimal nominal value of the share
<b>SK</b>	/	/	/
<b>UK</b>	/	/	/



r) Are there any requirements to consider the solvency of the company in determining the profit available for distribution? YES/NO

If so, please specify if this can be based on legislation or case law.

country	public listed company	public unlisted company	private company
<b>AT</b>	YES, see answers above - section 126 stock corporation act	YES, see answers above - section 126 stock corporation act	YES, see answers above - section 82 private company act
<b>BE</b>	NO [except that capital non distributable reserves may not be distributed] If so: /	NO [except that capital non distributable reserves may not be distributed] If so: /	NO [except that capital non distributable reserves may not be distributed] If so: /
<b>BG</b>			
<b>CH</b>	YES, although not specifically stipulated in the law	YES, although not specifically stipulated in the law	YES, although not specifically stipulated in the law
<b>CY</b>	NO	NO	NO
<b>CZ</b>	NO	NO	NO
<b>DE</b>	YES, by law ( <i>nähere Begründung erforderlich?</i> ).	YES, by law.	YES, by law.
<b>DK</b>	YES: The dividend shall not exceed an amount which is reasonable in consideration of the financial position of the company and, in parent companies, the financial position of the group		
<b>EE</b>			
<b>ES</b>	NO, requirements refers only to capital and reserves If so: N/A	NO, requirements refers only to capital and reserves If so: N/A	NO, requirements refers only to capital and reserves If so: N/A
<b>FI</b>	NO. The distribution of profit may not exceed the aggregate amount of the profit shown on the adopted balance sheet for the last financial period and other non-restricted equity of the company deducted by the loss shown on the balance sheet and by the amount which under the Articles of Association shall be transferred to the reserve fund or may otherwise not be distributed.		

<b>FR</b>	YES If so: both	YES If so: both	YES If so: both
<b>GR</b>	YES If so: by law	YES If so: by law	/
<b>HU</b>	NO	NO	NO
<b>IE</b>	no specific requirements	no specific requirements	no specific requirements
<b>IT</b>	NO	NO	NO
<b>LT</b>	YES: The General Meeting may not adopt the decision to declare and pay dividends if at least one of the following conditions is met: 1) the company is insolvent or would become insolvent after the payment of dividends; 2) the result of the financial year available for appropriation is negative (losses were incurred); 3) the equity capital of the company is lower or after the payment of dividends would become lower than the aggregate amount of the statutory capital of the company, the legal reserve, the revaluation reserve and the reserve for own shares of a public limited liability company.	YES: as PLC	YES: as PLC
<b>LU</b>			
<b>LV</b>	NO If so: the debt is bigger than assets.	NO If so: the debt is bigger than assets.	NO If so: the debt is bigger than assets.
<b>MT</b>	YES If so: Article 197 of the Companies Act requires companies making a distribution to make reference to the profits, losses, assets liabilities, provisions for liabilities and charges, provisions for depreciation on tangible fixed assets, provisions for diminution in value		

	on financial fixed assets, share capital and reserves, including un-distributable reserves, as stated in its last annual accounts (or the initial or interim accounts as the case may be).		
	In the case of public companies, distributions cannot result in net assets being less than the aggregate of issued share capital and un-distributable reserves.		
<b>NL</b>	YES: good faith If so: case law and legislation	YES: good faith If so: case law and legislation	YES: good faith If so: case law and legislation
<b>NO</b>			
<b>PL</b>	YES: The sums to be divided among the shareholders may not exceed the profits for the previous financial year, increased by the undivided profits from previous years and by the sums drawn from the supplementary reserve and reserve capitals created out of profits which may be allocated for dividends. That amount shall be reduced by uncovered losses, own shares and by the sums which according to the law or the statutes should be allocated, from the profits for the previous financial year, to the supplementary reserve or reserve capitals.	YES: The sums to be divided among the shareholders may not exceed the profits for the previous financial year, increased by the undivided profits from previous years and by the sums drawn from the supplementary reserve and reserve capitals created out of profits which may be allocated for dividends. That amount shall be reduced by uncovered losses, own shares and by the sums which according to the law or the statutes should be allocated, from the profits for the previous financial year, to the supplementary reserve or reserve capitals.	YES for limited liability company - NO for other companies  * for limited liability companies The sums to be divided among the shareholders may not exceed the profits for the previous financial year, increased by the undivided profits from previous years and by the sums drawn from the supplementary reserve and reserve capitals created out of profits which may be divided. That amount shall be reduced by uncovered losses, own shares and by the sums which according to the law or the articles of association should be allocated, from the profits for the previous financial year, to the supplementary reserve or reserve capitals.  * N/A for other companies
<b>PT</b>			
<b>RO</b>			
<b>SE</b>	YES: both	As listed entities.	As listed entities.

<b>SI</b>	NO	NO	NO
<b>SK</b>	NO	NO	NO
<b>UK</b>	NO specific requirement at present – though directors who pay dividends which endanger a company’s solvency may be subjected to subsequent civil action; also changes to the law will require directors to consider long term consequences of their actions in respect of all decisions they take.  If so: case law		

#### 4.2. Substance

- a) Do rules exist in the national requirements on individual accounts/ financial accounting related to the ability to distribute increases in equity (excluding share capital)? YES/NO

If so, please give a short explanation of these rules.

<b>country</b>	<b>public listed company</b>	<b>public unlisted company</b>	<b>private company</b>
<b>AT</b>	YES: See sections 226 and 235 ACC and 130 stock corporation act	YES: See sections 226 and 235 ACC and 130 stock corporation act	YES: See sections 226 and 235 ACC and 23 private company act
<b>BE</b>	YES [but increases due to a revaluation cannot as such be distributed]  If so: Distribution of increases in equity may not lead the equity under the share capital (dividend distributions)	YES [but increases due to a revaluation cannot as such be distributed]  If so: Distribution of increases in equity may not lead the equity under the share capital (dividend distributions)	YES [but increases due to a revaluation cannot as such be distributed]  If so: Distribution of increases in equity may not lead the equity under the share capital (dividend distributions)
<b>BG</b>			
<b>CH</b>	YES: Part of profit as well as capital paid in exceeding the share capital is transferred to general statutory reserves; general statutory		

	reserves may only be distributed to the extent they exceed 50% of share capital		
<b>CY</b>	NO	NO	NO
<b>CZ</b>	NO (limitations done only by the amount of equity) - not specifically treated in the Czech legislation		
<b>DE</b>	YES ( <i>nähere Begründung erforderlich ?</i> )	YES	YES
<b>DK</b>	YES: As mentioned above reserves can not be distributed. Further the dividend shall not exceed an amount which is reasonable in consideration of the financial position of the company and, in parent companies, the financial position of the group.	YES: As mentioned above reserves can not be distributed. Further the dividend shall not exceed an amount which is reasonable in consideration of the financial position of the company and, in parent companies, the financial position of the group.	YES: As mentioned above reserves can not be distributed. Further the dividend shall not exceed an amount which is reasonable in consideration of the financial position of the company and, in parent companies, the financial position of the group.
<b>EE</b>			
<b>ES</b>	YES: Prior provision of lawful and statutory reserves and a resulting net equity not minor than share capital.		
<b>FI</b>	YES: Assets of the company may be distributed to the shareholders in connection with a lowering of the share capital, the premium fund or the reserve fund. The General Meeting of the Shareholders shall decide on the lowering of the share capital, the premium fund or the reserve fund.		
<b>FR</b>	NO - but addressed by the Commercial code ("Code de commerce")		
<b>GR</b>	YES If so: According to the law, the amounts to be distributed must only derive from the profit and loss accounts and must be actually realised at the Balance Sheet date.		/
<b>HU</b>	NO	NO	NO
<b>IE</b>	YES, company law and accounting standards If so: section 45, Companies (Amendment) Act, 1983 FRS 3, Reporting Financial Performance	YES, company law and accounting standards If so: section 45, Companies (Amendment) Act, 1983 FRS 3, Reporting Financial Performance	YES, company law and accounting standards If so: section 45, Companies (Amendment) Act, 1983 FRS 3, Reporting Financial Performance
<b>IT</b>	YES: see above	YES: see above	YES: see above
<b>LT</b>	NO	NO	NO

<b>LU</b>			
<b>LV</b>	NO	NO	NO
<b>MT</b>	YES – articles 193 – 208 If so: Only realised profits, net of realised profits, may be distributed. Distributions shall be justified by reference to a company's accounts. Distributions may be made in kind. Unrealised profits cannot be used to pay up debentures or any amount unpaid on issued share capital.		
<b>NL</b>	YES: same as profit distribution	YES: same as profit distribution	YES: same as profit distribution
<b>NO</b>			
<b>PL</b>	YES	YES	YES (for limited liability company) - N/A, in case of registered partnership and limited partnerships there is no division of equity (there is only share capital).
<b>PT</b>			
<b>RO</b>			
<b>SE</b>	YES: see 4.1	as listed entities	as listed entities
<b>SI</b>	YES	YES	YES
<b>SK</b>	YES: in the Banking Act	YES: in the Banking Act	YES: in the Banking Act
<b>UK</b>	NO - but addressed by legislation	NO - but addressed by legislation	NO - but addressed by legislation

b) Are these rules only related to the increase in equity caused by profit or amounts that are accounted for in the profit and loss account? YES/NO

<b>country</b>	<b>public listed company</b>	<b>public unlisted company</b>	<b>private company</b>
<b>AT</b>	NO	NO	NO
<b>BE</b>	YES [but increases due to a revaluation cannot as such be distributed]	YES [but increases due to a revaluation cannot as such be distributed]	YES [but increases due to a revaluation cannot as such be distributed]
<b>BG</b>			
<b>CH</b>	NO	NO	NO
<b>CY</b>	N/A	N/A	N/A
<b>CZ</b>	N/A	N/A	N/A
<b>DE</b>	NO	NO	NO
<b>DK</b>	NO	NO	NO
<b>EE</b>			
<b>ES</b>	NO	NO	NO
<b>FI</b>	The rules are related to all increases in equity.	The rules are related to all increases in equity.	The rules are related to all increases in equity.
<b>FR</b>	NO	NO	NO
<b>GR</b>	NO	NO	/
<b>HU</b>	/	/	/
<b>IE</b>	YES	YES	YES
<b>IT</b>	YES	YES	YES
<b>LT</b>	/	/	/
<b>LU</b>			
<b>LV</b>	YES	YES	YES
<b>MT</b>	YES	YES	YES

<b>NL</b>	NO	NO	NO
<b>NO</b>			
<b>PL</b>	<p>The statutes may authorize the management board to pay the shareholders an advance on the dividends expected at the end of the financial year if the company has sufficient funds for such payment. The payment of the advance shall require the consent of the supervisory board.</p> <p>The company may pay the advance on the expected dividends if its approved financial report for the previous financial year shows profits. The advance may amount to not more than half of the profits earned from the end of the previous financial year, shown in the financial report audited by the auditor, increased by the reserve capitals created out of profits which may be administered by the management board for the payment of the advances, and reduced by the uncovered losses and own shares.</p>	<p>The statutes may authorize the management board to pay the shareholders an advance on the dividends expected at the end of the financial year if the company has sufficient funds for such payment. The payment of the advance shall require the consent of the supervisory board.</p> <p>The company may pay the advance on the expected dividends if its approved financial report for the previous financial year shows profits. The advance may amount to not more than half of the profits earned from the end of the previous financial year, shown in the financial report audited by the auditor, increased by the reserve capitals created out of profits which may be administered by the management board for the payment of the advances, and reduced by the uncovered losses and own shares.</p>	<p>The articles of association may authorize the management board to pay the shareholders an advance on the expected dividends for the financial year if the company has sufficient funds for such payment.</p> <p>The company may pay the advance on the expected dividends if its approved financial report for the previous financial year shows profits. The advance may amount to not more than half of the profits earned from the end of the previous financial year, increased by the reserve capitals created out of profits which the management board may administer for the purpose of the payment of the advance, and reduced by uncovered losses and own shares (for limited liability company).</p> <p>In a case of registered partnership and limited partnership a distribution of the equity a partner may request that the entire profits be divided and distributed at the end of each financial year.</p>
<b>PT</b>			
<b>RO</b>			
<b>SE</b>	NO	as listed entities	as listed entities
<b>SI</b>	NO	NO	NO
<b>SK</b>	NO	NO	NO
<b>UK</b>	All realised profits are distributable.	All realised profits are distributable.	All realised profits are distributable.



c) Is the question of realisation of profits determined by accounting rules? YES/NO

<b>country</b>	<b>public listed company</b>	<b>public listed company</b>	<b>private company</b>
<b>AT</b>	YES	YES	YES
<b>BE</b>	YES	YES	YES
<b>BG</b>			
<b>CH</b>	YES	YES	YES
<b>CY</b>	YES	YES	YES
<b>CZ</b>	NO – however accounting rules are strict on distinction between realized and unrealized profit		
<b>DE</b>	YES	YES	YES
<b>DK</b>	YES	YES	YES
<b>EE</b>			
<b>ES</b>	YES	YES	YES
<b>FI</b>	YES	YES	YES
<b>FR</b>	YES	YES	YES
<b>GR</b>	YES	YES	/
<b>HU</b>	YES	YES	YES
<b>IE</b>	YES	YES	YES
<b>IT</b>	YES	YES	YES
<b>LT</b>	YES	YES	YES
<b>LU</b>			
<b>LV</b>	YES	YES	YES

<b>MT</b>	NO	NO	NO
<b>NL</b>	YES	YES	YES
<b>NO</b>			
<b>PL</b>	NO	NO	NO
<b>PT</b>			
<b>RO</b>			
<b>SE</b>	NO	as listed entities	as listed entities
<b>SI</b>	YES	YES	YES
<b>SK</b>	YES	YES	YES
<b>UK</b>	YES	YES	YES

- d) For distribution purposes, according to the national requirements, is it relevant that the amount of profit is available in the form of cash or cash-equivalents (liquidity principle)? YES/NO

