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# *Commercial and Concern Law*

## *Review*

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We have prepared this document to provide our clients and partners with an overview of the most significant changes and amendments in Latvian law, with an emphasis on what we believe to be of greatest importance. Please note that this overview is compiled for informational purposes only and does not include all new laws, and the explanations provided include only that which in our view is the most essential information regarding joint-stock companies and limited liability companies. In order to gain a broader understanding of the aspects of Latvian legislation that are of greatest interest to you, we recommend that you contact Sorainen Law Offices or your legal advisor.

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## 1. INTRODUCTION

On 13.04.2000 the Latvian Parliament adopted the Commerce Law (Komerclikums), effective 01.01.2001. This law will unify all of the laws which currently regulate entrepreneurial activity, whilst introducing significant changes in the law. The Commerce Law consists of 378 articles over nearly 100 pages. The Law represents the most significant legislative item to be adopted since the renewal of Latvian independence. Further, the Law on Concerns (Koncernu likums) has been effective since April, 2000, and provides additional regulation on groups of companies formed, where one company exerts a decisive influence over the other companies.

The Commerce Law is intended to:

1. regulate company law issues heretofore not sufficiently regulated, such as issues relating to company reorganisation and protection of minority shareholders;
2. implement EU directives in an effort to bring Latvian company law into closer compliance with EU law; and
3. replace most existing laws regulating entrepreneurial activity, including the laws “On Entrepreneurial Activity”, “On Joint-Stock Companies” (JSC) and “On Limited Liability Companies” (LLC).

The Commerce Law is comprised of three parts:

1. “General Regulations on Commercial Activity”, which establishes the basic principles of commercial activity;
2. “Merchants” regulates issues pertaining to the different forms of commercial activity, including the still-valid laws “On Joint-Stock Companies” and “On Limited Liability Companies”;
3. “Reorganisation of Companies” regulates issues related to reorganisation of companies, including mergers, division and transformation.

The procedure by which the Commerce Law comes into force is established by a special law, which is to be adopted by the end of the year 2000. This law will set transition periods for the coming into force of various provisions of the Commerce Law. A draft of this law was published in September 2000, and several references have been made to this draft in this text.

## 2. GENERAL ISSUES

### *2.1. The Legal Status of Documents Registered in the Commerce Register*

The Commerce Law defines the Commerce Register as the state institution at which merchants must be registered and which handles issues related to such registration. The Company Register will handle the duties of the Commerce Register. The term “merchant” includes both JSCs and LLCs.

In accordance with the EU Council’s first directive (68/151/EEC), the Commerce Law regulates issues relating to the validity of Commerce Register entries relating to third parties, thus protecting the interests of such parties.

The Commerce Law states that Commerce Register entries are effective also upon third parties upon their publication in Latvia’s official gazette *Latvijas Vēstnesis*, unless such third parties take legal action within 15 days after such publication, and if the respective third party proves that it did not know and could not have known of this information.

Thus, registration not conducted in accordance with the Commerce Law and incorrectly registered or published notifications may not be acted upon in regard to the third parties if it is not proven that the respective third party had knowledge of this information.

## *2.2. Company Information in Daily Activity*

The Commerce Law states that the merchant is responsible for listing the following information in business letters, invoices and other documents written in the merchant's name:

- name of merchant;
- Commerce Register registration number;
- legal address;
- information on locating the merchant during insolvency or bankruptcy proceedings;
- the above-listed information on merchant's subsidiaries, if applicable.

The issue of precisely what information needs to be filed is not fully regulated by Latvian law, and merchants are responsible for ensuring that all documents are in compliance with this provision by 01.01.2001.

## *2.3. Commercial Secrets*

The Commerce Law defines the heretofore poorly defined notion of a commercial secret, seeking to lessen the need for interpretation.

According to the Commerce Law, a commercial secret is business, technical or scientific information connected with a merchant's business and written or otherwise recorded or unrecorded information having actual or potential tangible or intangible value, which, in another person's possession, may cause the merchant losses and which the merchant has taken reasonable efforts to keep secret.

Thus, in accordance with the Commerce Law, in order for information to be protected, it must not only be relevant to the merchant's business, but the merchant must also protect it. Further, commercial secrets may be applied to employment contracts, as well as to contracts with clients and suppliers.

