

# Icelandic Company Law

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## Introduction

This article's main undertaking is two-pronged: on the one hand, generally accounting for the Icelandic legal sources and forms of companies and their operations and, on the other hand, examining more closely the structure of Iceland's limited companies, while discussing some issues relating to their directors and shareholders, especially among companies listed on stock exchanges. Finally, the article will discuss the legal status of groups of companies. Danish law has usually been referred to when Iceland has enacted statutes concerning companies, and more often than not, Danish legislation on limited companies has provided a model for corresponding Icelandic legislation. This article therefore occasionally compares and contrasts Danish and Icelandic law. To start with, a brief review is appropriate of the developments in Icelandic company law during the past century.

## 1 Development in Company Law During the 20th Century

In 1921, Iceland became the last Nordic country to pass an Act on Limited Companies. A few years earlier, in 1914, the first limited liability company in Iceland, Hf. Eimskipafélag Íslands (Icelandic Steamship Company Ltd.) had been founded, with thousands of Icelanders subscribing to the shares. Icelanders regarded the founding of such a company as essential in achieving independence for their nation.<sup>1</sup> This is a typical example of utilising the limited company form when the financing of a business would otherwise be impossible. Previously, the first Icelandic legislation on partnerships and companies had been enacted as the Act on Commercial Registries, Firms and Proxy, No. 42/1903 (herewith called

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<sup>1</sup> Iceland achieved independence in 1918, but maintained a union with the Danish Crown, and did not become an independent republic until 1944.

the Act on Firms), which is still in force. The provisions of this Act and the one from 1921 relate exclusively to registration and proxy, whether among sole traders or individuals, or among partnerships, limited partnerships, limited companies, and other companies with limited liability. The Act from 1903 does not, for instance, regulate the structure of each entity or the characteristics of membership, and the guiding purpose of the Act, which was a translation of the Danish Act on Firms of 1889,<sup>2</sup> was to disclose information on business undertakings.

The Danish Companies Act of 1917 served as a model for the Act on Limited Liability Companies, No. 77/1921.<sup>3</sup> Although the insufficiency of the 1921 legislation was acknowledged early on, no thoroughgoing legal revision occurred until the passing of the Act on Limited Liability Companies, No. 32/1978. The 1978 legislation was inspired and strongly influenced by Iceland's participation from 1961 to 1969 in Nordic co-operation on regulating limited companies.<sup>4</sup> However, the Act is primarily based on the Danish Companies Act of 1973.<sup>5</sup> Including subsequent amendments, the Companies Act of 1978 remained in force until the present Companies Act, No. 2/1995, became law in 1994.

In connection with Iceland's founding membership in the European Economic Area (EEA) and under the EEA Agreement signed in 1992 and taking effect in 1994, Icelandic company law was harmonised with European law, equipping Iceland with overall legislation on securities. A landmark of the period was the first Act on Stock Exchanges, No. 11/1993. Iceland's EEA membership sharply spurred economic growth and the internationalisation of business enterprises in the country, besides affecting the Icelandic legal environment for companies and securities. A new era of company and securities law now began, and subsequent developments have been based to a large degree on directives from the European Community.

## 2 Forms of Business Organisation

Private organisations in Iceland can be divided into two basic forms, partnerships and corporations. The word *félag*, however, is used for both of these types and, in fact, for all kinds of private organisations.<sup>6</sup> Consequently, the Icelandic terms for partnership and limited company, i.e., *sameignarfélag* (general partnership) and *hlutafélag* (limited liability company, hereinafter called limited company), are compound nouns both ending in *-félag*, and the concept of *félagaréttur* (company law), where *-félag* appears at the beginning of the compound noun, comprises laws on all sorts of private organisations. The

<sup>2</sup> *Parliamentary Record* (Alþingistíðindi), 1903, Section C, at 164.

<sup>3</sup> *Parliamentary Record*, 1977-1978, Section A, at 421.

<sup>4</sup> Stefán Már Stefánsson, *Hlutafélög og einkahlutafélög*, Hið Íslenska bókmenntafélag, Reykjavík 1995, at 21.

<sup>5</sup> *Parliamentary Record*, 1977-1978, Section A, at 421 and 1994, Section A, at 783.

<sup>6</sup> For more detailed treatment of this distinction, see Áslaug Björgvinsdóttir, *Félagaréttur*, Bókaútgáfa Orators, Reykjavík 1999, at 43-48.

limited company and the private limited liability company (*einkahlutafélag*, hereinafter called private company) are the most common and economically important modes of business organisation in Iceland. *Hlutafélag (hf.)* corresponds to the Danish *A/S*, German *AG* and French *S.A.*, while *einkahlutafélag (ehf.)* parallels the Danish *ApS*, German *GmbH* and French *S.A.R.L.*

In Iceland, private companies were introduced in 1994 by enacting the Private Limited Liability Companies Act, No. 134/1994 (hereinafter referred to as the Private Companies Act), at the same time as the country's entire legislation on companies was revised in order to implement EC legislation. At the same time, the current Act on Limited Liability Companies, No. 2/1995, was passed (hereinafter referred to as the Companies Act). Other types of business organisation in Iceland include general partnerships (*sameignarfélag, sf.*) limited partnerships (*samlagsfélag, slf.*), co-operative companies (*samvinnufélag, svf.*), partnerships limited by shares (*samlagshlutafélag, slhf.*) and commercial foundations (*sjálfseignarstofnanir sem stunda atvinnurekstur, ses.*).

Legalising the private company form in 1994 gave single parties the option, for the first time under Icelandic law, of founding a company and limiting their liability; the Companies Act, on the other hand, still requires at least two shareholders to compose a limited company (§§ 1 and 20). Limited liability for the involved parties and lower taxes on limited companies and private companies than on partnerships and sole traders have led many sole traders and partnerships to convert their operating form to that of the private company; moreover, new enterprises tend to opt to become private companies. At the end of 2002, 17,588 private companies were registered, compared with 1,607 sole traders and 2,485 partnerships, and limited companies numbered 931.<sup>7</sup>

Apart from general partnerships and limited partnerships, each sort of company is regulated by its own particular parliamentary act, which imposes specific founding requirements, special formal procedures, and registration under that particular form for gaining status as a legal personality. Act No. 22/1991 regulates co-operative companies, and the Companies Act applies to partnerships limited by shares, as relevant. Furthermore, there is a special Act for European Economic Interest Groupings (*evrópsk fjárhagsleg hagsmunafélag, efjh.*), No. 159/1994, and an Act on International Trading Companies (*alþjóðleg verslunarfélag*), No. 31/1999. Various other financial undertakings are subject to separate statutes. Commercial banks, savings banks, investment banks, electronic money enterprises, securities companies, securities brokerages and UCITS management companies are all subject to the recently passed Act on Financial Undertakings, No. 161/2002. There is also a distinct statute on stock exchanges and regulated OTC markets, No. 34/1998, and a statute on securities depositories (Act on Electronic Registration of Title to Securities, No. 131/1997). Except for savings banks, which may be established as a special type of organisation, all the aforementioned undertakings must be organised as limited companies, besides being subject to the Companies Act.

