FOREIGN INVESTORS COUNCIL IN LATVIA

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Position Paper on Investment Security and Court System Efficiency

1. Executive Summary

Once the economic crisis was overcome, Latvia initiated a number of structural reforms in several industries, including healthcare and education, as well as state government. The Foreign Investors Council in Latvia (hereinafter referred to as FICIL) would like to draw attention to the need for maintaining the structural reform policy in order to achieve a sustainable increase in investment indicators for Latvia, shaping a favourable environment for business development.

FICIL Investment Protection Work Group has developed conclusions and recommendations regarding necessary and preferable changes in legislation as well as its enforcement, in order to better ensure the security and protection of investments as well as improve the business environment in Latvia in general.

2. Recommendations

2.1. Conclusions and recommendations regarding Commercial Law:

2.1.1. Commercial law's regulation of share capital in limited liability companies, improving and updating options for using the limited liability company as a business form in holding company activities, project financing and investment generation projects.

2.1.2. Revision of joint-stock company regulations and improving flexibility of stockholder's rights, including suggesting amendments to the Commercial law which would envisage the right of stockholders to waive their rights of first refusal in the event of issue of new stock.

2.1.3. Simplification of the restructuring process and reducing the timeframes set out in the Commercial law in case a limited liability company is being transformed into a joint-stock company, as no apparent harm can be done to the shareholders or creditors by changing the type of company's business activity.

2.1.4. Introducing a parallel debt concept in securing corporate bonds, providing amendments to the Commercial pledge law, envisaging that the right of commercial pledge for the benefit of the creditors on assets of debt securities or rights of claim can be secured also in favour of a third party (security agent, trustee), who may not be a creditor himself, and which is appointed by the issuer.

2.1.5. Improving regulations regarding capital gain via loans, implementing also limitations on the amount of stamp duty for registering mortgages in the land registry.

2.1.6. Introducing regulation in the Commercial law giving right to joint-stock companies to issue preference stocks for a limited period of time, which are erased after that period has expired, thus avoiding the complex and time consuming share capital reduction procedure.

2.1.7. Amendments to regulation on suspending dividend income by reducing the term for suspending dividend income and providing for the rights of investors to early intervene in case of financial difficulties.

2.1.8. Protection of rights of holders of convertible bonds by ensuring that the bonds shall be converted in accordance with the terms of their issue, by envisaging an obligation to the joint stock company in the Commercial law to ensure shares conformant with creditor claims in the event of converting bond, as well as suggesting amendments to the Commercial law that would provide for the right of joint stock company's board to increase the share capital and decide on conversion of securities.

2.1.9. Facilitating the possibilities of share conversion by ensuring an easier procedure to exchange shares of one share class to company's shares in another share class.

2.1.10. Eliminating the obstacles for launching public offering, by improving the provisions of the Commercial law with the possibility to register announced share capital, thus allowing immediate issuance of shares and offering existing shares in the market.

2.1.11. Improving Commercial Law regulation regarding matters to be specified in articles of association, envisaging for the veto right of individual council member (-s) deciding on significant matters of the company, as well as allowing the shareholders of limited liability companies or stockholders of joint stock companies to include more detailed provisions regarding different forms of share or stock alienation.

2.1.12. Improving the elasticity of payment of the share capital in accordance with the provisions of Directive 2012/30/EU (25 October 2012), by reducing the minimum requirements for joint stock company's stock capital and by making the terms of its payment more flexible.

2.1.13. Necessity for recognising and applying in the practice of state institutions the so-called „mirror signature", whereby each party can sign a different copy of a document with a notary.

2.1.14. Use of digital signatures for signing all files (objects) included in an EDOC container.

2.1.15. The need to concentrate on making mechanisms for monitoring payment of taxes by capital companies more effective; speed up decision-making in cases of tax arrears, exercising the option of applying an administrative fine and revoking a person's right to hold official positions within a commercial company for a certain time if necessary, instead of unjustified restriction of foreign national's right to act as a member of the board and capital company's options for attracting the investment.

2.1.16. Amendments to the Commercial Law establishing the validity, consequences and enforceability of provisions of shareholder agreements and other aspects.

2.2. Conclusions and recommendations regarding procedural matters:

2.2.1. Introducing attorney's proceedings in the civil proceedings and related matters.

2.2.2. Governing jurisdiction for securing claims in disputes that are to be considered on merit at a different country's court.

2.2.3. Protection of debtor's rights in civil proceedings in case of a dispute over validity of an agreement by implementing provisions in the Civil Procedure Law that limits the

possibilities of taking undisputed action against the debtor.

2.3. Conclusions and recommendations regarding court system efficiency:

2.3.1. The need for amendments to the Criminal Law specifying adequate penalties for illegal takeover (raiding) of a business as a combination of illegal activities, thereby simplifying the ways competent officials can hold offending parties liable.

2.3.2. Ensuring additional training for judges and persons executing criminal proceedings to improve their knowledge in matters of corporate raiding and skill in identifying this phenomenon.

2.3.3. The need for amendments to the Criminal law defining the notion "involvement in a criminal act", preventing excessively broad interpretations of this notion in practice.

2.3.4. Specifying compensation for harm caused to a party (defendant or third party) from which "illegal proceeds" have been seized.

2.3.5. Development of new regulation stipulating procedure for appointment of a custodian of property, a custodian's rights and obligations, a custodian monitoring mechanism, and a custodian's liability for non-fulfilment of inadequate fulfilment of obligations.

2.3.6. The need for amendments to the Criminal Law, providing extensive regulation of the rights and obligations of the owner of property affected by proceedings, ensuring protection of the owner's interests.

2.3.7. Improvements to prevent corporate raiding with a three-pronged approach:

- ensuring consistent application of legal regulations;
- enacting additional institutional changes;
- resolving issues identified in current regulation.

3. Rationale for Recommendations

3.1.Matters Regarding Commercial Law

FICIL has a number of suggestions regarding improvements to commercial law regulations which would eliminate issues that exist in practice, limiting the use of a limited liability company as a form of commercial enterprise for holding company activities and investment generation projects in general, and impairing protection of the rights of company shareholders and stockholders.

3.1.1. Regulation of capital shares of limited liability companies

With regard to limited liability companies, FICIL believes it necessary to introduce more flexible regulation pertaining to rights that may be vested with capital shares, which, in accordance with current legal regulations, are the same in each case. To overcome the existing limitation on structuring investments, the suggestion is to use regulations similar to Commercial Law provisions for joint-stock companies. Namely, limited liability company shares, like joint-stock company stocks, should allow the specification of distinct categories in the articles of association, including specification of different shareholder rights in each such category. Distinct share categories should include the possibility of specifying different economic rights for shareholders (right to receive dividends and liquidation quota), as well as limitations on the right to vote (including accommodation of shares without voting rights). There might also be provisions for specifying different nominal values per share in different categories.

