

26 July 2011

Screening report

Iceland

Chapter 6 – Company Law

Date of screening meetings:

Bilateral meeting only: 16 November 2010

I. CHAPTER CONTENT

The chapter includes harmonised rules in the field of company law, including financial reporting requirements, intended to facilitate the exercise of the right of establishment.

In the field of **company law**, the First Company Law Directive (2009/101/EC) on coordination of safeguards includes safeguards providing for mandatory disclosure requirements, limiting the grounds for invalidity of the obligations entered into by companies, as well as limiting the grounds for nullity of public and private limited liability companies. The Eleventh Company Law Directive (89/666/EEEC) similarly provides for disclosure requirements in respect of branches. The Second Company Law Directive (77/91/EEC) contains rules on the formation of public limited liability companies and the maintenance and alteration of their capital. The Twelfth Company Law Directive (2009/102/EC) requires Member States to ensure that their domestic law recognises single-member limited liability companies.

The Third Company Law Directive (78/855/EEC) and the Sixth Company Law Directive (82/891/EEC) harmonise national rules for the protection of shareholders and of creditors in the context of domestic mergers and divisions of public limited liability companies. Directive 2009/109/EC introduces simplified reporting and documentation requirements in the case of mergers and divisions. Directive 2005/56/EC on cross-border mergers provides for rules and procedures to facilitate cross-border mergers of public and private limited liability companies. Directive 2004/25/EC on takeover bids lays down harmonised rules to facilitate cross-border takeovers within the EU as well as improving transparency and protecting minority shareholders in the context of such takeovers.

The *acquis* also provides for certain European legal forms, *i.e.* the European Economic Interest Grouping - EEIG (Regulation 2137/85) and the European Company - *Societas Europaea* or SE (Regulation 2157/2001), while leaving several aspects of their internal structure and operation to be regulated through the domestic law of Member States.

The shareholders' rights Directive 2007/36/EC introduces minimum standards for the exercise of certain rights of shareholders in the listed companies. Four Commission recommendations (2004/913/EC, 2005/162/EC, 2009/385/EC, and 2009/384/EC) address corporate governance principles about the remuneration of directors and remuneration in financial institutions, about the independence of non-executive directors and about board committees.

In the field of **accounting and auditing**, the *acquis* includes valuation rules and layouts for balance sheets and profit & loss accounts for annual (Fourth Company Law Directive 78/660/EEC) and consolidated (Seventh Company Law Directive 83/349/EEC) accounts of public and private limited liability companies. These directives also set out audit requirements, as well as disclosure and publication obligations. Directive 2006/46/EC amends the Fourth and Seventh Company Law Directives, establishes collective responsibility of board members, introduces a corporate governance statement as part of annual reports of listed companies and enhances transparency of transactions. Directive 2009/49/EC introduces special disclosure requirements for medium-sized enterprises and the obligation to draw up consolidated accounts.

In addition, Regulation 1606/2002 on the application of international accounting standards requires EU companies listed on a regulated market to draw up their consolidated accounts in accordance with international accounting standards which have been endorsed by the Commission. Regulation No 1569/2007 establishes a mechanism to determine which third country accounting rules are equivalent to those of the EU. Decision 2008/961/EC and

Regulation 1289/2008 identify accounting standards of certain countries as equivalent to International Financial Reporting Standards for use within the EU.

Finally, the Eighth Company Law Directive (2006/43/EC) on statutory audits harmonises rules including *inter alia* the approval and registration of statutory auditors, external quality assurance, public oversight, auditor independence and the application of international standards of audit.

The entire *acquis* in the chapter on company law is covered by the EEA Agreement. Articles 49-55 of the Treaty on the Functioning of the European Union (TFEU) correspond to the Articles 31-34 of the EEA Agreement. Iceland has no EEA derogations in this field.

II. COUNTRY ALIGNMENT AND IMPLEMENTATION CAPACITY

This part summarises the information provided by Iceland and the discussion at the screening meeting held on 16 November 2010. Iceland indicated that it can accept the *acquis* regarding company law and it does not expect any difficulties to implement the *acquis* by the time of accession.

II.a. Company law

Company Law in Iceland is governed by the Act on Public Limited Companies No. 2/1995 and the Act on Private Limited Companies No. 138/1994. Certain aspects of the company law *acquis* are also regulated in the Act on Annual Accounts No. 3/2006, the Act on European Companies No. 26/2004, the Act on the European Economic Interest Grouping No. 159/1994, the Act on Securities Transactions No.108/2007, the Act on Official Supervision of Financial Operation No. 87/1998 as well as the Act on Financial Undertakings No 161/2002.