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<sup>7</sup> According to information from the Public Register of Enterprises, which is now maintained by the Directorate of Internal Revenue; cf. "rsk.is".

## 2.1 *General and Limited Partnerships*

Both general partnerships, where every partner is liable for the debts of the firm, and limited partnerships, where at least one partner's liability is limited to a certain amount and there is at least one general partner, are created by agreement of the participants. The general partnership has been a popular business form for the collaboration of a few parties engaged in smaller enterprises, such as operating law firms, despite this form's popularity having declined through the advent of the private company, as mentioned above. Joining in limited partnerships, on the other hand, was not very common but has markedly increased during the last two years; in 2000 none was registered, but at the end of 2002, 65 limited partnerships were on registry.<sup>8</sup>

No structural requirements are found in law on the formation of partnerships. A general partnership can thus be created by silent assent and by oral or written agreement, and solely the participants determine its structure and the rights and obligations of members. Nor are particular legal requirements imposed on the founders, and in practice the possibility has been recognised of general partnerships being established by registered legal entities, including companies with limited liability, such as limited and private companies.

It is obligatory to register general partnerships and limited partnerships in the commercial registry, as provided for in the Act on Firms, No. 42/1903, if they engage in merchandising, crafts, or manufacture (§ 8); nevertheless, this is not a pre-requisite to their appearing in their own name or to contracts being concluded on their behalf. Icelandic courts usually treat general partnerships as legal persons, i.e., they can enter into contracts in their own name and become parties to judicial cases, although they must be organised in order to present themselves externally as a legal entity. In this manner, they attain rights and obligations in their own name.<sup>9</sup>

According to a special provision in tax regulations, both general and limited partnerships can be taxed as independent legal persons, upon fulfilling certain conditions: they must be registered in the relevant Commercial Registry, request classification upon registration as an independent tax entity, and submit a company agreement stating the owners' shares and the deposited founding capital as well as how the company is to be dissolved (§ 2, par. 1, subpar. 3, in the Act on Income Tax and Equity Tax, No. 90/2003). Otherwise, such a company's revenues and assets are taxed along with the assets and revenues of its members. Under bankruptcy law, on the other hand, general partnerships and limited partnerships do not enjoy the status of an independent legal person. Pursuant to the first paragraph of § 5, Act No. 21/1991 on bankruptcy etc., their holdings do not enter into bankruptcy proceedings unless the holdings of the party or of those responsible for the firm's obligations have previously entered into bankruptcy action.

Although partnerships are not subject to specific statutes, certain aspects of their operations are covered by numerous legal provisions, for instance, tax regulations, stipulations about annual accounts, and the Act on Firms. The

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<sup>8</sup> According to information from the Public Register of Enterprises.

<sup>9</sup> Áslaug Björgvinsdóttir, *Félagaréttur*, Reykjavík, 1999, at 53.

memorandums and the articles of association, if they in fact exist, weigh heaviest in clarifying the legal status of a partnership and its members, while judicial practice and the fundamental principles of law apply to partnerships in other respects. A general partnership can in this respect be considered a more suitable and flexible type of company than, for example, a private company, which is perhaps the reason that limited companies sometimes prefer founding a general partnership to, for instance, a private company, when embarking on particular operations or even a temporary joint venture.

## 2.2 Partnerships Limited by Shares

Partnerships limited by shares are a combination of the limited company and limited partnership, corresponding to the Danish *partnerselskab* or *kommanditaktieselskab* and the German *Kommanditgesellschaft auf Aktien* (KGaA). As a limited partnership, this organisation has two varieties of members: one or more members who are personally liable for company debts and one or more members (shareholders) who have limited their liability to the amount of their shares in the company.

According to § 2, par. 1 and 3 of the Act on Income Tax and Equity Tax, No. 90/2003, partnerships limited by shares are independent tax entities in the same fashion as limited companies. The same rule applies to them as to general partnerships and limited partnerships in regard to their estate not being received independently into bankruptcy; cf. § 5, par. 1 of Act No. 21/1991 on bankruptcy etc.<sup>10</sup>

Although no partnership limited by shares has ever been registered in Iceland,<sup>11</sup> this option has been recognised by the legislature since the beginning of the last century; note for instance its mention in the Act on Firms, No. 42/1903. On the other hand, the structure and status of members have never been sufficiently defined by law. Until recently, partnerships limited by shares were subject to the Private Companies Act, insofar as it was relevant, without more specific definitions or rules, but since Act No. 39/2003 entered into force, amending the Companies Act, and Act No. 52/2003, amending the Private Companies Act, the Companies Act applies to such partnerships insofar as relevant. As pointed out in comments to both parliamentary bills, it was thought more appropriate for provisions of the Companies Act to apply to these companies, as applicable. The same comments stated that ideas had recently been broached on founding strong limited partnerships in the securities field. The necessity was therefore felt for the Companies Act to apply to partnerships limited by shares rather than the Private Companies Act, so that it would be possible for their shares to attain listing on the Iceland Stock Exchange.<sup>12</sup> Added

<sup>10</sup> *Parliamentary Record*, 1990-1991, Section A, at 102.

<sup>11</sup> *Parliamentary Record*, 2002-2003, Section A, Parliamentary bill to amend Act No. 2/1995 on limited companies (Act No. 39/2003). Doc. 865, available at "<http://www.althingi.is/altext/128/s/0865.html>".

<sup>12</sup> *Parliamentary Record*, 2002-2003, Section A, Parliamentary bill to amend Act No. 138/1994 on private limited companies (Act No 52/2003). Doc. 864, available at "<http://www.althingi>".

to the above amendments was a requirement that the articles of association for limited partnerships shall now include rules on the legal relationship between those having limited liability on the one hand and those having unlimited liability on the other hand.

### **2.3 Limited and Private Companies**

The model in 1994 for implementing EC directives through new legislation on limited and private companies was company legislation in Denmark.<sup>13</sup> The Companies Act, No. 2/1995, and the Private Companies Act, No. 138/1994, for the most part, contain the same provisions as existed in 1992 in the Danish Companies Act and Private Companies Act.

Neither of the current Acts contains a precise, direct definition for the concepts of limited company or private company; however, § 1 of each Act mentions the basic characteristics of these types of companies: limited liability and a fixed minimum sum of capital. The minimum capital of a limited company is set at ISK 4,000,000, while for a private company the amount is ISK 500,000. The rules of the Second Company Law Directive (77/91 of 13 December 1976) on the formation of companies and the maintenance and alteration of their capital have been extended to private companies. Both types of companies can be founded for a wide variety of legal purposes and not just for commercial ends. The Companies Act, § 9, par. 2, and Private Companies Act, § 7, par. 3, specifically require expressly mentioning in a company's articles of association, however, if the company's purpose is not to make a financial profit that can be paid to the shareholders. In fact, most limited companies in Iceland do engage in commerce.

