16

LATVIA

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I Implementation and scope 3

II Application of Latvian law 4

III Minimum information to be included in the articles of association and related documents 5

1 General remarks 5

2 Information to be included in the incorporation agreement 5

3 Information to be included in the articles of association 8

4 Information to be made public 9

5 Effects of publication 12

IV Information requiring prior authorization 13

V Incorporation by one or more persons 14

VI Capital requirements 14

1 Minimum capital 14

2 Composition of the capital 14

3 Issue price of the share 15

4 Payment of shares 16

5 Contributions in kind 16

A Valuator's report 16

B Exceptions 17

6 Transfer of assets after incorporation 19

7 Losses 20

8 No subscription to own shares 20

VII Acquisition of own shares 21

1 General rule and exceptions 21

2 Alienation and cancellation of own shares owned by the company 24

VIII Cross-participations 24

IX Pledge of own shares 26

X Financial assistance for acquisition of shares by a third party 26

XI Changes to the capital 27

1 General remarks 27

2 Capital increase 28

A Decision and conditions 28

B Shareholders' pre-emptive right 30

C Payment of newly issued shares 32

3 Capital decrease 33

A Capital decrease and the protection of creditors 33

B Capital redemption 34

C Withdrawal of shares 34

D Redeemable shares 34

XII Distribution of profits 35

1 Limitation on the distribution of profits 35

2 Interim dividends 35

3 Capital increase by the incorporation of reserves 35

4 Sanctions 36

I Implementation and scope

1. The Second Company Law Directive was implemented into Latvian law by adopting the Commercial Law (*Komerclikums*) on 13 April 2000, effective as of 1 January 2002. The adoption of Commercial Law was outcome of company law reform in Latvia and the Second Company Law Directive, as amended, was implemented into the initial draft of the Commercial Law and consequently adopted by the Parliament. The amendments to the Directive introduced by Directive 2006/68/EC of 6 September 2006 were implemented by amendments to the Commercial Law of 24 April 2008.

Scope of the Second Company Law Directive is limited to public limited liability companies. In accordance with the Directive, the joint stock company (*akciju sabiedrība (AS)*) is the public limited liability company under Latvian law to which the Directive applies. The Latvian legislator has extended certain rules of the Directive to cover also limited liability companies (*sabiedrība ar ierobežotu atbildību (SIA)*).

2. The Second Company Law Directive allows the Member States to exclude from its scope of application investment companies with variable capital (so called open-ended investment companies) and cooperatives that take a form of public limited liability company.

In accordance with the Law on Investment Companies (*Ieguldījumu pārvaldes sabiedrību likums*) of 18 December 1997, effective as of 1 July 1998, investment company may be established solely in the form of joint stock company and capital of the investment company shall be fixed and not less than 125 000 euro. In other words, under the Latvian law there are no investment companies with variable capital (open-ended investment companies) as corporate forms, but open-ended investment funds, where fund property is the joint property of fund investors and it shall be kept, recorded and managed separately from the

property of the investment company (as corporate form). Hence, the Second Company Law Directive is applicable also to investment companies established in the form of joint stock company, which administrate the open-ended or closed-ended investment funds, if the special rules of the Law on Investment Companies do not specify otherwise.

Cooperatives in Latvia have been excluded from the scope of the Second Company Law Directive. Cooperative under Latvian law is a different type of legal person and may not take a form of public limited liability company (joint stock company). Cooperatives is regulated by Cooperative Societies Law (*Kooperatīvo sabiedrību likums*) of 5 February 1998, effective as of 10 March 1998.

II Application of Latvian law

3. Latvia applies the real seat theory to determine the national law applicable to a company. In accordance with the Section 8 of the Civil Law (*Civillikums*) of 18 January 1937, effective as of 1 September 1992, under the Latvian law, the rights and capacity to act of a legal person shall be determined pursuant to the law of the place where its management board is located.

In order to determine the location of the management board, the Commercial Law stipulates that the legal address of a company shall be the address where the management of the company (seat of the company) is located.

If the company's management board is found to be in Latvia, Latvian law will determine the rights and capacity to act of a joint stock company, and the Commercial Law will be applicable to such company.

III Minimum information to be included in the articles of association and related documents

1 General remarks

4. The Commercial Law provides for the regulation of minimum information to be included in the documents of incorporation of a capital company. The documents of incorporation of a capital company are (i) incorporation agreement and (ii) the articles of association. The conditions in the documents of incorporation may vary from the provisions of the Commercial Law only if the law explicitly permits such variance.

Generally, the minimum information to be made public is the same for both types of capital companies – limited liability company and joint stock company. However, the Commercial Law in respect of articles of association of joint stock company requires detailed information about the shares and commercial activities.