FICIL also invites consideration regarding specification of different provisions for alienation of shares in limited liability company articles of association, by specifying e.g. that shares owned by employees cannot be sold or otherwise alienated. Similarly, upon termination of labour relations, the company buys back such shares at nominal value or for a different amount in accordance with a calculation methodology provided in the articles of association.

As for changes to the rights applicable to specific categories of shares, FICIL believes that the Commercial Law should specify that the rights vested in a certain share category should be amended by a qualified majority of votes of shareholders in the relevant category, i.e. that a decision directly affecting shareholders in a certain category must be approved by at least 2/3 of shareholders in the relevant category.

It should also be noted that requirements for data specified in a register or shareholders would have to be updated in this case, including specification of share category and existence or non-existence of voting rights.

Currently, the Commercial Law does not allow for limited liability companies to issue preference stocks or convertible bonds. In view of the aim of improving regulation of limited liability company capital shares, such rights should be specified in the Commercial Law.

FICIL holds the opinion that enacting the aforementioned amendments to the Commercial Law would improve regulation flexibility and overcome existing limitations on structuring of investments for limited liability companies.

3.1.2. Transforming a limited liability company into a joint-stock company

On account of current limitations on investment structuring within limited liability companies, lawmakers should consider the option of simplifying restructuring of a limited liability company (SIA) into a joint-stock company (AS) if all SIA shareholders give their consent. FICIL sees no apparent harm to creditors or other shareholders in changing the type of enterprise in this way, considering that, in accordance with Section 337 of the Commercial Law, all SIA rights shall be transferred to the AS (the receiving company) and all shareholders of the SIA shall become stockholders of the AS.

Therefore, FICIL sees a way of simplifying and speeding up application of Commercial Law regulations for transformation as one of the means of restructuring, including reduction of the 3-month period specified in the law for inspection of the second stage of such restructuring (i.e. following submission of a notification about restructuring). Otherwise, upon identifying an investor or establishing the need to attract an investor, a company must in fact undergo the entire restructuring process, which takes up to six months. This is an excessively protracted term during which an investor might lose their interest in committing to an investment.

3.1.3. Generating capital through loans

A parallel debt concept

With regard to securing corporate bonds, FICIL considers it necessary to regulate provision of collateral in a clear and undisputable fashion. Collateral is provided for the benefit of a wide range of bondholders which may change, therefore regulations should allow a specific possibility of noting in the prospectus or in some other bond issue documentation that a right of claim or commercial pledge right to bond securities in favour of creditors would be registered in favour of a third-party trustee of the issuer – a collateral agent/assignee who may or may not be a creditor themselves.

The definition in the Commercial Pledge Law – a recipient of commercial pledge is a party that accepts a commercial pledge as collateral for its claim – may lead to ambiguities. In the event of secured bonds, secured claims are granted to the bondholders and not to the collateral agent (assignee). Therefore, based on the example of Anglo-Saxon law, a "parallel debt" concept is established which is not known within the Latvian law system and has not been interpreted in court practice.

Stamp duty for registering mortgages

On 1 January 2014, amendments to Cabinet regulation No. 1250 of 27 October 2009, „Regulation on stamp duty for entering property title and mortgages into a land registry", took effect, stipulating that a stamp duty for entering mortgage rights into a land registry shall equal 0,1% of the loan agreement price or the amount of the principal claim under the agreement that specifies the mortgage-backed liability (in *euros*).

Until 1 January 2014, the stamp duty was capped at 1'000 Latvian lats – but the regulations no longer specify such a limitation. For large transactions, this stamp duty may reach excessive amounts that could impair common-law exchange and reduce investor interest.

Therefore, FICIL believes that reasonable limitations should be specified with regard to stamp duty for entering mortgages into a land registry.

3.1.4. Regulation of preference stocks

Preference stocks are successful for financing a commercial company's growth within a specific time frame (e.g. a five-year investment, whereupon the investor expects their capital to be paid back) and have been used successfully worldwide. Preference stocks allow attraction of equity capital in lieu of credit obligations. The current board and owners of the commercial company retain decision-making powers. However, if financing is invested in preference stocks, under Latvian legislation investors are faced with significant risks regarding repayment of their investments within the agreed-upon term.

Commercial entities and the banking sector practice transactions implementing the notion of „preference stocks discharged after a specific period", although the Commercial Law does not specify such an instrument. Thus, the sole mechanism for discharging preference stocks that currently exists under Commercial Law regulations is reduction of stock capital. However, with reduction of stock capital, investors become dependent on the decision of the meeting of

stockholders and the procedure for reducing stock capital.

With these considerations in mind FICIL suggests stipulating in the Commercial Law that joint-stock companies are entitled to issue preference stocks with a specific maturity period and to discharge such preference stocks, with reduction of stock capital following after that. This might be achieved by supplementing Section 240 of the Commercial Law and specifying an additional case where a joint-stock company is entitled to receive its stocks. It would also be necessary for the board to discharge stocks that have been bought back without the stock capital reduction procedure, provided that the council approves amendments to the articles of association. If the buyback is not performed within the term specified, a holder of preference stocks would receive a creditor's right of claim against the company.

In order to protect the interests of a company's creditors, the Commercial Law should also incorporate specific restrictions – for instance, on the ratio of preference stocks of a specific maturity period to stock capital – and a company's obligation to establish reserves for buying back preference stocks.

FICIL would like no draw attention to the fact that, since 2013, Section 46 of the Law on Alternative Investment Funds and their Managers already accommodates an analogous situation when treating a joint-stock company as an alternative investment fund. This law specifies that a fund's stock capital shall change depending on the volume of an issue or buyback of stocks (specification of the amount of stock capital in the fund's articles of association is not required).

3.1.5. Priority rights to dividends

The most typical application of preference stocks is to ensure priority to guaranteed income for a stockholder. In accordance with observations expressed in legal literature, Section 161 of the Commercial Law is to be interpreted to mean that dividends are generally treated as a share of net profit. If a company does not have profits during a reporting year, the Commercial Law does not directly accommodate accumulation of preference stock dividends in subsequent years.

Section 232 Paragraph Three of the Commercial Law specifies the following – „*If a stockholder who owns preference stock with special rights in relation to receiving dividends is not paid dividends for two accounting years in succession or is paid only part of them, they shall acquire voting rights in the following accounting year under general provisions, in proportion to the amount of the nominal value of the preference stock that they own*".

Delaying dividend income for two years is a long time and in practice, should financial difficulties occur, investors would have the right to intervene in a more timely manner. FICIL believes that protection of investor rights could be achieved using convertible bonds, although this instrument would also encounter Commercial Law barriers to enforcement of investor rights.

3.1.6. Convertible bonds and other convertible securities

In accordance with current Commercial Law regulations, holders of a company's convertible bonds cannot be certain that the bonds will be converted in accordance with the issue provisions.

