
Latvia

Treasury Shares Guide

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Contact

Dace Silava-Tomsone and
Toms Sulmanis

Raidla Lejins & Norcous, Riga

dace.silava-tomsone@rln.lv
toms.sulmanis@rln.lv

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INTRODUCTION

The following guide shall provide an overview of the Latvian legal framework on the acquisition and sale of treasury shares of Latvian joint stock companies.

This guide provides general information on treasury shares, on the legal requirements and restrictions for acquisition and sale of such treasury shares, as well as implications of treasury shares under Latvian takeover law.

The information in this guide cannot substitute professional legal advice. Therefore, anyone involved and considering a re-purchase of shares should not solely rely on this guide alone and should seek specialist advice.

GENERAL OVERVIEW

Is the buy-back of shares permitted in your jurisdiction?

Yes. However, there are a number of restrictions provided under the Latvian Commercial Law. Only joint stock companies (*akciju sabiedrība*) – listed and private, are allowed to perform buy-back of shares and buy-back is subject to certain conditions.

What are the characteristics (maximum holdings, voting rights and other rights) of treasury shares?

The treasury shares do not confer any of the shareholder's rights vested in the ordinary shares (voting, profit sharing, liquidation quota).

What are the main reasons to acquire treasury shares?

The Commercial Law expressly permits buy-back of treasury shares only to protect the company from substantial direct losses. However, neither law nor court practice provides any further guidance on interpretation of the notion of 'substantial direct losses'.

In practice acquisition of treasury shares is very rarely used instrument.

REGULATORY FRAMEWORK

Under Latvian law the term 'own shares' is used instead of 'treasury shares'. Acquisition of own shares in Latvia is governed by the following laws and EU regulations:

- Commercial Law, adopted on 13 April 2004, effective as of 1 January 2002;
- Financial Instruments Market Law, adopted on 20 November 2003, effective as of 1 January 2004; and
- Commission Regulation (EC) No 2273/2003 of 22 December 2003 as regards exemptions for buy-back programmes and stabilisation of financial instruments.

The following EU directives have been implemented in Latvia with respect to buy-back of shares:

- Directive 77/91/EEC of 13 December 1976 (Second Company Law Directive) as amended by Directive 2009/109/EC of 16 September 2009; and
- Directive 2003/6/EC of 28 January 2003 on insider dealing and market manipulation (market abuse).

ACQUISITION OF TREASURY SHARES

How can a company acquire treasury shares?

Latvian joint stock companies may acquire treasury shares only in accordance with the decision of the shareholders' meeting. In practice the buy-back is exercised by the management board of the company in one of the following ways: (i) anonymous purchase on the stock market; (ii) by public announcement (which is not the voluntary share buy-back bid); (iii) direct share purchase transaction with a particular shareholder (the principle of equal treatment shall be complied with).

Are there any restrictions in acquiring treasury shares? (eg, purpose-wise; accounting-wise?)

Article 240 of the Commercial Law provides that joint stock companies (private and listed) may acquire their own shares only in the following cases:

- 1) if a company reduces its share capital by withdrawing a part of the shares from circulation and cancels them;
- 2) if a company acquires its own shares in order to protect itself from substantial direct losses;
- 3) if a company acquires its own employee (personnel) shares;
- 4) if a company acquires its own shares as a result of reorganisation (legal merger), by paying compensation in the cases specified by law;
- 5) if a company acquires its own shares when it acquires some other undertaking or a part thereof;
- 6) if a company acquires its own shares as a result of a transaction without consideration (free of charge);
- 7) if a company acquires its own shares by way of inheritance;
- 8) if a company acquires its own shares through collection of its claims from third parties;
- 9) if a company acquires shares from a shareholder who has not paid up the shares within the specified time period.

Special rules are in place regarding acquisition of treasury shares as provided in subparagraph 2) above, such as, in cases when the shares are acquired in order to protect the company from substantial direct losses.