2 Information to be included in the incorporation agreement

5. The incorporation agreement of capital company must include at least the following information:

(i) information regarding the founders (a) for natural persons – given name, surname, personal identity number (if the person does not have a personal identity number – the date of birth, the number and date of issue of a personal identification document, the state and authority, which issued the document) and residential address, (b) for legal persons – name, registration number, legal address, the given name, surname, personal identity number (if the person does not have a personal identity

number – the date of birth, the number and date of issue of a personal identification document, the state and authority, which issued the document), office and residential address of the representative who signs the incorporation agreement in the name of the legal person;

(ii) the firm name of the company;

(iii) the amount of the share capital of the company, the number of shares and par value;

(iv) the amount of the share capital each founder has subscribed to and the amount of share capital to be paid-up before registration, the procedures and time periods for payment;

(v) the number of shares due to each founder in accordance with the part of the share capital such founder has subscribed to;

(vi) the number of and the par value total of those shares which, when founding the company, are to be paid-up with contributions in kind, indicating each item of the contribution in kind, and the given name, surname, personal identity number (if the person does not have a personal identity number – the date of birth, the number and date of issue of a personal identification document, the state and authority, which issued the document) and residential address of those persons who have assumed obligations to make contributions in kind;

(vii) the allowed amount of founding costs and the procedures for covering these costs;

(viii) any special duties, rights or advantages which are granted during the period of the founding of the company to a person who has taken part in the founding of the company;

(ix) the given names, surnames, personal identity numbers (if the person does not have a personal identity number – the date of birth, the number and date of issue of a personal identification document, the state and authority, which issued the document) and residential addresses of the members of the management board of the company;

(x) the given names, surnames, personal identity numbers (if the person does not have a personal identity number – the date of birth, the number and date of issue of a personal identification document, the state and authority, which issued the document) and residential addresses of members of the supervisory board of the company (if the company has a supervisory board);

(xi) the given name, surname, personal identity number (if the person does not have a personal identity number – the date of birth, the number and date of issue of a personal identification document, the state and authority, which issued the document) and residential address of the auditor, if an auditor is intended in the company; and

(xii) other provisions which the founders consider to be significant and which are not in contradiction to law.

6. The incorporation agreement shall be signed by the all of the founders and it shall be effective until the obligations specified therein are appropriately implemented and until the expiration of the authorizations of the supervisory board and the management board of the company. If a company is established by one founder, instead of the incorporation agreement a resolution regarding the founding of a company shall be prepared and signed. The provisions of the Commercial Law which regulate incorporation agreement shall also apply to the resolution regarding the founding of a company.

3 Information to be included in the articles of association

7. The following information shall be included in the articles of association of a capital company:

(i) the firm name of the company;

(ii) the time period or goals of the activities of the company (if the company is founded for a specific period of time or to reach a specific goal);

(iii) the amount of the share capital, the number of shares and par value;

(iv) the number of members of the management board of the company, especially indicating the rights of members of the management board to represent the company separately or jointly;

(v) the number of supervisory board members of the company (if the company has provided for a supervisory board);

(vi) special provisions for the alienation of shares (if such are provided for); and

(vii) other provisions which the founders consider to be significant and which are not in contradiction to the Commercial Law.

In addition to the above information the articles of association of joint stock company shall also indicate:

(i) if the company has different categories of shares – the categories of shares (indicating the rights which arise from each category of shares) and the number and the par value of each category of shares;

(ii) whether the shares are registered shares or bearer shares and if the articles of association provide that registered shares can be converted into bearer shares or *vice versa* – the provisions for such conversions;

(iii) whether the shares are in printed form or dematerialised and, if the articles of association provide for the conversion of printed form shares into dematerialised shares and *vice versa* – the provisions for such conversions; and

(iv) the main types of commercial activities of the company.

4 Information to be made public

8. Pursuant to the Second Company Law Directive, certain information must be made public, upon incorporation and afterwards, so that third parties are able to understand the characteristics of the company in question. In accordance with the Commercial Law the following information shall be recorded in the Commercial Register in respect of a capital company:

(i) firm name;

(ii) type of capital company (limited liability company or joint stock company);

(iii) given name, surname, personal identity number (if the person does not have a personal identity number – the date of birth, the number and date of issue of a personal identification document, the state and authority, which issued the document), residential address and office held of the members of the management board, members of the supervisory board (if the capital company has formed a supervisory board);

(iv) the right of the members of the management board to represent the capital company individually or jointly;

(v) amount of share capital, separately indicating the subscribed and paid-up amounts of share capital;

(vi) legal (registered) address;

(vii) if the capital company has been established for a specific time period – the time period for which it was established;

(viii) branch firm name, if it is different from the firm name of the capital company, and its legal address;