## *2.4. Transfer of Ownership of Company*

The Commerce Law states that in the event of transfer in ownership of a company or a part thereof, the new owner also acquires responsibility for all of the company's (or of the respective part transferred) obligations. An exception is obligations which come due or are subject to conditions five or more years after transfer. Transferor and transferee are solely responsible for such obligations.

Thus, companies will be forced to scrutinise much more closely the obligations of the companies they acquire, because, for example, limitations of liability upon an acquiring company included in a purchase agreement may be held to be invalid.

## *2.5. Company Identity*

In addition to existing restrictions on company names, according to the Commerce Law, company names must clearly and definitively differ from other companies' trademarks and from other companies' names registered or pending registration in the Commerce Register.

This stipulation is intended to protect the rights of existing companies; the Commerce Law clearly spells out a merchant's rights to demand compensation for losses stemming from illegal use of company name. Of course, determining what is sufficiently different is a matter of interpretation, resulting in potential complications for the Company Register and companies.

In addition, the Commerce Law states that:

- a company name may only be transferred together with the company itself; and
- upon acquisition of an existing company, the acquirer may only continue to use the company name upon approval of the previous company owner or its heirs.

The pending law on implementation of the Commerce Law referred to earlier in the text includes a procedure for bringing existing companies into compliance with the Law. In reregistering companies from the Company Register to the Commercial Register, the problem of companies with identical or similar names is to be resolved by granting the company which was registered first the right to continue to use the name.

## *2.6. Legal Address*

The Commerce Law states that a company's board of directors is charged with notifying the Commercial Register of the company's legal address. The submission of documentation proving the authenticity of the address will no longer be required. Thus, for example, companies will no longer be required to submit a copy of the company's lease agreement, a requirement which complicated company-registration and address-change procedures. Of course, along with this change comes a heightened responsibility for the board of directors for submitting accurate information about the company's address.

In addition, the Commercial Register will deem any correspondence mailed to a company's legal address to have been duly received by the company. For example, a creditor sending a debt collection notice will merely have to mail the notice in order to comply with notification requirements.

## *2.7. Power of Attorney*

Section 5 of the Commerce Law introduces new terms and meanings for powers of attorney: procuration and commercial power of attorney, though equivalent terms have long been in use in Europe.

The procuration and commercial power of attorney are powers of attorney granted by a merchant to a third party to engage in legal activity on behalf of the merchant. The Commerce Law completely changes the way powers of attorney are granted and includes the requirement that procurations be registered.

A procuration is a form of commercial power of attorney which provides the grantee with the right not only to conclude transactions on behalf of the merchant, but also to engage in any other activities related to commerce, including acting as the merchant's representative in judicial proceedings. The only commercial activity not covered by the procuration and which requires specific authorisation is engaging in real estate transactions, the aim of the restriction being the protection of third parties' interests. The Commerce Law states that any other restrictions in a procuration are invalid.

An ordinary power of attorney, or commercial power of attorney is a power of attorney granted to a third person to engage in activities related to the merchant's company on behalf of the merchant. This power of attorney is less comprehensive in its scope and does not need to be registered with the Commercial Register. The rights to engage in transactions with the merchant's real estate, undertake obligations under bills of exchange, take out a loan and to represent the merchant in court must be specifically enumerated in the commercial power of attorney.

## *2.8. Commercial Agents*

The section on commercial agents applies to business entities which offer goods or services utilising an agent—whether a legal or physical person—as an intermediary. The aim of this section is to protect the material interests of such agents.