In the event of bond conversion, the creditor depends wholly on the company's stockholder meeting decision to increase stock capital and amend the company's articles of association. Section 268 Paragraph One of the Commercial Law also stipulates that decisions to issue and convert securities shall be within the sole competence of a meeting of stockholders. The sole means for protecting a creditor's right to conversion of the company does not fulfil obligations is a court application against the relevant company or its stockholders, which is not considered a sufficiently effective instrument due to the significant time and resources it requires.

In order to ensure protection of investor interests and rights, FICIL proposes specification in the Commercial Law of a joint-stock company's obligation to ensure availability of stocks consistent

with creditors' claims. One solution would be stipulating the possibility of increasing stock capital at the moment of issue of the convertible bonds (securities) – as "announced equity" – as well as the right of a joint-stock company to hold its own stocks for a specific time in order to cover the enforcement of bonds. Payment for stocks in such cases would be made upon conversion of the bonds. Other mechanisms also exist but implementation of the announced activity concept would also suit the implementation of a public offer (see below).

FICIL also believes that the Commercial Law should stipulate the right of a joint-stock company's board to increase stock capital and make a decision on converting securities.

To protect the interests of minority stockholders, the ratio of bonds to total stock capital should be considered as well.

3.1.7. Simplifying stock conversion options

In addition to the aforesaid, FICIL believes it necessary to introduce a regulation in the Commercial Law that would specify a mechanism for exchanging (converting) stocks of one category into the company's stocks of a different category. In accordance with currently applicable Commercial Law regulations, if a stockholder wishes to exchange (convert) their stocks from one category into a different category to e.g. receive some other economic rights, advantages and/or limitations, it would be necessary for a meeting of stockholders to make a decision to reduce stock capital by discharging stocks in the relevant stock category, followed by a separate stockholders' meeting decision to increase stock capital by issuing new stocks in the other category, to which the stockholder wishing to exchange (convert) their stocks would then apply (subscribe).

3.1.8. Reducing barriers to a public offer

One of the impediments to expressing a public offer for joint-stock companies is the lack of regulations in the Commercial Law regarding stockholders' option of waiving their right of first refusal to a new issue of stocks and convertible bonds. No such rights are currently specified for stockholders in the Commercial Law; therefore, while expressing a public offer on regulated markets, investors must account for this risk or wait for a period of 30 days until the increase in stock capital is registered. The rights of stockholders to waive this right of first refusal in writing prior to expiration of such a period should be clearly defined in the Commercial Law.

FICIL sees opportunities for improving Commercial Law regulation by registering announced stock capital that would allow immediate issue of stocks and offering existing stocks for trade. This would also give justification to the Commercial Law requirement of paying for stocks (paying in full for bearer stock) upon subscription to the stocks.

3.1.9. Regulations included in articles of association

In order to allow an investor to receive quick and effective protection of their interests, and increase the certainty of enforcing such interests, FICIL suggests considering the following amendments and updates to the Commercial Law (regarding limited liability companies as well as joint-stock companies):

- Allow stockholders to specify in the articles of association veto rights of a certain member of the council (or stockholder) on matters essential to the company (requiring participation of this representative at a meeting, and their consent before a decision is adopted). Thus, an investor could enforce control over matters of importance and, on the basis of an agreement, such rights might be granted regardless of the size of their investment as a percentage of total stock capital;
- Allow shareholders to specify in the articles of association of a joint-stock company or limited liability company more verbose provisions regarding various types of alienation of stocks or shares.

Thus, shareholders could specify in the articles of association, for instance, a CALL option (entitling the buyer to purchase shares/stocks at a predefined future price) and a PUT option (entitling the seller to sell shares/stocks at a predefined future price).

Another possibility to be considered is the option of specifying in articles of association that the right of first refusal is granted to specific shareholders/stockholders only.

3.1.10. Improving stock capital payment flexibility

Furthermore, FICIL sees opportunities for improving the Commercial Law on account of regulations specified in Directive 2012/30/EU of the European Parliament and of the Council of 25 October 2012 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 54 of the Treaty on the Functioning of the European Union, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent (hereinafter referred to as the **Directive**). For instance, one proposal specified in the Directive which FICIL believes important to consider is reducing minimum stock capital for a joint-stock company from 35`000 *euros* to 25`000 *euros*. FICIL also suggests reviewing the possibility of specifying more flexible provisions for paying joint-stock company stock capital concerning both the amount of stock capital payable prior to joint-stock company registration and the term for complete payment of stock capital. The Commercial Law could also transpose the Directive's regulation regarding exercise of stockholders' right of first refusal to stocks issued in the event of increasing stock capital; namely, by specifying 14 days as the minimum period for exercising such rights as opposed to one month, which is currently specified in the Commercial Law, and clearly defining the right of stockholders to waive such right of first refusal in writing prior to expiration of the specified period.

The aforementioned instruments as they are reflected in the Directive may be used in order to improve and modernise the options for using the limited liability company format for holding company activities, and to make joint-stock company regulation more flexible and attractive for investment attraction projects.

3.1.11. Using "mirror signatures" for submitting documents to state institutions

FICIL draws attention to the issue of using so-called „mirror signature" in cases where documents are submitted to state authorities. For instance, in accordance with the provisions of Section 218 of the Commercial Law, upon applying amendments to a capital company's articles of association with the Register of Enterprises, the documents that shall be enclosed with the application are minutes of the meeting of shareholders deciding to make amendments to the articles of association, as well as the full text of the articles of association in their new wording. Such documents shall be signed by the board and the persons who have signed the relevant shareholders' meeting minutes. In accordance with Section 10 Paragraph Two Clause 2 (c), signatures on minutes (or a derived document) and the text of articles of association shall be notarised.

Filing of the aforementioned documents presents no difficulties as long as shareholders of capital companies are legal entities registered in Latvia. However, shareholders of capital companies often include entities registered and individuals residing abroad. Furthermore, once a document has been signed in a notary's presence within a foreign country, it must be legalised in accordance with the provisions of international agreements.

In practice, this means that either all shareholders must come to Latvia and sign the relevant document, or the document itself must be sent sequentially to all shareholders of the capital company in the relevant countries. In each of these countries, the document is signed in the presence of a notary and legalisation or verification of authenticity of the public document is

performed wherever necessary.

In view of the aforementioned concerns, the costs of drawing up a document go up and, what is often of the essence, the signing procedure takes a lot of time, potentially requiring several months to prepare required documents for submission to state institutions in Latvia.

Observations performed by FICIL show that this procedure would be facilitated by recognition and implementation of the so-called „mirror signature" in state institutions' practice, meaning that each shareholder performs notarised signing of a document and, if necessary, legalises the document in their country of residence. Afterwards, instances of the document signed in each individual country are compiled, bound, and submitted to the relevant state institution, where they are treated as a single document.