Amount of repurchased shares

The number of treasury shares repurchased by the company together with any other company's own shares already held by the company shall not exceed one tenth of the company's subscribed share capital.

Balance sheet requirements

Treasury shares may be repurchased subject to condition that the company's equity (share capital + reserves + undistributed profits) exceeds the share capital, and as a result of such repurchase the company's equity will not become lower than the share capital.

Paid-up shares

Any treasury shares repurchased by the company must be fully paid up.

Equal treatment

In relation to listed joint stock companies Article 54(1) of the Financial Instruments Market Law provides that management institutions of the company shall ensure equal treatment of all persons holding the same category of shares. The Commercial Law does not contain respective provisions regarding private joint stock companies, however, the principle of equal treatment may be indirectly derived from the Second Company Law Directive, as well as practice of the Latvian Constitutional Court.

In practice, the principle of equal treatment would mean that the current shareholders would be entitled to sell their shares to the company for the same price and in proportion their shareholding in the company unless the shares are repurchased on the free market via stock exchange.

Which authorisation is needed?

In order to implement repurchase of treasury shares in cases when the company has to protect itself from substantial direct losses, a resolution of the general meeting of shareholders is required. Unless a qualified majority of votes is required under the articles of association, such resolution is adopted by simple majority vote of the shareholders present at the meeting.

The resolution of the general meeting shall indicate: (i) the maximum amount of shares to be repurchased; (ii) term during which the repurchase shall be exercised, which may not exceed 18 months; (iii) minimum and maximum amount of consideration to be paid for the repurchased shares.

Within the scope of the resolution of the general meeting, the company's management board is free to take any actions required in order to exercise the share repurchase.

It should also be noted that all matters decided by the general meeting of shareholders shall first be reviewed by the supervisory board of the joint stock company, that is, a respective resolution of the supervisory board is also required for the share repurchase.

What are the publicity requirements in the event of acquisition of treasury shares?

With respect of the resolution adopted by the general meeting of shareholders regarding implementation of the share repurchase, listed joint stock companies are required to comply with the regular publicity requirements for general meetings, that is, the information on the adopted resolutions shall be (i) published with the official storage system maintained by the Financial and Capital Market Commission, (ii) posted on the web pages of the stock exchange and the company (iii) notified to news agencies or mass media (reference to webpage is sufficient).

Listed joint stock companies are also required to publish information on acquisition of the company's own shares no later than within four trading days as of acquisition if the proportion of own shares reaches or exceeds the thresholds of five or ten per cent of the voting rights. The proportion shall be calculated taking into account the total number of shares with voting rights.

Acquisition of company's own shares shall be reflected in the annual accounts by indicating (i) the reason for acquisition, (ii) number, total nominal value and proportion of the share capital represented by the respective shares, (iii) type and amount of consideration. The annual accounts shall also indicate the total number of company's own shares and their proportion in the share capital. The said requirements for annual accounts are applicable to listed, as well as private joint stock companies.

Put and call options – do they count as acquisition of own shares?

Taking into account that repurchase of treasury shares is allowed only for the specific purpose of protection of the company from substantial direct losses, entry into put/call option arrangements between the company and its shareholders may be deemed as contrary to the Commercial Law.

UTILISATION OF TREASURY SHARES

Are there any statutory obligations to resell or redeem treasury shares?

Pursuant to Article 242 of the Commercial Law, all acquired treasury shares shall be resold within the term of one year from the date of acquisition. If the shares have not been resold within the said term, the shares shall be redeemed (cancelled) by reducing the company's share capital respectively. The said requirements are applicable regardless whether the joint stock company is private or listed.

How are treasury shares redeemed?

In case the company is obliged to redeem (cancel) the treasury shares, the regular provisions on reduction of share capital are applicable, including the requirements regarding protection of creditors, that is, the resolution on reduction of the share capital shall be sent to all creditors of the company, well as published with the official newspaper. Creditors wishing to receive security of their claims may apply to the company within one month from the date of publication (the term may also be longer).