<b>country</b>	<b>public listed company</b>	<b>public unlisted company</b>	<b>private company</b>
<b>AT</b>	NO	NO	NO
<b>BE</b>	NO	NO	NO
<b>BG</b>			
<b>CH</b>	YES	YES (but distribution in kind possible)	YES (but distribution in kind possible)
<b>CY</b>	YES	YES	YES
<b>CZ</b>	NO	NO	NO
<b>DE</b>	NO	NO	NO
<b>DK</b>	NO	NO	NO
<b>EE</b>			
<b>ES</b>	NO	NO	NO
<b>FI</b>	NO	NO	NO
<b>FR</b>	NO	NO	NO
<b>GR</b>	not directly	not directly	
<b>HU</b>	NO	NO	NO
<b>IE</b>	not obligatory	not obligatory	not obligatory
<b>IT</b>	NO	NO	NO
<b>LT</b>	NO (no direct link)	NO (no direct link)	NO (no direct link)
<b>LU</b>			
<b>LV</b>	NO	NO	NO

<b>MT</b>	NO, however see reply to question 4.1 (r)		
<b>NL</b>	NO	NO	NO
<b>NO</b>			
<b>PL</b>	YES	YES	YES
<b>PT</b>			
<b>RO</b>			
<b>SE</b>	NO	as listed entities	as listed entities
<b>SI</b>	NO	NO	NO
<b>SK</b>	NO	NO	NO
<b>UK</b>	NO	NO	NO

e) Is it a prerequisite in your legislation that a distribution must not cause a decrease in equity/capital? YES/NO

<b>country</b>	<b>public listed company</b>	<b>public unlisted company</b>	<b>private company</b>
<b>AT</b>	YES, basically in share capital	YES, basically in share capital	YES, basically in share capital
<b>BE</b>	YES	YES	YES
<b>BG</b>			
<b>CH</b>	NO	NO	NO
<b>CY</b>	YES	YES	YES
<b>CZ</b>	Distribution must not cause a situation when equity is lower than basic capital plus legal reserve fund plus other funds Not available for distribution.		
<b>DE</b>	YES, basically in share capital	See left	See left
<b>DK</b>			

<b>EE</b>			
<b>ES</b>	YES	YES	YES
<b>FI</b>	The distribution of profit may not exceed the aggregate amount of the profit shown on the adopted balance sheet for the last financial period and other non-restricted equity of the company deducted by the loss shown on the balance sheet and by the amount which under the Articles of Association shall be transferred to the reserve fund or may otherwise not be distributed.		
<b>FR</b>	YES - Unless in the case of a capital reduction, no distribution can be made to the shareholders when the share capital is, or would thereby become, lower than the amount of the capital plus the reserves which are not available for distribution due to the law or the articles of incorporation.		
<b>GR</b>	YES	YES	/
<b>HU</b>	NO	NO	NO
<b>IE</b>	/	/	/
<b>IT</b>	NO	NO	NO
<b>LT</b>	NO	NO	NO
<b>LU</b>			
<b>LV</b>	YES	YES	YES
<b>MT</b>	YES – article 193 (1)	YES – article 193 (1)	A company is formed by means of a capital divided into shares held by its members (article 167). The minimum amount prescribed by law must always be retained and is non-distributable unless upon a liquidation of the company.
<b>NL</b>	NO - (unclear question) - distribution is allowed up till the minimum level of the capital required and the legally non-distributable reserves and/or reserves, if so prescribed, as mentioned in the articles of association.		
<b>NO</b>			
<b>PL</b>	YES	YES	YES
<b>PT</b>			
<b>RO</b>			

<b>SE</b>	question unclear A distribution will by definition decrease the equity. However, a distribution may not decrease the restricted part of equity.	as listed entities	as listed entities
<b>SI</b>	YES	YES	YES
<b>SK</b>	NO	NO	NO
<b>UK</b>	NO	NO	NO

f) Is it possible to pay dividends on preference shares even if there is no profit or there are no distributable reserves? YES/NO

<b>country</b>	<b>public listed company</b>	<b>public unlisted company</b>	<b>private company</b>
<b>AT</b>	NO	NO	N/A
<b>BE</b>	NO	NO	NO
<b>BG</b>			
<b>CH</b>	NO	NO	NO
<b>CY</b>	NO	NO	NO
<b>CZ</b>	NO	NO	NO
<b>DE</b>	NO	NO	NO
<b>DK</b>	No	NO	NO
<b>EE</b>			
<b>ES</b>	NO	NO	NO
<b>FI</b>	NO. The distribution of profit may not exceed the aggregate amount of the profit shown on the adopted balance sheet for the last financial period and other non-restricted equity of the company deducted by the loss shown on the balance sheet and by the amount		

	which under the Articles of Association shall be transferred to the reserve fund or may otherwise not be distributed.		
<b>FR</b>	NO	NO	NO
<b>GR</b>	NO	NO	/
<b>HU</b>	NO	NO	NO
<b>IE</b>	NO	NO	NO
<b>IT</b>	NO	NO	NO
<b>LT</b>	NO	NO	NO
<b>LU</b>			
<b>LV</b>	YES	YES	YES
<b>MT</b>	NO	NO	NO
<b>NL</b>	NO	NO	NO
<b>NO</b>			
<b>PL</b>	NO	NO	NO
<b>PT</b>			
<b>RO</b>			
<b>SE</b>	NO	as listed entities	as listed entities
<b>SI</b>	NO	NO	NO
<b>SK</b>	NO	NO	NO
<b>UK</b>	NO	NO	NO

g) Is it possible to distribute in kind? YES/NO

If so, how is the distribution measured?

<b>country</b>	<b>public listed company</b>	<b>public unlisted company</b>	<b>private company</b>
<b>AT</b>	not explicitly ruled	not explicitly ruled	not explicitly ruled
<b>BE</b>	NO	NO	NO [except in case of liquidation]
<b>BG</b>			
<b>CH</b>	YES (in theory): book value	YES: book value	YES: book value
<b>CY</b>	NO	NO	NO
<b>CZ</b>	not specifically addressed in the law	not specifically addressed in the law	not specifically addressed in the law
<b>DE</b>	YES, but not explicitly ruled (?)	See left	See left
<b>DK</b>	YES: The value of the distribution must as a maximum correspond to the consideration agreed.	YES: The value of the distribution must as a maximum correspond to the consideration agreed.	YES: The value of the distribution must as a maximum correspond to the consideration agreed.
<b>EE</b>			
<b>ES</b>	YES (not explicitly prohibited) Following the percentage of capital of each shareholder. Not explicitly ruled.	YES (not explicitly prohibited) Following the percentage of capital of each shareholder. Not explicitly ruled.	YES (not explicitly prohibited) Following the percentage of capital of each shareholder. Not explicitly ruled.
<b>FI</b>	YES. The General Meeting of the Shareholders may decide to distribute in kind if the Board of Directors has proposed it. The distributable assets of the company are decreased by the book value of the assets distributed to the shareholders. The distribution of profit may not exceed the amount of distributable assets.		
<b>FR</b>	YES under specific circumstances If so: book value of asset distributed		
<b>GR</b>	NO	NO	/
<b>HU</b>	NO	NO	NO



<b>IE</b>	YES	YES	YES
<b>IT</b>	YES: according to the market value	YES: according to the market value	YES: according to the market value
<b>LT</b>	NO	NO	NO
<b>LU</b>			
<b>LV</b>	NO	NO	NO
<b>MT</b>	<p>YES – article 192 (2)</p> <p>If so: Limited mention in the Companies Act: article 203 states that where a company makes a distribution of, or including, a non-cash asset and any part of the amount at which that asset is stated in the accounts relevant for the purposes of the distribution in accordance with articles 197 and 202 represents an unrealised profit, that profit is to be treated as a realised profit.</p>		
<b>NL</b>	<p>YES</p> <p>If so: not regulated but it should be the book value</p>	<p>YES</p> <p>If so: not regulated but it should be the book value</p>	<p>YES</p> <p>If so: not regulated but it should be the book value</p>
<b>NO</b>			
<b>PL</b>	YES: distribution of the profit can be in cash or shares or as a mixture of both of these forms.	YES: distribution of the profit can be in cash or shares or as a mixture of both of these forms.	YES: distribution of the profit can be in cash or shares or as a mixture of both of these forms (for limited liability company).
<b>PT</b>			
<b>RO</b>			
<b>SE</b>	YES: book value of the distributed asset	as listed entities	as listed entities
<b>SI</b>	Not explicitly ruled.	Not explicitly ruled.	Not explicitly ruled.
<b>SK</b>	NO	NO	NO
<b>UK</b>	YES: book value of asset distributed	YES: book value of asset distributed	YES: book value of asset distributed

h) What are the consequences of violating these distributions in kind rules?

<b>country</b>	<b>public listed company</b>	<b>public unlisted company</b>	<b>private company</b>
<b>AT</b>	NA	NA	NA
<b>BE</b>	civil liability	civil liability	civil liability
<b>BG</b>			
<b>CH</b>	N/A	N/A	N/A
<b>CY</b>	N/A	N/A	N/A
<b>CZ</b>	usual civil and criminal consequences	usual civil and criminal consequences	usual civil and criminal consequences
<b>DE</b>	N/A , (but usually see answer to 4.1.1)	See left	See left
<b>DK</b>			
<b>EE</b>			
<b>ES</b>	Responsibility for the directors.	Responsibility for the directors.	Responsibility for the directors.
<b>FI</b>	<p>The shareholder shall be liable to return any assets he has obtained from the company against the provisions of the Companies Act unless he had a justified reason to assume that the distribution of the funds took place in accordance with the Companies Act.</p> <p>Liability for any deficiency existing after the repayment shall lie with those who have participated in the making or implementation of the decision to distribute the assets or in the preparation or adoption of the faulty balance sheet.</p>		
<b>FR</b>	possible civil liability of the management		
<b>GR</b>	/	/	/
<b>HU</b>	see above	see above	see above
<b>IE</b>	/	/	/
<b>IT</b>	see answer 4.1. m	see answer 4.1. m	see answer 4.1. m
<b>LT</b>	/	/	/
<b>LU</b>			
<b>LV</b>	/	/	/
<b>MT</b>	The member who, knowingly receives or has reasonable grounds of believing it to be an unlawful distribution, shall repay a sum equal		

	to the value of the distribution received (article 204).		
<b>NL</b>	same as for distribution of money	same as for distribution of money	same as for distribution of money
<b>NO</b>			
<b>PL</b>	The consequences are the same as for violating the distributions in general (see question 4.1 m).	The consequences are the same as for violating the distributions in general (see question 4.1 m).	The consequences are the same as for violating the distributions in general (see question 4.1 m).
<b>PT</b>			
<b>RO</b>			
<b>SE</b>	No specific consequences, board of directors/auditors could however be liable to pay damages	as listed entities	as listed entities
<b>SI</b>	possible civil law suit	possible civil law suit	possible civil law suit
<b>SK</b>	/	/	/
<b>UK</b>	/	/	/

- i) What is the rough total amount in Euros or as a percentage of the costs according to the rules on distribution of profits (e.g. costs of making up a description, notary costs, auditor's costs, registration costs, stamp duty and listing costs)?

<b>country</b>	<b>public listed company</b>	<b>public unlisted company</b>	<b>private company</b>
<b>AT</b>	no detailed information available	no detailed information available	no detailed information available
<b>BE</b>	estimates may vary	estimates may vary	estimates may vary
<b>BG</b>			
<b>CH</b>	/	/	/
<b>CY</b>	same as answer to question 2.2(e)	same as answer to question 2.2(e)	same as answer to question 2.2(e)

<b>CZ</b>	Due to volatile amount of certain fees (for example notary fees are stated as a percentage from the amount of capital) the amount is impossible to estimate.		
<b>DE</b>	no detailed information available.	See left.	See left.
<b>DK</b>	Depends on the complexity of the valuation of distribution in kind.		
<b>EE</b>			
<b>ES</b>	see 2.2 e)	see 2.2 e)	see 2.2 e)
<b>FI</b>	- registration costs: €330 - auditors cost: according to an agreement	- registration costs: €330 - auditors cost: according to an agreement	- registration costs: €330 - auditors cost: according to an agreement
<b>FR</b>	information not available		
<b>GR</b>	see 2.2 e)	see 2.2 e)	/
<b>HU</b>	see above	see above	see above
<b>IE</b>	/	/	/
<b>IT</b>	Foundation expenses are not very high. Listing in the stock exchange is normally burdensome.	Foundation expenses are not very high.	Foundation expenses are not very high.
<b>LT</b>	see 2.2 e)	see 2.2 e)	see 2.2 e)
<b>LU</b>			
<b>LV</b>	2,000 LVL	2,000 LVL	200 LVL - SIA
<b>MT</b>	see question 2.2 e)	see question 2.2 e)	see question 2.2 e)
<b>NL</b>	see question 2.2 e)	see question 2.2 e)	see question 2.2 e)
<b>NO</b>			
<b>PL</b>	N/A	N/A	N/A
<b>PT</b>			
<b>RO</b>			
<b>SE</b>	can not be generally estimated	as listed entities	as listed entities

<b>SI</b>	N/A	N/A	N/A
<b>SK</b>	/	/	/
<b>UK</b>	/	/	/

- j) Which of the rules in relation to the distribution of profit and increases in equity are particularly burdensome for a company and why (i.e. are there any rules that do not have a necessary function)?