FICIL has concluded that the practice of recognising „mirror signatures" has not been unambiguous across all state institutions. For instance, the Register of Enterprises does not recognise or accept submission of documents signed in this manner, while Land Registry Departments do accept documents signed this way.

In order to prevent such inconsistent practice by state institutions, FICIL proposed applying suggested legal instruments and issuing unified standards, methodological guidelines and manuals to state institutions on the matter of recognising and accepting documents signed in this way.

FICIL believes that this matter does not require regulatory amendments to resolve. Notably, no regulatory enactment specifies that a person's will may be expressed solely by signing one and the same copy of the document. In accordance with Section 1427 of the Civil Law, a bilateral or multilateral transaction requires coordinated expression of will of shareholders. Considering the aforementioned, a coordinated expression of will is also possible if each shareholder signs a document with identical content, rather than one and the same original of such a document.

At the same time, FICIL acknowledges that recognition of such documents may encounter barriers of a technical nature – namely, comparison of all copies of a document in order to evaluate them for equivalency. However, they may be overcome using modern technical means, as well as considering the practice of other countries in such matters.

Use of mirror signatures in other states is regulated and applied in practice. In some cases, when a document must be signed by two or more parties, the party submitting the document may, for instance, also submit a scanned document (derivation) containing each of the necessary signatures.

With regard to corporate documents, submission of documents requiring signatures of more than one party is accepted by way of several copies (documents with mirror signature). In such cases, the copies of documents are supplemented with a lawyer's representation confirming that the content of all submitted copies is identical with the exception of the signature field.

This way, other countries are tackling issue by treating several individual copies of a document as a unified document (expression of will). Namely, state authorities have no basis for rejecting a document if an identical expression of will has been made by all parties specified in the document who have, however, not done so on one and the same copy of the document.

Implementation of such practice would also conform to the existing interpretation of the legal system in Latvia.

3.1.12. Using digital signatures

FICIL would like to direct attention to the issues with digital signatures. In practice, there are ambiguities regarding requirements filing requests applicable to submission of electronic documents to state authorities, and regarding which regulations applicable to filing of electronic documents should be observed.

Cabinet regulation No. 473 of 28 June 2005 "Procedures for the preparation, drawing up, storage and circulation of electronic documents at state and local government institutions, and the procedures whereby electronic documents are circulated between state and local government institutions, or between these institutions and natural persons and legal persons" (hereinafter referred to as Cabinet regulation No. 473) Paragraph 10.[1] stipulates that an EDOC format package may be used sending or saving of an electronic document on digital storage media.

In accordance with AS „Latvijas Valsts radio un televīzijas centrs" 8 April 2010 format specifications for the LVRTC eDoc 1.01 document format, an EDOC package is a logical unit storing a number of objects. The purpose of a package is to combine several EDOC (or other content) components in a single object. In accordance with the specifications, objects are content components that constitute a unified document. Thus, an EDOC format package may be used to include one or several objects and signed with a secure digital signature.

FICIL holds the opinion that the author (signor) and date of an electronic document are unambiguously identified by an integral (secure) digital signature appended to an EDOC package. Furthermore, the date when the signed document has been signed with the certification service provider is confirmed by the integral time stamp appended to the package, as opposed to the information contained in files appended to (included in) the package. An EDOC format package may contain a number of files in different formats that are signed using a uniform secure digital signature. If it is technically possible to only sign the entire package using a secure digital signature, then each file appended to the package – or each page within a file, as is customary for paper documents – need not be signed in order to have legal force.

State institutions and court practices do not accept or recognise submission of documents using an EDOC package containing several objects. It is specified that, upon development of several documents, each document must be signed regardless of the way in which it is drawn up. This means that several EDOC packages must be created and each of them must be signed with a secure digital signature and timestamp.

FICIL considers such interpretation of legal regulations and legal principles to be neither sensible nor rational from the point of view of regulatory teleology and from the point of view of good governance procedure. Thus, the purpose and significance of an EDOC format package are lost if electronic documents are to be sent in accordance with the regulations in Cabinet regulation No. 473.

Considering the aforesaid, FICIL would propose applying in state institution practice the options furnished by state of the art technical means for signing with a unified secure digital signature all files (objects) included in an EDOC package, which would therefore constitute a unified document that makes clear and unambiguous the author (signor) or the document as well as the time of signing.

3.1.13. Amendments to the Commercial Law regarding the citizenship of members of the board of a capital company

On 17 December 2014, the Saeima enacted the bill "Amendments to the Law "On the Register of Enterprises of the Republic of Latvia"" after the second and final reading in accordance with urgent procedure, which products and services supplementation of Section 14 of the law "On the Register of Enterprises of the Republic of Latvia" with a new Paragraph Six as follows:

"The Register of Enterprises state notary shall make a decision to enter a capital company into the Commercial Register or a decision to amend the composition of the board of a capital company only if at least one of the members of the capital company's board is a citizen of the Republic of Latvia, a non-citizen of the Republic of Latvia, or a citizen of some other European Union member-state, European Economic Area country or the Swiss Confederation."

The aforementioned amendments were to take effect at the same time as amendments to the Commercial Law which would be adopted after the first reading on 18 December 2014. Although the planned adoption of Commercial Law amendments after the second and final reading on the same day had been postponed and, as at the moment of drawing up this statement, has not been referred for review to parliament, FICIL would like to express its position on the aforementioned amendments and invite legislators to abstain from adopting such amendments for the following reasons.

Firstly, FICIL notes that, as already stated in its previous position paper, the fact that significant amendments to existing legislation are adopted within a very short timeframe and, moreover, that they are also applied to legal relations already initiated (continued) and, furthermore, that a relatively short transition period is being provided suggest, in the opinion of FICIL, an adverse tendency with regard to the predictability of legislation, which is of particular importance to foreign companies making or planning to make investments in Latvia by carefully assessing the potential security of the investment environment.

It is the opinion of FICIL that high-quality, predictable law-making processes and due discussion of bills with professionals and experts should be introduced, which would reduce the necessity to frequently amend legislation – creating confidence in consistent further development of judicial policy. A new law requires a period for discussing proposed legislation that may not be rushed and should take into consideration the potential effect of the proposed legislation on private-law relations and on the security of investments.

For this reason, FICIL considers it unacceptable that amendments of such great substance were reviewed as part of urgent procedure within such a short period of time – the amendments to the law "On the Register of Enterprises of the Republic of Latvia" were adopted after the final reading 7 days following submission to the Saeima, incorporating the regulation on citizenship of members of the board into the final reading only; furthermore, adoption of amendments to the Commercial Law in the final reading had been planned on the very next day following submission. The amendments had also been planned to take effect on 1 January 2015 without stipulating any transitional provisions with regard to, at the very least, applications already submitted to the Register of Enterprises regarding changes to the composition of the board, precluding any way of discussing any reasonable period of transition to introducing the aforementioned amendments.