SALE OF TREASURY SHARES

How can the company sell treasury shares?

The Commercial Law does not contain any specific requirements or restrictions regarding sale of treasury shares. Accordingly, the company's management board would be authorised to take all necessary steps related to the sale. The sale may be effected in any of the following ways: (i) anonymous sale on the stock market; (ii) by auction; (iii) direct share sale transaction.

Are there any restrictions for selling treasury shares?

There are no restrictions imposed by the Commercial Law in relation to sale of the treasury shares.

Which authorisation is needed for selling treasury shares?

No particular authorisation is required for sale of treasury shares. Accordingly, a decision of the company's management board on the sale would be sufficient, unless the company's articles of association provide that consent of the supervisory board is required for such type of decisions.

Can treasury shares be sold other than via the stock exchange or by public tender offer?

There are no limitations provided under the law as to the sale procedure of treasury shares.

What are the publicity requirements in the event of a sale of treasury shares?

Listed joint stock companies are required to publish information on sale of the company's own shares not later than within four trading days as of sale if the proportion of the own shares reaches or decreases below the thresholds of five or ten per cent of the voting rights. The proportion shall be calculated taking into account the total number of shares with voting rights.

What legal restrictions are there in order to avoid market abuse?

Article 84(6) of the Financial Instruments Market Law provides that provisions on market abuse are not applicable to transactions with own shares within the scope of buy-back programmes and to measures taken for stabilisation of financial instruments in accordance with Regulation (EC) No 2273/2003 of 22 December 2003. Taking into account that the Commercial Law and the Financial Instruments Market Law do not provide for the possibility to implement such buy-back programmes as provided under the Regulation, it may be concluded that the market abuse restrictions are applicable to all dealings with treasury shares of a listed joint stock company.

Under Article 88(1) of the Financial Instruments Market Law, unfair transactions and market manipulation with financial instruments shall be prohibited. Market manipulation has been defined as:

- 1) the performance of transactions or submission of orders to purchase or sell financial instruments with the following purpose:
 - a. to create a false appearance of circulation of financial instruments;
 - b. to create a false representation as to the supply and demand of financial instruments;
 - c. to artificially influence (maintain, increase, reduce) the price of a financial instrument;

- d. to significantly impede the normal functioning of financial instruments market;
and
- 2) the dissemination of such information by means of the media which gives, or is likely to give, false or misleading representation as to the price, demand and supply of a financial instrument, including the dissemination of false or misleading information if the person disseminating this information is aware or he or she should have been aware that the information is false or misleading.

TREASURY SHARES AND TAKEOVER LAW

What are the general implications of treasury shares under the applicable takeover law regime?

According to Chapter V of the Financial Instruments Market Law, the trigger thresholds for takeover bids are determined depending on the total number of company's shares with voting rights. Taking into account that the company's own shares do not have voting rights, acquisition of treasury shares has a direct effect on the percentage of shares with voting rights held by any shareholder. Thus, if the thresholds for the mandatory bid (50 per cent) or the final bid (95 per cent) are exceeded as a result of acquisition of treasury shares, the respective takeover provisions would be triggered, that is, either the shareholder would be obliged to express the mandatory bid or entitled to express the final bid.

Treasury shares as defence measures?

Taking into account that repurchase of treasury shares is allowed only with the purpose to protect the company against substantial direct losses, use of treasury shares as defence measures against takeover bids would be possible only if the particular takeover bid may be regarded as potentially causing substantial direct losses to the company. In such situation the usual requirements for repurchase of treasury shares would be applicable, that is, approval of the shareholders meeting, equal treatment of shareholders, etc.

It follows from Article 77 of the Financial Instruments Market Law that, in case repurchase of treasury shares was initiated already prior to the takeover bid, the management board of the company would require a repeated approval of the shareholders meeting for continuation of the repurchase of the treasury shares if such repurchase may impede with the takeover bid.