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Amendments to CCC as regards reorganisation at national and cross- border level

On 8 August 2022, a draft of amendments to the Code of Commercial Companies ("CCC") was published on the website of the Government Legislation Centre, implementing the following EU directives:

- Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019 amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions,
- Directive (EU) 2019/1151 of the European Parliament and of the Council of 20 June 2019 amending Directive (EU) 2017/1132 as regards the use of digital tools and processes in company law].

In parallel, the provisions in question implement the judgment of the Court of Justice of the European Union (CJEU) in Polbud case C-106/16 of 25 October 2017 in which the CJEU found that Polish provisions requiring liquidation proceedings to be conducted in order to transfer a company's registered office to another Member State restrict the principle of the freedom of establishment.

The draft amendments to the CCC particularly concern changes as regards reorganisation at both national and cross-border level.

Who is affected by the proposed changes?

Proposed changes affects entities that are planning to reorganise their corporate structure or expand their business abroad. Businesses should therefore analyse their current financial situation and the potential opportunities offered by the following proposed regulatory changes.

Opportunities offered by the new regulations

- increased freedom of establishment by harmonising the rules on cross-border operations,
- increased competitiveness of Polish businesses on the internal market and the attractiveness of the Polish market to foreign investors,
- introduction of new types of reorganisation processes, e.g. division by spin-off,
- greater competitiveness of limited joint-stock partnerships by extending their merger and division capacity,
- facilitated access to information on the intention to carry out a cross-border operation, particularly for creditors, shareholders, potential foreign investors, for the purpose of following a company's business plans,
- extending the protection of shareholders, creditors and employees in cross-border operations.

Details of the proposed changes

1. Introduction of new types of cross-border reorganisation

The amendments introduce two new types of cross-border operations to the Polish legal system:

- a. **cross-border divisions of limited liability companies** – possible only by transferring the assets of the company being divided to the newly formed company or companies,
- b. **cross-border conversion** – a process by which a limited liability company or limited joint-stock partnership may be converted into a foreign company listed in Annex II to Directive 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law, subject to the law of a Member State of the European Union or a State party to the Agreement on the European Economic Area and transfer its registered office to that State while retaining its legal personality.

2. **Simplification of cross-border merger process** – in the case of a merger without a share issue, given the same proportion of equity participation in the merging companies, by the very nature of this type of merger, simplifications in this respect include not having to specify the exchange ratio in the cross-border merger plan or having to prepare an expert opinion.

3. Introduction of rules to protect creditors, minority shareholders and employees in cross-border reorganisations

As regards cross-border mergers, divisions and conversions, the amendments introduce the following regulations to ensure the protection of creditors, minority shareholders and employees in connection with cross-border reorganisations:

- a. ensuring that creditors are able to apply to the relevant authority for adequate safeguards within one month of the date on which the reorganisation plan is disclosed or made available (merger, division or conversion plan). Implementation of a safeguard will in this case depend on whether the cross-border reorganisation is carried out successfully,
- b. guaranteeing minority shareholders the right to exit the company and receive remuneration for their shares of a value equal to the value of their shares, to be assessed by an independent expert, and allowing them to submit comments on the reorganisation plan,
- c. giving employees the opportunity to comment on the reorganisation plan and providing access to a report setting out, inter alia, the impact of the planned reorganisation on their legal situation, while these issues are to be regulated ultimately in a separate law.

4. Introduction of arrangements for extending the scrutiny of cross-border reorganisation processes

To ensure greater security of cross-border operations, the amendments introduce the need to obtain a certificate of the conformity of operations with Polish law, hitherto in force for cross-border mergers. The registration of a reorganisation in another Member State is made conditional upon the issue of a certificate.

5. Introduction of new types of domestic reorganisations

- a. **Division by spin-off** – involving the transfer of some of the assets and liabilities of the company being divided to one or more acquiring companies in exchange for the issue to the company being divided of shares in the newly formed company. Unlike in the case of partial division that has functioned in the Polish legal system to date, in the case of a division by spin-off, the shareholders of the company being divided do not become shareholders in the acquiring company,
- b. **New type of simplified merger** – extending the possibility of merging companies to cases of merger without allotment of shares in a company where one shareholder holds, directly or indirectly, all the shares in the merging companies or the shareholders of the merging companies hold shares in the same proportion in all the merging companies.

6. Changes to limited joint-stock partnerships

The amendments change the existing regulations on the participation of limited joint-stock partnerships in merger and division procedures and allow limited joint-stock partnerships to participate in merger procedures, either as the acquiring company or as a newly formed company, or, in the case of a division, as the company being divided. This applies to both domestic and cross-border transactions.

7. Entry into force of the new regulations

The majority of the provisions of the law are scheduled to come into force on 31 January 2023.

Who will my adviser be?



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Sylwia provides advice on corporate law and M&A, including day-to-day support in company law. She has experience in restructuring, in both the analytical phase (work on assumptions, development of target structure and approach path, preparation of timetables for planned activities) and the implementation phase (e.g. creation of commercial companies, drafting/amending companies' articles of association, capital changes, mergers, divisions and conversions of companies), and in the implementation of due diligences and M&A transactions.



Hubert Kawalek

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Hubert deals with commercial, business and civil law. He specialises in corporate law issues, providing day-to-day corporate assistance, and reorganisation processes (mergers, divisions, conversions and liquidations).

Hubert has experience in providing services to business entities and for reorganisation, establishment and liquidation of enterprises from various sectors, both in Poland and abroad.