Secondly, FICIL wishes to underscore its objections to the aforementioned amendments in terms of their essence as well.

As noted by the Saeima's Legal Bureau, the legal regulation is in violation of the principle of equality specified in Section 91 of the Constitution, the principle of prohibiting discrimination, and there are doubts regarding the compliance of the submitted legal regulation with the principle of proportionality. We have to agree with the Legal Bureau's concern that a party's adherence to a specific country is no guarantee of that party's reliability or diligent payment of taxes during business activities. Neither the Constitution nor the international obligations undertaken by the Republic of Latvia preclude the presumption that a party's nationality in and of itself indicates intent to engage in „fraudulent activities". The choices of a capital company's shareholders in favour of a certain candidate for the position of member of the board should be motivated a party's specific knowledge, ability, and suitability for a specific duty, rather than by one's nationality.

FICIL also cannot agree with the alternative solution proposed to the Saeima Committee in the Ministry of Finance letter dated 15 March 2015, specifying the requirement that at least one member of the board (provided that only foreign nationals are represented in the legal entity) should arrive in person and submit documents for registration of the legal entity to the Republic of Latvia Register of Enterprises. The Saeima's Legal Bureau had previously stated that this requirement is disproportionate and the legitimacy of such a regulation is dubious. It is unclear how

a person's arrival in person at the Register of Enterprises (alternatively, the inclusion on the board of a company of a European Union member-state citizen, European Economic Area country citizen, or Latvia non-citizen) might assist with achievement of the legitimate purpose stated by the authors of the bill, i.e. prevention of fraudulent activities with regard to taxation.

FICIL is of the opinion that focus is required on making tax payment monitoring mechanisms more effective, on quicker adoption of decisions when tax payments are delayed, using the options of applying an administrative fine, revoking a person's right to hold official positions within a commercial company for a certain time, if necessary – rather than on restricting, without justification, the right of any foreign party to act as a member of the board, or the access of a capital company to attract needed investment.

3.1.14. Regulation of agreements among a capital company's shareholders

Shareholder agreements between the shareholders of limited liability companies and joint stock companies in Latvia are a legal instrument that is frequently used in practice and which increases the level of corporate governance integrity and commercial predictability.

However, neither legislation, nor jurisprudence of Latvian courts have clearly defined the validity, consequences and enforceability of shareholder agreements, for instance, whether their contractual provisions can bind the company itself or its board, whether they can bind third parties etc. The rules contained in Section 281 of the Commercial Law only establish limitations on known stockholders' obligations.

Therefore, FICIL maintains its previously stated opinion that appropriate amendments to the Commercial Law would be necessary that would define the validity, consequences and enforceability of shareholder agreements, as well as other aspects.

3.2. PROCEDURAL MATTERS

3.2.1. Introducing the attorney's proceedings in Latvia

In late September 2014, the Ministry of Justice conducted a discussion in connection with a proposal drafted by the Latvian Council of Sworn Advocates, renewing interest in the topic of the attorney's proceedings in civil proceedings. The discussion invited opinions by representatives from various institutions and non-governmental organisations, including FICIL.

In its 30 May 2014 Position Paper on the Security and Protection of Investment, FICIL noted that introduction of the attorney's proceedings in civil proceedings, within courts of the first and second instance, could simplify and speed up court operations, stimulating overall effectiveness of private and commercial rights protection which the courts in Latvia provide, with a beneficial effect on the business environment and the amount of foreign investment. However, FICIL also added that granting such special status to advocacy in Latvia could also make litigation in Latvian courts more costly and significantly complicate access to court protection in some legal disciplines that have too few competent members of the advocacy in Latvia for the attorney's proceedings in these disciplines to be justified. The opinion expressed by FICIL was that exceptions from the attorney's proceedings could justifiably apply to representatives of companies, institutions and internal legal departments employed on the basis of an employment agreement, i.e. that the relevant specialists should ensure a way to represent a company, institution or organisation in court.

In this position paper, FICIL also cited a lack of concern about the fact that demands for accepting new lawyers into the advocacy have become increasingly strict, resulting in e.g. a sharp decrease in the number of assistant advocates. Therefore, FICIL opined that, should the attorney's proceedings be introduced in courts of the first and second instance, a simpler procedure for admitting lawyers, including young lawyers, to the advocacy. Secondly, in order to ensure that the number and

competency of advocates are increased in the fields where the number of specialists is low, FICIL believed it useful to consider relaxing requirements for admitting young lawyers into the advocacy which had been in effect prior to coming into force of the aforementioned amendments to the Advocacy Law.

FICIL believes it necessary to study what impact on the relevant category of civil cases would result in each specific case if the attorney's proceedings were introduced. Considering that amendments to the Civil Procedure Law were made with a similar goal (ensuring efficiency of civil procedure and ensuring quality representation of the interests of parties), specifying attorney's proceedings at the cassation instance, FICIL recommends to research this matter in order to determine whether inspection of the attorney's proceedings at the cassation instance has in any way made litigation at this instance more efficient or professional. Within the framework of such an evaluation, by analysing statistics and facts, one should establish: whether implementation of the attorney's proceedings has reduced the duration of review at the cassation instance in court; how the number of cases has changed wherein the collegium of Senators has refused to initiate cassation litigation; whether the number of cases without progress has gone down; whether the number of rejected (unsubstantiated) cassation appeals has decreased; and whether any other improvements are observable that would indicate increased efficiency of litigation at the cassation instance. Once the facts and statistics are compiled and analysed, one may make qualitative assertions about the need to expand the attorney's proceedings in civil proceedings.

In order to evaluate the consequences of introducing the attorney's proceedings at the first and second appellate instance, FICIL considers it necessary to also compile data on the number of cases where representatives of one or both sides are not advocates. Firstly, this is necessary in order to evaluate whether implementation of the attorney's proceedings at the first and second appellate instances is at all advisable. For example, if it turns out that representatives who are not advocates participate in just 10% of cases, then potential gains from introducing the attorney's proceedings would be questionable. Secondly, based on such information one could understand to what extent the current number of advocates is adequate for feasible representation in the cases that would require the attorney's proceedings.

In the opinion of FICIL, if the attorney's proceedings are mandated in Latvian legislation, it should in no case be universal or absolute, i.e. apply to all categories of cases tried in Republic of Latvia courts.

The necessity of requiring involvement of an advocate for a specific case category must be substantiated by the need for advocate-specific knowledge and professionalism, and for the same reasons some case categories might be more suited for involvement of a specialist from the relevant field.

FICIL believes that case categories for which the attorney's proceedings should not be obligatory include such specific disciplines where the number of members of the Latvian advocacy is relatively low (e.g. European Union law, banking and finance law, international trade). It would be unacceptable to have a person represent themselves in such a specialised case category, or to have them trust this job to an advocate, who might be aware of the procedural peculiarities of litigation but will not always be a specialist in the relevant legal matters. By applying the attorney's proceedings to e.g. copyright and neighbouring rights or trademarks, patents and design specimens, one would be faced with a reasonable question of why such disputes should prohibit representation or drafting of documents by e.g. patent attorneys, who may or may not be Sworn Advocates but are clearly specialists in intellectual property law.