The Commerce Law:

- provides that agreements between commercial agents and the entity represented must be in writing;
- regulates payment to commercial agents for their work, particularly amount and time of payment;
- establishes a procedure for terminating relationships between commercial agents and the entity represented;

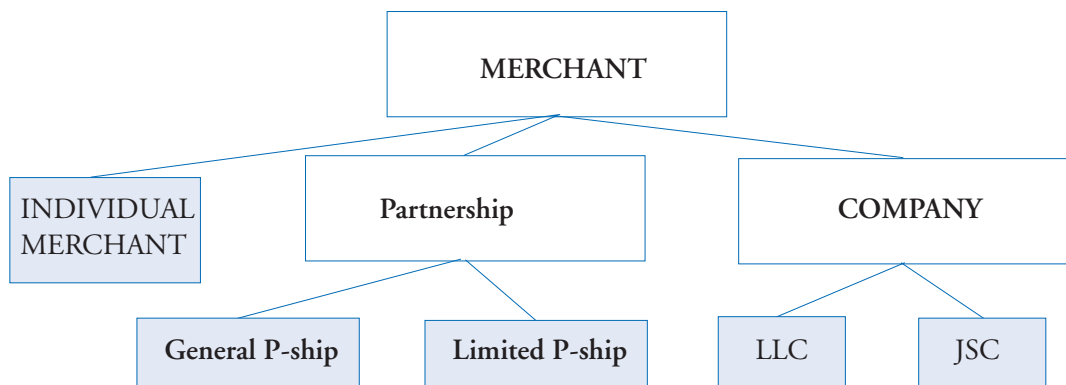
- establishes a procedure by which the business entity represented may place non-competition restrictions after the expiration of a power of attorney (non-competition restrictions may not exceed two years, and the agent is entitled to receive commensurate compensation).

## 2.9. Brokers

The section on brokers—physical or legal persons playing an intermediary role in concluding transactions on behalf of another person—establishes a procedure for transaction conclusion, sets forth the intermediary's obligations toward the parties to the transaction and the broker's responsibility and right to compensation.

## 2.10. Forms of Commercial Activity

In place of the existing 13 forms of entrepreneurial activity possible under current law, the Commerce Law permits only the following five forms:



The recently published draft of the transitional regulations states that transition to the above five forms of entrepreneurial activity is to be fully completed by 31.12.2002.

## 2.11. Commercial Activity Conducted by Foreigners in Latvia

In accordance with the law “On Foreign Investment in the Republic of Latvia”, foreign legal and physical persons may only engage in entrepreneurial activity in Latvia in the form of an LLC or a JSC. According to the Commerce Law, however, foreigners may also engage in such activity as individual merchants or partnerships.

Compared to the law “On Entrepreneurial Activity”, the Commerce Law regulates the procedure for foundation of foreign branches in Latvia much more broadly and clearly.

The submission of the following documents is necessary for registration of foreign branches in the Commercial Register of Latvia:

- application for branch registration in the Company Register;
- documentation substantiating merchant's registration abroad (if the respective country requires registration with the local company register);
- permission to open a branch (if required by law);
- notarised copy of the foreign company's articles of association, foundation resolution, or their foreign equivalent;
- documentation substantiating the power of attorney of the individual representing the foreign merchant in all branch-related transactions, and substantiating the scope of the power of attorney.

Representative offices of foreign businesses may not engage in commercial activity; the scope of activities representative offices foreign businesses may engage in is not regulated by the Commerce Law.

### 3. JOINT STOCK COMPANY AND LIMITED LIABILITY COMPANY

Pursuant to the draft transitional regulations, compliance by existing joint stock companies (JSC) and limited liability companies (LLC) with the requirements of the Commerce Law must be ensured by December 31, 2001. This date is stated in the draft transitional regulations as the deadline for re-registration of JSCs and LLCs from the Company Register to the Commercial Register.

#### 3.1. *Foundation*

Authorisation for submission of a registration application shall be issued before a notary public. Such procedure is not required by the current legislation. These amendments will complicate the procedure of company registration.

The Commerce Law removes the limitation regarding the number of shareholders in a LLC; the current law provides that the number of shareholders in a LLC may not exceed 50 and, in case this number is exceeded, the LLC must be transformed into a JSC or liquidated.

#### 3.2. *Capital*

##### 3.2.1. *Limited Liability Company*

The entire share capital of the LLC must be paid by the time of registration. Further, substantially stricter requirements are set for investments-in-kind in a LLC. Similarly, as in the case of a JSC, the following provisions have been adopted for protection of LLC capital:

- dividends cannot be paid out if at the approval of the annual report it is discovered that the company's own capital is less than the total amount of the company's share capital and mandatory reserves;
- the following are considered unfounded payments from the company's capital: use by a shareholder of the company's property free of charge; payment to a shareholder for services provided to the company if such payment is higher than the amount stipulated by agreement; purchase by the company of a shareholder's property at a higher price;
- cases when the company may acquire its own shares have been limited;
- provisions regarding the procedure for reduction and increase of the company's share capital must be more detailed.