(ix) given name, surname and personal identity number (if the person does not have a personal identity number – the date of birth, the number and date of issue of a personal identification document, the state and authority, which issued the document) of the procurator, as well as a reference to a joint procuration or branch procuration if such procuration has been issued, and a reference to the granting of the rights to alienate, pledge or encumber immovable property if such rights have been granted, as well as the right of the procurator to represent a company individually or jointly with one or several members of the management board;

(x) the given name, surname, personal identity number (if the person does not have a personal identity number – the date of birth, the number and date of issue of a personal identification document, the state and authority, which issued the document), residential address and scope of authorisation of those persons who are authorised to represent a merchant (foreign merchant) in activities related to a branch;

(xi) information regarding the reorganisation of the activities of a merchant (foreign merchant);

(xii) information regarding the appointment of an administrator of insolvency proceedings (hereinafter – administrator), indicating the given name, surname, personal identity number (if the person does not have a personal identity number – the date of birth, the number and date of issue of a personal identification document, the state and authority, which issued the document), place of operation of the administrator, information regarding implementation and termination of legal protection proceedings of a merchant (foreign merchant), information regarding announcement and termination of the insolvency proceedings of the merchant (foreign merchant), information regarding completion of bankruptcy proceedings of the merchant (foreign merchant);

(xiii) information regarding suspension or renewal of economic activity of a merchant;

(xiv) information regarding termination and liquidation of operation of a merchant (foreign merchant), as well as regarding appointment of a liquidator, indicating the given name, surname, personal identity number (if the person does not have a personal identity number – the date of birth, the number and date of issue of a personal identification document, the state and authority, which issued the document), place of residence thereof, but if the liquidator of the foreign merchant is a legal person – the firm name, registration number and legal address;

(xv) information regarding entering into a group of companies agreement, amending or termination thereof, indicating the dominant and dependent company, registration number and date of entering into agreement; and

(xvi) date of the entry of each record.

9. The Commercial Register (*Komercreģistrs*) is maintained by a State institution authorized by law – the Commercial Register Office (*Komercreģistra iestāde*). The Commercial Register is publicly available and everyone has a right to get acquainted with the records of the Commercial Register and the documents submitted to the Commercial Register Office.

Records in the Commercial Register are entered on the basis of an application of interested person by filling a standard form or court adjudication. All records of the Commercial Register are promulgated by publishing them in the newspaper *Latvijas Vēstnesis* (the official Gazette of the Government of the Republic of Latvia), at the same time publishing them electronically. Similarly, information regarding documents of incorporation and their amendments, regarding draft reorganisation agreement and amendments thereto, indicating the date of registration and the number of the Commercial Register file in which the document is located are promulgated.

5 Effects of publication

10. In accordance with the Commercial Law, records in the Commercial Register are effective in relation to third persons from the date of their publication. This provision does not apply to legal activities, which are performed within 15 days following the promulgation of the record, insofar as the third person can prove that he or she did not know or could not have known the relevant information. The burden of proof

is on the third person proving that he or she acted in a good faith (he or she did not know and should not have known the relevant information).

11. However, if the information to be recorded in the Commercial Register has not been recorded or has been recorded but not promulgated, the person in whose interests such information should have been recorded cannot use it against a third person, except in the case, when the third person knew such information. In this case, the person in whose interests the information has been recorded shall prove the bad faith of third person, that this person knew the relevant information.

12. Also, if the information to be recorded in the Commercial Register has been recorded or has been promulgated incorrectly, a third person, in relation to the person in whose interests such information should have been recorded, may refer to the promulgated information, except in the case when the third person knew that the promulgated information does not correspond to the actual legal status or the information recorded in the Commercial Register. Similarly, as mentioned above in no 11 of this chapter, the person in whose interests the information has been recorded shall prove the bad faith of third person that the third person in question knew that the promulgated information does not correspond to the actual legal status or the information recorded in the Commercial Register.

IV Information requiring prior authorization

13. Latvian law does not require prior authorization to commence business, except of specific types of regulated activities, such as banking or insurance activities, construction, food production, etc.

A capital company is deemed to be founded and acquires the status of legal person from the date when it is recorded (registered) in the Commercial Register.

V Incorporation by one or more persons

14. In accordance with the Commercial Law there are no quantitative restrictions in respect of the founders of a capital company (joint stock company and limited liability company). A capital company may be incorporated by one or several founders. The founder of a capital company may be a natural person or a legal person or a partnership, which has performed the activities related to the founding of the company or on whose behalf these activities of incorporation have been performed.

VI Capital requirements

1 Minimum capital

15. The share capital of joint stock company may not be less than EUR 35, 000. The share capital by incorporation of a company shall be fully paid up not later than within one year from the date of the signing of incorporation agreement of the company.

2 Composition of the capital

16. The share capital of joint stock company may be paid up either by money or by contributions in kind.

In the event of contributions in kind, the object of contributions in kind may be tangible or intangible property valued in terms of money, which may be utilised in the commercial activities of a company, except for property which in accordance with law may not be the subject of collection.