By improving overall efficiency of protecting the rights of individuals and merchants as provided by Latvian courts, the attorney's proceedings could be introduced for some case categories at the very first court instance. FICIL believes that, if that a case is already being considered on merit at

the first instance, there is no reason to delay involvement of a sworn advocate and assign one at the appellate instance only.

Effective protection of a person's rights at the very first court instance could also help avoid further appellate litigation.

FICIL understands the notion "attorney's proceedings" as a procedure whereby a person may either represent themselves or, a person may be represented only by a sworn advocate. As specified in the provisions of the Civil Procedure Law with regard to trying cases at the cassation instance: individuals argue cases at the cassation instance themselves or with the mediation of a sworn advocate. The cases of legal entities at the cassation instance are argued by their officials acting within the framework of authorisations granted by law, the articles of association, or a regulation, or with the mediation of an advocate.

FICIL believes that a person should retain the right to represent oneself in court. Similarly, companies, institutions and organisations should retain the right to represent themselves with the mediation of officials, e.g. board and council members (if the relevant institution has been established by the entity).

FICIL bases its opinion on the concern that an employee of a company or organisation (such as a legal division manager) is more competent or involved in resolving a given matter than a member of its board or council. FICIL believes that a company's management should be given access to deciding whether representation of the company's interests would be best entrusted to an employee of the legal entity on account of the specifics of the matter at hand.

FICIL believes that a definition of mandatory attorney's proceedings for some case categories will require enhancement and expansion of the ways in which the state pays or compensates the assistance of a sworn advocate to persons who themselves do not have the means to contract an advocate, in order to ensure that the persons who themselves cannot afford the assistance of a sworn advocate can also receive it using funding allocated from the state budget with the mediation of the State Legal Aid Administration.

FICIL believes that the institution of advocate accountability and work quality should be improved as well.

FICIL is of the opinion that any amendments to currently applicable legislation are to be made only in the cases where they will make the litigation process quicker and more effective. It is also necessary to study whether such changes would be useful across all case categories. The experience of FICIL members shows that cases involving advocates do not always lead to quicker trial of cases in court proceedings, or increase effectiveness in any other way. On the contrary, companies and organisations are occasionally unwilling to involve activities because it increases expenses on proceedings, while company employees have adequate knowledge and competence in order to represent the company's employees interests without involving an advocate in the litigation process, particularly if the dispute is insignificant.

FICIL believes that hasty and injudicious adoption of amendments should be avoided. FICIL invites careful initial evaluation of such restrictions for constitutionality on account of the basic rights specified in Section 92 of the Constitution of the Republic of Latvia, namely, whether the legitimate purpose of such a restriction will be considered proportionate (whether the resources allocated are suitable for achieving a legitimate goal, whether the goal may be achieved by other means that pose fewer limitations on the personal rights or legal interests, whether the gains to society exceed the harm caused to an individual).

FICIL invites an evaluation and discussion of foreign experience in resolving such matters, considering that the "attorney's proceedings" has been introduced in Germany and the Scandinavian countries, such as state-determined tariffs for remuneration of advocates. In any case, whatever

changes to the current state of affairs should be made following a more careful analysis of the situation, where the need for amendments is substantiated, and with the specification of a reasonable transitional period.

3.2.2. Problems of securing claims in cross-border disputes

FICIL would like to draw attention to issues with the jurisdiction of applications for securing a claim within the framework of a dispute that must be tried on its merit in another country's courts.

When trial of a case is subject to the jurisdiction of a different member-state's court, an application for securing a claim is to be submitted to the court of the member-state in which the case will be tried.

Civil Procedure Law regulations do not entitle an applicant to file an application for securing their claim with a court in Latvia. In accordance with the Brussels I regulation and Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (effective since 9 January 2015), acknowledgement of an application by any concerned party is rejected in the event of a retroactive judgement – if the respondent was not provided the document whereby the claim was submitted, or a similar document, in due time to be able to mount a defence – unless the respondent has failed to initiate procedure to appeal the judgement while able to do so.

One should keep in mind that securing of claims is a means of legal protection for apartments aimed at making judgements enforceable in the future. Securing effective enforcement of a court judgement in favour of the applicant is one of the manifestations of fair court activities.

In the opinion of FICIL, resolution to this issue requires amendments to the regulation of Civil Procedure Law provisions, specifying the right of the applicant to file an application to secure a claim in court within their country.

3.2.3. Protection of debtor's rights in Civil proceedings

In case of a dispute over validity of a lease agreement and lease payments, the Civil procedure allows the lessor to take action against the lessee on an uncontested basis. The experience of FICIL's member's shows that in practice this means that such action is taken against the lessee regularly and the court does not take this fact into account. Therefore multiple decisions regarding unchallenged recovery of lease payments are made and the debtor disputes each and every one of them.

FICIL suggests improvements in the procedural laws that would prevent this issue while there is an undergoing dispute regarding the agreement. As a possible solution FICIL sees that in case such action is taken against the lessee, an entry is made with the Land registry which would create an obstacle for the court to make a decision regarding the next unchallenged recovery.

3.3. MATTERS REGARDING THE COURT SYSTEM

3.3.1. Protection of an investor's interests during criminal proceedings

3.3.1.1. The notion of "property related to a criminal act"

In accordance with Section 355 Paragraph One of the Criminal Procedure Law, property that has come into the ownership of possession of a person as a direct or indirect result of a criminal act shall be considered criminally acquired. In accordance with the general regulations incorporated in Section 356 Paragraph One, of the Criminal Procedure Law, property may be declared criminally acquired before conclusion of the principal criminal proceedings. There are just a few cases in which the property may be declared criminally acquired and returned to the owner before conclusion of the criminal proceedings.

Such a mechanism is stipulated in Chapter 59 of the Criminal Procedure Law – proceedings regarding criminally acquired property. In accordance with Section 626 of the Criminal Procedure Law, the party directing the proceedings is entitled to, in the interest of resolving financial matters and ensuring economy in proceedings, separate materials on criminally acquired property from the criminal proceedings and initiate the process if the following conditions are met: 1) the body of evidence gives reason to believe that property that has been seized or attached is of criminal origin **or related to a criminal act**; 2) for objective reasons, transferring the criminal case to court in the nearest future (within a reasonable period of time) is not possible or might bring about substantial unjustified expenses.

Therefore, in order to have property declared criminally acquired during pre-trial criminal proceedings, before the criminal case is judged on its merits, it is sufficient to establish that the property is "**related**" to a criminal act that has occurred.