The Icelandic law recognises the following main types of business entities:

- individual's firm;
- companies of persons: partnerships, co-operative societies, European economic interest groupings;
- companies of capital: public limited company ("hlutafélag" or "hf.", "h/f", h.f.), private limited company ("einkahlutafélag" or "ehf"), European public limited company ("European company").

The Icelandic legislation contains provisions on **disclosure requirements, validity of obligations and grounds for nullity**. The Register of Firms with the District Commissioner keeps record of individual's firms, partnerships and European economic interest groupings. Establishing private and public limited companies, as well as European companies, requires registration in the Register of Limited Companies operated by the Director of Internal Revenue, an agency under the Minister of Finance. The Registers are open to the public. Online registration and online public access to the documents and information in the Registers are possible.

The general rules for disclosure apply to **disclosure requirements in respect of branches**. The notice of the establishment of a branch must state which is the national law applicable to the creation and functioning of the company, the name of the register and the company's registration number as well as the company's legal form.

Icelandic legislation provides that a private limited company may be a **single-member company**. It can be created either by formation or by acquisition of all shares. The sole

member exercises the powers of the shareholders' meeting; he takes decisions himself for and on behalf of the company. Contracts between the sole member and the company are entered in a record of minutes or prepared in a different written document, unless these are daily business transactions.

In the area of **capital formation, maintenance and alteration** of public limited liability companies, Icelandic law provides for the minimum content of the instrument of incorporation and of the statutes. A company must have a minimum share capital of ISK 4 million before it can be incorporated. Share certificates must be issued in the company; electronic registration of shares is possible under certain conditions. Shares can be issued for cash or non-cash considerations. No shares may be issued below the nominal value. Upon the establishment of a company, shares must be paid in full within one year.

Allocating dividends to shareholders is allowed if the finances of the company are in sufficiently good order. A company may acquire its own shares under certain conditions. A company must not make loans to third parties for the acquisition of its shares, except employees.

As regards **domestic mergers** of public limited liability companies, Icelandic law recognises merger by acquisition of one or more companies by another (merger with take-over) and merger by formation of a new company (merger with the establishment of a new company). Draft terms of merger ("merger schedule") must contain a comprehensive range of information. The rights of the creditors of the merging companies are protected. A decision concerning a merger of a company which has been taken over is made by a shareholders' meeting. As a general rule, a decision on a merger in a take-over company is made by its board of directors.

Concerning **domestic division** of public limited liability companies, Icelandic law recognises division by acquisition (takeover) and division by the formation of new companies. The provisions on mergers apply also to divisions, with the exception of a few rules specific to divisions.

Iceland stated that simplified rules on reporting and documentation in the case of mergers and divisions (Directive 2009/109/EC), which also have an impact on capital formation, maintenance and alteration of public limited companies, will be incorporated in the Icelandic legislation in the second half of 2011.

The provisions on domestic mergers apply to **cross-border mergers**.

Icelandic law regulates the conditions for mandatory and voluntary **take-over bids** of a limited liability company: issuers, takeover procedure, rights and obligations of participants of the takeover procedure, conditions triggering the mandatory bid, supervision over takeovers. The provisions apply to takeovers of issuers with a registered office in Iceland and issuers whose shares have been admitted to trading in Iceland.

Iceland has incorporated the *acquis* on the **Statute for a European Company** (*Societas Europaea*) and the **European Economic Interest Grouping** (EEIG). No such companies have been established in Iceland so far.

Concerning **rights of shareholders in listed companies**, Icelandic law is to a very large extent aligned with the provisions of the *acquis*, which applies to companies whose shares are admitted to trading on a regulated market. However, Iceland has not set a single deadline to include items on the agenda of the general meeting (Directive 2007/36/EC).

Provisions on **remuneration of directors** apply to public and private limited companies which are bound to elect an auditor. Iceland states that the independence of directors and the committees of the supervisory board is subject to a soft law approach through rules set jointly by the Chamber of Commerce of Iceland, the Stock Market and the Federation of Employers. Icelandic legislation provides for remuneration policies in the financial services sector.