As was the case in Denmark prior to deregulation under the Danish Private Companies Act of 1996, the rules in the two Icelandic Acts on limited companies are very similar. Despite both Acts' containing rather detailed rules, the provisions on private companies are occasionally somewhat simpler than the rules on limited companies, for instance as relates to forming the company, paying for shares, the company's acquiring its own shares, organisational structuring, and dissolving the company. Share certificates may be issued in a private company, but the rules on negotiable securities do not apply to private company shares, unlike the rule on stock shares under § 29 of the Companies Act. According to Icelandic law, shares in limited companies must be issued to named persons<sup>14</sup> and indicate the amount of the share (§ 27); therefore, shares without any nominal value cannot be issued. Limited companies listed on regulated markets and limited and private companies authorised by the Annual Financial Statements Registry to keep their accounts and prepare annual financial statements in foreign currency may denominate their share capital in

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is/alttext/128/s/0864.html”.

<sup>13</sup> Stefán Már Stefánsson, *Hlutafélög og einkahlutafélög*, Reykjavík 1995, at 26.

<sup>14</sup> The Companies Act and the Act on Securities Transactions, No. 33/2003, nonetheless allow for nominee registration of shares on behalf of a financial undertaking.

foreign currency under the Companies Act, § 1, par. 4-5, and the Private Companies Act, § 1, par. 4-5.

The management structure of both limited companies and private companies is a two-tiered system in which the board of directors (*félagsstjórn*) and the management board (*framkvæmdastjórn*) mutually handle the actual management of the company, oversee its affairs and bear responsibility for its operation. Nonetheless, the structure of the private company is allowed to be simpler, because hiring a managing director is not necessary, and in the single-party private company, a sole shareholder replaces annual general meetings. Nor does the possibility of a representative committee exist for private companies, as it does for limited companies.

Both Acts contain the same rule about the liability of directors and managers, who are personally responsible for any wilful or negligent damage they may cause to the company or to its shareholders, creditors and third parties while carrying out their duties (the culpa rule). The party demanding compensation bears the burden of proof, and liability must be proved in regard to each individual member.

Despite how few judicial rulings there are, it can be inferred that Icelandic courts seem reluctant to pierce the corporate veil, i.e., to set aside the company's legal personality and the basic principle of limited liability so as to make individual directors or shareholders personally liable for their company's obligations. It can however be concluded from a judgement by the Supreme Court of Iceland (*Hæstiréttur Íslands*) in 1993 (H 1993,1653, Case No. 151/1993) that those engaged commercially in the name of a limited company, but not abiding by provisions of the Companies Act, risk being accounted personally liable. In the instance judged, neither meetings of the board nor annual general meetings had been held, and no annual financial statements had been prepared. In view of these facts, the Supreme Court concluded that the company involved had in no manner been operated as a limited company in the sense of the Companies Act. In addition, the dealings underlying the complaint were not in accordance with the purpose of the company. Two of the directors, who were also shareholders, were therefore held personally liable. This holding was not based on the culpa rule.

When the legislation on companies was revised in 1994, following the Danish pattern, a special rule on the liability of shareholders was introduced, applying to both limited and private companies.<sup>15</sup> Under the rule's provisions, a shareholder is obliged to pay compensation for damage he or she has caused the company, other shareholders or a third party through wilful or gross negligence in violation of the law or the company's articles of association. Neither this rule nor issues on the liability of parent companies due to obligations of their subsidiaries have yet been tested before the courts.

One characteristic of Icelandic company law is that there is no legal obligation to ensure employee representation on company boards, nor other methods for employees to influence company management. While several bills to amend the Companies Act have been introduced in Parliament (*Althingi*), none have been passed. Trade unions and workers' associations have not taken

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<sup>15</sup> *Parliamentary Record*, 1994, Section A, at 816.

the initiative on such rules and indeed do not appear strongly interested in introducing stipulations of this sort. It might however be mentioned that EC Directive 45/1994 of 22 September 1994, on the European Works Council, was implemented in Iceland by passage of the Act on the European Works Council, No. 61/1999.

#### **2.4 Co-operative Companies**

Co-operatives are companies founded on the basis of co-operation for their members' mutual monetary benefit, in proportion to their financial participation in the co-operative's activities, according to § 1 of the Co-operatives Act, No. 22/1991. Other salient characteristics are that the number of members is unlimited, there is no fixed amount of founding capital, and the members have no individual liability toward the co-operative's creditors for debts owed by the enterprise. Through the Companies Act, the structure and operation of co-operatives are regulated in detail, which is not the case, for example, regarding the Danish *andelsselskaber*.

Like a limited company, a co-operative becomes a distinct legal entity as of its entry in the Register of Co-operatives. The typical activities of a co-operative company would be providing its members with goods and services for their own needs, seeing to the general operation of a store for consumers, or processing and selling products of the members.<sup>16</sup> Membership in a co-operative is open not only to everyone willing to work in the co-operative and abide by its articles of association, as stated in § 15, but also to legal entities if so stated in the articles of association. Membership rights are not assignable, nor can they be passed on by inheritance (§ 17). In fact, the nature of participation in a co-operative is personal. It is for example the main statutory rule that members have equal voting rights (§ 1, par. 20) and that only members are eligible to sit on the board (§ 27). On the other hand, the articles of association of a co-operative which performs tasks for producers of goods or services may provide for members acquiring additional votes in proportion to their business with the co-operative (§ 20, par. 2), as well as an increased share in profit on the basis of their business with the co-operative or in accordance with the work they have contributed (§ 53).

Under § 37 of the Act, a co-operative's initial capital consists of the members' original contributions, and membership fees shall be deposited in this fund. With the enactment of Act No. 22/1991, the legislation on co-operatives was amended to strengthen their establishment, introducing the authorisation to issue and sell so-called co-operative shares (B shares) that are transferable in the same manner as stocks. Under § 37, provisions in a co-operative's articles of association may authorise a special fund to be established with money raised by selling B shares, without their owners having to be members of the co-operative. Such a fund is said to comprise B-share initial capital, whereas a fund containing membership fees is called the A-share initial capital. A co-operative with B-share initial capital resembles limited companies to some degree. Though it

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<sup>16</sup> *Parliamentary Record*, 1990-1991, Section A, at 2501.



displays many of their characteristics, however, a considerable difference lies in the stipulation of § 42 that no voting rights accompany B shares. The intent of this was to facilitate the financing of co-operatives by subjecting their possession to rules comparable to those for limited companies,<sup>17</sup> i.e., that co-operatives can be financed through the sale of B shares and in this respect correspond to limited companies.<sup>18</sup> Moreover, the Iceland Stock Exchange accepts co-operative shares.<sup>19</sup>

Co-operative companies played a significant role in the last century. Although the first Co-operatives Act was passed in 1921 (Act No. 36/1921), the first co-operative company had already been founded in 1882. However, the popularity of the co-operative form dwindled markedly around the middle of the twentieth century, and allowing for B shares through the current Act No. 22/2001 did not provide the rejuvenation intended by this amendment.<sup>20</sup> Act No. 22/2001, in this respect amending Act No. 22/1991, also introduced provisions authorising the conversion of co-operatives into limited companies. At present a mere 93 co-operative companies are registered, only one of which is also listed on the Iceland Stock Exchange.<sup>21</sup>

## 2.5 Commercial Foundations

Along with the above-specified companies, the foundation offers another legal form for private company operations in Iceland, so that its legal status should be included in a discussion of Icelandic company law. Like the above-specified companies, foundations are established for a definite purpose, and they are generally expected to operate for an unspecified period. On the other hand, the outstanding characteristic of foundations, entirely distinguishing them from other companies, is that no one owns a foundation; instead, it owns itself. This form of ownership and operation is therefore called in Icelandic literally a “self-owning organisation” (*sjálfseignarstofnun*), which is similar to the Danish term for foundation (*selvejende institution*). A foundation alone owns its assets, and an independent board is charged with handling and disposing of them. In this respect the organisation of foundations is fundamentally different from that of other companies, whose members generally have the final say on operations and also frequently benefit from possessing financial rights.<sup>22</sup>

<sup>17</sup> *Parliamentary Record*, 2000–2001, Section A, Parliamentary bill to amend Act No. 22/1991 on co-operatives (Act No. 22/2001). Doc. 716, available at “<http://www.althingi.is/altext/126/s/0716.html>”.