However, obligations to provide services or to perform work, anticipated profits or anticipated activities for the company, or also expected salary, royalties, dividends and similar payments, which a founder or shareholder may receive from the company, may not be contributions in kind.

3 Issue price of the share

17. The shares of joint stock company can be issued only with the nominal value. The nominal value of shares shall be determined by the articles of association of the company and shall be expressed in euro. The nominal value of shares shall not be less than 10 cents and it shall be such that it can be divided by the smallest nominal value of the shares of the company and 10 cents without a reminder.

Shares are securities certify the shareholder's participation in the share capital of a company and give them the right, in conformity with the relevant category of shares, to take part in the management of the company, to receive dividends and, in the case of the liquidation of the company, a liquidation quota.

Joint stock company may issue different categories of shares, where different rights may be attached to the shares in respect to: (i) receiving dividends; (ii) receiving a liquidation quota; and (iii) voting rights at a meeting of shareholders. The shares in which an equal amount of rights are fixed are shares of one category.

Latvia has not adopted the option allowing shareholders who undertake to place shares in the exercise of their profession to pay less than the total price of the shares for which they subscribe in the course of transactions they organise.

4 Payment of shares

18. All of the share capital of a joint stock company specified in the incorporation agreement shall be subscribed up to the submission of the application for registration. Up to the submission of the application for registration the amount of paid up share capital may not be less than the minimum share capital mentioned no 15 of this chapter, and less than 25% of the subscribed share capital and shall be paid up only in money. The entire capital specified in the articles of association when founding a company shall be fully paid up by money or by contributions in kind not later than within one year from the date of the signing the incorporation agreement of the company.

In order to pay up the share capital of joint stock company by money, the founders shall open a bank account in the name of the company to be founded, organise the deposit of money into it and receive a notice from the bank, addressed to the Commercial Register Office, or another document issued by the bank, which confirms the amount of share capital paid up to founding.

5 Contributions in kind

A Valuator's report

19. In the event of contributions in kind, it shall be evaluated and an opinion shall be provided by a person who is included in the list of valuators of contributions in kind. A valuator may not be a relative of the

owner of the property to be valuated up to the third degree of kinship, a spouse and brother-in-law or sister-in-law up to the second degree of affinity, as well as a person otherwise interested in the evaluation of the property. The procedures by which the list of valuators of contributions in kind shall be maintained, and the requirements to be brought forward for valuators, shall be determined by the Cabinet of Ministers.

The contributions in kind shall be valued in accordance with the usual value of the relevant property or rights. An opinion regarding the valuation of contributions in kind shall include a description and value of each contribution item, indicate the ownership of the property, and the method used for the valuation of each contribution, and include an opinion regarding the conformity of the items of contributions in kind with the types of commercial activities of the company.

The opinion regarding the valuation of contributions in kind in a joint stock company submitted to the Commercial Register Office shall be published in the newspaper *Latvijas Vēstnesis*.

B Exceptions

20. Latvian joint stock companies do not have to request a valuator's report for certain assets whose value is otherwise established. The general exception when 90% of the nominal value or, in the absence thereof, the accountable par of all shares are issued to one or more companies in return for contributions in kind (chapter 1, no 25) has not been made applicable in Latvia.

21. No valuator's opinion (report) is required, if the share capital is paid by transferable securities and money market instruments which have been included in the regulated market registered (licensed) in a European Union Member State or a Member State of the European Economic Area at least two years prior to signing of incorporation agreement or taking of a decision regarding increase of the share capital. An

opinion regarding valuation of contribution in kind may be provided by those founders or shareholders, who have made the relevant contribution in kind.

22. If the share capital is valued in accordance with the procedures specified no 21 above, the value of transferable securities and money market instruments shall be determined pursuant to the weighted average price in the regulated market within six months before the valuation.

An opinion regarding the valuation of a contribution in kind shall be in effect for six months from the date of drawing up thereof. The opinion regarding the valuation of a contribution in kind shall also be in effect on the day, when an incorporation agreement is signed or a decision regarding increase of share capital is taken.

23. The management board has a duty to ensure a re-valuation of a contribution in kind in accordance with the provisions of no 19 of this chapter, if the conditions, which could decrease the value of the property contribution until the time when an application regarding recording of the company in the Commercial Register or an application for increase of the share capital is submitted to the Commercial Register Office, have been discovered.

If the management board fails to provide a re-valuation of the contribution in kind in the case referred to in the above paragraph, shareholders who on the day of taking of a decision regarding increase of the share capital represent at least 5% of the share capital until the day when an application for increase of the share capital will be submitted to the Commercial Register Office, have the right to request re-valuation of the property contribution in accordance with the provisions of no 19 above.

