

Reference material on the requirements for shareholders who become owners or beneficial owners of a commercial company critical to the national security

Under the amendments to the National Security Law effective since March 29, 2017, Latvijas Gāze as the natural gas distribution system operator is listed among commercial companies critical to the national security. Hence, the shareholders of Latvijas Gāze are subject to a number of restrictions.

The requirements of the law apply to shareholders who own (or intend to acquire) at least 10% of shares. The requirements of the law do not apply to shareholders who meet the criteria listed in the law but whose status (number of shares, beneficial owners) remains the same as before March 29.

Under the law, the Cabinet of Ministers of the Republic of Latvia shall decide on the retention of a person's influence or permission to acquire influence in commercial companies critical to the national security, as well as on permission to transfer critical infrastructure to the possession or ownership of another person.¹

As long as the distribution system operator is part of Latvijas Gāze, the requirements will apply to Latvijas Gāze and its shareholders. Following the separation of the distribution system, the requirements will apply to the separated commercial company and its shareholders.

Requesting permission

A permission by the Cabinet of Ministers is required in the following situations:

Permission request*	Criteria	When requested?	Who requests?
Qualifying holding	Direct or indirect 10% holding	Before acquisition	Acquirer
Decisive influence	Direct or indirect 50% holding	Before acquisition	Acquirer
Change of beneficial owner	Direct or indirect 25% holding by a natural person	Within 5 days after change	Shareholder or beneficial owner
Transfer of undertaking	Transfer of the distribution operator or its parts to another person	Before transfer	Commercial company

* Definition of terms:

- **qualifying holding**² - a holding acquired directly or indirectly which comprises 10 and more percent of the equity capital or the number of voting stocks (shares) of a commercial company or which makes it possible

¹ Section 10 Paragraph nine of National Security Law

² Section 1 Paragraph one Item 20 of Financial Instrument Market Law

to exercise a significant influence over the management of the financial and operational policy of the commercial company;

- **decisive influence**³ - may be direct or indirect (through other persons) and refers to the majority of voting rights, majority in supervisory and executive bodies (for instance, the majority of shareholders vote for the same council members) or control by virtue of acting for the benefit of the controlling person;
- **beneficial owner**⁴ - a natural person who owns or directly or indirectly controls at least 25 per cent of the merchant's fixed capital or the total amount of voting shares, or who controls the merchant's activity in any other way;
- **transfer of undertaking**⁵ - transfer of an undertaking or an independent part thereof to the ownership or use of another person.

There are a number of situations where permission is not required⁶. For instance, if the undertaking or shares are fully or partially acquired by the state – a public person, a public person's capital company, or a public private capital company.

The Cabinet shall take a decision within one month from the date of receipt of a request. This period may be extended to four months.⁷ The decision shall be received by both the applicant and the commercial company⁸.

The Cabinet shall determine the institution whom the permission shall be requested, the information to be included in the request, and the procedure of examination (not yet drawn up at the time of adoption of the law).⁹

Sanctions

If a shareholder acquires a qualifying holding or a decisive influence without requesting the Cabinet's permission, the transfer of shares shall not be registered in the register of shareholders. In such case, the Cabinet obliges the shareholder to alienate the shares or terminate the indirect holding (voting right) and prohibits exercising the voting right in the respective capital company until the execution of this obligation.¹⁰

Decisions of a meeting of shareholders voted for by shareholders whose holding or change of the beneficial owner has not been permitted by the Cabinet and decisions taken by violating the prohibition of voting right shall be invalid.¹¹

If the Cabinet has obliged a shareholder or beneficial owner to alienate shares or terminate an indirect holding (voting right) within a specified period and the shareholder or beneficial owner does not take the required action, on the next day after the end of the specified period it shall no longer be eligible to exercise the voting right.¹²

If a transfer of an undertaking takes place without the Cabinet's permission, such transfer shall be invalid.¹³

³ Section 3 and 4 of Group of Companies Law

⁴ Section 1 Paragraph five Item a) of Law On the Prevention of Money Laundering and Terrorism Financing

⁵ Section 20 Paragraph one of Commercial Law

⁶ Section 43 of National Security Law

⁷ Section 44 Paragraph one of National Security Law

⁸ Section 44 Paragraph three of National Security Law

⁹ Section 44 Paragraph eight of National Security Law

¹⁰ Section 45 Paragraphs one and four of National Security Law

¹¹ Section 45 Paragraph three of National Security Law

¹² Section 41 Paragraph four of National Security Law

¹³ Section 45 Paragraph two of National Security Law