<b>country</b>	<b>public listed company</b>	<b>public unlisted company</b>	<b>private company</b>
<b>AT</b>	NONE	NONE	NONE
<b>BE</b>	N/A	N/A	N/A
<b>BG</b>			
<b>CH</b>	NONE	NONE	NONE
<b>CY</b>	same as answer to question 2.2(f)	same as answer to question 2.2(f)	same as answer to question 2.2(f)
<b>CZ</b>	none identified	none identified	complications in relation to contribution in kind – enterprise
<b>DE</b>	NONE	NONE	NONE
<b>DK</b>	N/A	N/A	N/A
<b>EE</b>			
<b>ES</b>	NONE	NONE	NONE
<b>FI</b>	NONE	NONE	NONE
<b>FR</b>	N/A	N/A	N/A
<b>GR</b>	According to the Law, the companies must hold 5% of the profits for legal reserves and distribute at least 35% of their profit or 6% of the capital to the shareholders. Those rules alone can not really protect the creditors and investors. The protection of shareholders and creditors should be ensured by the appropriate accounting rules in the determination of		/

	the profits actually realised at the date of the Balance Sheet and by detached audits for all companies.		
<b>HU</b>	see above	see above	see above
<b>IE</b>	/	/	/
<b>IT</b>	N/A	N/A	N/A
<b>LT</b>	/	/	/
<b>LU</b>			
<b>LV</b>	/	/	/
<b>MT</b>	N/A	N/A	N/A
<b>NL</b>	NONE	NONE	NONE
<b>NO</b>			
<b>PL</b>	unavailable	unavailable	unavailable
<b>PT</b>			
<b>RO</b>			
<b>SE</b>	none in particular	as listed entities	as listed entities
<b>SI</b>	N/A	N/A	N/A
<b>SK</b>	/	/	/
<b>UK</b>	/	/	/

k) Which of the rules in relation to distribution of profit and increase in equity do you find particularly helpful and why?

<b>country</b>	<b>public listed company</b>	<b>public unlisted company</b>	<b>private company</b>
<b>AT</b>	ALL	ALL	ALL
<b>BE</b>	trigger on insolvency	trigger on insolvency	trigger on insolvency
<b>BG</b>			
<b>CH</b>	NONE	NONE	NONE
<b>CY</b>	same as answer to question 2.2(g)	same as answer to question 2.2(g)	same as answer to question 2.2(g)
<b>CZ</b>	none identified	none identified	none identified
<b>DE</b>	ALL	ALL	ALL
<b>DK</b>	N/A	N/A	N/A
<b>EE</b>			
<b>ES</b>	All the rules are useful.	All the rules are useful.	All the rules are useful.
<b>FI</b>	/	/	/
<b>FR</b>	N/A	N/A	N/A
<b>GR</b>	see above	see above	/
<b>HU</b>	see above	see above	see above
<b>IE</b>	/	/	/
<b>IT</b>	shareholder's approval	shareholder's approval	shareholder's approval
<b>LT</b>	/	/	/
<b>LU</b>			
<b>LV</b>	/	/	/
<b>MT</b>	The requirements on references to annual, interim and initial accounts under the respective circumstances are very clear and straightforward.		

<b>NL</b>	calculation of distributable profit	calculation of distributable profit	calculation of distributable profit
<b>NO</b>			
<b>PL</b>	unavailable	unavailable	unavailable
<b>PT</b>			
<b>RO</b>			
<b>SE</b>	none in particular	as listed entities	as listed entities
<b>SI</b>	N/A	N/A	N/A
<b>SK</b>	/	/	/
<b>UK</b>	/	/	/

1) Are there any requirements in your country in relation to the restriction of distribution of reserves? YES/NO

<b>country</b>	<b>public listed company</b>	<b>public unlisted company</b>	<b>private company</b>
<b>AT</b>	YES, see answers above	YES, see answers above	YES, see answers above
<b>BE</b>	YES [see above]	YES [see above]	YES [see above]
<b>BG</b>			
<b>CH</b>	YES	YES	YES
<b>CY</b>	YES	YES	YES
<b>CZ</b>	YES: Company cannot distribute reserves if it leads to a situation when equity is lower than basic capital plus legal reserve fund plus other funds Not available for distribution.  Reserves cannot be distributed in case that foundation costs are recorded unless distributable reserves covers foundation costs.		
<b>DE</b>	YES, see answers above	YES, see answers above	YES, see answers above



<b>DK</b>	YES	YES	YES
<b>EE</b>			
<b>ES</b>	YES	YES	YES
<b>FI</b>	YES	YES	YES
<b>FR</b>	YES - please refer above	YES - please refer above	YES - please refer above
<b>GR</b>	YES	YES	/
<b>HU</b>	YES: see accounting law	YES: see accounting law	YES: see accounting law
<b>IE</b>	/	/	/
<b>IT</b>	YES	YES	YES
<b>LT</b>	YES	YES	YES
<b>LU</b>			
<b>LV</b>	YES	YES	YES
<b>MT</b>	Share premium, capital redemption reserve, unrealised profits net of unrealised losses, and any reserve prohibited by any legislation or articles of association cannot be distributed (article 193.3).		
<b>NL</b>	legally non-distributable reserves cannot be distributed	legally non-distributable reserves cannot be distributed	legally non-distributable reserves cannot be distributed
<b>NO</b>			
<b>PL</b>	At least 8% of the profits for a given financial year shall be transferred to the supplementary reserve until such reserve reaches at least one third of the share capital. This part of the supplementary reserve must not be distributed.	At least 8% of the profits for a given financial year shall be transferred to the supplementary reserve until such reserve reaches at least one third of the share capital. This part of the supplementary reserve must not be distributed.	NO (for limited liability company) - N/A (for other companies).
<b>PT</b>			
<b>RO</b>			
<b>SE</b>	YES: see question 4.1	as listed entities	as listed entities

<b>SI</b>	YES	YES	YES
<b>SK</b>	NO	NO	NO
<b>UK</b>	/	/	/

## 5. Questions regarding loss of equity

### 5.1. Formalities

a) Does management have the obligation to start certain procedures if the equity decreases under a certain level due to losses? YES/NO

If so, describe the level and the actions to be taken.

country	public listed company	public unlisted company	private company <sup>15</sup>
AT	YES: If the incurred losses exceed 50 per cent of share capital a shareholder's meeting has to be called	YES: If the incurred losses exceed 50 per cent of share capital a shareholder's meeting has to be called	YES: If the incurred losses exceed 50 per cent of share capital a shareholder's meeting has to be called and the commercial court has to be informed about the resolutions of the meeting
BE	YES  If so: For example, if the equity decreases to a level that is less than half of the share capital, then the dissolution of the company can be asked by three thirds of the votes cast by the shareholders' meeting, to be called by the board of directors.	YES  If so: For example, if the equity decreases to a level that is less than half of the share capital, then the dissolution of the company can be asked by three thirds of the votes cast by the shareholders' meeting, to be called by the board of directors.	YES  If so: For example, if the equity decreases to a level that is less than half of the share capital, then the dissolution of the company can be asked by three thirds of the votes cast by the shareholders' meeting, to be called by the board of directors.
BG			
CH	YES: Loss of 50% of total of share capital and general statutory reserves requires the call of a Shareholders' meeting and proposals by the Board of Directors of remedial actions		
CY	YES  If so: The capital must increase to the	YES  If so: The capital must increase to the	NO  If so: N/A

<sup>15</sup> GR : no rules

	prescribed minimum.	prescribed minimum.	
<b>CZ</b>	<p>YES:  - <i>Level</i>: total equity drops below half of basic capital or the company is in bankruptcy  - <i>Action</i>: Board of directors must convene shareholders meeting and suggest either to wind up the company or other measures (increase/decrease of basic capital etc.)</p>		
<b>DE</b>	<p>YES,  If it becomes obvious when preparing the annual balance sheet or an interim balance sheet, or if in the exercise of proper judgment it must be assumed that the company has incurred a loss that is one half of the share capital, the management board shall promptly call a shareholders meeting.  If the company becomes unable to make payments when they fall due, the management board shall file petition for the institution of bankruptcy or judicial composition proceedings without undue delay, that is within three weeks after the company became unable to make payments (§ 92 AktG).</p> <p>AND:  Illiquidity and overindebtedness are reasons for commencement of the insolvency proceeding (§§ 16, 17, 19 of the Insolvency Code).</p> <p>IN the event that the debtor shall petition for the commencement of the insolvency proceedings, impending illiquidity shall also be a reason for commencement (§ 18 of the Insolvency Code).</p>	See left	<p>See left ( except for § 92 (AktG)  A shareholders meeting shall be called with undue delay if it is apparent that the annual financial statements or from a balance sheet prepared at an interim date that one half of the share capital is lost . (§ 49 GmbHG).</p> <p>If the company becomes insolvent, the managing directors shall with undue delay (not later than three weeks) , file a petition for the commencement of insolvency proceedings (§ 64 GmbHG).</p>

<b>DK</b>	YES: Where at any time the company has lost half of its share capital, the board of directors shall convene a general meeting within a maximum period of six months there from. At such general meeting the board of directors shall make a statement concerning the financial position of the company and, if required, propose any measures to be taken, including the dissolution of the company.		
<b>EE</b>			
<b>ES</b>	YES - To re-establish the equity balance in two months or one year, depending on the net equity resulting (less than 50% of share capital or minor than 2/3 of share capital).		
<b>FI</b>	<p>YES: If the Board of Directors, when preparing the annual accounts notices or if it otherwise has reason to assume that the equity of the company is less than half of its share capital, the Board of Directors shall, as soon as possible, prepare a balance sheet to ascertain the financial situation of the company. If the equity of the company, according to the balance sheet, is less than half of the share capital, the Board of Directors shall, without delay, submit the balance sheet to be audited by the auditors and to convene the General Meeting of the Shareholders to handle the placing of the company in liquidation.</p> <p>The company shall be placed in liquidation unless a General Meeting of the Shareholders held no later than 12 months after the General Meeting of the Shareholders referred to in the paragraph above adopts a balance sheet audited by the auditors indicating that the equity of the company is at least equal to half of the share capital.</p>	<p>YES: If the Board of Directors, when preparing the annual accounts notices or if it otherwise has reason to assume that the equity of the company is less than half of its share capital, the Board of Directors shall, as soon as possible, prepare a balance sheet to ascertain the financial situation of the company. If the equity of the company, according to the balance sheet, is less than half of the share capital, the Board of Directors shall, without delay, submit the balance sheet to be audited by the auditors and to convene the General Meeting of the Shareholders to handle the placing of the company in liquidation.</p> <p>The company shall be placed in liquidation unless a General Meeting of the Shareholders held no later than 12 months after the General Meeting of the Shareholders referred to in the paragraph above adopts a balance sheet audited by the auditors indicating that the equity of the company is at least equal to half of the share capital.</p>	<p>YES: If the Board of Directors, when preparing the annual accounts notices or if it otherwise has reason to assume that the equity of the company is less than half of its share capital, the Board of Directors shall, as soon as possible, prepare a balance sheet to ascertain the financial situation of the company. If the equity of the company, according to the balance sheet, is less than half of the share capital, the Board of Directors shall, without delay, submit the balance sheet to be audited by the auditors and to convene the General Meeting of the Shareholders to handle the placing of the company in liquidation.</p> <p>The company shall be placed in liquidation unless a General Meeting of the Shareholders held no later than 12 months after the General Meeting of the Shareholders referred to in the paragraph above adopts a balance sheet audited by the auditors indicating that the equity of the company is at least equal to half of the share capital.</p>

<b>FR</b>	<p>YES, based on the equity in the individual financial statements</p> <p>If so: If, as a result of losses duly recorded in the accounting documents, a company's equity capital falls below half of its share capital, the board of directors or management, as the case may be, must call an special shareholders' meeting within four months of the approval of the accounts revealing the said loss to decide whether the company should be prematurely dissolved.</p>	<p>YES, based on the equity in the individual financial statements, for SARL, SA, SAS and SCA</p> <p>If so: SARL, SA, SAS, SCA: same actions</p>	
<b>GR</b>	<p>YES</p> <p>If so:</p> <p>a) Less than ½ of the capital → The Board of Directors must call a General Assembly to take measures</p> <p>b) Less than 1/10 of the capital → The trade licence may be withdrawn by decision of the Minister of Commerce</p>	/	
<b>HU</b>	<p>YES: under company law directory board have the obligation to call shareholder's meeting if corporations' equity capital &lt; 66% of registered capital</p>	<p>YES: if Ltd's equity &lt; 50% of registered capital</p>	
<b>IE</b>	<p>YES: Net assets fall to half or less of called up share capital – Section 40, Companies (Amendment) Act 1983. Extraordinary general meeting to be convened.</p>	<p>YES: Net assets fall to half or less of called up share capital – Section 40, Companies (Amendment) Act 1983. Extraordinary general meeting to be convened.</p>	<p>YES: Net assets fall to half or less of called up share capital – Section 40, Companies (Amendment) Act 1983. Extraordinary general meeting to be convened.</p>
<b>IT</b>	<p>YES: if the loss overcomes one third of the minimum capital, the management has to convoke the shareholders' meeting</p>	<p>YES: if the loss overcomes one third of the minimum capital, the management has to convoke the shareholders' meeting</p>	<p>YES: if the loss overcomes one third of the minimum capital, the management has to convoke the shareholders' meeting</p>
<b>LT</b>	<p>NO</p> <p>If so, the shareholders should cover the losses so that the equity would not be less than ½ of the statutory capital; the manager should initiate the company bankruptcy proceeding and inform the creditors if there is inability to discharge obligations</p>	<p>NO</p> <p>If so, as PLC.</p>	<p>NO</p> <p>If so, as PLC.</p>
<b>LU</b>			

