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REFORM OF SHARE CAPITAL IN JOINT STOCK COMPANIES

On 5 October 2008, an amendment to the Commercial Companies Code came into effect. The amendment implements the Directive 2006/68/CE aimed at simplification in the area of share capital in joint stock companies. The following changes were introduced

In-kind contributions

- The obligation to have statements of company founders or of the management board audited by a certified auditor in view of determining the fair value of in-kind contribution, which ensures unification between the Commercial Companies Code and the Accountancy Act, as well as the obligation to verify whether the value is not lower than the nominal value of shares taken up or their higher issue price;
- Possibility to abstain from having the statements of founders or the management board audited in case the in-kind contribution takes the form of:
 - disposable securities or financial market instruments, the value of which is determined on the basis of their average price in the regulated market over 6 months preceding the date of making the in-kind contribution, unless circumstances have occurred which affect their price at the time of making the contribution;
 - assets, the fair value of which was assessed by a certified auditor over 6 months preceding the date of contribution, or the fair value of which was stated in financial statements for the preceding financial year audited in accordance with the principles stipulated in the Accountancy Act, unless circumstances have occurred which may have affected their fair value at the time of making the contribution;
- Protection of a shareholder in case the audit is abandoned is ensured by the right of shareholders representing at least 5% of share capital to request valuation, where such request must be made before the date of making the contribution at the latest;
- The obligation to announce the data concerning the subject of in-kind contribution and its value within one month from the date of contribution in case the in-kind contribution is not to be audited.

Acquisition of own shares

- The right to acquire own shares under the authorization provided by the general meeting was expanded: all joint stock companies will now have the right to acquire shares under an authorization granted for the period of 5 years, where the total nominal value of own shares owned by a company must not exceed 20% of its share capital, and the aim of such acquisition can be specified in any manner compliant with the applicable provisions of law.
- The Management Board must notify shareholders about each acquisition of own shares under the authorization of general shareholder meeting at the next general meeting
- The said amendment provides that the funds released from reserve capital as a result



of own share acquisition shall increase the capital(s) from which the reserve capital was established, rather than the supplementary capital, as was the case before.

Financing share acquisition

- Each joint stock company was given the right to finance the acquisition and taking up of shares issued by it, provided that the financing is made in accordance with market conditions, the taking up or acquisition of shares is made in return for fair price, and the conditions and limits for financing are specified in a prior resolution adopted by general shareholder meeting.
- Regulations relating to the provision of services in this area as part of usual activity of finance institutions and performances to employees of the company or related company aimed to facilitate the acquisition or the taking up of shares issued by the company are less rigorous.
- Said financing is permissible for all companies provided that the company has a reserve capital created for that purpose from the amount that may be allocated for distribution among shareholders.

Reduction of share capital

- After a company announces share capital reduction, creditors have 3 months to lodge their claims against the company, which, we believe, precisely specifies the kind of rights granted to creditors. The Company is obliged to satisfy the claims lodged.
- Within the aforesaid time limit creditors may also lodge non-matured claims that the company will have to secure if they arose before the date of announcing the resolution reducing share capital and if the creditor proves that the planned reduction is a threat to such claims and no adequate security exists for them.

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We hope the above information proves useful. The information is not a legal opinion or advice. Should you wish to obtain full information or legal advice, please contact us

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