Contrary to the Law on JSCs, the Commerce Law does not contain any prohibition on financing share purchase. The minimum amount of the mandatory reserve fund has been decreased from 1/3 to 1/10 of the share capital amount. The reserve fund is composed of net profit contributions in the amount of 5%.

##### 3.2.2. *Joint-stock company*

The Commerce Law introduces stricter requirements regarding the amount of JSC and LLC share capital. Until now the minimum foundation share capital for a JSC was LVL 5000, and the minimum registered share capital of LVL 25 000 had to be contributed within five years from the date of registration. Pursuant to the Commerce Law, the minimum paid share capital at registration is LVL 25 000, and it must be contributed in cash. The remaining subscribed JSC share capital must be contributed within one year.

One of the reasons for increasing the above mentioned requirements is that under the Commerce Law all JSCs will acquire the status of public companies. Thus, it will be possible to list all JSC shares publicly.

In accordance with the EU Second Directive (77/91/EEC), the Commerce Law contains special provisions regarding maintaining JSC capital. In addition to the current norms, the Commerce Law prescribes that:

- dividends cannot be calculated if at the approval of the annual report it is discovered

- that the company's own capital is less than the total amount of the company's share capital and mandatory reserves;
- the following are considered unfounded payments from the company's capital: use by a shareholder of the company's property free of charge; payment to a shareholder for services provided to the company if such payment is higher than the amount stipulated by agreement; purchase by the company of a shareholder's property at a higher price;
  - cases when the company may acquire its own shares have been limited;
  - provisions regarding the procedure for reduction and increase of the company's share capital must be more detailed;
  - financing purchase of its own shares by the company, as well as subscribing a company's own shares is explicitly prohibited (also, the dependent company in a concern cannot subscribe the shares of the principal company).

JSCs will have the obligation to accumulate a reserve fund in the amount of 10% of the share capital. Currently, the legislation in force does not require JSCs to accumulate such a reserve fund. Further, the Commerce Law does not include management board reserve shares as a separate entity.

### *3.3. Liability*

In accordance with current provisions of law concerning liability of supervisory board and management board members for losses incurred by the company as a result of their actions, the burden of proof is on those persons who submit a claim against members of these boards.

The Commerce Law contains a contrary provision: in case a dispute arises on whether the company has incurred losses as a result of actions by supervisory or management board members, the burden of proof is on those board members. This increases the liability of these company officers.

Further, special attention should be attributed to the provisions of the Commerce Law described below.

### *3.4. Management institutions of the company*

The Commerce Law provides simplified rules regarding the activity of the general meeting of shareholders and the procedure for decision making.

#### *3.4.1. Limited liability company*

The first substantial amendment: shareholders may also adopt decisions without convening a general meeting if the law or articles of association do not require adoption of certain decisions only at the general meeting. In such case voting on the issue on the agenda is carried out by the shareholders in writing.

The second substantial amendment: the general meeting of a LLC is entitled to decide issues within its authority if more than 50% of the share capital is represented. Previously, for certain decisions, such as amendments to the articles of association, liquidation or conclusion of a concern agreement, a quorum of  $\frac{3}{4}$  of the share capital was required.

Decisions on amendments to the articles of association now require 2/3 of the present votes (previously 75%); other decisions can be made by a simple majority. Cases when decisions are adopted without convening a general meeting constitute an exception to this rule. In such cases, a decision on amendments to the articles of association shall be adopted by more than 2/3 majority of votes; other decisions may be made by a simple majority.

Pursuant to the Commerce Law, an LLC management board must be comprised of at least one member. Further, written acceptance if this position is required from all management board members. Finally, at least half of the management board members shall be permanent residents of Latvia, notwithstanding the origin of the company's capital (such requirement does not exist in the current legislation). An LLC may also form a supervisory board (previously this was not possible in a LLC).