<b>LV</b>	YES If so: ask the shareholders to increase a share capital.	YES If so: ask the shareholders to increase a share capital.	YES If so: ask the shareholders to increase a share capital.
<b>MT</b>	YES – article 104  If so: Where the net assets ( <b>see definition in question 5.2 a</b> ) of a public company are half or less of its called-up issued share capital, the directors shall, not later than thirty days from the earliest day on which that fact is known to any director of the company, duly convene a general meeting of the company by means of a notice to that effect for a date not later than forty days from the date of the notice for the purpose of considering whether any, and if so, what steps should be taken to deal with the situation, including consideration as to whether the company should be dissolved.		NOT specifically, but see section below  If so: NO mention in the Companies Act on loss of equity in a private company. However, article 329A provides that where the directors of any company become aware that the company is unable to pay its debt or is imminently likely to become unable to pay its debts, they shall forthwith, not later than thirty days from when the fact becomes known to them, duly convene a general meeting of the company by means of a notice to that effect for a date not later than forty days from the date of the notice for the purpose of reviewing the company's position and of determining what steps should be taken, including consideration as to whether the company should be dissolved or whether the company should be make a company recovery application.
<b>NL</b>	YES: AGM to discuss measures	YES: AGM to discuss measures	NO: N/A
<b>NO</b>			
<b>PL</b>	YES: If the balance sheet drawn up by the management board shows a loss exceeding the aggregate of the supplementary and the reserve capitals and one third of the share capital, the management board shall immediately convene the general assembly so that a resolution on the continued	YES: If the balance sheet drawn up by the management board shows a loss exceeding the aggregate of the supplementary and the reserve capitals and one third of the share capital, the management board shall immediately convene the general assembly so that a resolution on the continued	YES (for limited liability company) - NO (for other companies).  If the balance sheet drawn up by the management board shows a loss exceeding the aggregated supplementary and reserve capitals and half of the share capital, the

	existence of the company can be adopted.	existence of the company can be adopted.	management board shall immediately convene the general meeting so that a resolution on the continued existence of the company can be adopted (for limited liability company).
<b>PT</b>			
<b>RO</b>			
<b>SE</b>	YES: A special balance sheet with assets valued at fair value must be prepared.	as listed entities	as listed entities
<b>SI</b>	YES: if it is established in the annual balance sheet or an interim balance sheet that half of the share capital has been lost; general meeting shall be convened	YES: if it is established in the annual balance sheet or an interim balance sheet that half of the share capital has been lost; general meeting shall be convened	YES: if it is established in the annual balance sheet or an interim balance sheet that half of the share capital has been lost; general meeting shall be convened
<b>SK</b>	YES: 30 % minimum of capital	YES: 30 % minimum of capital	YES: 30 % minimum of capital
<b>UK</b>	YES	YES	N/A



b) Is it possible to continue operations even if all the equity has been lost? YES/NO

<b>country</b>	<b>public listed company</b>	<b>public unlisted company</b>	<b>private company</b>
<b>AT</b>	YES	YES	YES
<b>BE</b>	YES	YES	YES
<b>BG</b>			
<b>CH</b>	NO (if no remedial actions are taken)	NO (if no remedial actions are taken)	NO (if no remedial actions are taken)
<b>CY</b>	NO	NO	YES
<b>CZ</b>	YES	YES	YES
<b>DE</b>	YES	YES	YES
<b>DK</b>	YES	YES	YES
<b>EE</b>			
<b>ES</b>	YES, during two months	YES, during two months	YES, during two months
<b>FI</b>	YES, for a while. See above.	YES, for a while. See above.	YES, for a while. See above.
<b>FR</b>	<p>YES</p> <p>If it is not decided to dissolve the company, the company must, by no later than the end of the second financial year after that in which the losses were recorded, and subject to the provisions of Article L.224-2, reduce its capital to a sum at least equal to that of any losses not imputed to reserves unless the equity capital shall have been restored to a figure at least equivalent to half the share capital within that time.</p>		
<b>GR</b>	YES, if the ministry does not withdraw licence	YES, if the ministry does not withdraw licence	/
<b>HU</b>	YES, for a restricted period	YES, for a restricted period	YES, for a restricted period
<b>IE</b>	YES	YES	YES
<b>IT</b>	NO. The company is to be wound up.	NO. The company is to be wound up.	NO. The company is to be wound up.
<b>LT</b>	YES (if it permanent or shareholders are	YES (if it permanent or shareholders are	YES (if it permanent or shareholders are

	ready to compensate the loss)	ready to compensate the loss)	ready to compensate the loss)
<b>LU</b>			
<b>LV</b>	NO, excluding the case of planned loss in the first years	YES, if a company is due to its parent company and received a letter of support	YES, if a company is due to its parent company and received a letter of support
<b>MT</b>	NO mention in the Companies Act except as explained in the previous question.		N/A
<b>NL</b>	YES	YES	YES
<b>NO</b>			
<b>PL</b>	YES	YES	- YES for limited liability company - NO for other companies
<b>PT</b>			
<b>RO</b>			
<b>SE</b>	YES	as listed entities	as listed entities
<b>SI</b>	YES	YES	YES
<b>SK</b>	NO	NO	NO
<b>UK</b>	YES	YES	YES

c) What are the consequences for management of violating these rules?

<b>country</b>	<b>public listed company</b>	<b>public listed company</b>	<b>private company</b>
<b>AT</b>	compensation for damages	compensation for damages	compensation for damages
<b>BE</b>	liability	liability	liability
<b>BG</b>			
<b>CH</b>	civil liability	civil liability	civil liability

<b>CY</b>	There are specific provisions for penalties in the Law.	There are specific provisions for penalties in the Law.	N/A
<b>CZ</b>	consequences according to the criminal code	consequences according to the criminal code	consequences according to the criminal code
<b>DE</b>	compensation for damages	compensation for damages	compensation for damages
<b>DK</b>	Promoters, members of the board of directors and of the management board who, in the performance of their duties have caused damage to the company due to willful misconduct or negligence, shall be liable in damages. This consequence shall also apply where damage has been inflicted upon shareholders, creditors of the company or any third party by a violation of the provisions of The Danish Public Companies Act or the articles of association.		
<b>EE</b>			
<b>ES</b>	Personal liability for the new debts after the second months.		
<b>FI</b>	Anyone who wilfully violates the provisions of the Companies Act regarding the preparation of the balance sheet (see above) shall, unless the act is minor or subject to a more severe punishment elsewhere in the law, be sentenced to a fine for a limited company offence.		
<b>FR</b>	civil liability and criminal sanctions	civil liability and criminal sanctions	civil liability and criminal sanctions
<b>GR<sup>16</sup></b>	penal sum and imprisonment	penal sum and imprisonment	
<b>HU</b>	They are forbidden to manage companies for years.	They are forbidden to manage companies for years.	They are forbidden to manage companies for years.
<b>IE</b>	Each director can be fined and/or imprisoned	Each director can be fined and/or imprisoned	Each director can be fined and/or imprisoned
<b>IT</b>	The Supervisory Board has to make the actions that the Board of Directors is expected to do + Liability action.		
<b>LT</b>	civil or criminal sanctions	civil or criminal sanctions	civil or criminal sanctions
<b>LU</b>			
<b>LV</b>	criminal case	criminal case	criminal case
<b>MT</b>	Article 104 (3) – If a general meeting is not convened, each of the directors of the company in default shall be liable to a penalty (€ 466), and, for every day during which		N/A

<sup>16</sup> GR: article 57, paragraph d

	the default continues, to a further penalty (€ 23/day).		
<b>NL</b>	personal liability	personal liability	personal liability
<b>NO</b>			
<b>PL</b>	A member of the management board (also the supervisory board and a liquidator) shall be liable to the company for damage caused by acts or omissions in breach of the law or the provisions of the statutes, unless he is not at fault.	A member of the management board (also the supervisory board and a liquidator) shall be liable to the company for damage caused by acts or omissions in breach of the law or the provisions of the statutes, unless he is not at fault.	A member of the management board (also the supervisory board, the audit committee and a liquidator) shall be liable to the company for damage caused by acts or omissions in breach of the law or the provisions of the articles of association, unless he is not at fault (for limited liability company).  Partners are liable to other partners for damage caused by acts or omissions in breach of the law or the provisions of the articles of association (for other companies).
<b>PT</b>			
<b>RO</b>			
<b>SE</b>	Personnel liability for Managing Director and Board members for the company's commitments.	as listed entities	as listed entities
<b>SI</b>	They are personally liable to the creditors.	They are personally liable to the creditors.	They are personally liable to the creditors.
<b>SK</b>	/	/	/
<b>UK</b>	financial penalty	financial penalty	N/A

- d) Does the auditor of the company take any role in this respect? YES/NO  
If so, what does the auditor do?

country	public listed company	public unlisted company	private company
<b>AT</b>	<p>YES</p> <p>There are several tasks for the auditor:</p> <ol style="list-style-type: none"> <li>1. Warning letter regarding the loss of more than 50% of Company's registered share capital</li> <li>2. Report when certain ratios are met (net assets in % of total assets, debt redemption).</li> <li>3. Consideration of Going Concern assumption: If the management's assumption for the preparation of the F/S was to continue as a going concern, the assurance provided by the auditor's opinion also comprises this assumption</li> </ol>		
<b>BE</b>	YES: alteration of audit + opinion + possibility to call a shareholders' meeting		
<b>BG</b>			
<b>CH</b>	YES: If over-indebtedness is obvious and the board of directors does not inform the judge, the auditor has to notify the judge		
<b>CY</b>	NO	NO	NO
<b>CZ</b>	<p>YES: in accordance with Law on Auditors, auditor is obliged to inform statutory and supervisory body and regulator (if applicable) in written form on any of the following:</p> <ul style="list-style-type: none"> <li>- Facts discovered during the audit that have a substantial adverse effect on the accounting entity's results;</li> <li>- Facts discovered during the audit that may affect the accounting entity's existence as a going concern;</li> <li>- Facts discovered during the audit may lead to disclaimer, adverse opinion or opinion with qualifications,</li> </ul>		
<b>DE</b>	<p>YES</p> <p>There are several tasks for the auditor, e.g.:</p> <ul style="list-style-type: none"> <li>- Warning letter regarding the loss of more than 50% of Company's registered share capital</li> <li>- Report when certain ratios are met (net assets in % of total assets, debt redemption)</li> </ul>	See left	See left

	- Consideration of Going Concern assumption: It the management's assumption for the preparation of the F/S was to continue as a going concern, the assurance provided by the auditor's opinion also comprises this assumption.		
<b>DK</b>	YES (if the management are violating the rules): mention in the audit opinion under "Emphasis of matter" that management may be held liable.		
<b>EE</b>			
<b>ES</b>	YES: The auditor can qualify his report.	YES: The auditor can qualify his report.	YES: The auditor can qualify his report.
<b>FI</b>	YES: the auditor audits the balance sheet referred to above. The application to a court to have the company placed in liquidation may also be submitted by an auditor.		
<b>FR</b>	YES: The auditor has to check that the information regarding the equity being lower than half of the share capital is duly reported in the management's report. Furthermore, he may launch a warning procedure ("procedure d'alerte") which concerns the management, then the board of directors and the president of the commercial court and finally the shareholders.		
<b>GR</b>	YES: the auditor makes a reference in the audit report and must evaluate the going concern assumption for the company.	/	
<b>HU</b>	YES: to give alert in time. Auditor has to initiate calling shareholder's meeting. If the right arrangement is not done ha has to report on this fact to registration office. (company law)		
<b>IE</b>	Auditors report on financial statements includes opinion as to whether or not a "Section 40 situation" exists.		
<b>IT</b>	YES: the auditor has to qualify his opinion.		
<b>LT</b>	YES: The auditor indicates about the situation in the auditor's report		
<b>LU</b>			
<b>LV</b>	YES: an auditor is responsible for the opinion on the company financial statements (non-compliance with going concern principle).		
<b>MT</b>	NO If so: N/A	NO If so: N/A	N/A If so: N/A
<b>NL</b>	NO	NO	NO

	If so: N/A	If so: N/A	If so: N/A
<b>NO</b>			
<b>PL</b>	<p>YES: If the balance sheet drawn up by the management board shows a loss exceeding the aggregate of the supplementary and the reserve capitals and one third of the share capital, the auditor has to state in his report that the management board shall immediately convene the general assembly so that a resolution on the continued existence of the company can be adopted.</p> <p>Above this, an auditor may issue a qualified opinion, an adverse opinion or he can disclaim an opinion if finds it necessary.</p>	<p>YES: If the balance sheet drawn up by the management board shows a loss exceeding the aggregate of the supplementary and the reserve capitals and one third of the share capital, the auditor has to state in his report that the management board shall immediately convene the general assembly so that a resolution on the continued existence of the company can be adopted.</p> <p>Above this, an auditor may issue a qualified opinion, an adverse opinion or he can disclaim an opinion if finds it necessary.</p>	<p>YES (for limited liability company) - NO (for other companies).</p> <p>If the balance sheet drawn up by the management board shows a loss exceeding the aggregate of the supplementary and the reserve capitals and half of the share capital, the auditor has to state in his report that the management board shall immediately convene the general assembly so that a resolution on the continued existence of the company can be adopted (for limited liability company).</p> <p>Above this, an auditor may issue a qualified opinion, an adverse opinion or he can disclaim an opinion if finds it necessary (for all companies).</p>
<b>PT</b>			
<b>RO</b>			
<b>SE</b>	YES: The auditor makes a review of the special balance sheet.	as listed entities	as listed entities
<b>SI</b>	YES: IAS 250; going concern	YES: IAS 250; going concern	YES: IAS 250; going concern
<b>SK</b>	YES: report to the regulator	YES: report to the regulator	YES: report to the regulator
<b>UK</b>	no legal responsibility	no legal responsibility	no legal responsibility

## 5.2. Substance

a) Are unrealised losses treated in the same way as realised losses in this respect? (for example decreases in fair value, impairment) YES/NO

If no, please describe.