<sup>18</sup> *Parliamentary Record*, 1990–1991, Section A, at 2509.

<sup>19</sup> According to Rules of the Iceland Stock Exchange, Ltd., No. 2, released 1 July 1999, the Iceland Stock Exchange accepts, among other securities, listings of co-operative shares (Iceland Stock Exchange, at “[icex.is](http://icex.is)”).

<sup>20</sup> *Parliamentary Record*, 2000–2001, Section A, Parliamentary bill to amend Act No. 22/1991 on cooperatives (Act No. 22/2001). Doc. 716, available at “<http://www.althingi.is/altext/126/s/0716.html>”.

<sup>21</sup> Iceland Stock Exchange, at “[icex.is](http://icex.is)”.

<sup>22</sup> Áslaug Björgvinsdóttir, *Félagaréttur*, Reykjavík 1999, at 73.

Icelandic law distinguishes between commercial and non-commercial private foundations. Commercial foundations are regulated under Act No. 33/1999, whereas applying for confirmation by the Minister of Justice is optional for non-commercial foundations, pursuant to Act No. 19/1988 on funds and institutions operating under a confirmed charter and according to the Act.

Icelandic legislation does not provide an exact legal definition for a foundation, but four characteristics can be inferred from Act No. 19/1988 (§ 2) and Act No. 33/1999 (§ 2, 9): a founding charter and/or a memorandum of association/statutes, an express purpose, fund/capital, and a board of directors. It is a basic principle that the foundation's capital or assets must be segregated from the founders' assets, and the board must be independent. Foundations are legal personalities, although a commercial foundation has to register to obtain the status of a legal personality.

The legal reasoning underlying the Act on Commercial Foundations was the need for special rules on these foundations. The Act takes various commercial matters into account, because such foundations commonly engage in activities similar to those of limited companies and other companies.<sup>23</sup> Many provisions found in the Act are taken directly from the Private Companies Act and the Companies Act. At present, only 24 commercial foundations are registered, most of them operating to serve educational and cultural causes.<sup>24</sup>

### **3 Corporate Governance in Limited Companies**

In Iceland public attention has increasingly focussed on the operations of limited companies, the function and liability of directors and the status of shareholders. Much of the increased interest may be attributed to the creation of a regulated stock market in the mid-1980s. Also, the conversion of state companies to limited companies in recent years,<sup>25</sup> involving in the majority of cases their ensuing privatisation and registration on the Iceland Stock Exchange, has without doubt helped excite this interest. The discussion of corporate governance is ongoing in Iceland, and parties on the market can be expected in the near future to do their utmost to bring about reform and to outline criteria for promoting better company management.

In this section I will explain the structure of limited companies, including those that are registered on the stock exchange. Since several aspects of Icelandic legislation regarding the status of directors and shareholders are different from those in other Nordic countries, they will be specifically treated in this discussion, as well as points of interest in the context of corporate governance. The rules will also be covered which concern the selection and remuneration of directors in limited companies and which provide a minority the

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<sup>23</sup> *Parliamentary Record*, 1998-1999, Section A, at 914.

<sup>24</sup> According to information from the Public Register of Enterprises.

<sup>25</sup> During the period 1996-1998, for example, laws were enacted converting all state commercial banks to limited companies, and a limited company was founded for the state-owned Iceland Telecom. Confer the *Skýrsla framkvæmdanefndar um einkavæðingu (Report of the Committee on Privatisation)*, 1999-2003, May 2003, available at "stjr.is".

special statutory right to elect a representative to sit on the board. Furthermore, I will review the rules on differentiated voting rights and nonvoting shares, share redemption, takeover bids, and the utilisation of information technology for company communications with shareholders. Since the advent of an organised securities market in Iceland and the implementation of a new set of regulations for registered companies have been of enormous significance for the operation of Icelandic limited companies and the status of directors and shareholders in them, a short account of the Iceland Stock Exchange is now in order.

### 3.1 *Stock Exchanges and Regulated OTC Markets*

The advent of the Iceland Stock Exchange created a basis for systematic transactions in bonds and shares according to clear rules and subject to government monitoring.<sup>26</sup> The first law enacted on stock exchanges was Act No. 11/1993 on the Iceland Stock Exchange, which under the Act was a foundation with the exclusive right to operate a stock exchange. In particular, the foundation form was selected because the stock exchanges in Copenhagen and Oslo were foundations, and a legal monopoly seemed appropriate since the securities market in Iceland was deemed hardly capable of supporting more than one stock exchange in a professional capacity.<sup>27</sup> However, Act No. 34/1998 on the Operation of Stock Exchanges and Regulated OTC Markets abolished the monopoly of the Iceland Stock Exchange, constructing a comprehensive framework for operating stock exchanges and regulated OTC markets. Stock exchange operations were thereby open to any party fulfilling the Act's requirements, and the operational mode of a regulated stock market was changed to that of a limited company. In accordance with the Act, Iceland Stock Exchange Ltd. (ICEX) was founded at the end of 1998. The Icelandic name of the company (Verðbréfaþing Íslands hf.) was changed to Kauphöll Íslands hf. as of 1 July 2002, and on 15 June 2000 ICEX became a partner of the NOREX Alliance. To date ICEX remains the only stock exchange run in Iceland, but as of 15 June 2002, it has also operated an OTC service (ICEX Alternative Market).

At present 48 companies are listed officially on ICEX (forty on the Main List and eight on the Growth List), and eight companies are listed on the ICEX Alternative Market.<sup>28</sup> The largest shareholders in the fifteen leading companies on ICEX (ICEX-15) in mid-2002 belonged to the following categories:

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<sup>26</sup> It was in 1984 that the Central Bank of Iceland began preparations for organised transactions of securities, even though Act No. 10/1961 had already authorised the bank to establish such transactions and, for this purpose, to found and operate a stock exchange for trading bonds and shares according to regulations set by the bank's board and confirmed by the Minister. Securities were first listed in a regulated stock market on 8 November 1985, and shares were not approved for listing until 15 October 1990. (*Parliamentary Record* 1992-1993, Section A, at 464-466.) See also "[http://www.vi.is/vsm\\_vthi/owa/disp.birta?pk=911](http://www.vi.is/vsm_vthi/owa/disp.birta?pk=911)" for a history of the Iceland Stock Exchange.