### *3.4.2. Joint-stock company*

The first substantial amendment: pursuant to the Commerce Law the general meeting of shareholders is entitled to adopt decisions notwithstanding the share capital represented at the meeting (according to the current law, the general meeting has quorum if at least half of the paid share capital is represented or, in case of the most important decisions, if at least  $\frac{3}{4}$  of the paid share capital is represented).

The Commerce Law has introduced several substantial changes concerning formation of management institutions in JSCs. Written acceptance by a candidate to the supervisory board is required and such acceptance shall be registered at the Commercial Register. Formation of a supervisory board in a JSC is mandatory.

At least  $\frac{1}{2}$  of members to management board must be permanent residents of Latvia, notwithstanding the origin of share capital. The supervisory board elects the management board (pursuant to current law, the general meeting elects it).

The Commerce Law removes the currently existing obligation for members of the management board to acquire a certain number of the company's reserve shares within one month after their election. Similar to the LLC, written acceptance by management board candidates is required and must be registered at the Commercial Register.

### *3.5. Prohibition of Competition*

The Commerce Law sets stricter rules concerning the prohibition on competition by members of the management board with the company. Previously, the general meeting of shareholders could on its own initiative stipulate in the articles of association provisions on prohibition of competition. Pursuant to the Commerce Law, without approval of the supervisory board or general meeting, a member of the management board may not:

- be a member with full liability in a partnership or be a member with additional liability in a company operating in the area of the company's commercial activity;
- conclude transactions in his own name or on behalf of third parties in the area of the company's commercial activity;
- be a member of the management board of another company operating in the area of the company's commercial activity, except when the two companies are in the same concern.

### *3.6. Protection of Creditors' Interests*

The provisions of the Commerce Law provide more possibilities for protection of creditors' interests than the current legislation.

First, announcements on reduction of company's share capital and liquidation of the company shall be submitted not only to those creditors whose place of residence is known to the company, but to all creditors of the company, whether or not the company knows their residence. Consequently, those creditors who have not received such an announcement have the right to contest the legality of reduction of the company's share capital or liquidation of the company, even if the company was not aware of their domicile.

To promote efficient activity of companies, the Commerce Law reduces the minimum term for submission of creditors' claims to one month in case of share capital reduction (previously the minimum term was three months, both in case of share capital reduction and company liquidation).

Also, the Commerce Law contains explicit rules for protection of creditors' interests in case of company reorganisation. Announcements on reorganisation shall be sent within 15 days after adoption of such decision to all creditors known to the company. The minimum term for submission of such creditors' claims is also one month.

However, the Commerce Law prescribes limitations for satisfaction of creditors' claims. Such claims on an acquiring company shall be satisfied only if the creditor proves that reorganisation will adversely affect satisfaction of the claim. Secured creditors can claim satisfaction of their claims only in the amount of the unsecured part of their claims.

Further, the Commerce Law entitles any creditor who cannot attain satisfaction of his claim by the company to submit within five years a personal claim to the court for the benefit of the company and against the founders, members of the supervisory board and management board of the company, as well as against any third party who has caused losses to the company without compensating these losses. Submission of such claim is also possible when the company has failed to file a claim against the party at fault, concluded a settlement agreement, or the losses have been caused by fulfilling a decision of the supervisory or management board.

Finally, please see possibilities of protection of creditors' interests provided for by the Law on Concerns.

### *3.7. Protection of Minority Interests*

The Commerce Law provides broader possibilities for protection of minority shareholders' interests.

Rights of minority shareholders in LLCs have been increased to the level of rights previously enjoyed only by minority shareholders in JSCs. For example, shareholders representing  $\frac{1}{4}$  of LLC share capital will be entitled to demand that the Commercial Register examine that the company has been properly founded.

The Commerce Law also lowers the required minimum shareholder representation for implementation of minority shareholder rights. For example,  $\frac{1}{20}$  of the company's shareholders (previously  $\frac{1}{10}$ ) or shareholders representing at least LVL 50 000 of the company's share capital will be entitled to submit a claim against the founders and officers of the company.

The Commerce Law sets forth the rights of minority shareholders in the event of a company's reorganisation. Shareholders of a company being acquired, divided or transformed and who do not agree to such reorganisation are entitled within two months after the effective date of the reorganisation to demand that the acquiring company purchase their shares by payment in cash. The amount of the remuneration shall correspond to the amount which the shareholder would receive in case of division of the company's property at liquidation, had it occurred at the time the decision on reorganisation was adopted.