country	public listed company	public unlisted company	private company
<b>AT</b>	YES, if the company has negative equity, the management has to prepare a forecast regarding its ability to continue as a going concern based on liquidation values and on future cash flows	YES, if the company has negative equity, the management has to prepare a forecast regarding its ability to continue as a going concern based on liquidation values and on future cash flows	YES, if the company has negative equity, the management has to prepare a forecast regarding its ability to continue as a going concern based on liquidation values and on future cash flows
<b>BE</b>	NO	NO	NO
<b>BG</b>			
<b>CH</b>	YES	YES	YES
<b>CY</b>	YES	YES	YES
<b>CZ</b>	YES	YES	YES
<b>DE</b>	<i>Same answer as in Austria?</i>		
<b>DK</b>	YES	YES	YES
<b>EE</b>			
<b>ES</b>	NO If so: Unrealised losses are not registered and so that net equity is not affected.	NO If so: Unrealised losses are not registered and so that net equity is not affected.	NO If so: Unrealised losses are not registered and so that net equity is not affected.
<b>FI</b>	YES, if they are entered in the books. In accordance with the Companies Act the equity of a company shall be more than half of its share capital.	YES, if they are entered in the books. In accordance with the Companies Act the equity of a company shall be more than half of its share capital.	YES, if they are entered in the books. In accordance with the Companies Act the equity of a company shall be more than half of its share capital.
<b>FR</b>	YES - from the moment that they are	YES - from the moment that they are	YES - from the moment that they are



	registered in the individual accounts	registered in the individual accounts	registered in the individual accounts
<b>GR</b>	YES	YES	/
<b>HU</b>	NO	NO	NO
<b>IE</b>	YES	YES	YES
<b>IT</b>	YES	YES	YES
<b>LT</b>	YES (through revaluation reserve)	YES (through revaluation reserve)	YES (through revaluation reserve)
<b>LU</b>			
<b>LV</b>	NO If so: It is separated from the undistributed profit or loss as a separate reserve.	NO If so: It is separated from the undistributed profit or loss as a separate reserve.	NO If so: It is separated from the undistributed profit or loss as a separate reserve.
<b>MT</b>	YES – Article 193 (2) defines “net assets” as the aggregate of the company’s assets less the aggregate of its liabilities. “Liabilities” include any amount retained as reasonably necessary for the purpose of providing for any liability or loss which is either likely to be incurred or certain to be incurred but uncertain as to amount or as to the date on which it will arise.		N/A
<b>NL</b>	YES	YES	YES
<b>NO</b>			
<b>PL</b>	NO (not all, see b)	NO (not all, see b)	NO (not all, see b)
<b>PT</b>			
<b>RO</b>			
<b>SE</b>	YES	as listed entities	as listed entities
<b>SI</b>	YES	YES	YES
<b>SK</b>	YES	YES	YES
<b>UK</b>	YES	YES	YES

- b) Which of the rules in relation to decrease of equity are particularly burdensome for a company and why (i.e. are there any rules that do not have a necessary function)?

<b>country</b>	<b>public listed company</b>	<b>public unlisted company</b>	<b>private company</b>
<b>AT</b>	NONE	NONE	NONE
<b>BE</b>	NONE	NONE	NONE
<b>BG</b>			
<b>CH</b>	call to creditors	call to creditors	call to creditors
<b>CY</b>	same as answer to question 2.2(f)	same as answer to question 2.2(f)	same as answer to question 2.2(f)
<b>CZ</b>	none identified	none identified	none identified
<b>DE</b>	NONE	NONE	NONE
<b>DK</b>	N/A	N/A	N/A
<b>EE</b>			
<b>ES</b>	NONE	NONE	NONE
<b>FI</b>	NONE	NONE	NONE
<b>FR</b>	N/A	N/A	N/A
<b>GR</b>	The withdrawal of licences since it cannot resolve any of the problems and hence it is not actually implemented.		/
<b>HU</b>	/	/	/
<b>IE</b>	/	/	/
<b>IT</b>	N/A	N/A	N/A
<b>LT</b>	/	/	/
<b>LU</b>			
<b>LV</b>	/	/	/
<b>MT</b>	N/A	N/A	N/A

<b>NL</b>	NONE	NONE	NONE
<b>NO</b>			
<b>PL</b>	<p>The effects of the revaluation of investments classified as non-current assets to their market prices are credited to the revaluation reserve in equity. A decrease in the value, which offsets a surplus for the same investment previously credited to the revaluation reserve in equity and subsequently not cleared as at the measurement date, is debited to the revaluation reserve in equity. In other cases, the effects of a decrease in the value of investments are recognised as financial costs. An increase in the value of a given investment directly related to a previous decrease in the value of the same investment which was recognised as financial costs is recognised as financial income to the extent in which it offsets the previously recognised financial costs.</p> <p>If an investment that was classified as non-current assets and disposed of was previously re-valued or valued at the lower of market price (value) and cost of acquisition and the effects of such a measurement were recognised in a manner specified above, then a revaluation surplus is determined and accounted for with the revaluation reserve.</p>		
<b>PT</b>			
<b>RO</b>			
<b>SE</b>	none in particular	as listed entities	as listed entities
<b>SI</b>	N/A	N/A	N/A
<b>SK</b>	NO	NO	NO
<b>UK</b>	/	/	/

c) Which of the rules in relation to a decrease in equity do you find particularly helpful and why?

<b>country</b>	<b>public listed company</b>	<b>public unlisted company</b>	<b>private company</b>
<b>AT</b>	ALL	ALL	ALL
<b>BE</b>	NONE	NONE	NONE
<b>BG</b>			
<b>CH</b>	NONE	NONE	NONE

<b>CY</b>	same as answer to question 2.2(g)	same as answer to question 2.2(g)	same as answer to question 2.2(g)
<b>CZ</b>	none identified	none identified	none identified
<b>DE</b>	ALL	ALL	ALL
<b>DK</b>	N/A	N/A	N/A
<b>EE</b>			
<b>ES</b>	All the rules are useful.	All the rules are useful.	All the rules are useful.
<b>FI</b>	/	/	/
<b>FR</b>	N/A	N/A	N/A
<b>GR</b>	The reference of the auditor, because it can inform the creditors for the potential danger.		/
<b>HU</b>	/	/	/
<b>IE</b>	/	/	/
<b>IT</b>	see answer 5.1.a) and 5.1.b)	see answer 5.1.a) and 5.1.b)	see answer 5.1.a) and 5.1.b)
<b>LT</b>	/	/	/
<b>LU</b>			
<b>LV</b>	/	/	/
<b>MT</b>	N/A	N/A	N/A
<b>NL</b>	NONE	NONE	NONE
<b>NO</b>			
<b>PL</b>	unavailable	unavailable	unavailable
<b>PT</b>			
<b>RO</b>			
<b>SE</b>	none in particular	as listed entities	as listed entities
<b>SI</b>	N/A	N/A	N/A
<b>SK</b>	NO	NO	NO

<b>UK</b>	/	/	/
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## 6 Questions regarding return / payment of capital to shareholders

### 6.1. Formalities

a) Are there any rules regarding return of capital in the case of winding up the company? YES/NO

country	public listed company	public unlisted company	private company
AT	YES	YES	YES
BE	YES	YES	YES
BG			
CH	YES	YES	YES
CY	YES	YES	YES
CZ	YES	YES	YES
DE	YES	YES	YES
DK	YES	YES	YES
EE			
ES	YES	YES	YES
FI	YES	YES	YES
FR	YES The rules (i) may be included in the articles of incorporation (ii) may be determined by the shareholders in the decision of winding up or (iii) are those provided for by the commercial code when (i) and (ii) are not applicable.		
GR	YES	YES	/
HU	YES	YES	YES
IE	YES	YES	YES
IT	YES	YES	YES

<b>LT</b>	YES	YES	YES
<b>LU</b>			
<b>LV</b>	NO	NO	NO
<b>MT</b>	<p>YES</p> <p>In the context of a voluntary winding-up, article 287 prescribes that subject to the provisions of the Companies Act and of any other law as to preferential debts or payments, the property of a company shall, on its winding-up, be applied in satisfaction of its liabilities <i>pari passu</i>, and, subject to such application, shall, unless the articles otherwise provide, be distributed among the shareholders according to their rights and interests in the company.</p> <p>Moreover, article 300A provides that where in the course of the winding-up of a company the liquidator has not taken into account any asset of the company, and the name of the company has been struck off the register, any interested persons may, by an application, request the Court to order the rectification of the scheme of distribution, and the Court may, where it considers it appropriate, order such rectification under those terms and conditions it may deem fit.</p> <p>Where a company has made a distribution to its shareholders pursuant to a scheme of distribution and the name of such company has been struck off the register, any creditor whose claim against the company has not been satisfied may, by an application, claim what it due to him from the shareholders of the company <i>pro rata</i> to the amount received by the shareholders upon the distribution, and the Court may, where it considers it appropriate, order that payments by the shareholders to such creditor under those terms and conditions it may deem fit.</p>		
<b>NL</b>	YES	YES	YES
<b>NO</b>			
<b>PL</b>	YES	YES	YES
<b>PT</b>			
<b>RO</b>			
<b>SE</b>	YES	as listed entities	as listed entities
<b>SI</b>	YES	YES	YES
<b>SK</b>	NO	NO	NO
<b>UK</b>	shareholders subject to court approval	shareholders subject to court approval	shareholders subject to court approval in certain cases

b) Are there special rules regarding the return/repayment of capital in situations other than winding up the company? YES/NO

<b>country</b>	<b>public listed company</b>	<b>public unlisted company</b>	<b>private company</b>
<b>AT</b>	YES	YES	YES
<b>BE</b>	YES	YES	YES
<b>BG</b>			
<b>CH</b>	YES	YES	YES
<b>CY</b>	YES	YES	YES
<b>CZ</b>	YES	YES	Yes
<b>DE</b>	YES	YES	YES
<b>DK</b>	YES	YES	YES
<b>EE</b>			
<b>ES</b>	YES	YES	YES
<b>FI</b>	YES	YES	YES
<b>FR</b>	YES	YES	YES
<b>GR</b>	YES	YES	/
<b>HU</b>	YES	YES	YES
<b>IE</b>	YES, reduction of share capital or purchase and cancellation of own shares.	YES, reduction of share capital or purchase and cancellation of own shares.	YES, reduction of share capital or purchase and cancellation of own shares.
<b>IT</b>	YES	YES	YES
<b>LT</b>	YES (reorganisation)	YES (reorganisation)	YES (reorganisation)
<b>LU</b>			
<b>LV</b>	NO	NO	NO
<b>MT</b>	YES – reduction of issued capital; redemption of preference shares; acquisition by the company of its own shares		



<b>NL</b>	YES	YES	YES
<b>NO</b>			
<b>PL</b>	YES	YES	YES
<b>PT</b>			
<b>RO</b>			
<b>SE</b>	YES	as listed entities	as listed entities
<b>SI</b>	YES	YES	YES
<b>SK</b>	NO	NO	NO
<b>UK</b>	YES	YES	YES

c) Do these rules differ regarding different classes of shares? YES/NO

<b>country</b>	<b>public listed company</b>	<b>public unlisted company</b>	<b>private company</b>
<b>AT</b>	NO	NO	NA
<b>BE</b>	YES	YES	YES
<b>BG</b>			
<b>CH</b>	NO	NO	NO
<b>CY</b>	YES	YES	YES
<b>CZ</b>	NO	NO	* NO – a.s. * N/A – s.r.o.
<b>DE</b>	NO	NO	NO
<b>DK</b>	depending on the articles of incorporation	depending on the articles of incorporation	depending on the articles of incorporation
<b>EE</b>			

<b>ES</b>	NO	NO	NO
<b>FI</b>	NO, but the Articles of Association may stipulate that shares of different classes differ from each other with regard to the right attached to the share in the distribution of the assets of the company.	NO, but the Articles of Association may stipulate that shares of different classes differ from each other with regard to the right attached to the share in the distribution of the assets of the company.	NO, but the Articles of Association may stipulate that shares of different classes differ from each other with regard to the right attached to the share in the distribution of the assets of the company.
<b>FR</b>	<p>YES, depending on the nature of the operation on the capital</p> <p>For example:</p> <ul style="list-style-type: none"> <li>- preferred redeemable shares,</li> <li>- rights of preferred shares in case of winding up</li> </ul> <p>But in the case of a reduction in capital, no different rules can be applied in case of different classes of shares (even for preferred shares).</p>		
<b>GR</b>	YES	YES	/
<b>HU</b>	YES	/	/
<b>IE</b>	YES	YES	YES
<b>IT</b>	YES (Preferred Shares)	YES (Preferred Shares)	NO
<b>LT</b>	YES	YES	YES
<b>LU</b>			
<b>LV</b>	NO	NO	NO
<b>MT</b>	NO	NO	NO
<b>NL</b>	NO	NO	NO
<b>NO</b>			
<b>PL</b>	YES	YES	- YES for limited liability company - NO for other companies
<b>PT</b>			
<b>RO</b>			

<b>SE</b>	NO	as listed entities	as listed entities
<b>SI</b>	NO	NO	NO
<b>SK</b>	NO	NO	NO
<b>UK</b>	depends on rights attached to classes	depends on rights attached to classes	depends on rights attached to classes

d) Who has the power to decide on the return/repayment of capital?