II.b. Corporate accounting and auditing

Corporate accounting and auditing are regulated in Iceland mainly by the Act on Annual Accounts No. 3/2006 and the Act on Auditors No. 79/2008. Certain aspects of the *acquis* have been also incorporated into the Act on Private Limited Companies No. 138/1994, the Act on European Companies No. 26/2004, Regulation 860/2010 on quality assurance systems as well as Regulation 589/2009 on examination for certification as auditors, Regulation 30/2011 on continuing education of auditors and Regulation 460/2011 on public register of auditors and audit firms.

As regards **annual accounts**, the Icelandic legislation contains rules on presentation and content of annual accounts and annual reports, valuation methods used and their publication in respect of certain limited liability companies, exemptions from the rules for small and medium-size companies, obligation for auditing of annual accounts by a state authorised auditor. Annual accounts are submitted to the Register of Annual Accounts, operated by the Directorate of Internal Revenue.

The Icelandic legislation allows companies that do not exceed certain limits to prepare an abridged version of their financial statements. Publication of financial statements, annual report and the auditor's opinion is obligatory, without exceptions.

Iceland stated that a bill of law relieving companies fulfilling certain criteria from the obligation of having the financial statements audited (Fourth Company Law Directive 78/660/EEC amended by Directive 2006/46/EC) will be re-submitted to the Icelandic Parliament in the second half of 2011.

As concerns **consolidated accounts**, the Icelandic legislation contains rules on the obligation to draw up consolidated accounts, the financial year of a consolidation, the start of a consolidation, purchase method, pooling of interests method, joint venture, accounting procedures, other notes, report of the board of directors and accounting on mergers and divisions. Consolidated accounts are submitted to the Register of Annual Accounts, operated by the Directorate of Internal Revenue. A parent company is not required to draw up a consolidated account if the consolidation as a whole does not exceed certain limits.

Iceland stated that a bill of law proposing to incorporate Directive 2006/46/EC, amending the *acquis* relating to the annual accounts of certain companies, annual and consolidated accounts of banks, financial institutions and insurance undertakings as well as relating to collective responsibility of board members and enhancing transparency of transactions, has been resubmitted to the Icelandic Parliament. Iceland expects it to be adopted in the second half of 2011. Provisions of the *acquis* regarding certain disclosure requirements of medium-sized companies and the obligation to draw up consolidated accounts (Directive 2009/49/EC) are also still to be incorporated into the Icelandic legislation. Iceland stated that draft legislation incorporating the above-mentioned Directive will be submitted to the Icelandic Parliament in autumn 2011.

The application of **international accounting standards** is mandatory in the preparation of annual and consolidated accounts for certain types of companies. Commission Regulations adopting or amending international accounting standards are incorporated into Icelandic legislation and officially published in Icelandic in the EEA Supplement and in the Government Gazette. Draft legislation incorporating Regulation 1569/2007 and Decision 2008/961/EC relating to equivalence of accounting standards has been resubmitted to the Icelandic Parliament. Iceland expects it to be adopted in the second half of 2011. The adoption of this bill will pave the way to incorporate amended provisions in this area (Regulation 1289/2008).

In the area of **statutory audits**, Icelandic legislation regulates qualifications of auditors, approval of statutory auditors and audit firms as well as rules on a public register of auditors and audit firms, educational qualifications, examination of professional competence and continuing education. It contains provisions on the independence of auditors, appointment of auditors, rules on audit fees, the Public Auditors' Oversight Board, quality assurance, termination of auditing licence and transparency report and confidentiality. Iceland's provisions on the approval and registration of third country auditors and the cooperation with competent authorities in third countries are not in line with the EU *acquis*.

III. ASSESSMENT OF THE DEGREE OF ALIGNMENT AND IMPLEMENTING CAPACITY

Overall, Iceland has already reached a high level of alignment and applies a substantial part of the *acquis* in the fields covered by this chapter, due to its EEA membership. New EU legislation relevant to this chapter is regularly incorporated into the EEA Agreement. Iceland has no EEA derogations in this field.

Further alignment with the *acquis* is expected to take place in line with the existing EEA deadlines for transposition. Transposition of most of the remaining *acquis* is likely to take place in 2011. The Commission will need to monitor Iceland's alignment with the existing and updated *acquis*.

Administrative capacity in this area is sufficient. Business Department in the Ministry of Economic Affairs is responsible for company law, corporate accounting and auditing. Requirements on the administrative structures relate mainly to the disclosure of company documents. The Register of Limited Companies is held in electronic form and allows for online registration and online access to the public. The Registry of Annual Accounts publishes companies' annual accounts. The Public Auditors' Oversight Board is the public oversight body for auditors.