It is interesting to note that regarding LLCs, the law prescribes a procedure for the court to seize shareholders' shares. Current legislation does not provide for such a possibility.

### *3.8. Reorganisation*

The Commerce Law prescribes a detailed procedure for reorganisation of companies. Until now the process of reorganisation was not sufficiently regulated by Latvian legislation.

A company may be reorganised by merger, division or transformation. If two or more existing companies participate in a reorganisation, they are obliged to conclude a reorganisation agreement, as well as to prepare a reorganisation prospectus, which indicates provisions of the reorganisation agreement and legal and economical aspects of the reorganisation.

The decision on reorganisation shall be adopted by the general meetings of shareholders of the companies involved in the project after the shareholders have had at least one month to familiarise themselves with the draft reorganisation agreement, reorganisation prospectus, conclusion of the auditor on the draft reorganisation agreement, annual reports for the last three years of companies that are parties to the reorganisation, and, in some cases, the extraordinary balance sheet prepared at least three months before the announcement on reorganisation is submitted to the Commercial Register.

Simplified requirements apply to LLCs involved in the reorganisation process: if all shareholders agree, it will no longer be necessary to prepare a reorganisation prospectus. Also, the auditor will no longer be required to review the draft reorganisation agreement.

The decision on reorganisation of a company can come into force after a period of three months has elapsed from such announcement in *Latvijas Vēstnesis*. Shareholders and members of the supervisory and management boards of the involved companies are provided with this time period to dispute the decision on reorganisation in court. Consequently, pursuant to the Commerce Law, reorganisation of companies cannot be implemented before a period of four months has elapsed from shareholders of the involved companies having been given the possibility to familiarise themselves with the draft reorganisation agreement.

From the changes in law described above, it follows that the Commerce Law will significantly affect business activity in Latvia. However, considering that the transitional guidelines are not yet completed, it is difficult to foresee how quickly businesses will have to bring their activities into compliance with the provisions of the Commerce Law, as well as to predict the amount of expenses that will be incurred.

It is important to take into consideration that the effectiveness of the Commerce Law may be significantly affected by complications arising from its implementation, in particular, by those complications applicable to the mandated changes in the functioning of the Company Register.

## 4. THE LAW ON CONCERNS

### 4.1. Introduction

At the end of March 2000 the Latvian Parliament passed the Law on Concerns, effective 27.04.2000. Initially, it was planned that the law would be a part of the Commerce Law, but it was finally adopted separately. Thus, Latvia is one of the few countries in Europe where issues related to concerns are regulated by a separate law. The Law on Concerns also applies to companies having their parent company abroad.

The Law on Concerns regulates relations among the companies of which the concern consists, setting forth the responsibilities of the principal company (or individual), as well as provisions for the protection of creditors and minority shareholders of the dependent companies. The provisions of the Law of Concerns are not applicable to a company where one person is the sole shareholder, with the exception of creditor-protection provisions.

### 4.2. "Concern" Defined

The Law on Concerns states that a concern consists of the entity formed by one principal company and one or more dependent ones. A principal company is a Latvian or foreign business, company or physical person having a decisive influence on one or more other companies. The dependent company(ies) must be registered in Latvia for the law to apply.

### 4.3. Decisive Influence

A decisive influence is founded upon a concern agreement or on the basis of ownership of shares. A decisive influence on the basis of ownership of shares is considered to be present when at least one of the following criteria is met:

- the principal company has a majority of votes in the dependent company;
- the principal company owns shares in the dependent company and has the right to appoint or remove a majority of management or supervisory body members;
- the principal company owns shares in the dependent company and, solely on the basis of its rights as a shareholder, has appointed a majority of management or supervisory body members in one fiscal year;

- the principal company owns shares in the dependent company and, on the basis of an agreement with other shareholders, solely controls a majority of votes in the dependent company.

The decisive influence may be direct or indirect. If the principal company exercises its influence on a dependent company using the influence of another dependent company or an individual acting in his own name, but in the interests of the principal company, then the law will apply.

