
Latvia

Financial Assistance

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Contact

Gatis Flinters
Cobalt, Riga
gatis.flinters@cobalt.legal

Edgars Lodzins
Cobalt, Riga
edgars.lodzins@cobalt.legal

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INTRODUCTION

The following guide is intended to provide a general overview of the regulation dealing with the concept of financial assistance in Latvia as regulated by the Commercial Law of the Republic of Latvia (*Komerclikums*).

GENERAL OVERVIEW

■ Which are the origins of financial assistance in Latvian law?

Regulation of financial assistance has its origins in Article 23 (1) of the Second Company Law Directive (77/91/EEC) of 13 December 1976 (hereinafter referred to as the “**Directive**”). The Directive, including Article 23 (1), was implemented into Latvian law by adopting the Commercial Law on 13 April 2000, effective as of 1 January 2002. The Commercial Law was adopted as a result of company law reform in Latvia and the Directive, as amended, was already implemented into the initial draft of the Commercial Law. The concept of financial assistance is regulated by Article 241 of the Commercial Law. Nevertheless, since the introduction of the financial assistance rules in 2002, Latvia has not used the option to liberalize the financial assistance rules as foreseen in the Article 25 (2) to (5) of the Directive 2012/30/EU of 25 October 2012 and Article 64 (2) to (5) of the Directive 2017/1132 of 14 June 2017.

■ What should be understood as financial assistance under Latvian law?

In general terms, financial assistance shall be understood as the issue of loans by the target company or other direct or indirect financing provided by the target company to third persons for the purposes of the acquisition of the shares of the target company. Indirect financial assistance, inter alia, includes the provision of a guarantee by the target company for the benefit of third persons so as to acquire the target company’s shares, as well as the pledge of company’s assets for the benefit of third parties.

■ Is it accepted under Latvian law the financial assistance?

No. Article 241 of the Commercial Law provides for complete ban of financial assistance by public limited companies (“*akciju sabiedrība*”).

■ Is there any exception under Latvian law as regards the general prohibition of providing financial assistance to third parties?

There are no exceptions applicable to the public limited companies as regards the general prohibition of providing financial assistance to third parties.

■ Which are the consequences of providing financial assistance?

The general rules of civil liability will be applicable for the infringement of the prohibition of providing financial assistance. According to the Civil Law, a transaction which is contrary to the laws and regulations shall be null and void.

PRIVATE LIMITED COMPANIES

The Commercial Law does not address the issue of financial assistance by the private limited companies ("*sabiedrība ar ierobežotu atbildību*").

Nevertheless, there are few court cases where the courts have extended the application of the financial assistance rules by analogy to private limited companies. The courts have argued that the interests protected in public limited companies under the financial assistance rules are present in private limited companies and hence, must be protected in the same manner. The court practice in regard to the application of financial assistance rules to private companies is still developing and therefore further changes can be expected.

PUBLIC LIMITED COMPANIES

- **General rule**

Article 241 of the Commercial Law stipulates that a company is prohibited from issuing loans or otherwise directly or indirectly financing third persons in the acquisition of such company's shares.

- **Exceptions to the applicability of the general rule as regards public limited companies**

The Commercial Law does not provide for exceptions in respect of prohibition of financial assistance.

CONSEQUENCES OF PROVIDING FINANCIAL ASSISTANCE

- **Civil penalties**

According to Article 1415 of the Civil Law the provided financial assistance and any act derived from it will be considered as a transaction contrary to the laws and regulations and consequently will be considered as null and void.

- **Liability of member of the Management Board and Supervisory Board**

Article 169 (1) of the Commercial Law stipulates that members of the Management Board and the Supervisory Board shall perform their duties as prudent and careful managers. The term "careful and prudent manager", in the light of the Commercial Law, inter alia, contains a duty to observe law and articles of association of the company. If members of the Management Board and Supervisory Board fail to observe laws and regulations, they shall be jointly liable for damages that they have caused to the company. Therefore, the

members of the Management Board and Supervisory Board will be liable to the company for any damages caused as per the financial assistance provided.

- **Fines**

No fines are stated under Latvian law in case of illegal financial assistance.