<sup>27</sup> *Parliamentary Record*, 1992-1993, Section A, at 468-469.

<sup>28</sup> See the Iceland Stock Exchange "[http://www.vi.is/vsm\\_vthi/owa/disp.birta?pk=924](http://www.vi.is/vsm_vthi/owa/disp.birta?pk=924)", July 30, 2003.

individuals 20%, companies and other enterprises 19%, foreign investors 20%, pension funds 14%, and financial undertakings 14%. Foreign ownership has increased enormously since the mid-1990s, when there were almost no foreign investments in Icelandic companies, but it must be kept in mind that this also includes the share possession of foreign holding companies owned by Icelanders.<sup>29</sup>

### **3.2 Structure of the Limited Company**

The Companies Act stipulates three units of management: 1) the shareholders' meeting (*hluthafafundur*), which holds the highest authority in a company and elects at least a majority of 2) the board of directors (*félagsstjórn*), which in turn appoints 3) the management board (*framkvæmdastjórn*). A minimum of three people constitute a limited company's board of directors (cf. the Companies Act, § 63, par. 1), and there can be up to three managing directors unless the company's articles of association stipulate a higher number (§ 65, par. 1). Also, a representative committee (*fulltrúanefnd*) may be created, elected by a shareholders' meeting (§ 73). No instance of a representative committee is documented in an Icelandic company, but if any are formed, their function will be to monitor the board of directors and the managing directors. Such a committee has no power to decide company matters, although it can demand the information necessary for fulfilling its monitoring function. The power to decide company matters, and thereby assume liability, lies with directors and the shareholders' meeting.

#### **3.2.1 Directors**

As previously mentioned, the management structure of limited companies is based on a two-tiered structure. The board of directors and the management board mutually manage the company's operations and represent the company. The most significant provisions on the functions of the board of directors and the management board and the division of responsibility between these two bodies appear in § 68 of the Companies Act, which parallels § 54 of the Danish Limited Companies Act. To sum up, a company's board of directors supervises the company in general and monitors its operations, while the managing directors must see to daily operations under the board's supervision and are obligated to perform their job according to the board's directions. Decisions that are exceptional or major are clearly stated to be the purview of the board of directors. Since the board is thus authorised to reach decisions under the heading of daily operations and is not forbidden to participate itself in such operations, it is clear that the division of labour between the board of directors and the management board, as well as their function and influence, can vary greatly from one company to another. However, there are indications that the board of directors is not intended to take over the day-to-day business of the company - for example, rules that a majority of the board of directors shall consist of people

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<sup>29</sup> *ICEX News & Views*, Volume 2, Issue No. 23, October 11, 2002. Accessible at "icex.is".

who are not managing directors (§ 65, par. 2) and that no member of the managing board may be chosen as chairman of the board of directors (§ 70, par. 1). These stipulations were incorporated into the Act in view of the Danish model and a draft of the Fifth Company Law Directive.<sup>30</sup>

### 3.2.2 The shareholders' meeting

Under § 80, par. 1, of the Companies Act, a shareholders' meeting has the highest authority in company matters, in accordance with law and the articles of association. In other words, a shareholders' meeting always has the power to decide unless law assigns the decision elsewhere. For example, the hiring and firing of managing directors is the purview of the board of directors, and the board is permitted to veto a shareholders' meeting concerning the payment of dividends. The Supreme Court of Iceland has reiterated the priority of shareholders' meetings *vis-à-vis* directors in regard to having a final say in company affairs, e.g., through H 1994, 1642, Case No. 315/1994, and H 10 July 2001, Case No. 256/2001, where the court stated: "A shareholders' meeting can address any matter regarding the company and pass a resolution thereon, and the company's board must subsequently adhere to the resolution." In both of these cases, an injunction had been demanded on an agreement which a limited company board had made with a third party on the sale of stocks, even though a request had been presented for a shareholders' meeting to discuss the disposal of the shares in question. The injunction was granted, partly on the premises that a demand had been presented for a shareholders' meeting to discuss the issue. In the latter case, the Supreme Court noted that the board of the company had been in a position to call the meeting soon enough; under such circumstances, it was impermissible for the board to dictate and execute the sale before holding such a meeting.

A shareholders' meeting is the only legal venue for shareholders to exercise their right to influence the company (§ 80). The rights of shareholders respecting a shareholders' meeting are to attend the meeting (§ 80, par. 3) and be accompanied by a councillor (81, par. 1), to speak and submit proposals (§ 86), to obtain information albeit limited (right to ask questions, § 91) and, principally, to vote (§ 82, par. 1). Other rights related to shareholders' meetings and worth mentioning are the right to demand the nullification of a decision by a shareholders' meeting or its amendment (§ 95) and the right of shareholders controlling 10% of the share capital to call a shareholders' meeting. A shareholder can also have an agent attend a shareholders' meeting, on condition that the agent present a signed and dated power of attorney to this effect (§ 81, par. 1 and 2).

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<sup>30</sup> *Parliamentary Record*, 1994, Section A, at 803.

### 3.3 *Minority's Right to Elect Representatives on the Board*

One of the main functions of a shareholders' meeting, and also the function best reflecting its status as the company's highest authority, is to elect members of the board of directors; cf. the Companies Act, § 63. The general rule is that a shareholders' meeting elects all the directors or at least a majority of the board, but the articles of association may confer upon public authorities or a third party the right to appoint one or more members to the board of directors. Regarding the election of the board, however, the Companies Act ensures a minority of shareholders a special, and indeed unusual right, namely, to choose representatives on the board.

The Act provides for three procedures in electing directors: majority voting, proportional voting and cumulative voting. The elections shall be held among individuals or lists with the name(s) of one or more individuals (§ 63, par. 2). If the articles of association do not stipulate the voting arrangement, elections shall be conducted between individuals according to the majority rule. Under § 63, par. 7, shareholders controlling at least 1/5 of the share capital can demand proportional voting or cumulative voting to elect directors. In companies with 200 or more shareholders, shareholders controlling at least 1/10 of the share capital are allowed to place such a demand. The company's board must receive this demand at least five days before the shareholders' meeting, and if there are conflicting demands for proportional and cumulative voting, cumulative voting is to be employed.<sup>31</sup>

The effect of the rule is that upon electing a board of five directors, for example, a minority controlling 33.3% of the votes can elect two members of the board, and given a board with three directors a minority controlling over 25% of the votes can elect one member.<sup>32</sup> This will pertain, according to § 63, par. 1, provided that all directors are elected at the same meeting, since that is necessary to implement the provisions on cumulative or proportional voting.<sup>33</sup> The minority's right when electing the boards of Icelandic limited companies is in this respect completely different from the legal privileges of the minority in the other Nordic countries, where the principle is that anyone controlling a majority of the votes can appoint every member on the board unless otherwise stipulated in the articles of association.<sup>34</sup>

The right of a minority to choose representatives to sit on the board was introduced when the Companies Act was revised in 1978. The original parliamentary bill provided for the traditional rule on the board of directors being elected by a majority of votes, with no special provision to ensure a

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<sup>31</sup> Similarly, the minority in a private limited company is assured the right to choose a representative to sit on the board, though it does not have the option of cumulative voting; the choice is rather between majority rule and proportional voting. Another difference between limited and private limited companies is that in the latter the minority does not need to demand proportional voting prior to the shareholders' meeting. For more detail, see § 39 of the Private Limited Companies Act.