#### *4.4. Responsibility to give Notice*

If the decisive influence is founded upon ownership of shares in the dependent company, the Law on Concerns states that:

- if the dependent company is a public joint-stock company, the principal company must notify the Company Register in writing of its decisive influence on the basis of ownership of shares in the dependent company. Notice must also be given upon the cessation of such influence;
- a shareholder is required to provide written notice to the Company Register and the dependent company if, on the basis of an agreement with other shareholders, he has acquired control over a majority of votes in the company;
- if a shareholder has acquired more than 10% of a company's shares (and for every additional 5% acquisition or 10% transfer of shares), he is required to provide written notice to the company about the total number of shares owned and the corresponding amount of votes within two weeks of acquisition of such shares. Upon receipt of such notice, the company must register it with the Company Register if the shareholder ownership in the company increases or decreases to the following percentage amounts of total shares: 10, 25, 50, 75 or 90. Shareholders required by law to give notice of the extent of their ownership in a company may not exercise the rights that come with newly acquired shares until this notice has been given. Resolutions passed without compliance with this restriction may be held invalid from the date of their adoption.

This requirement to give notice in accordance with the Commerce Law may under certain circumstances have retroactive effect. Companies which have acquired or lost voting control in a dependent company on the basis of an agreement with other shareholders or who have acquired or lost their decisive influence on a public joint-stock company before the law's effective date (27.04.2000) are required to fulfil the notification requirement by the next general meeting of the dependent company, but no later than by the beginning of the company's next fiscal year.

From the law it may be concluded that shareholders may not exercise the rights that accompany their ownership of the shares until they have given the requisite notice and, thus, resolutions adopted after 27.04.2000 may under certain circumstances be found invalid.

#### *4.5. Concern Agreements*

A concern agreement is an agreement by which a company subordinates its management to another company (management agreement) and/or agrees to transfer all or part of its profits to another company (profit-transfer agreement or management and profit-transfer agreement).

Concern agreements must be in writing according to the procedure stated by law and must be registered with the Company Register.

#### *4.5.1. Profit-transfer agreements*

Under a profit-transfer agreement the amount of profits a dependent company may transfer to the principal company is limited to an amount not exceeding the dependent company's fiscal-year profits before disbursement of profits, from which must first be subtracted any losses suffered in the previous year and any amount to be deposited in reserves the company is required to keep.

Whilst the concern agreement is effective, the principal company is required to compensate losses suffered by the dependent company in the fiscal year. Waiver of this obligation is effective only if dependent-company minority shareholders so agree.

The Law on Concerns contains provisions on protection of dependent-company minority shareholders and creditors applicable to profit-transfer agreements, including minority shareholders' rights to receive a set amount of the dependent company's profits and to demand repurchase of their shares.

#### *4.5.2. Management Agreements*

Under a management agreement the principal company has the right to issue instructions to the dependent company's management body in regard to the dependent company's management, even if such instructions result in losses to the dependent company. These instructions, however, may not render the dependent company insolvent, cause its business activities to cease or cause its liquidation through court proceedings.

#### *4.6. Restriction in Absence of Concern Agreement*

If a management agreement has not been concluded, the principal company may not exercise its influence to cause the dependent company to conclude an agreement or cause it to engage in activity that is not in the dependent company's interests, unless any losses incurred as a result of such an agreement or such activity are compensated.

The law assigns the dependent company the responsibility of preparing annually a dependency report regarding its relationship with the principal company.

#### *4.7. Liability*

If a principal company's legal representatives transgress the restriction regarding a dependent company's management or receipt of profits, considering their liability for the dependent company's debts, the representatives are required to pay compensation for the dependent company's losses. Dependent companies may only waive this requirement if all minority shareholders so agree. Shareholders and creditors reserve the right to demand compensation on their own behalf, but for the benefit of the dependent company within five years.

#### *4.8. Protection of Minority Shareholders*

The Law on Concerns contains some important provisions on the protection of minority shareholders. For example, a principal company owning 90 or more percent of a dependent company is obligated, upon demand by the dependent-company minority shareholders, to buy the shares owned by the minority shareholders. If the parties are unable to agree upon a selling price, the price is set by the court.