<b>country</b>	<b>public listed company</b>	<b>public unlisted company</b>	<b>private company</b>
<b>AT</b>	shareholders' meeting	shareholders' meeting	shareholders' meeting
<b>BE</b>	shareholders' meeting	shareholders' meeting	shareholders' meeting
<b>BG</b>			
<b>CH</b>	shareholders' meeting	shareholders' meeting	shareholders' meeting
<b>CY</b>	liquidator	liquidator	liquidator
<b>CZ</b>	shareholders' meeting	shareholders' meeting	shareholders' meeting
<b>DE</b>	shareholders' meeting	shareholders' meeting	shareholders' meeting
<b>DK</b>	general meeting	general meeting	general meeting
<b>EE</b>			
<b>ES</b>	shareholders' meeting	shareholders' meeting	shareholders' meeting
<b>FI</b>	general meeting of the shareholders	general meeting of the shareholders	general meeting of the shareholders
<b>FR</b>	shareholders' meeting	shareholders' meeting	shareholders' meeting
<b>GR</b>	General Assembly	General Assembly	/
<b>HU</b>	- winding up: court - otherwise: owners	- winding up: court - otherwise: owners	- winding up: court - otherwise: owners

<b>IE</b>	- reduction of capital – shareholders - purchase and cancellation – articles of association, directors	- reduction of capital – shareholders - purchase and cancellation – articles of association, directors	- reduction of capital – shareholders - purchase and cancellation – articles of association, directors
<b>IT</b>	- The shareholders, in case of a reduction of capital and in case of exclusion.  - The individual shareholder in case of escape.  - The liquidators, in case of voluntary winding up of the company.	- The shareholders, in case of a reduction of capital and in case of exclusion.  - The individual shareholder in case of escape.  - The liquidators, in case of voluntary winding up of the company.	- The shareholders, in case of a reduction of capital and in case of exclusion.  - The individual shareholder in case of escape.  - The liquidators, in case of voluntary winding up of the company.
<b>LT</b>	Liquidator should follow the law.	Liquidator should follow the law.	Liquidator should follow the law.
<b>LU</b>			
<b>LV</b>	/	/	/
<b>MT</b>	The company in general meeting.  However, where there are different classes of shares the decision by the general meeting concerning a reduction in issued share capital shall be subject to a separate vote for each class of shareholders whose rights are effected by the reduction.		
<b>NL</b>	AGM	AGM	AGM
<b>NO</b>			
<b>PL</b>	Shareholders or liquidator (in the persons of management board, other persons appointed by the statutes or a resolution of the general assembly or a person appointed by the court).	Shareholders or liquidator (in the persons of management board, other persons appointed by the statutes or a resolution of the general assembly or a person appointed by the court).	Shareholders or liquidator (in the persons of management board, other persons appointed by the articles of associations or a resolution of the shareholders or a person appointed by the court) – for limited liability company.  Other partners or liquidator (in the persons of other partners or a person appointed by the court) – for other companies.
<b>PT</b>			
<b>RO</b>			

<b>SE</b>	general meeting	as listed entities	as listed entities
<b>SI</b>	shareholders' meeting	shareholders' meeting	shareholders' meeting
<b>SK</b>	shareholders	shareholders	shareholders
<b>UK</b>	shareholders	shareholders	shareholders

e) Who is liable in case of violation of the rules for returning capital to shareholders?

<b>country</b>	<b>public listed company</b>	<b>public unlisted company</b>	<b>private company</b>
<b>AT</b>	board of directors	board of directors	board of directors
<b>BE</b>	board of directors (for its proposals)	board of directors (for its proposals)	board of directors (for its proposals)
<b>BG</b>			
<b>CH</b>	board of directors / auditors	board of directors / auditors	board of directors / auditors
<b>CY</b>	liquidator	liquidator	liquidator
<b>CZ</b>	liquidator	liquidator	liquidator
<b>DE</b>	board of directors (management and supervisory board)	See left	See left.
<b>DK</b>	the supervisory board or the shareholders	the supervisory board or the shareholders	the supervisory board or the shareholders
<b>EE</b>			
<b>ES</b>	directors	directors	directors

<b>FI</b>	<p>The shareholder shall be liable to return any assets he has obtained from the company against the provisions of the Companies Act unless he had a justified reason to assume that the distribution of the funds took place in accordance with the Companies Act.</p> <p>Liability for any deficiency existing after the repayment shall lie with those who have participated in the making or implementation of the decision to distribute the assets or in the preparation or adoption of the faulty balance sheet.</p>	<p>The shareholder shall be liable to return any assets he has obtained from the company against the provisions of the Companies Act unless he had a justified reason to assume that the distribution of the funds took place in accordance with the Companies Act.</p> <p>Liability for any deficiency existing after the repayment shall lie with those who have participated in the making or implementation of the decision to distribute the assets or in the preparation or adoption of the faulty balance sheet.</p>	<p>The shareholder shall be liable to return any assets he has obtained from the company against the provisions of the Companies Act unless he had a justified reason to assume that the distribution of the funds took place in accordance with the Companies Act.</p> <p>Liability for any deficiency existing after the repayment shall lie with those who have participated in the making or implementation of the decision to distribute the assets or in the preparation or adoption of the faulty balance sheet.</p>
<b>FR</b>	board of directors	board of directors	board of directors
<b>GR</b>	board of directors	board of directors	/
<b>HU</b>	/	/	/
<b>IE</b>	directors	directors	directors
<b>IT</b>	Those board members who implemented the decision of the shareholders.	Those board members who implemented the decision of the shareholders.	Those board members who implemented the decision of the shareholders.
<b>LT</b>	liquidator	liquidator	liquidator
<b>LU</b>			
<b>LV</b>	/	/	/
<b>MT</b>	Generally, the directors. However, pursuant to article 204 <i>et seq.</i> , where a distribution, or part of a distribution, made by a company to one of its members is unlawful and that member knows or has reasonable grounds for believing that it is unlawful, he shall be liable to repay it to the company or, in the case of a distribution in kind, to pay the company a sum equal to the value of the distribution at that time.		
<b>NL</b>	Management and supervisory board and in case of shareholders that can or ought to	Management and supervisory board and in case of shareholders that can or ought to	Management and supervisory board and in case of shareholders that can or ought to

	know and don't act properly: shareholders	know and don't act properly: shareholders	know and don't act properly: shareholders
<b>NO</b>			
<b>PL</b>	A member of the management board, the supervisory board and a liquidator shall be liable to the company for damage caused by acts or omissions in breach of the law or the provisions of the statutes.	A member of the management board, the supervisory board and a liquidator shall be liable to the company for damage caused by acts or omissions in breach of the law or the provisions of the statutes.	A member of the management board, the supervisory board, the audit committee and a liquidator shall be liable to the company for damage caused by acts or omissions in breach of the law or the provisions of the articles of association (for limited liability company). Partners (for other companies).
<b>PT</b>			
<b>RO</b>			
<b>SE</b>	in winding up a company; the appointed administrator of the liquidation	as listed entities	as listed entities
<b>SI</b>	Board of directors	Board of directors	Board of directors
<b>SK</b>	NO	NO	NO
<b>UK</b>	/	/	/

f) Do insolvency practitioners (liquidators) have the same liability as directors in winding up the company? YES/NO

country	public listed company	public unlisted company	private company
<b>AT</b>	YES	YES	YES
<b>BE</b>	NO [reinforced liability]	NO [reinforced liability]	NO [reinforced liability]
<b>BG</b>			
<b>CH</b>	NO (similar)	NO (similar)	NO (similar)

<b>CY</b>	NO	NO	NO
<b>CZ</b>	YES	YES	YES
<b>DE</b>	YES	YES	YES
<b>DK</b>	NO: directors resign when liquidator is appointed	NO: directors resign when liquidator is appointed	NO: directors resign when liquidator is appointed
<b>EE</b>			
<b>ES</b>	YES, one or more liquidators (an odd number) are chosen to replace the directors	YES, one or more liquidators (an odd number) are chosen to replace the directors	YES, one or more liquidators (an odd number) are chosen to replace the directors
<b>FI</b>	YES. One or more liquidators are chosen to replace the Board of Directors, the Managing Director and the Supervisory Board, if any. The provisions of the Companies Act on the Board of Directors or the members of the Board of Directors shall correspondingly apply to the liquidators unless otherwise provided in the Companies Act.		
<b>FR</b>	YES	YES	YES
<b>GR</b>	YES	YES	/
<b>HU</b>	YES	YES	YES
<b>IE</b>	N/A as powers/office of director cease on appointment of liquidator	N/A as powers/office of director cease on appointment of liquidator	N/A as powers/office of director cease on appointment of liquidator
<b>IT</b>	YES	YES	YES
<b>LT</b>	YES	YES	YES
<b>LU</b>			
<b>LV</b>	YES	YES	YES
<b>MT</b>	YES	YES	YES
<b>NL</b>	NO	NO	NO
<b>NO</b>			
<b>PL</b>	YES	YES	YES
<b>PT</b>			
<b>RO</b>			



<b>SE</b>	YES	as listed entities	as listed entities
<b>SI</b>	YES	YES	YES
<b>SK</b>	NO	NO	NO
<b>UK</b>	/	/	/

## 6.2. Substance

- a) Is it possible in situations other than in winding up the company to return to shareholders an amount equal or greater than the capital paid in, if there are deficits in equity e.g. from loss carried forward (e.g. can one repay the nominal value or a part of the issued share capital even if the total amount of equity is negative)? YES/NO

country	public listed company	public listed company	private company
<b>AT</b>	YES, but the share capital may not fall below minimum share capital	YES, but the share capital may not fall below minimum share capital	YES, but the share capital may not fall below minimum share capital
<b>BE</b>	NO	NO	NO
<b>BG</b>			
<b>CH</b>	/	/	/
<b>CY</b>	NO	NO	NO
<b>CZ</b>	YES - rarely	YES - rarely	YES - rarely
<b>DE</b>	NO ( <i>Rechtliche Grundlage?</i> )	NO	NO
<b>DK</b>	NO	NO	NO

<b>EE</b>			
<b>ES</b>	NO	NO	NO
<b>FI</b>	NO	NO	NO
<b>FR</b>	<p>YES, under the following conditions :</p> <ul style="list-style-type: none"> <li>- In case of <b>repayment of capital</b> ("amortissement du capital") : (i) amounts used for repayment may only come from the distributable (profit for the period less (a) the losses carried forward, (b) the sums carried forward pursuant to the law or the articles of association, plus the profits carried forward) and reserves available for distribution and (ii) unless a capital reduction is taking place, no distribution can be made to the shareholders when the share capital is, or would thereby become, lower than the amount of the capital plus the reserves which are non available for distribution due to the commercial code or the articles of incorporation.</li> <li>- In case of a <b>reduction in capital</b> : the reduction to an amount lower than the minimum capital required by law may be decided only subject to the suspensive condition of an increase in capital in the view to raise the capital to an amount at least equal to the minimum capital required by law, unless the company is converted into another form of company.</li> </ul>		
<b>GR</b>	NO	NO	/
<b>HU</b>	NO	NO	NO
<b>IE</b>	NO	NO	NO
<b>IT</b>	NO	NO	NO
<b>LT</b>	YES	YES	YES
<b>LU</b>			
<b>LV</b>	NO	NO	NO
<b>MT</b>	<p>YES – In the event of a reduction of issued share capital involving an outright return of the nominal value of the shares so reduced, and possibly a premium thereon, and which, pursuant to article 83 (1), takes effect upon the expiration of three months from the date of publication on the website of the Registry of Companies and in a daily newspaper of a notice of the said reduction.</p>		
<b>NL</b>	NO	NO	NO
<b>NO</b>			
<b>PL</b>	NO	NO	NO
<b>PT</b>			
<b>RO</b>			

<b>SE</b>	YES	as listed entities	as listed entities
<b>SI</b>	NO	NO	NO
<b>SK</b>	NO	NO	NO
<b>UK</b>	/	/	/

b) Which of the rules on the return of capital are particularly burdensome for a company and why (i.e. are there any rules that do not have a necessary function)?

<b>country</b>	<b>public listed company</b>	<b>public unlisted company</b>	<b>private company</b>
<b>AT</b>	NONE	NONE	NONE
<b>BE</b>	NONE	NONE	NONE
<b>BG</b>			
<b>CH</b>	call to creditors	call to creditors	call to creditors
<b>CY</b>	same as answer to question 2.2(f)	same as answer to question 2.2(f)	same as answer to question 2.2(f)
<b>CZ</b>	none identified	none identified	none identified
<b>DE</b>	NONE	NONE	NONE
<b>DK</b>	N/A	N/A	N/A
<b>EE</b>			
<b>ES</b>	NONE	NONE	NONE
<b>FI</b>	NONE	NONE	NONE
<b>FR</b>	N/A	N/A	N/A
<b>GR</b>	The rules on the return of capital are helpful. There is a need for more specific legislation.		/
<b>HU</b>	/	/	/

<b>IE</b>	/	/	/
<b>IT</b>	N/A	N/A	N/A
<b>LT</b>	/	/	/
<b>LU</b>			
<b>LV</b>	/	/	/
<b>MT</b>	N/A	N/A	N/A
<b>NL</b>	publication rules	publication rules	publication rules
<b>NO</b>			
<b>PL</b>	unavailable	unavailable	unavailable
<b>PT</b>			
<b>RO</b>			
<b>SE</b>	none in particular	as listed entities	as listed entities
<b>SI</b>	N/A	N/A	N/A
<b>SK</b>	NO	NO	NO
<b>UK</b>	/	/	/

c) Which of the rules in relation to return of capital do you find particularly helpful and why?