24. The valuation methods for contribution in kind need not be indicated, if the valuation is made by the founders or shareholders. The information used as the basis for determination of the value of contribution

in kind shall be indicated additionally in the opinion regarding the valuation of the contribution in kind referred to no 21 above, which is drawn up by founders or shareholders.

25. The persons, who performed the valuation, shall be jointly liable for any losses, which have been incurred as result of an incorrect valuation of a property contribution.

26. The provisions of the Directive which do not require an expert's opinion with respect to the following types of assets such as - assets for which a fair value opinion by recognised independent expert is available and other assets whose value can be determined with reference to audited accounts for previous financial year (Art. 10 (a) the Second Company Law Directive) have not been made applicable in Latvia.

6 Transfer of assets after incorporation

27. If a joint stock company acquires an asset within two years after incorporation thereof (if a longer period of time has not been specified in the articles of association) from the founder, shareholder or a person with similar material interest (family member, affiliated undertaking, etc.), the compensation for which exceeds the share capital of the company by 10 per cent, the transaction, on the basis of which the asset is acquired, shall come into effect only after confirmation of such transaction by the meeting of shareholders.

Such provision shall apply also to cases when an asset from one of the persons referred to in paragraph above is acquired in several transactions and exceeds the limit (the compensation for which exceeds the share capital of the company by 10 per cent). In such case the confirmation of the meeting of shareholders is necessary for the last transaction, which results in exceeding of the said limit, as well as for each subsequent transaction, which is entered into with this person by the company.

Such acquisition of assets is subject to general rules of valuation of contribution in kind and the opinion (report) of valuator has to be obtained.

The provisions mentioned in this chapter shall not apply to cases when the asset has been acquired within the framework of commercial activities usually performed by the company for usual value, in transaction without compensation, in auction, stock exchange transaction or in accordance with court adjudication.

7 Losses

28. If the losses of the company exceed half of the share capital of the company or the company has limited solvency, the indications of insolvency procedures have been determined or they are likely to occur in the company, the management board shall notify the supervisory board thereof and convene a meeting of shareholders, where it shall provide explanations. The meeting of shareholders shall decide regarding submission of an application for legal protection proceedings or application for insolvency proceedings, termination of the operation and liquidation, reorganisation of the company, changes to the share capital or shall take another decision regarding improvement of the financial standing of the company.

29. Decisions regarding reorganisation of the company and termination or continuation of operations shall be taken by a meeting of shareholders if not less than three quarters of the shareholders with voting rights present vote for them, if the articles of association do not specify a larger number of votes.

8 No subscription to own shares

30. A joint stock company may not subscribe to its own shares. A dependent company may not subscribe to the shares of its dominant company. If a person subscribes to the shares of a company acting in its own name but for the benefit of the company or its dependent companies, then it shall be deemed that such person has subscribed to the shares on its own account. An agreement which is in contradiction with this provision shall be void.

VII Acquisition of own shares

1 General rule and exceptions

31. The general rule under the Commercial Law is that the Latvian joint stock company is not entitled to acquire its own shares, except in the following cases:

(i) if a company reduces its share capital by withdrawing a part of the shares from circulation and cancelling them;

(ii) if a company acquires its own shares in order to protect itself from substantial direct losses;

(iii) if a company acquires its own employee shares;

(iv) if a company acquires its own shares as a result of reorganisation, by paying compensation in the cases specified by law;

(v) if a company acquires its own shares when it acquires some other undertaking or its part;

(vi) if a company acquires its own shares as a result of a free-of-charge transaction;

(vii) if a company acquires its own shares by way of inheritance;

(viii) if a company acquires its own shares by collecting on its claims from third persons; and

(ix) if the shares are acquired from a shareholder who has not paid-up such shares within the specified time period.

32. If a company acquires its own shares in order to protect itself from substantial direct losses, such acquisition may take place only if based upon a decision of a meeting of shareholders, with the condition that the total par value of the acquired shares together with the shares already owned by the company does not exceed 10% of the subscribed share capital of the company. The company may acquire the said shares only if the equity of company exceeds the amount of the share capital, and as a result of the acquisition of such shares the equity of the company does not become less than the said amount. The decision of the meeting of shareholders shall indicate the maximum number of shares to be acquired, as well as the time period in which the shares shall be acquired which may not exceed 18 months. If the shares are acquired for compensation, the decision shall indicate the minimum and maximum amount of compensation.

33. Shares of a joint stock company, owned by a person who has acquired such shares in his or her own name but for the benefit of such company, as well as the company's shares held by a dependent company of such company, shall be deemed to be owned by that company if the law does not specify otherwise.

34. If a company acquires its own shares in violation of the provisions of the Commercial Law, then the guilty members of the management board shall be jointly liable regarding the payment of any illegally acquired shares.

As a result of the acquisition of its own shares, the value of the company's equity may not become smaller than the amount of the share capital of the company.