FICIL considers such Criminal Procedure Law regulation to be unsuccessful because the notion "property related to a criminal act" is markedly incorrect and fails to conform to the principle of criminal law consequences being expressed clearly; the regulation must have clear boundaries for application.

An interpretation of "property related to a criminal act" in combination with Section 358 of the Criminal Procedure Law concludes that "property related to a criminal act" refers to property that has direct relation to property of illegal origin. This relation cannot be abstract or general. Acquisition of property related to a criminal act must be causally related to acquisition of property of illegal origin. Acquisition of property related to a criminal act is the consequence of acquiring property of illegal origin.

In accordance with theses expressed in legal literature, the content of "criminally acquired property" is linked to confiscation of property as regulated in Section 358 of the Criminal Procedure Law, specifying what property may be confiscated in addition to that which has been declared criminally acquired[1]. Criminal Procedure Law Section 358 Paragraph Two stipulates that, if criminally acquired property is alienated, destroyed, hidden or concealed and cannot be confiscated, confiscation or enforcement may be applied to other property, including financial assets, having the value of the property subject to confiscation.

Nevertheless, practice in cases regarding criminally acquired property shows that not every subject of law adheres to this interpretation, occasionally interpreting "property related to a criminal act" excessively broadly, declaring property related to a criminal act and criminally acquired the origin of which is not considered illegal, and "relation" to a possible criminal act is very distant and indirect.

FICIL sees that two potential solutions to the situation: a) amending Criminal Procedure Law regulations to determine that general "relation" to a criminal act cannot constitute basis for declaring property criminally acquired, or b) defining clearly what the law considers to constitute "relation" to a criminal act, preventing disproportionately broad interpretation and application of this regulation in practice.

Resolution of matters related to this legal institution are essential considering that property is declared criminally acquired within the framework of pre-trial criminal proceedings in accordance with appropriate procedure, before any party's guilt in committing the criminal act has been proven. Furthermore, at the pre-trial investigation stage, persons against whom the criminally acquired

[1] See "Mantas konfiskācijas tiesiskais regulējums Latvijā un Eiropas Savienībā, tās izpildes mehānisma efektivitātes nodrošināšana" [Legal regulation of confiscating property in Latvia and the European Union, ensuring efficiency of the enforcement mechanism]. Study conducted by – prof. Ā.Meikališa, prof. K.Strada-Rozenberga. Study period: 1 October 2010–10 December 2010.

property process is initiated – and other persons entitled to a defence – have no right to get acquainted with the materials of the criminal case which constitute basis for declaring property criminally acquired (excluding materials which the party directing the proceedings submits at their discretion). Therefore, both persons involved in criminal proceedings – and especially third parties not involved in criminal proceedings directly – are prevented acquaintance with all materials of the case, which are only available to the prosecutor and the court; as a result, the right of such persons to a fair trial is violated.

There is a real possibility that, once some property is declared "related" to a criminal act (or criminally acquired) as part of certain proceedings, the principal criminal proceedings may establish that the criminal act has not occurred or the accused party is exonerated. In such cases, the property that has been confiscated and transferred to a third party may no longer be considered criminally acquired, which is decided as part of ancillary proceedings. In such a situation, the person whose property was initially confiscated upon being declared criminally acquired is denied the possibility of recovering the property.

In view of the aforesaid, FICIL believes that regulations should also include the state's obligation to compensate harm caused to the person (the accused or a third party) whose "criminally acquired property" has been confiscated, or else the existing regulation should be improved to exclude the possibility of such a turn of events.

3.3.1.2. Insufficient regulation of the institution of seized property custodians in criminal procedure

Criminal Procedure Law (Section 365) specifies that arrested property shall be transferred into the custody of a third party. Although the property custodian appointed property custodian appointed as part of criminal proceedings is generally obliged to act within the framework of Latvian law, monitor the property and take care about its preservation and safety (security), the current legal regulations are considered inadequate, obsolete and inappropriate for common-law exchange, which undergoes continual development.

As noted previously, in accordance with Criminal Law Section 357 Paragraph One, criminally acquired property shall be returned, as appropriate, to the owner or legal manager, in accordance with a decision made by the person directing the proceedings once custody of the property is no longer necessary in order to achieve the aims of the criminal proceedings. Therefore, one may conclude that, under normal circumstances, until a court ruling or prosecutor's decision to terminate the criminal proceedings, criminally acquired property shall remain in custody. Because attachment of property may also be applied to a party within the framework of the criminal proceedings in order to resolve financial matters within the framework of the proceedings, property thus attached shall also be in custody.

In the event that property is attached a merchant may be barred from certain activities with the property, which may thus in fact suspend the business operations of that merchant. This may lead to consequences such as loss of clientele and competitive performance on the market, essentially driving the merchant into insolvency

The Criminal Procedure Law does not stipulate how custody, management, supervision of the aforementioned criminally acquired property should be performed, or who and to what extent is accountable for appropriate performance of the aforementioned activities. Custody is discussed only generally in Cabinet regulation No. 1025 of 27 December 2011 "Regulations on disposal of material evidence and attached property", which does not however include regulation of all substantial matters so as to prevent depreciation of value or detrimental effect on other parties, employees, stockholders, or the entity in general.

Criminal procedure legislation does not clearly define the rights or obligations of a property custodian. Currently, the matter of custodian accountability and activity monitoring is not regulated

clearly. Current regulation applies general legal standards that cannot be acknowledged as sufficient for due monitoring of property custodian activities and holding them accountable where appropriate.

It is especially important to develop sufficient and clear regulation for attached property which cannot, and may not with economic justification, be simply stored, property which requires regular, professional management so as to prevent depreciation of its value (i.e. real estate, capital shares, stocks, securities etc.).

A property custodian is appointed as part of criminal proceedings by a decision of the person directing the proceedings, which is not a publicly available document, and third parties cannot get acquainted with it. Legislation does not define safeguards of the rights and interests or third parties in the event of attachment and custody of property, and does not specify any right of such parties to counteract a property custodian's abuse of power. This usually occurs in situations where a property custodian is appointed for the property of one stockholder or beneficial owner but actually affects other stockholders and the entire company.

Legal theory has expressed an opinion regarding attached property that the regulation in Section 365 of the Criminal Procedure Law only applies to custody of attached property, without regulating matters of management of such property.[2]

FICIL considers the aforesaid to be a problem that affects the investment environment in Latvia substantially and should be resolved by developing new regulations or significantly supplementing existing ones with appropriate regulatory standards. Such regulation should specify the procedure for appointing a custodian of property that has been attached and transferred into custody, their rights and obligations, and a mechanism for monitoring their activities.

At the same time, in order to ensure fulfilment of the obligations of a custodian of property that has been attached and transferred into custody, liability for non-fulfilment or inadequate fulfilment of the specified obligations should be provided. Legislation should thus specify the limitations on a property custodian's discretion and their obligation to coordinate their activities with the donor.

