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新布局 新曙光

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私营股份有限公司股本的增减

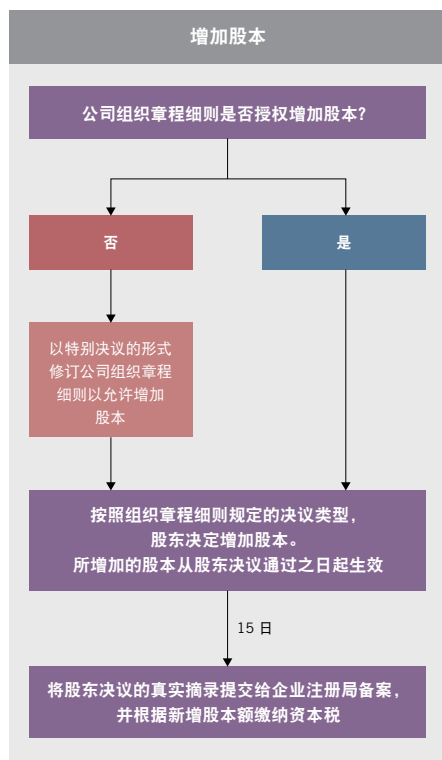
Increase, reduction of share capital in companies limited by shares



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《塞浦路斯公司法》第 60 条列出了五种资本运作方式，增加法定股本为其中之一，“如果公司组织章程细则有此授权”，股份有限公司即可实施增加股本。倘若该公司的组织章程细则没有明确授权，则需要以特别决议的形式对组织章程细则进行修订，从而获得有关增加股本的授权。增加股本需要公司股东的批准，并从该股东决议案通过之日起生效。至于所要求的股东决议应该采取普通类型还是特别类型，《公司法》没有明文要求，因此取决于各公司组织章程细则各自的规定。

根据《公司法》第 62 (1) 条，授权增加股本的股东决议自通过之日起 15 天内，须向企业注册局备案。在实践中，由公司秘书将授权增加股本股东决议经核证后的真



实摘录提交给企业注册局，同时还要提交 HE14 表单，表单中须以数字的形式列明增加的股本，以便计算应缴资本税。资本税按新增股本额的 0.6% 计算，且不低于 20 欧元 (27 美元)，在有关增加股本的所有备案材料提交给企业注册局时支付。

经过法院的确认，并且公司组织章程细则已经授权，股份有限公司可通过特别决议案以任何方式削减法定股本。倘若该公司的组织章程细则没有明确授权削减股本，则需要以特别决议的形式修订章程细则使此项授权生效。法院批准削减股本背后依据的原则是，确保拟削减股本的方案不仅在公司股东之间，而且在涉及该公司的其他权益方之间保持公平和公正。

批准削减股本的股东特别决议案获通过后，须以请求书的形式对公司事务及公司法方面的问题向法院申请确认削减股本。除了通常应包含的材料细节，如公司的设立地、注册办事处、公司组织章程大纲中规定的经营目标和股本情况，提交给法院的请求书中还必须清楚指明公司组织章程细则中允许削减股本的资本运作条款、经股东批准的相关特别决议以及寻求削减股本的原因。

请求书必须有经公司的高级职员宣誓过的宣誓书的支持。宣誓书中应显示出如下内容：1) 公司成立的证书；2) 公司组织章程大纲及章程细则；3) 批准削减股本特别决议案，包括特别决议的批准所适合的及所使用的方式和媒介的任何公告；4) 公司最近期的财务和 / 或管理账目报表；5) 债权人对该拟削减股本方案的同意书，或债权人对其债务已解除、了结或以其他方式保全的任何确认书。

法院对削减股本的确认具有自由裁量权，

L PAPAPHILIPPOU & CO LLC

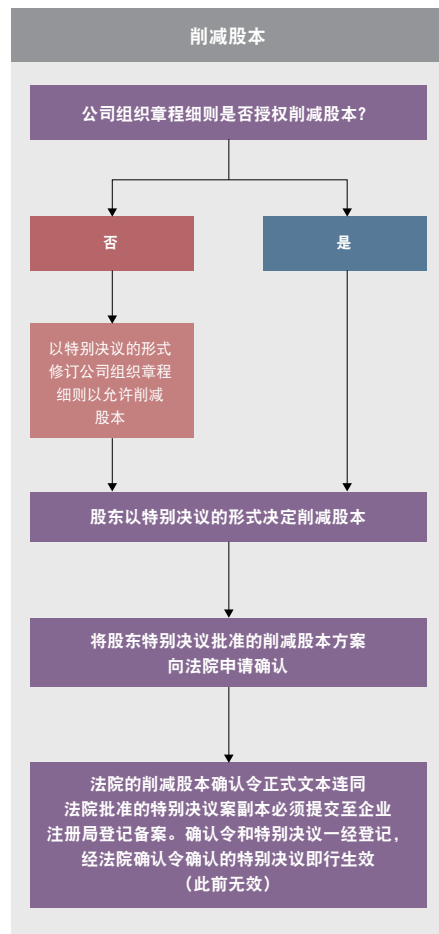
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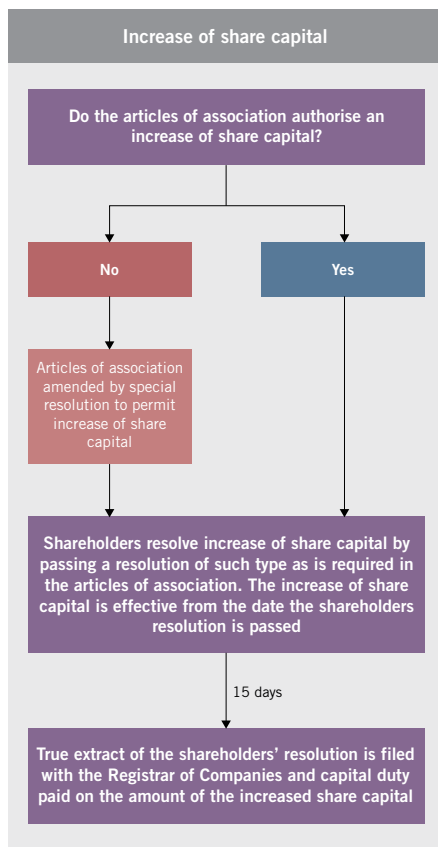
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并可酌情对相关的条件和条款加以限制和调整。法院的削减股本确认令正式文本及法院批准的特别决议案副本必须提交至企业注册局登记。该项确认令和特别决议一经登记即生效，即削减股本的特别决议须以法院确认令的形式予以确认并完成登记程序方能生效，在此之前无效。由企业注册局发出的证书为不可推翻的证据，因为《公司法》中有关股本削减的所有规定已获遵守，而且该公司的股本反映了相关特别决议中所述的情况。■