<b>country</b>	<b>public listed company</b>	<b>public listed company</b>	<b>private company</b>
<b>AT</b>	ALL	ALL	ALL
<b>BE</b>	NONE	NONE	NONE
<b>BG</b>			
<b>CH</b>	NONE	NONE	NONE
<b>CY</b>	same as answer to question 2.2(g)	same as answer to question 2.2(g)	same as answer to question 2.2(g)
<b>CZ</b>	none identified	none identified	none identified
<b>DE</b>	ALL	ALL	ALL
<b>DK</b>	N/A	N/A	N/A
<b>EE</b>			
<b>ES</b>	All of the rules are useful	All of the rules are useful	All of the rules are useful
<b>FI</b>	/	/	/
<b>FR</b>	N/A	N/A	N/A
<b>GR</b>	see answer 6.1.e)	see answer 6.1.e)	/
<b>HU</b>	/	/	/
<b>IE</b>	/	/	/
<b>IT</b>	see answer 6.1.e)	see answer 6.1.e)	see answer 6.1.e)
<b>LT</b>	/	/	/
<b>LU</b>			
<b>LV</b>	/	/	/

<b>MT</b>	Article 83 (1), which provides that a reduction of issued share capital involving an outright return of the nominal value of the shares so reduced, takes effect only upon the expiration of three months form the date of publication on the website of the Registry of Companies and in a daily newspaper of a notice of the said reduction. Article 83 (1) protects the creditors of a company by granting the said creditors the right to object to such a reduction by filing an application in court within the aforementioned period of three months and showing good cause why the reduction should not take effect. The court may either uphold the objection or allow the reduction on sufficient security being given.		
<b>NL</b>	ALL	ALL	ALL
<b>NO</b>			
<b>PL</b>	unavailable	unavailable	unavailable
<b>PT</b>			
<b>RO</b>			
<b>SE</b>	none in particular	as listed entities	as listed entities
<b>SI</b>	N/A	N/A	N/A
<b>SK</b>	NO	NO	NO
<b>UK</b>	/	/	/

## 7. Insolvency

a) What are the reasons to file for insolvency under national legislation?

country	public listed company	public unlisted company	private company
<b>AT</b>	over-indebtedness and non-transitional inability to pay the debts	over-indebtedness and non-transitional inability to pay the debts	over-indebtedness and non-transitional inability to pay the debts
<b>BE</b>	<p>Creditors and the Public Prosecutor are entitled to place a debtor in bankruptcy, by serving a writ of summons before the commercial court. They are required to demonstrate that the conditions for bankruptcy are met, i.e.:</p> <ol style="list-style-type: none"> <li>1) The debtor has ceased in a persistent manner to pay his/her debt;</li> <li>2) The debtor is no longer able to obtain credits.</li> <li>3) The company must have a “commercial activity”</li> </ol>		
<b>BG</b>			
<b>CH</b>	over-indebtedness / illiquidity	over-indebtedness / illiquidity	over-indebtedness / illiquidity
<b>CY</b>	<ol style="list-style-type: none"> <li>(a) The number of shareholders is reduced below seven.</li> <li>(b) The company is unable to pay its debts.</li> <li>(c) The company does not commence business within a year from its incorporation.</li> <li>(d) Company decision</li> <li>(e) Default in making statutory return.</li> </ol>		<ol style="list-style-type: none"> <li>(a) The company is unable to pay its debts.</li> <li>(b) The company does not commence business within a year from its incorporation.</li> <li>(c) Company decision</li> <li>(e) Default in making statutory return.</li> </ol>
<b>CZ</b>	<ol style="list-style-type: none"> <li>a) the company is insolvent (it has more creditors and monetary debt overdue for more than 30 days and is Not able to repay these debts) OR</li> <li>b) amount of liabilities due (to more creditors) exceed total assets (definition of assets differs from IFRS definition)</li> </ol>	<ol style="list-style-type: none"> <li>a) the company is insolvent (it has more creditors and monetary debt overdue for more than 30 days and is Not able to repay these debts) OR</li> <li>b) amount of liabilities due (to more creditors) exceed total assets (definition of assets differs from IFRS definition)</li> </ol>	<ol style="list-style-type: none"> <li>a) the company is insolvent (it has more creditors and monetary debt overdue for more than 30 days and is Not able to repay these debts) OR</li> <li>b) amount of liabilities due (to more creditors) exceed total assets (definition of assets differs from IFRS definition)</li> </ol>

	These are basic reasons for filing for insolvency.	These are basic reasons for filing for insolvency.	These are basic reasons for filing for insolvency.
<b>DE</b>	<ul style="list-style-type: none"> <li>- Debtor is illiquid (§ 17 Insolvency Code)</li> <li>- Over-indebtedness / excessive debt (§ 19 Insolvency Code)</li> <li>- Impending illiquidity: In the event that the debtor shall petition for the commencement of the insolvency proceedings, impending illiquidity shall also be a reason for commencement (§ 18 of the Insolvency Code).</li> </ul>		
<b>DK</b>	The company is not able to pay due debt.	The company is not able to pay due debt.	The company is not able to pay due debt.
<b>EE</b>			
<b>ES</b>	Not to be able to regularly meet the liabilities.	Not to be able to regularly meet the liabilities.	Not to be able to regularly meet the liabilities.
<b>FI</b>	If the equity of the company is less than half of its share capital, the company shall be placed in liquidation. The liquidation can end up in bankruptcy if the equity continues to be less than half of the share capital. A company can also file for bankruptcy if it is insolvent. A company can try to start the restructuring procedure, if it is temporarily insolvent.		
<b>FR</b>	The company is insolvent and namely the inability to pay debts.		
<b>GR</b>	The company fails to pay its debts. The debtors file for adjudication order.	/	
<b>HU</b>	lost share capital	If the companies don't meet their payment liabilities.	
<b>IE</b>	Primarily, company unable to pay its debts.		
<b>IT</b>	the state of insolvency	the state of insolvency	the state of insolvency
<b>LT</b>	<ul style="list-style-type: none"> <li>- fails to pay wages and other employment-related amounts when due</li> <li>- fails to pay, when due, for the goods received, work performed, services provided, defaults in the repayment of credits and does not fulfill other obligations</li> </ul>	as PLC	as PLC



	<p>assumed under contracts</p> <ul style="list-style-type: none"> <li>- fails to pay, when due, taxes, other compulsory contributions prescribed by law and/or the awarded sums</li> <li>- notified the creditors of its inability or lack of intent to discharge its obligations</li> <li>- has no assets or income from which debts could be recovered</li> </ul>		
<b>LU</b>			
<b>LV</b>	<p>1.If the debt exceeds the company assets or 2. the company can not pay during three weeks from the payment term and can not agree with a creditor on the payment conditions the management is obliged to submit an insolvency letter to the court.</p>		
<b>MT</b>	<p>Articles 218 and 214 state that any shareholder, director, debenture holder, creditor or contributory (i.e. any person liable to contribute to the assets of a company in the event of its dissolution) may request the court to dissolve and wind up the company if the latter is unable to pay its debts.</p>		
<b>NL</b>	stopping to meet payable debts	stopping to meet payable debts	stopping to meet payable debts
<b>NO</b>			
<b>PL</b>	<p>Insolvency of the company is announced when the company is insolvent.</p> <p>Debtor is insolvent when does not pay his current liabilities.</p> <p>For companies like: joint-stock partnership and limited liability company insolvency is also announced when its liabilities are higher then the value of the total assets (even when the company pays its current liabilities).</p>		
<b>PT</b>			
<b>RO</b>			
<b>SE</b>	<p>When the company is unable to fulfil its payment obligations and this inability is considered to not only be for a short duration.</p>	as listed entities	as listed entities

<b>SI</b>	Company is unable to pay its liabilities on time for longer period of time.	Company is unable to pay its liabilities on time for longer period of time.	Company is unable to pay its liabilities on time for longer period of time.
<b>SK</b>	bankruptcy law	bankruptcy law	bankruptcy law
<b>UK</b>	The main ground is inability to pay debts, which may be determined on a simple cash flow basis or via a technical definition of insolvency, via liabilities exceeding assets		

- b) Is there any possibility to recover funds from directors in situations of insolvency (for example in cases of wrongful or fraudulent trading)?  
YES/NO

<b>country</b>	<b>public listed company</b>	<b>public unlisted company</b>	<b>private company</b>
<b>AT</b>	YES	YES	YES
<b>BE</b>	Directors may be held liable [both from a civil and criminal perspective], if they fail to file for bankruptcy in a timely fashion. Besides, if a court finds that an obvious and serious default of a director has contributed to the company becoming bankrupt, it may make him responsible for paying all or part of all debts and it may bar that director from being a director or other officer of any company for a period of three to ten years.		
<b>BG</b>			
<b>CH</b>	YES	YES	YES
<b>CY</b>	YES	YES	YES
<b>CZ</b>	YES	YES	YES
<b>DE</b>	YES ( <i>rechtliche Grundlage?</i> )	YES	YES
<b>DK</b>	YES	YES	YES
<b>EE</b>			
<b>ES</b>	YESYES	YES	YES
<b>FI</b>	YES	YES	YES

	<p>The Securities Market Act shall apply to the issuance of securities to the public, the transfer and clearing of securities issued to the public as well as to public trade in securities. In accordance with the Securities Market Act anyone who causes damage through procedure that is against the Securities Market Act or against provisions issued there under shall be liable to compensate the damage he has caused.</p> <p>Adjustment and allocation of the damages among two or more parties liable therein shall be governed by the provision of the Damages Act.</p> <p>Punishment for abuse of inside information wilfully or through gross negligence in order to gain a material benefit is governed in chapter 51, sections 1 and 2 of the Penal Code.</p> <p>Punishment for market price distortion in order to gain a material benefit is governed by chapter 51, sections 3 and 4 of the Penal Code.</p> <p>The provisions of the Companies Act described in the Private Company section apply also to listed companies.</p>	<p>A founder, a member of the Board of Directors or a Supervisory Board and the Managing Director shall be liable to compensate all damage caused to the company in office either wilfully or negligently. The same shall apply to damage caused to a shareholder or a third person by an act infringing the Companies Act or the Articles of Association.</p> <p>A shareholder shall be liable to compensate a damage caused to the company, a shareholder or a third person to which he has contributed through a wilful or grossly negligent act infringing the Companies Act or the Articles of Association.</p> <p>The adjustment of damages as well as the allocation of the liability in damages among two or more persons liable for the damages shall be governed by the provisions of the Damages Act.</p>	<p>A founder, a member of the Board of Directors or a Supervisory Board and the Managing Director shall be liable to compensate all damage caused to the company in office either wilfully or negligently. The same shall apply to damage caused to a shareholder or a third person by an act infringing the Companies Act or the Articles of Association.</p> <p>A shareholder shall be liable to compensate a damage caused to the company, a shareholder or a third person to which he has contributed through a wilful or grossly negligent act infringing the Companies Act or the Articles of Association.</p> <p>The adjustment of damages as well as the allocation of the liability in damages among two or more persons liable for the damages shall be governed by the provisions of the Damages Act.</p>
<b>FR</b>	YES	YES	YES
<b>GR</b>	YES	YES	/
<b>HU</b>	YES	YES	YES
<b>IE</b>	YES	YES	YES
<b>IT</b>	Action of liability carried out by the	Action of liability carried out by the	Action of liability carried out by the

	receiver (in the Italian Law the receiver is called “curatore”)	receiver (in the Italian Law the receiver is called “curatore”)	receiver (in the Italian Law the receiver is called “curatore”)
<b>LT</b>	YES	YES	YES
<b>LU</b>			
<b>LV</b>	YES	YES	YES
<b>MT</b>	<p>YES, the Companies Act contemplates two situations in which funds may be recovered from directors in situations of insolvency:</p> <ul style="list-style-type: none"> <li>- Article 315 (1) – If in the course of the winding-up of a company it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose, the court on the application of the official receiver, or the liquidator or any creditor or contributory of the company, may, if it thinks proper so to do, declare that any persons who were knowingly parties to the carrying on of the business in the manner aforesaid be personally responsible, without any limitation of liability for all or any of the debts or other liabilities of the company as the court may direct.</li> <li>- Articles 316 (1) and (2) – Where a company has been dissolved and is insolvent, and it appears that a person, who was a director of the company, knew or ought to have known prior to the dissolution of the company that there was no reasonable prospect that the company would avoid being dissolved due to its insolvency to the court, on the application of the liquidator of the said company, may declare the director liable to make a payment towards the company’s assets as the court thinks fit.</li> </ul>		
<b>NL</b>	YES	YES	YES
<b>NO</b>			
<b>PL</b>	YES	YES	YES
<b>PT</b>			
<b>RO</b>			
<b>SE</b>	YES	as listed entities	as listed entities
<b>SI</b>	YES	YES	YES
<b>SK</b>	NO	NO	NO
<b>UK</b>	YES	YES	YES

c) Are there civil liabilities for directors where they allow their company to trade with intent to defraud creditors? YES/NO

<b>country</b>	<b>public listed company</b>	<b>public unlisted company</b>	<b>private company</b>
<b>AT</b>	YES	YES	YES
<b>BE</b>	YES	YES	YES
<b>BG</b>			
<b>CH</b>	YES	YES	YES
<b>CY</b>	YES	YES	YES
<b>CZ</b>	YES	YES	YES
<b>DE</b>	YES	YES	YES
<b>DK</b>	YES	YES	YES
<b>EE</b>			
<b>ES</b>	YES	YES	YES
<b>FI</b>	YES, see 7.b		
<b>FR</b>	YES	YES	YES
<b>GR</b>	YES	YES	/
<b>HU</b>	YES	YES	YES
<b>IE</b>	YES	YES	YES
<b>IT</b>	YES	YES	YES
<b>LT</b>	YES	YES	YES
<b>LU</b>			
<b>LV</b>	YES	YES	YES

<b>MT</b>	<p>YES (see answer to question 7.b above)</p> <p>The directors of a company are bound to act honestly and in good faith and in the best interest of the company, the directors being bound to promote the well-being of the company in the exercise of the duties inherent in the general governance of the company and its proper administration and management for which the directors of the company are responsible. The personal liability of the directors in damages for breach of duty is joint and several.</p> <p>The above is without prejudice to the criminal liability provided for in the articles 307, 308, 313 and 315 pursuant to which a director is guilty of the offences identified in the aforesaid articles shall be liable to a fine not exceeding € 232,937 or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.</p>		
<b>NL</b>	YES	YES	YES
<b>NO</b>			
<b>PL</b>	YES	YES	YES
<b>PT</b>			
<b>RO</b>			
<b>SE</b>	YES	as listed entities	as listed entities
<b>SI</b>	YES	YES	YES
<b>SK</b>	YES	YES	YES
<b>UK</b>	YES	YES	YES

d) If so, are such liabilities imposed by legislation or case law?

<b>country</b>	<b>public listed company</b>	<b>public unlisted company</b>	<b>private company</b>
<b>AT</b>	by legislation	by legislation	by legislation
<b>BE</b>	by law	by law	by law
<b>BG</b>			
<b>CH</b>	by legislation	by legislation	by legislation
<b>CY</b>	by legislation	by legislation	by legislation
<b>CZ</b>	by legislation	by legislation	by legislation
<b>DE</b>	by legislation	by legislation	by legislation
<b>DK</b>	by legislation	by legislation	by legislation
<b>EE</b>			
<b>ES</b>	both	both	both
<b>FI</b>	by legislation	by legislation	by legislation
<b>FR</b>	both	both	both
<b>GR</b>	by legislation	by legislation	/
<b>HU</b>	by legislation	by legislation	by legislation
<b>IE</b>	company law	company law	company law
<b>IT</b>	by legislation	by legislation	by legislation
<b>LT</b>	civil and criminal law (legislation)	civil and criminal law (legislation)	civil and criminal law (legislation)
<b>LU</b>			
<b>LV</b>	criminal responsibility	criminal responsibility	criminal responsibility
<b>MT</b>	by legislation	by legislation	by legislation

<b>NL</b>	legislation as well as case law	legislation as well as case law	legislation as well as case law
<b>NO</b>			
<b>PL</b>	by legislation	by legislation	by legislation
<b>PT</b>			
<b>RO</b>			
<b>SE</b>	both	as listed entities	as listed entities
<b>SI</b>	by legislation	by legislation	by legislation
<b>SK</b>	criminal	criminal	criminal
<b>UK</b>	by legislation	by legislation	by legislation

e) Are there laws or rules for wrongful and fraudulent trading that are of relevance to capital maintenance and creditor protection?