35. Company's shares, owned by the company itself, shall not give the company any of the rights which arise from such shares, and such rights shall not be taken into account when determining the quorum of a meeting of shareholders and in the distribution of profit.

36. The acquisition of own shares shall be reflected by a company in the annual accounts, setting out the following information regarding the shares acquired in the relevant financial year:

(i) reason for the acquisition;

(ii) the number of shares acquired, the total of the par value and the part of share capital represented by the shares; and

(iii) if the shares are acquired by payment – the form of payment and the amount; and

(iv) total number of own shares owned by the company and the part of share capital represented by the shares.

2 Alienation and cancellation of own shares owned by the company

37. If a joint stock company has acquired its own shares, such shares shall be alienated within one year from the day when they were acquired, except in the cases where a company reduces its share capital by withdrawing a part of the shares from circulation and cancelling them, and where the shares of a joint stock company are owned by a person who has acquired such shares in his or her own name but for the benefit of the company, as well as if company's shares are held by a dependent company of such company.

If a company has acquired its own shares in violation of the provisions of the Commercial Law, such illegally acquired shares shall be alienated within three months from the day when they were acquired.

Company's employee shares that are owned by the company shall be offered to employees and members of the management board of the company within six months.

If a company does not alienate its own shares within the time periods specified above, such shares shall be cancelled, and correspondingly the share capital shall be reduced in accordance with the provisions of the Commercial Law.

VIII Cross-participations

38. The general rule under the Commercial Law is that the shares of the joint stock company acquired by the person who has acquired shares in his or her own name but for the benefit of the company, as well as

the company's shares held by the dependent company, shall be deemed to be owned by the company itself. If this is the case the general rules of acquisition of own shares shall apply.

39. Pursuant to the Group of Companies Law (*Koncernu likums*) of 23 March 2000, effective as of 27 April 2000, the dependent company is a company that is under the decisive influence of a dominant company and is located in Latvia. A decisive influence arises on the basis of a group of companies contract, as well as on the basis of participation. The dominant company has a decisive influence over a company on the basis of participation, if at least one of the following circumstances exist:

(i) the dominant company has the majority of voting rights in the dependent company;

(ii) the dominant company as a shareholder of the company has the right to appoint or remove the majority of members of the executive body or of the supervisory body of the dependent company;

(iii) the dominant company is a shareholder of the company and, by exercising only its rights of a shareholder, during the financial year has appointed the majority of members of the executive body or of the supervisory body of the dependent company; or

(iv) the dominant company is a shareholder of the company and, on the basis of agreement with other shareholders, has sole control of the majority of voting rights in the dependent company.

Thus, the shares acquired by a person in his or her own name but for the benefit of the company, as well as the dominant company's shares held by a dependent company, shall be deemed to be owned by the dominant company itself, and pursuant to the Commercial Law such shares shall not give the company any of the rights which arise from such shares, and such rights shall not be taken into account when determining the quorum of a meeting of shareholders and in the distribution of profit. However, the shares

of a joint stock company, owned by a person who has acquired such shares in his or her own name but for the benefit of a company, as well as the dominant company's shares held by a dependent company are not subject to the general rule of Commercial Law in respect of mandatory alienation of own shares.

40. It may be concluded, that despite the fact the Group of Companies Law does not prohibit the cross-participation in respect of the joint stock companies, it is somehow limited by the provisions of Commercial Law providing the restrictive regulation, that the rights attached to the shares in the joint stock company held by the dependent company shall be suspended in the event of cross-participation.

IX Pledge of own shares

41. The provisions of the Commercial Law regarding prohibition of acquisition of own shares apply also to acceptance of own shares as a pledge.

A company may take its own shares as a pledge only if they are fully paid-up. If this provision is violated, then the guilty members of the management board are liable for full payment of the shares and for losses inflicted on third persons.

X Financial assistance for acquisition of shares by a third party

42. In accordance with the Commercial Law a joint stock company is prohibited from issuing loans or otherwise, directly or indirectly, financing third persons in the acquisition of the shares of such company. The Directive 2006/68/EC of September 6, 2006, which has considerably changed the rules on financial

assistance, replacing a complete ban with an authorisation with safeguards (see chap. 1 no 45 of this book), has not been implemented into the Latvian law. The Commercial Law still provides for complete ban of financial assistance to third persons in the acquisition of the company's shares.

XI Changes to the capital

1 General remarks

43. In general, the share capital of joint stock company may be increased or decreased only on the basis of a decision of a meeting of shareholders, in which the regulations for an increase or reduction of the share capital shall be approved, and amendments to the articles of association of the company made. As exception of the general rule, the authorisation for the management board may be specified in the articles of association for a period of time up to five years to increase the share capital in the amount specified in the articles of association or in the meeting of shareholders, not exceeding 30% of the share capital of the company at the time of coming into effect of the authorisation.