<sup>32</sup> Stefán Már Stefánsson, *Hlutafélög og einkahlutafélög*, Reykjavík 1995, at 200-201.

<sup>33</sup> See *Parliamentary Record*, 1994, Section A, at 802.

<sup>34</sup> Jesper Lau Hansen, *Nordic Company law – the Regulation of Public Companies in Denmark, Finland, Iceland, Norway and Sweden*, DJØF Publishing, Copenhagen 2003, at 110.

specific minority privilege of electing a director. During parliamentary proceedings the bill was amended by adding provisions on proportional and cumulative voting, in keeping with a committee opinion, to strengthen protection of the minority.<sup>35</sup> One of the goals the legislature aimed for via these amendments was to strengthen the limited company arrangement by increasing the democracy involved. Among other means was the improved legal status of minority groups.<sup>36</sup>

Under the Act of 1978, the condition for demanding proportional or cumulative voting had been to control at least one-fourth of the share capital. Act No. 69/1989, amending Act No. 32/1978 on limited companies, decreased the minimum to one-fifth. The goal of the amendment was added harmony between the minimum share ownership required of those demanding a special voting procedure and the number of votes at a shareholders' meeting which were required for electing one person to a five-member board, i.e., the control of 16 2/3% of the votes. The former rule had been based on companies with a three-member board, where control of one-fourth of the share capital was sufficient for electing one person to the board.<sup>37</sup> Act No. 12/1990, amending Act No. 32/1978 on limited companies, introduced the above-specified rule to ensure the minority in companies with 200 or more shareholders a greater right to demand proportional or cumulative voting.

This principle has not been discussed to any extent in Iceland. Stefán Már Stefánsson, however, has pointed out certain difficulties with the rule's construction in light of the stipulation which provides specified parties the right to designate members of the board (§ 63, par. 2). For example, if the minority also has a right to designate a board member under the articles of association, invoking proportional or cumulative voting additionally might result in the minority controlling a majority of the directors.<sup>38</sup> The provision's legalisation in 1978 appears to be attributable to overall Nordic discussion around the middle of the last century, even if the outcome in other Nordic countries was not to ensure such a right for the minority. The Danish Public Committee on Reform of the Companies Act (*Danske Aktielovskommissionen*), in its mandate paper (*Betækning*) No. 362/1964, originally proposed giving minority shareholders or those controlling one-third of share capital the right to choose a representative on the board; however, the Committee withdrew from this position in *Betækning* No. 540/1969, fearing that forced minority participation could lead to difficulties in collaborating inside the board.<sup>39</sup> The Danes also expressed the viewpoint that such rules hardly conformed to the healthy financial management of companies and might provide competitors with opportunities to obtain company secrets.<sup>40</sup> However, taking into account the strong duty of confidentiality among members of the board, it must on the whole be assumed that directors will abide by their

<sup>35</sup> *Parliamentary Record*, 1977-1978, Section A, at 2029.

<sup>36</sup> *Parliamentary Record*, 1977-1978, Section A, at 2026.

<sup>37</sup> *Parliamentary Record*, 1988, Section A, at 945.

<sup>38</sup> Stefán Már Stefánsson, *Hlutafélög og einkahlutafélög*, 1995, at 201.

<sup>39</sup> Bernhard Gomard, *Aktieselskaber og anpartsselskaber*, DJØF Publishing, Copenhagen 1996, at 200.

<sup>40</sup> Stefán Már Stefánsson, *Hlutafélög og einkahlutafélög*, Reykjavík, 1995, at 201.

obligation to protect the company's interests and preserve its commercial secrets, despite possible abuses of information never being entirely precluded. On the other hand, the advantage of constituting boards with representatives for different groups of shareholders is that generally more viewpoints will probably be considered by the board than would otherwise be the case, thereby broadening the board's horizons.

Since the Icelandic rules were set, a comprehensive revision of the country's legislation on limited companies has occurred twice without any demand surfacing to abolish the rules, in spite of the parliamentary bills being sent both times to interested parties for comment. If there were any doubts in the beginning, those voices have at least fallen silent. It must therefore be justified to infer that general satisfaction or at least reconciliation prevails concerning these arrangements for management in Iceland, although no specific survey has been carried out on the extent to which the rule is applied in Icelandic limited companies<sup>41</sup> or on its significance for their management. However, such research would undoubtedly prove interesting, as would an investigation of whether the Icelandic rules ensuring the minority's right to appoint representatives on the board might serve as a model for the commission to the European Council and Parliament which is considering the modernisation of company law and planning "to establish a real shareholder democracy in the EU"<sup>42</sup> by improving corporate governance in Europe.

### ***3.4 Differentiated Voting Rights and Nonvoting Shares***

As mentioned previously, the general principle in limited companies is that voting rights are in direct proportion to share capital ownership, but this is not required. Under § 82, par. 1, subpar. 2, of the Companies Act, the articles of association may determine that specific shares in a company have increased voting weight without specific limitations, and even that shares entail no voting rights. Provision is also made for placing a ceiling on voting rights; cf. § 82, par. 2.

The authorisation for issuing shares without voting rights was introduced during revision of the Limited Companies Act in 1994. Exposition accompanying the parliamentary bill for the Act stated that this innovation, among other things, would provide companies the opportunity of raising capital without affecting the voting ratios between former and new owners; in addition, the public would be given the chance to purchase such shares as an investment, which was often the main goal of purchasing shares. The exposition stated that providing this opportunity in Iceland seemed fitting in order to stimulate the

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<sup>41</sup> It seems that the custom in Icelandic limited companies is to estimate the strength of different groups of shareholders before shareholder meetings, based on the cumulative election method, and then attempt to reach an agreement before the meeting on who will be nominated to the board of directors.

<sup>42</sup> Communication of 21 May 2003 from the Commission to the Council and the European Parliament: *Modernising Company Law and Enhancing Corporate Governance in the European Union – a Plan to Move Forward*, at 14. Available at "[http://www.europa.eu.int/comm/internal\\_market/en/company/company/index.htm](http://www.europa.eu.int/comm/internal_market/en/company/company/index.htm)".



economy and transactions in shares. In addition, companies would have less need to seek domestic or foreign loan capital.<sup>43</sup> While the Act did not stipulate any special privileges for owners of nonvoting shares, the possibility certainly exists of establishing such rights, e.g., an added right to dividends or special remedies if the company paid no dividends.