3.3.1.3. Rights of an investor as the owner of property affected by proceedings

Considering that an investor may be involved in criminal proceedings not just as an offended party buy out also as the owner of affected property, members of FICIL have identified a number of problems related to criminal procedure regulations referring specifically to the rights of an owner of affected property.

At present, criminal procedure regulation of the rights and obligations of an investor acting as a creditor who is declared the owner of affected by criminal proceedings does not provide an adequate and expected degree of protection of interests.[3] The Criminal Procedure Law defines the rights of an owner of affected property are defined narrowly, and the hasty amendments have failed to incorporate clear provisions that would enable the owner of affected property to ask the person directing the proceedings to grant them such procedural status, to allow them to have their say and appeal rulings that concern their legal interests, or at the very least to obtain information about procedural progress on matters that affect their property.

[2] See "Mantas konfiskācijas tiesiskais regulējums Latvijā un Eiropas Savienībā, tās izpildes mehānisma efektivitātes nodrošināšana" [Legal regulation of confiscating property in Latvia and the European Union, ensuring efficiency of the enforcement mechanism]. Study conducted by – prof. Ā.Meikališa, prof. K.Strada-Rozenberga. Study period: 1 October 2010–10 December 2010.

[3] See Meikališa Ā. Kriminālprocesā aizskartā mantas īpašnieka tiesiskais statuss un tā problemātika [Property owners affected by criminal proceedings – legal status and issues]. Jurista Vārds, 31.03.2015, No. 13 (865), pages 10-20

Considering the aforementioned, noting that only weighed, comprehensive criminal procedure regulations can achieve the aim of criminal proceedings, which includes fair regulation of criminal-law exchange, FICIL believes that appropriate amendments should be made to the Criminal Procedure Law, implementing comprehensive regulation of the rights and obligations of an owner of property affected by criminal proceedings in order to ensure protection of their interests.

3.3.2. Effective ways to combat corporate raiding

One of the most significant issues in the investment environment of Latvia recently has been corporate raiding[4], which refers to hostile takeover of a company's shares (stocks), as well as a company's assets – real estate and movable property.

Takeover of a company is effected by various methods, from the apparently legal to patently illegal – for instance, by leveraging state institutions and law enforcement authorities, banks, minority shareholder or stockholder rights, accumulated debt (with submission of all claims at once), and personal relationships with officials. Victims of raiding often include: companies that face difficulties and have some deficiencies in governance or documentation; companies with a large number of shareholders (making it difficult to keep track of what happens within the company); companies with large amounts of assets etc.

A company may take years to counteract the consequences of raiding – often unsuccessfully. To reduce the number of cases of raiding effectively, one needs legal as well as practical means of resolving a situation, appeal a fake transaction or forgery of documents on the basis of which a company is being taken over – within a reasonable period of time, instead of years later, when a company's assets are no longer its property. Here, the speed with which a situation is resolved, is of vital importance, not only for preserving and protecting a company's assets, but also for upholding Latvia's reputation as a country with rule of law.

With regard to potential improvements for preventing raiding, FICIL believes that a complex solution is required, working on three aspects simultaneously: ensuring consistent application of legal regulations; enacting additional institutional changes; and resolving issues identified in existing regulation.

The quality of the legal system in Latvia is determined not only by legal regulations but also by the practice of applying these regulations, which is in the hands of courts, insolvency procedure administrators, the Register of Enterprises, and arbitration courts. If the law machinery is actually weak from and administrative standpoint, regardless of the adequacy of the regulatory base, then the fight against raiding will be ineffective. Here, the matter that needs to be resolved is one of consistent interpretation and application of legal provisions in accordance with the spirit and purpose of the law.

As for implementation of further institutional changes, there have already been numerous indications of inadequate judge competence in commercial matters, and a proposal has been made to establish a standalone commercial court. One example is amendments to the Civil Procedure Law that are aimed at court specialisation: since 1 July 2013, with cases on declaring decisions of a capital company's meeting of shareholders (stockholders) void have been tried by the Jelgava court.

An alternative, institutionally simpler solution could be introducing regular training and workshops for judges to ensure lifelong training and general understanding of the matters they try, especially complicated matters involving highly specific aspects of law, economics or otherwise, which are becoming more and more frequent nowadays.

[4] This denoting the interpretation of the term accepted in Latvia – a takeover of company shares (stocks) or assets on legally dubious grounds.

At the same time, FICIL stresses that, in order to prevent the negative effect of raiding on the safety of the economy and investment in Latvia, a complex solution is required in order to effectively counteract the situations which are used as basis for taking over companies – within a reasonable time frame.

With regard to amendments to regulations, the legislator has done (and continues) work on making the regulatory environment consistent. Although amendments to the Commercial Law, Civil Procedure Law and the Law "On the Register of Enterprises of the Republic of Latvia" have brought positive results and the number of cases of raiding has apparently gone down, a number of improvements are necessary in the Criminal Procedure Law, considering evaluations of investor protection from a criminal procedure standpoint.

3.3.2.1. Criminal liability for raiding practices

As a result of illegal takeover of a merchant, a criminal act may be committed that infringes upon the interests of investors. As noted repeatedly in discussions, the Criminal Law does not currently have a section that would specify criminal liability for corporate raiding. This circumstance makes holding offenders accountable considerably more difficult due to the various kinds of raiding that are possible.

It is important to add that raiding often includes illegal, criminally penalised offenses, such as forging of documents, fraud, blackmail, extortion etc., which may also be treated as theft in general[5]. Thus, liability for activities covered under the umbrella of corporate raiding practices is determined based on disparate sections of the Criminal Law. However – considering that raiding most often involves a number of activities listed herein, sometimes all of them, and a number of others – appropriate amendments to legislation must be introduced in order to allow adequate sentencing of offenders for activities that, as evident from practice, can have a very substantial negative impact on the national economy.

Because investigation of raiding cases often requires deeply specialised knowledge of application of procedural provisions as well as knowledge in fields such as commercial activity, accounting and related material law, FICIL also stresses the need for organising regular training of competent officials and employees involved in criminal proceedings. This would help arrive at a systemic understanding and consistent application of legal provisions in cases involving corporate raiding by such officials, employees and judges. Furthermore, it would improve their ability to identify the indicators of raiding during criminal proceedings, ensuring observance of the principle of substance over form.

Considering the aforementioned, FICIL believes it necessary to develop amendments to the Criminal Law that would determine adequate penalties for illegal takeover of a merchant – raiding – as a community of illegal acts, simplifying the ways that competent authorities may hold offenders accountable. Further training of persons involved in civil proceedings and judges should also be provided in order to enhance their knowledge and skills in matters regarding raiding and identification thereof.

[5] See Šļakota K. Reiderisms: Termins un saturs jeb "tev nebūs zagt" [Raiding: Definition and Content, or *Thou Shalt Not Steal*]. Jurista Vārds 21.10.2014, No. 41 (843), page 22