III.a. Company law

The Act on Public Limited Companies, the Act on Private Limited Companies and the Act on Annual Accounts are fully aligned with the First Company Law Directive (2009/101/EC) as regards **disclosure requirements, validity of obligations and grounds for nullity**.

The Act on Public Limited Companies, the Act on Private Limited Companies and the Act on Annual Accounts are fully aligned with the Eleventh Company Law Directive (89/666/EEC) concerning **disclosure in respect of branches**.

The Act on Private Limited Companies is fully aligned with the Twelfth Company Law Directive (2009/102/EC) on **single-member companies**.

The Act on Public Limited Companies and the Act on Annual Accounts have reached a high level of alignment with the Second Company Law Directive (77/91/EEC) as regards **capital formation, maintenance and alteration** of public limited liability companies. Further alignment will be necessary as concerns simplified rules on reporting and documentation (Directive 2009/109/EC), which Iceland intends to incorporate in the Acts in the second half of 2011.

The Act on Public Limited Companies has reached a high level of alignment with the Third Company Law Directive (78/855/EEC) regarding **domestic mergers** of public limited liability companies and Sixth Company Law Directive (82/891/EEC) regarding **domestic divisions** of public limited liability companies. Further alignment will be necessary as concerns simplified rules on reporting and documentation (Directive 2009/109/EC), which Iceland intends to incorporate in the Act in the second half of 2011.

The Act on Public Limited Companies and the Act on Private Limited Companies have reached a high level of alignment with Directive 2005/56/EC regarding **cross-border mergers** of limited liability companies. Further alignment will be necessary as concerns simplified rules on reporting and documentation (Directive 2009/109/EC), which Iceland intends to incorporate in the Acts in the second half of 2011.

The Icelandic legislation, mainly the Act on Securities Transactions, is fully aligned with Directive 2004/25/EC on **take-over bids**.

Iceland has fully aligned its legislation with the *acquis* on the **Statute for a European company** (Regulation 2157/2001) and on the **European Economic Interest Grouping** (Regulation 2137/85).

The Icelandic legislation has reached a high level of alignment with the **shareholders' rights** Directive 2007/36/EC. Further alignment will be necessary as concerns the setting of a single deadline to include items on the agenda of the general meeting.

The Icelandic legislation provides for the principles foreseen in the Commission Recommendations 2004/913/EC, 2005/162/EC and 2009/385/EC concerning the **remuneration of directors**. Iceland promotes the application of Commission's Recommendations on the independence of directors and the board committees. Iceland has also incorporated Commission Recommendation 2009/384/EC on remuneration policies in the financial services sector.

Overall, Iceland still needs to simplify rules on reporting and documentation in the case of mergers and divisions (Directive 2009/109/EC) and to set a single deadline to include items on the agenda of the general meeting (Directive 2007/36/EC).

III.b. Corporate accounting and auditing

The Act on Annual Accounts is highly aligned with the Fourth Company Law Directive (78/660/EEC) on **annual accounts** as well as with the Seventh Company Law Directive (83/349/EEC) on **consolidated accounts**. However, Iceland still needs to transpose certain amended provisions of the *acquis*. They include relieving companies from the obligation of having the financial statements audited, collective responsibility of board members, introduction of a corporate governance statement as part of annual reports of listed companies and enhancing transparency of transactions (Directive 2006/46/EC). Iceland also needs to transpose provisions on special disclosure requirements of medium-size companies and the obligation to draw up consolidated accounts (Directive 2009/49/EC).

Iceland applies **international accounting standards** and its law is aligned with Regulation No 1606/2002 on the application of international accounting standards. However, further alignment is necessary as regards equivalence of accounting standards (Regulation 1569/2007, Decision 2008/961/EC and Regulation 1289/2008).

Iceland has reached a high level of alignment with the acquis in the area of **statutory audits** (Eighth Company Law Directive 2006/43/EC). The international aspects of the Statutory Audit Directive have yet to be transposed.

Overall, Iceland still needs to align with the amended provisions on annual and consolidated accounts (Directive 2006/46/EC and Directive 2009/49/EC), to establish an equivalence of accounting standards (Regulation 1569/2007, Decision 2008/961/EC and Regulation 1289/2008) and to align with international aspects of statutory audits (Directive 2006/43/EC).