Despite the authority existing since 1978 to divide limited company shares into separate classes and employ differential voting rights, and despite nine years of authorisation for nonvoting shares, dual-class shares and shares with superior voting rights, the fact remains that companies with so-called A and B shares are not common in Iceland, nor have articles of association been setting ceilings on voting rights. The common principle in Icelandic limited companies is actually one-share/one-vote. For example, only one limited company is registered on the Iceland Stock Exchange with two classes of shares.<sup>44</sup> In this sense the organisation of ownership and shareholders' influence are entirely different from the general pattern in Denmark, where it is quite common for limited companies both to use dual-class shares and to limit the exercise of voting rights.<sup>45</sup>

### 3.5 *Redemption – Squeeze-out and Sell-out Rights*

For the first time in Icelandic law, the revised Companies Act of 1994 enacted provisions on the rights and obligations of redemption, cf. §§ 19-21. More specifically, the provisions stipulated the right of shareholders owning more than 90% of the share capital and controlling a corresponding number of votes to decide that the stock of other shareholders in the company should be subject to redemption and, likewise, the right of the minority under the same conditions to demand redemption. When adding these provisions, amendments to the Danish Companies Act from late 1992 were taken into consideration; cf. §§ 20b-20d of this Act.<sup>46</sup> The intention of the provisions was also to respond to a parliamentary resolution of 19 March 1992, concerning takeover bids and other general bids for limited companies.<sup>47</sup> This resolution charged the Minister of Commerce to prepare legislation immediately on takeover bids and other general bids for limited companies, with the aim of protecting shareholders and others with vested interests.<sup>48</sup>

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<sup>43</sup> *Parliamentary Record*, 1994, Section A, at 796. By the same reasoning, the comprehensive revision of the Companies Act in 1988 authorised non-voting shares, but during parliamentary proceedings, this was stricken without any reason for the removal being recorded in parliamentary documents. Cf. the *Parliamentary Record* (Alþingistíðindi), 1988, Section A, at 930, 941 and 3435.

<sup>44</sup> According to information from the Iceland Stock Exchange, July 2003.

<sup>45</sup> Confer Jan Schans Christiansen, *Danish Company Law*, in *Danish Law in a European Perspective*, ed. by Børge Dahl, Torben Melchior and Ditlev Tamm. Thomson Publishers, Copenhagen, 2002, at 396-397.

<sup>46</sup> Consolidation Act No. 9 of 9 January 2002 (Bekendtgørelse nr. 9 af 9. januar 2002 af lov om aktieselskaber). Available at "eogs.dk".

<sup>47</sup> *Parliamentary Record*, 1994, Section A, at 796-797.

<sup>48</sup> *Parliamentary Record*, 1991, Section A, at 995-996 and 3486.

### 3.6 *Takeover Bids*

It was not until passage of the Act on the Operation of Stock Exchanges and Regulated OTC Markets, No. 34/1998, that the first provisions on takeover bids were fixed in Icelandic legislation. However, the provisions extended only to shares listed on stock exchanges, and the degree of control was set at 50% of the voting shares in a company or at a corresponding degree of control as further defined in the Act. In establishing these rules, the draft of an EU directive on takeover bids was taken into consideration.<sup>49</sup> A new Act on Securities Transactions, No. 33/2003, transferred the rules from the Act on Stock Exchanges to the Act on Securities Transactions, besides introducing some amendments. More specifically, the degree of control was lowered from 50% to 40%, and the obligation to submit a takeover bid now includes not only shares listed on stock exchanges but also shares listed on regulated OTC markets.

The obligation of making a takeover bid arises if a share has been directly or indirectly taken over with the result of the party involved acquiring any of the following: a 40% voting share in the company, the privilege of designating or removing a majority of the company's Board of Directors, the possibility of managing the company on the basis of its articles of association or in another manner through an agreement with the company, or control over 40% of company votes on the basis of a pact with other shareholders. A tender obligation does not arise through a change in ownership due to inheritance, gifting, perfection of security interests, or a change in ownership within a group of companies. This is in accordance with Danish law.<sup>50</sup> As regards the factor of takeover rules applying also to OTC markets, the parliamentary bill pointed out that the committee drafting the bill felt the need for these rules was equally pressing for limited companies listed on OTC markets.<sup>51</sup> In the parliamentary bill, the threshold for the takeover obligation remained at 50%, but during parliamentary proceedings it was thought proper to lower the proportion of voting rights triggering a takeover obligation so as better to ensure the interests of shareholders and also to support a more efficient stock market. Although the proportion was thus finally lowered to 40%, the committee opinion expressed the necessity of considering carefully whether this decrease was justified.<sup>52</sup>

### 3.7 *Modern Information and Communication*

Icelandic limited companies increasingly utilise modern information technology to present information about the company. Most, if not all, listed companies in Iceland have a website where they regularly publish information about their organisation and activities. There are also some instances of listed companies

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<sup>49</sup> *Parliamentary Record*, 1997-1998, Section A, at 1932-1933 and 4092.

<sup>50</sup> *Parliamentary Record*, 2002-2003, Section A, at 1567.

<sup>51</sup> *Parliamentary Record*, 2002-2003, Section A, at 1563.

<sup>52</sup> *Parliamentary Record*, 2002-2003, Section A, Parliamentary bill for the Act on Securities Transactions (No. 33/2003). Doc. 1108, available at "<http://www.althingi.is/altext/128/s/1108.html>".

transmitting shareholder meetings live on the Internet, and the Iceland Stock Exchange recently urged listed companies to utilise webcasting, thereby providing distant parties the opportunity of asking questions at meetings.<sup>53</sup> Also, the possibility should exist of enabling shareholders to grant an electronic power of attorney; cf. the general authorisation for this in the Companies Act and on the basis of Act No. 28/2001 about electronic signatures. The latter Act builds on the principle that a fully valid electronic signature shall always have the same validity as a signature written by hand when the law, administrative instructions or another authority requires a handwritten signature.<sup>54</sup> On the other hand, no special rules have been introduced in the Icelandic legislation on limited companies that apply to utilising information technology in connection with shareholders' meetings, communications of shareholders or the publication of information. Despite the lack of special legislation on this matter, the Public Register of Enterprises is available in computer-readable format, to which people can subscribe, and the register is also available through the search engines of privately operated media.<sup>55</sup> According to the new Act on the Public Register of Enterprises, No. 17/2002, notices for the register may be submitted in electronic format, and, as mentioned in the exposition accompanying the parliamentary bill for the Act, the growing electronic administration targeted by the Icelandic government was kept in mind upon enacting the law.<sup>56</sup> Therefore, Iceland should have no problems in further developing and utilising modern information and communications technology to bolster the dissemination of information to shareholders, communications with them, and decision-making in companies, nor in legalising the new directive simplifying and modernising the provision of company information, which is to modify the First Company Law Directive (68/151/EEC).

### 3.8 Remuneration

One consequence of increased share transactions on the Iceland Stock Exchange and the internationalisation of Icelandic limited companies is increased discussion of directors' salaries and other remuneration. Another observation is that their remuneration appears to be increasing. Under § 79 of the Companies Act, it is the purview of shareholders' meetings to decide annually the directors' salaries, while the board decides the salary and terms of employment for the managing director. This rule was legalised through the Limited Companies Act, No. 32/1978, for which the comments to the parliamentary bill state the grounding principle of this provision to be that the party electing or appointing people to manage the company should also dictate their wages and terms of

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<sup>53</sup> For further details, see *ICEX News & Views*, Volume 3, Issue 17, 10 July 2003, available at "icex.is".