If yes, please describe

<b>country</b>	<b>public listed company</b>	<b>public unlisted company</b>	<b>private company</b>
<b>AT</b>	YES, see above	YES, see above	YES, see above
<b>BE</b>	YES [liability in case of non-convocation of the General Assembly]	YES [liability in case of non-convocation of the General Assembly]	YES [liability in case of non-convocation of the General Assembly]
<b>BG</b>			
<b>CH</b>	question unclear	question unclear	question unclear
<b>CY</b>	YES: Any person who is party to fraudulent trading is personally liable, without any limitation, for all or any of the debts or other liabilities of the company.		
<b>CZ</b>	YES, According to the Criminal Code	YES, According to the Criminal Code	YES, According to the Criminal Code



	fraudulent accounting is criminal act.	fraudulent accounting is criminal act.	fraudulent accounting is criminal act.
<b>DE</b>	YES, see above ( <i>nähere Begründung?</i> )	YES, see above	YES, see above
<b>DK</b>	YES: Promoters, members of the board of directors and of the management board who, in the performance of their duties have caused damage to the company due to willful misconduct or negligence, shall be liable in damages. This consequence shall also apply where damage has been inflicted upon shareholders, creditors of the company or any third party by a violation of the provisions of The Danish Public Companies Act or the articles of association.		
<b>EE</b>			
<b>ES</b>	YES - Commercial law, company law and insolvency law establish the responsibility of the board of directors for wrongful and fraudulent trading.		
<b>FI</b>	YES, see 7.b		
<b>FR</b>	YES - In case of negligence, failure in consulting the shareholders of the company, the management, president and directors entail criminal sanctions		
<b>GR</b>	<ul style="list-style-type: none"> <li>- CL 2190/1920, Article 22a: Fair Presentation (truthfulness) of Financial Statements</li> <li>- Commercial Law, Article 685: Penal Responsibility of Directors in case of fraudulent insolvency</li> </ul>		/
<b>HU</b>	In the new company law: Yes. - In the case of wrongful trading civil law defines liabilities of directors against creditors if company becomes insolvent.		
<b>IE</b>	YES: sections 245-248, 282B-D, 286-289, 293-299, Companies Act 1963 and Sections 139-140, Companies Act 1990	YES: sections 245-248, 282B-D, 286-289, 293-299, Companies Act 1963 and Sections 139-140, Companies Act 1990	YES: sections 245-248, 282B-D, 286-289, 293-299, Companies Act 1963 and Sections 139-140, Companies Act 1990
<b>IT</b>	See answer 7.b)	See answer 7.b)	See answer 7.b)
<b>LT</b>	NO	NO	NO
<b>LU</b>			
<b>LV</b>	NO	NO	NO
<b>MT</b>	<p>YES – These rules are embedded in articles 307 – 321. However, these provisions are specifically applicable in the context of winding-up.</p> <p>Similar rules concerning fraudulent trading and wrongful trading pervade the company recovery procedure as catered for in article 329B.</p>		

<b>NL</b>	YES: if directors are guilty of mismanagement and the mismanagement caused the insolvency they are liable for the shortfall. Not keeping the records properly, not making up proper annual accounts in time or not filing them in time is mismanagement according to law and makes management liable.		
<b>NO</b>			
<b>PL</b>	YES: A member of the management board, the supervisory board and a liquidator shall be liable to the company for damage caused by acts or omissions in breach of the law or the provisions of the statutes, unless he is not at fault.	YES: A member of the management board, the supervisory board and a liquidator shall be liable to the company for damage caused by acts or omissions in breach of the law or the provisions of the statutes, unless he is not at fault.	YES: A member of the management board, the supervisory board, the audit committee and a liquidator shall be liable to the company for damage caused by acts or omissions in breach of the law or the provisions of the articles of association, unless he is not at fault (for limited liability company).  Owners are responsible for any wrongful and fraudulent trading to their contractors on the grounds of the civil law (for other companies).
<b>PT</b>			
<b>RO</b>			
<b>SE</b>	YES: Anyone who acts on behalf of a company that should be put into involuntary liquidation could be liable for obligations incurred by the company. Further there are criminal sanctions if a creditor is disadvantaged when the company is insolvent.	as listed entities	as listed entities
<b>SI</b>	YES: The members of the board of directors shall be jointly and severally liable to the company for damage arising as a consequence of a violation of their duties, unless they demonstrate that they fulfilled their duties honestly and conscientiously (A Company Act)		
<b>SK</b>	YES: Act of AML, criminal,	YES: Act of AML, criminal,	YES: Act of AML, criminal,
<b>UK</b>	YES: where directors allow their company to continue to run up debts after they should know that the company cannot survive, they may be held personally liable for those debts		

## 8. Additional questions

- a) Is the meaning of equity for profit distribution/dividend distribution (individual accounts) the same as for equity in the consolidated accounts?  
YES/NO

Is this a recent change (after IFRS introduction)? YES/NO

country	public listed company	public unlisted company	private company
AT	NO	NO	NO
BE	NO recent change: NO	NO recent change: NO	NO recent change: NO
BG			
CH	NO	NO	NO
CY	YES recent change: NO	YES recent change: NO	YES recent change: NO
CZ	YES recent change: NO	YES recent change: NO	YES recent change: NO
DE	NO	NO	NO
DK	NO	NO	NO
EE			
ES	NO recent change: NO	NO recent change: NO	NO recent change: NO

<b>FI</b>	<p>YES</p> <p>The companies act regulates the distribution of profit, IFRS does not. In accordance with the Companies Act the distribution of profit may not exceed the amount of distributable assets as defined in the Companies Act. A parent company may not distribute as profit more than the distributable assets in the consolidated balance sheet.</p> <p>recent change: NO</p>		
<b>FR</b>	<p>Dividend or profit distribution are subject to a specific regulation different from equity in the consolidated accounts</p> <p>recent change: NO</p>		
<b>GR</b>	question unclear	question unclear	question unclear
<b>HU</b>	NO	NO	NO
<b>IE</b>	<p>YES: Profits available for distribution are determined solely on basis of the financial statements of the parent company.</p> <p>recent change: NO</p>	<p>YES: Profits available for distribution are determined solely on basis of the financial statements of the parent company.</p> <p>recent change: NO</p>	<p>YES: Profits available for distribution are determined solely on basis of the financial statements of the parent company.</p> <p>recent change: NO</p>
<b>IT</b>	NO	NO	NO
<b>LT</b>	YES	YES	YES
<b>LU</b>			
<b>LV</b>	<p>YES</p> <p>recent change: NO</p>	<p>YES</p> <p>recent change: NO</p>	<p>YES</p> <p>recent change: NO</p>
<b>MT</b>	<p>NO</p> <p>recent change? NO, only the individual accounts are relevant for distribution purposes.</p>		
<b>NL</b>	<p>NO, the consolidated equity needs not to be split in components because of its irrelevance for capital maintenance.</p> <p>recent change: NO</p>	<p>NO, the consolidated equity needs not to be split in components because of its irrelevance for capital maintenance.</p> <p>recent change: NO</p>	<p>NO, the consolidated equity needs not to be split in components because of its irrelevance for capital maintenance.</p> <p>recent change: NO</p>

<b>NO</b>			
<b>PL</b>	NO	NO	NO
<b>PT</b>			
<b>RO</b>			
<b>SE</b>	NO - recent change: YES	as listed entities	as listed entities
<b>SI</b>	NO	NO	NO
<b>SK</b>	NO - recent change: YES	NO - recent change: YES	NO - recent change: YES
<b>UK</b>	YES but the meaning of equity (share capital) for legal purposes is not the same as for IFRS (e.g. preference shares would not be treated as debt)  - change: N/A		

- b) Are there any other areas of law or rules whereby the directors can incur personal liability for acts undertaken by the company which threaten the company's solvency or violate the capital maintenance requirements?

<b>country</b>	<b>public listed company</b>	<b>public unlisted company</b>	<b>private company</b>
<b>AT</b>	NO	NO	NO
<b>BE</b>	YES	YES	YES
<b>BG</b>			
<b>CH</b>	YES, in the context of mergers and demergers	YES, in the context of mergers and demergers	YES, in the context of mergers and demergers

<b>CY</b>	YES	YES	YES
<b>CZ</b>	none identified	none identified	none identified
<b>DE</b>	NO ( <i>question unclear?</i> )	NO	NO
<b>DK</b>	YES	YES	YES
<b>EE</b>			
<b>ES</b>	YES	YES	YES
<b>FI</b>	see 7.b	see 7.b	see 7.b
<b>FR</b>	NO	NO	NO
<b>GR</b>	Civil Law, Article 71: Responsibility for Dud Cheques		/
<b>HU</b>	YES	YES	YES
<b>IE</b>	/	/	/
<b>IT</b>	YES	YES	YES
<b>LT</b>	NO	NO	NO
<b>LU</b>			
<b>LV</b>	criminal law	criminal law	criminal law
<b>MT</b>	In addition to the civil law provisions and the provisions of wrongful and fraudulent trading in the context of winding-up (see section 7 above) the recently-introduced provisions on company recovery procedure in the Companies Act hold directors responsible for failing to act as diligent directors in particular circumstances where they ought to have taken steps in order to avoid the company from becoming unable to pay its debts.		
<b>NL</b>	see above	see above	see above
<b>NO</b>			
<b>PL</b>	Any directors' actions that threaten the company's solvency or violate the capital maintenance requirements are illegal and these directors incur personal liability (unless they are not at fault) for such acts.	Any directors' actions that threaten the company's solvency or violate the capital maintenance requirements are illegal and these directors incur personal liability (unless they are not at fault) for such acts.	Any directors' actions that threaten the company's solvency or violate the capital maintenance requirements are illegal and these directors incur personal liability (unless they are not at fault) for such acts (for limited liability company).

			Partners are responsible (to other partners) for any actions that threaten the company's solvency. In such cases they incur personal liability (for other companies).
<b>PT</b>			
<b>RO</b>			
<b>SE</b>	YES	as listed entities	as listed entities
<b>SI</b>	NO	NO	NO
<b>SK</b>	NO	NO	NO
<b>UK</b>	directors may be personally liable if they allow their company to trade fraudulently	directors may be personally liable if they allow their company to trade fraudulently	directors may be personally liable if they allow their company to trade fraudulently

- c) Are there any specific requirements applicable to the SE different from those for a public company as described above? Please indicate the differences as far as they are relevant for the capital maintenance examination.

<b>country</b>	<b>public listed company</b>	<b>public unlisted company</b>	<b>private company</b>
<b>AT</b>	NO	NO	NO
<b>BE</b>	NO	NO	NO
<b>BG</b>			
<b>CH</b>	NO	NO	NO
<b>CY</b>	no other differences	no other differences	no other differences
<b>CZ</b>	none identified	none identified	none identified
<b>DE</b>	NO	NO	NO
<b>DK</b>	further protection of minority interests	further protection of minority interests	further protection of minority interests

<b>EE</b>			
<b>ES</b>	NO	NO	NO
<b>FI</b>	/	/	/
<b>FR</b>	NO	NO	NO
<b>GR</b>	/	/	/
<b>HU</b>	/	/	/
<b>IE</b>	/	/	/
<b>IT</b>	YES: the rules for PIE are more stringent	YES	YES
<b>LT</b>	NO	NO	NO
<b>LU</b>			
<b>LV</b>	NO	NO	NO
<b>MT</b>	No specific regulation has yet been enacted in Malta to complement the direct applicability of EU Regulation 2157/2001. Therefore to date capital maintenance provisions under the Companies Act would be applicable. We understand that specific Maltese legislation in this respect is being prepared.		
<b>NL</b>	NO	NO	NO
<b>NO</b>			
<b>PL</b>	<p>In PL there is no division of the companies into big, medium or small companies.</p> <p>All listed entities have an obligation to be audited every year and also have to be reviewed by a statutory auditor every three months.</p> <p>Other companies are required to be audited by a statutory auditor yearly only if they follow two out of three conditions:</p> <ul style="list-style-type: none"> <li>- the annual average number of employees in full-time equivalents amounted to at least 50 people,</li> <li>- the total assets as at the end of the financial year were at least the PLN equivalent of € 2.500 000,</li> <li>- the net revenue from the sales of goods for resale and finished goods and the financial transactions for the financial year, was at least the PLN equivalent of € 5.000 000.</li> </ul> <p>These other companies do not have to be reviewed.</p>		
<b>PT</b>			
<b>RO</b>			



<b>SE</b>	NO	as listed entities	as listed entities
<b>SI</b>	NO	NO	NO
<b>SK</b>	/	/	/
<b>UK</b>	NO	NO	NO

**Legend of the countries**

AT	Austria
BE	Belgium
BG	Bulgaria
CY	Cyprus
CZ	Czech Republic
DK	Denmark
EE	Estonia
FI	Finland
FR	France
DE	Germany
GR	Greece
HU	Hungary
IE	Ireland
IT	Italy
LV	Latvia
LT	Lithuania
LU	Luxembourg
MT	Malta
NL	Netherlands
NO	Norway
PL	Poland
PT	Portugal
RO	Romania
SK	Slovak Republic
SI	Slovenia
ES	Spain
CH	Switzerland
UK	United Kingdom