44. Decisions on the making of amendments to the articles of association and the increase or decrease of share capital shall be taken by a meeting of shareholders if not less than three quarters of the shareholders with voting rights present vote for them, if the articles of association do not specify a larger number of votes. Pursuant to the Commercial Law the meeting of shareholders is entitled to take decisions irrespective of the share capital represented at the meeting, however, the articles of association may specify for a quorum in order to take decisions at the meeting. If there are several categories of shares in a company, a decision on an issue which affects the rights of shareholders of the relevant category of shares shall be taken if the shareholders of each of the relevant categories of shares, by a majority of votes of the

shareholders with voting rights present as specified by law or the articles of association, vote for it in each of such groups of shareholders.

Decisions changing or otherwise affecting the share capital must be rendered public in the same manner as other corporate decisions (see no 9 of this chapter).

The decision on changes in the share capital shall be deemed to be effective and enforceable against third parties from the date when a record is made in the Commercial Register.

2 Capital increase

A Decision and conditions

45. A joint stock company may increase its share capital by issuing new shares in accordance with a decision of the meeting of shareholders to increase the share capital and by opening subscription to them. The share capital may be increased only if the previous issue of shares has been fully paid-up.

The newly issued shares may be paid up either by cash or by contribution in kind. If shares of the new issue are paid-up by a contribution in kind, this contribution shall be evaluated and a valuator's opinion shall be submitted regarding it in accordance with the procedures specified in the Commercial Law (see no 19 of this chapter).

46. A joint stock company with the sole shareholder, after approval of the annual accounts or a report on economic activities for a shorter time period than a year, may increase the share capital by increasing pro rata the par value of the existing shares or by issuing new shares, by including fully or partially in the

share capital the positive difference between the equity and the sum formed by the share capital and reserves, which in accordance with the law may not be included for increase of the share capital. The report on economic activities shall be drawn up in accordance with the requirements of the law regarding drawing up of the annual accounts.

47. The authorisation for the management board may be specified in the articles of association for a period of time up to five years to increase the share capital in amount specified in the articles of association or in the meeting of shareholders, not exceeding 30% of the share capital of the company at the time of coming into effect of the authorisation.

48. The share capital of a joint stock company may also be increased by determining that the newly issued shares shall be utilised for special purposes, which are indicated in the regulations for the increase of share capital. In such cases the increase in the share capital may not exceed the amount necessary for the special purpose. The share capital may be increased only for the following purposes:

(i) for the exchange of newly issued shares for convertible bonds;

(ii) for the exchange of newly issued shares for the shares of a company to be merged in the case of a reorganisation;

(iii) as compensation to minority shareholders which as an exchange of shares is conducted by the dominant company of a group of companies; and

(iv) for the issuing of employee shares.

Upon increase of share capital in accordance with the procedures specified above, the regulations for increase of share capital shall also indicate the group of persons who have the right to acquire the newly issued shares, as well as in the cases referred to above (i)–(iii) – the exchange rate for such shares.

The management board shall submit to the meeting of shareholders, which is examining the question of increase of share capital for a special purpose, a justification for the necessity of such an increase.

A joint stock company shall send the regulations for increase of share capital to all shareholders recorded in the register of shareholders. If the company has also issued bearer shares, a notice regarding increase of share capital shall be published also in the newspaper *Latvijas Vēstnesis*, indicating the place and time, where and when one may become acquainted with the regulations for increase of share capital. The document forms, which are necessary for the existing shareholders to exercise their pre-emptive right shall be appended to the regulations for increase of share capital.

If the shares of the joint stock company are publicly traded (listed in the stock exchange), a company shall prepare a prospectus regarding the issue of shares and register it with the Financial Capital Market Commission.

If the announced share capital is not fully subscribed within the time periods specified in the regulations for increase of share capital, the issue of shares shall be deemed to have taken place for the value of the subscribed shares, except in cases when it is not allowed in the regulations for increase of share capital.

B Shareholders' pre-emptive right

49. In case of share capital increase the current shareholders have pre-emptive right to purchase the newly issued shares in proportion to the total of the par value of the shares already owned by them. If any of

shareholders do not exercise their pre-emptive right within the specified time period, the relevant newly issued shares shall be offered for subscription, in accordance with the procedures specified in the regulations for increasing share capital, to those current shareholders who have already exercised their pre-emptive right.

50. A notice regarding a pre-emptive right of shareholders to the newly issued shares shall be published in the newspaper *Latvijas Vēstnesis*. A joint stock company shall send a notice regarding their pre-emptive right to the newly issued shares to all shareholders registered in the register of shareholders. If a company has only registered shares, then the notice in the newspaper *Latvijas Vēstnesis* is not mandatory, if the articles of association do not specify otherwise.