<sup>54</sup> *Parliamentary Record*, 2000-2001, Section A, at 3393.

<sup>55</sup> For more details on the services of the Public Register of Enterprises, see the website of the Directorate of Internal Revenue, which maintains the register at "rsk.is".

<sup>56</sup> *Parliamentary Record*, 2002-2003, Section A, at 1626.

employment.<sup>57</sup> This rule is appropriate, since members of the board are of course incompetent to decide their own salaries. Actually, it may be said that the rule is based on the management structure of limited companies, because the shareholders' meeting has ultimate authority, which is reflected in the statutory rule that the meeting elects the members of the board, which then appoints the managing director. Also, a shareholder's meeting can remove directors at any time (§ 64, par. 1). As is evident from these provisions and also from the above-specified rule shareholders' meetings determines directors' salaries, the selection, period and other terms of their employment is subject to a shareholders' meetings discretion.

The Companies Act contains no substantive rules for determining directors' salaries or other remuneration, unlike, for example, § 64 of the Danish Companies Act,<sup>58</sup> which includes stipulations that limit director payments to an amount not exceeding what is regarded as customary, taking into account the nature and scope of the work, and require the payments to be justifiable in light of the financial status of the company or group, if a parent company is involved.

In determining managers salaries, whether of directors or managing directors, the general rule in § 76, par. 1, of the Companies Act must of course be observed. This rule generally forbids a member of the board of directors from favouring someone at the cost of the shareholders or the company, and the corresponding principle in § 95 of the Act likewise forbids a shareholders' meeting from making such decisions. These rules must lead to a conclusion resembling the above-mentioned provisions of the Danish Companies Act, i.e., that decisions concerning directors' salaries or other remuneration must take into account the nature and scope of their work and be justifiable in light of the company's financial status. Increased transparency and constraint respecting the directors of listed companies is foreseeable in the near future; on 13 February 2003, the Iceland Stock Exchange approved new rules, which entered into force on 1 July of the same year, on the obligation of those issuing shares to disclose the terms of employment and share ownership of directors. The goal of these new rules was to ensure transparency regarding directors' financial interests, the access of investors to standardised information that could be significant for the value of shares, and, finally, greater credibility in the Icelandic securities market.<sup>59</sup> The regulations were based on those for stock exchanges in the Nordic countries, the United States and Great Britain.<sup>60</sup> Listed companies are now obliged to provide the Iceland Stock Exchange with information on all payments to individual members of the board and to managing directors, including agreements on purchase options, exceptional transactions and other

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<sup>57</sup> *Parliamentary Record*, Section A, 1977-1978, p. 462.

<sup>58</sup> Bekendtgørelse nr. 9 af 9. januar 2002 af lov om *aktieselskaber* (*Consolidation Act No. 9 of 9 January 2002*), available at "eogs.dk".

<sup>59</sup> Rule No. 2 on listing of securities on the Iceland Stock Exchange, Appendix I: Rules on Disclosure Requirements Concerning Executive Remuneration upon Listing of Equities on ICEX and Rule No. 3 on Disclosure Requirements of Issuers on Iceland Stock Exchange, Appendix I: Rules on Disclosure Requirements Concerning Executive Remuneration by Issuers of Equities on the Iceland Stock Exchange. Available at "icex.is".

<sup>60</sup> *ICEX News & Views*, Volume 3, Issue No. 4, 26 February 2003. Available at "icex.is".

extraordinary arrangements, in addition to publishing such information in annual financial statements.

These new regulations are an innovation in the field of corporate governance for the Icelandic regulatory structure and may be viewed as a potential first step in the trend toward interested parties - the stock exchange and companies - setting their own rules to improve the management of Icelandic limited companies and to attempt to prevent directors from abusing power for their own interests.

## 4 Corporate Groups

The corporate group is a well-known structure for business in Iceland, and corporate groups fulfil important roles in the country's economy. A common aspect of many such groups of companies is placing their subsidiaries under a common board, a group board, where the managing director or chairman of the board for the parent company is also the managing director or chairman of the board for one or more of the subsidiaries.

Legislation on companies generally regards corporate groups as independent legal entities, but the Companies Act and Private Companies Act contain only a few provisions on groups of limited companies - provisions which are more formal than substantive in nature. To begin with, Section 2 of the Companies Act and § 2 of the Private Companies Act stipulate the conditions for forming a group of limited or private companies. Section 2 of the Companies Act deals with *groups of limited companies*, where *the parent company is a limited company*, while § 2 of the Private Companies Act deals with *groups of private companies*, where *the parent company is a private company*. Whether a limited company group or a private company group is involved, its subsidiaries can be limited and/or private companies. According to § 2, par. 1 and 2 of both Acts, a group of companies exists when one limited company/private company, by itself or together with one or more subsidiaries, holds sufficient shares in another limited or private company to control the majority of voting rights in that company. According to par. 3, a group of companies can be formed under still further circumstances, i.e., shareholding or agreements resulting in control over other companies.

Both the Companies Act and Private Companies Act furthermore contain provisions particularly covering parent companies and subsidiaries and implying that a group, as an economic entity, constitutes a whole. This is seen for example in § 69 of the Companies Act and § 45 of the Private Companies Act, which specify the obligation of notice and disclosure of the companies associated in a group; § 91 of the Companies Act and § 66 of the Private Companies Act, which specify the right of shareholders at a shareholders' meeting to information on the company's relations to companies within the same group; and finally in § 99, par. 2, of the Companies Act and § 74, par. 2, of the Private Companies Act, which forbid the parent company from paying out dividends which exceed accepted operating practice in light of the group's financial status.

The legislation on limited companies takes no stand on more complicated questions of corporate group law, i.e., questions involving the nature of the

parent company's control and its liability respecting subsidiaries, their creditors and minority shareholders. The Act on Annual Financial Statements, No. 144/1994, also contains several provisions on corporate groups, originating from the Seventh Company Law Directive, and the definition of groups in these two cases is more extensive than that in the Companies and Private Companies Acts, since both of the latter pertain only to groups formed from limited companies and/or private companies, but not to groups composed of other kinds of companies. The Act on Annual Financial Statements, on the other hand, pertains to groups formed from every type of company within the scope of the Act, including co-operative companies as well as general and limited partnerships. A group of companies does not exist within the meaning of the Companies Act or Private Companies Act when an individual, partnership or commercial foundation controls a majority of votes in a limited company. Furthermore, so-called "sister" companies, two or more limited companies owned for the most part by one party, which party is not a limited or private company but manages the sister companies, do not fall under the group concept in the legislation on companies.

In Iceland groups of companies have not yet been the topic of much debate, for instance as to whether special legislation is called for concerning a parent company's right to control or protect the minority of a subsidiary and its creditors. This lack of interest can probably be attributed to the fact that issues involving the parent company's administrative authority, its liability or that of the directors, and the protection of minority interests and customers have not yet reached the Icelandic courts. As in neighbouring countries, the business sector itself will be last to call for a strict regulatory framework.