An increase of authorised share capital comprises one of five capital operations listed in section 60 of the Companies Law, which may be exercised by a company limited by shares “if so authorised by its articles”. Where the articles of association of such a company do not expressly contain an authority to increase share capital, they would need to be amended by special resolution to facilitate such authority for the increase to be effected. An increase of capital requires the approval of the company’s shareholders and is effective from the date such shareholder resolution is passed. In the absence of an express requirement in the Companies Law, the type of shareholder resolution required – ordinary or special – is a matter of the construction of the articles of association of each company.

Pursuant to section 62(1) of the Companies Law, the shareholders’ resolution authorising the increase of capital would need to be filed with the Registrar of Companies within 15 days from the date the resolution is passed. In practice, the company secretary submits a certified true extract of the shareholders’ resolution authorising the increase of capital to the Registrar of Companies, along with Form HE14, which sets out numerically the



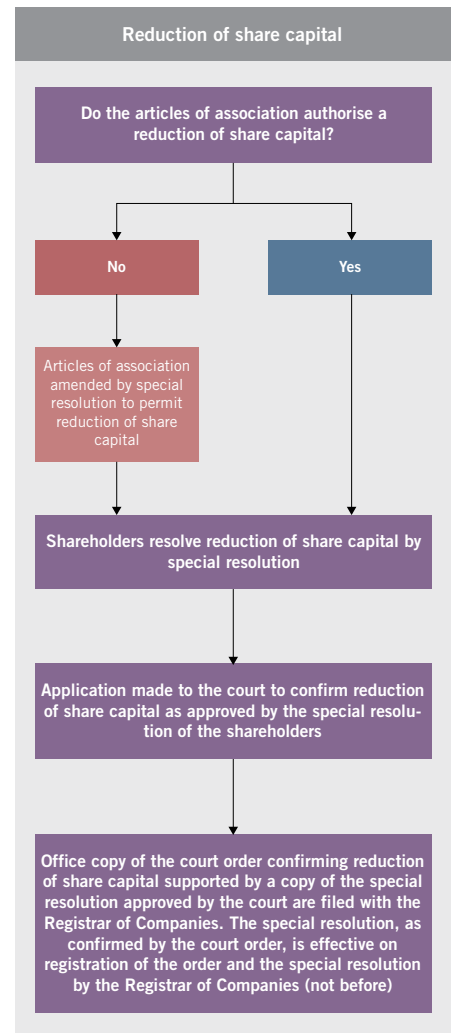
increase of share capital for the purposes of calculation of the capital duty due. Capital duty is calculated at a rate of 0.6% on the amount of the share capital increase or €20 (US\$27), whichever amount is greater, and is payable at the time all filings pertinent to the increase of share capital are submitted to the Registrar of Companies.

Subject to confirmation by the court, a company limited by shares may by special resolution, and if authorised by its articles, reduce its authorised share capital in any way. Where the articles of association of such a company do not expressly contain an authority to reduce share capital, they would need to be amended by special resolution to facilitate such authority for the reduction to be effected. The rationale behind the sanction of the court is to ensure that the proposed reduction of share capital is fair and equitable, not only among the shareholders of the company, but among any other interests dealing with the company.

The court application for the confirmation of the share capital reduction is done by petition instituted in the matter of the company and in the matter of the Companies Law after the passing of the shareholders’ special resolution approving the share capital reduction.

Apart from the boilerplate particulars customarily included in company court applications – incorporation, registered office, operative objects of the memorandum of association, share capital – the petition must clearly point out the operative provision in the articles of association of the company permitting the reduction, the relevant special resolution approved by the shareholders as well as the reasons the reduction of share capital is sought.

The petition must be supported by affidavit sworn by any of the officers of the company. The said affidavit should exhibit: a) certificate of incorporation of the company; b) memorandum and articles of association of the company; c) special resolution approving the reduction of capital, including any notices pertinent and applicable to the mode and medium of approval of the special resolution; d) most recent financial statements of the company and/or management accounts; e) consents of the creditors to the proposed reduction of share capital or any other confirmation that their debt has been discharged, determined or otherwise secured.



Confirmation of the share capital reduction by the court is discretionary and may be conditional on such terms and conditions as the court thinks fit. An office copy of the court order confirming the reduction and of the special resolution approved by the court must be submitted to the Registrar of Companies for registration. Upon registration of the order and the special resolution, and not before, the special resolution for reducing share capital as confirmed by the registered court order will take effect. The certificate by the Registrar of Companies shall be conclusive evidence that all requirements of the Companies Law with respect to reduction of share capital have been complied with and that the share capital of the company is as stated in the relevant special resolution. ■

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