The notice on the pre-emptive right shall indicate at least:

(i) the firm name and legal address of the company;

(ii) the size of the share capital and the planned amount by which the share capital would be increased;

(iii) the category, number and par value of the shares to be issued;

(iv) the selling price of the share; and

(v) the time period during which the shareholders must exercise their pre-emptive right, and which may not be less than one month from the date when the notice is published, or in the case of registered shares – from the date when the notice was sent.

51. The pre-emptive right of shareholders may not be revoked or restricted by the incorporation agreement, the articles of association or by a decision of a meeting of shareholders. In the cases of increase of share capital for special purposes (see no 48 of this chpater) shareholders shall not have pre-emptive rights. A decision of a meeting of shareholders regarding the organisation of the subscription of shares by third persons shall not be deemed to be a restriction of the pre-emptive right. These persons shall ensure the pre-emptive right of shareholders.

C Payment of newly issued shares

52. The par value of newly issued share shall be determined in the regulations for increase of share capital. The sale price of each newly issued share shall be determined by the management board, but it may not be less than the par value of the share. The sale price of share is composed of the par value of the share, and the additional payment and the mark up of the issue. The management board may change the sale price of shares within limits provided for in the regulations for increase of share capital.

A joint stock company may organise subscription to a new issue of shares itself or entrust the organisation to a third person (a bank, brokerage company, stock exchange and the like).

53. When subscribing to a new issue of registered shares, at least 25% of the par value of subscribed new issue of shares, and all the additional payment and the mark up of the issue shall be paid, but the remainder of the amount shall be paid within the time periods specified in the regulations for increasing share capital.

If the announced share capital is not fully subscribed within the time periods specified in the regulations for increase of share capital, the issue of shares shall be deemed to have taken place for the value of the subscribed shares, except in cases when it is not allowed in the regulations for increase of share capital.

If the newly issued shares are paid up by contribution in kind, it must be paid up in full.

3 Capital decrease

A Capital decrease and the protection of creditors

54. A decision to decrease the share capital must be approved by the meeting of shareholders with the qualified majority (see no 44 of this chapter). Share capital may be decreased:

(i) by the company itself acquiring and cancelling its own shares;

(ii) by cancelling shares which have been submitted by shareholders; or

(iii) by reducing the par value of shares.

The share capital may not be decreased below the amount of EUR 35, 000. In the case when share capital is to be decreased, the share capital shall first of all be decreased on the account of the own shares owned by the company.

55. In the event of the share capital decrease, the Commercial Law sets forth the special rules of protection of creditors. Within five days from the date when a decision is taken to decrease the share capital, the management board shall send a written notice regarding the decrease of share capital and the new amount of share capital to all known creditors of the company whose rights to demand against the company have arisen prior to the taking of the decision to decrease the share capital. The management board shall also

publish a notice regarding the taken decision to decrease share capital in the newspaper *Latvijas Vēstnesis*. The notice shall indicate the time period within which creditors who wish to receive security may apply. The notice shall indicate a time period for the submission of creditor claims which may not be shorter than one month from the day of publication of the notice. The company shall provide security for creditors who have applied within the time periods specified (except the amount of secured claims of secured creditors).

56. Share capital shall be deemed to have been decreased from the day when the new amount of share capital has been recorded in the Commercial Register.

B Capital redemption

57. Latvian law does not permit the capital redemption.

C Withdrawal of shares

58. Latvian law does not allow the withdrawal of shares.

D Redeemable shares

59. Latvian law does not permit the issue of redeemable shares.

XII Distribution of profits

1 Limitation on the distribution of profits

60. An ordinary meeting of shareholders shall take a decision on the use of the profit from the previous financial year. The management board shall prepare and submit to an ordinary meeting of shareholders its proposal for the utilisation of profit. The proposal shall indicate: (i) the amount of the net profit of the company; (ii) the part of the net profit to be paid out as dividends; and (iii) the utilisation of the profit for other purposes. The meeting of shareholders decides on the utilisation of the profit after the annual accounts of the company have been approved.

The amount of dividends shall be determined by a decision of shareholders' meeting. Dividends may not be determined, calculated and paid out if arises from the annual accounts that the equity of the company is less than the total amount of the share capital.

Dividends shall be calculated and paid out for fully paid-up shares to shareholders in proportion to the total of the par value of the shares owned by them. Dividends shall be determined and calculated once a year. Dividends shall be paid out only in cash, based upon a decision regarding the distribution of profit.

2 Interim dividends

61. Latvian law does permit to distribute the interim dividends.

3 Capital increase by the incorporation of reserves

62. The restrictions on distributions of profits and interim dividends do not apply to a capital increase through the capitalisation of reserves as described in no 46 above.

4 Sanctions

If a person has been paid out a dividend, to which or part of which they had no right, and this person, at the time of receipt of the dividend, knew or should have known that the payment was unjustified, it is their duty to return the amount acquired without justification to the company.