THE LEGAL IMPLICATIONS OF THE ECONOMIC REALITIES OF ARTIFICIALLY MANIPULATING A DECREASE/INCREASE OF EARNINGS PER SHARE - IF ANY

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SUMMARY

Although probably oversimplified, calculating "earnings per share" or the "earnings-per-share ratio" entails the activity of dividing the net profit of a company by the number of its issued shares. The economic reality is that companies may use innovation and creativity to lawfully engineer a better earnings-per-share ratio in order to attract more shareholder investments. Neither the *Companies Act* of 1973 nor that of 2008 makes any provision for the maximum or minimum amount of capital required to float a company, or the minimum number of shares that should be issued. This depends solely on the promoters' discretion of the number of shares that must equal the capital amount. It is therefore possible that the promoters may excessively exercise their discretion when deciding on the authorised share capital, and later tailor-make or financially engineer the share capital structure of the business to make it attractive to shareholders or future shareholders. After all, the law does not prohibit statutory financial engineering. The purpose of this article is therefore to consider section 75 in the *Companies Act* of 1973 - or its equivalent (section 36(2)) in the *Companies Act* of 2008 - and the topic of statutory approval for an artificial decrease or increase in the number of issued shares. Possible methods of preventing or limiting artificial increases in earnings per share are also suggested.

KEYWORDS: earnings per share; earnings-per-share ratio; *Companies Act*; economic reality; financial engineering; share capital structure.

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