Key amendment to the Code of Commercial Companies in domestic company reorganisations

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The amendment to the Code of Commercial Companies (CCC), which came into force on 15 September 2023, introduced the possibility of dividing commercial companies by separation – that is, in essence, the creation of subsidiaries within which property can be transferred using the principle of general succession. A number of changes have also been introduced with regard to international and domestic mergers.

In this article, we focus on the changes to the law that have a domestic impact. Changes regarding international reorganisations have been addressed *in the following article*.

NEW REGULATIONS WILL FACILITATE THE REORGANISATION OF POLISH COMPANIES

One of the most important changes for entrepreneurs; brought by the latest major amendment to the CCC; is the introduction of a new division modality for commercial companies – **division by separation**. This is a very important change given that thus far each division resulted in the granting of shares to the existing shareholders of the divided company. In practice, this meant that there was no instrument that would allow the company to transfer its property or a part thereof to another entity in exchange for the share rights of that entity by using the principle of general succession.

If a company wanted to make such a transfer, it had to carry out a procedure for the contribution in kind of individual assets or of the business (or an organised part thereof). Such processes were complex and time-consuming as their successful completion in principle required a number of consents from counterparties and, in the case of regulated activities, also from the competent public authorities.

The changes to the rules on domestic reorganisations, which meet the expectations of entrepreneurs, should of course be viewed positively given that they broaden the options of entrepreneurs and simplify already existing processes. As Directive 2019/1151[1] expands the catalogue of permissible cross-border transformations, it was also necessary to supplement the regulations at the national level. This will enable Polish companies to carry out the same reorganisation processes, both between themselves and within the European Union.

[1] Directive (EU) 2019/1151 of the European Parliament and of the Council of 20 June 2019 amending Directive 2017/1132 as regards the use of digital tools and processes in company law

CHANGES WITH REGARD TO DIVISIONS IN PRACTICE

The new division procedure consists of transferring a part of the property of the divided company to the existing or newly established company(ies) in exchange for shares in the acquiring or newly established company(ies), which will be acquired by the divided company itself, and thus not by its shareholders as in the case of division by spin-off.

Division by separation (*podział przez wyodrębnienie*) (from a formal point of view), in principle, will not differ significantly from division by spin-off (*podział przez wydzielenie*). The property of the company being divided will be transferred on the basis of general succession, which in relation to the previously applied in-kind contribution procedure, will significantly streamline the process of transferring assets in exchange for shares in another company. The introduction of such a procedure is the result of practical needs and has been propounded by market participants, based on their experience, for a long time.

NEW PROCEDURE AS AN OPPORTUNITY FOR M&A PROJECTS

It also appears that the new procedure will be applicable to certain M&A projects. In trading practice, there have been transactions that were structured in such a way that an entity wishing to sell its business or an organised part thereof would first establish a new company, make a contribution in kind to it and then sell its shares to an investor. The main disadvantage of this structure was that it was time-consuming and complicated. The new legislation significantly simplifies this process by allowing the company to be separated and then sell its shares to an interested buyer.

CHANGES CONCERNING PARTNERSHIPS

Until now, partnerships were not subject to division at all. Thanks to the amendment in question, this will change – the new provisions allow for divisions of limited joint-stock partnerships. Furthermore, a limited joint-stock partnership will also be able to be an acquiring company or a newly established company, and partnerships will be able to merge not only by establishing a company (*spółka kapitałowa*), but also by establishing or acquiring a limited joint-stock partnership. Previously, no partnership could be an acquiring or newly incorporated company and such partnerships could only merge with each other by means of the incorporation of a company (*spółka kapitałowa*).

When the acquiring company or the newly incorporated company is a limited joint-stock partnership, it will be necessary to have the merger plan examined by an expert in terms of correctness and fairness.

THE SIMPLIFIED PROCEDURE WILL FACILITATE CONCENTRATIONS

Also introduced is the possibility to conduct a merger without allotting shares in the acquiring company in the event that one shareholder holds all the shares in the merging companies directly or indirectly, or the shareholders of the merging companies hold shares in the same proportion in all the merging companies. The new solution is intended to facilitate the concentration of assets and liabilities of companies dispersed within a holding structure, allowing simplified mergers to also take place between companies at different levels of the group (e.g. between a great-grandparent company and a great-grandchild company).

In the case of a merger without allotting shares in the target company, a number of simplifications will be possible. For example, the merger plan will not indicate the ratio of exchange of shares of the target company or companies merging by establishing a new company for shares of the acquiring company or

the newly established company, nor the amount of additional payments, if any, nor the rules concerning the allotment of shares in the acquiring company or the newly established company, nor the date from which such shares entitle a target company to participate in the profits of the acquiring company or the newly established company (this results from the very nature of such a merger). It will also not be necessary for an expert to examine the merger plan and issue an opinion.

In the event that one shareholder indirectly holds all the shares in the target company, and the merger takes place without allotting shares in the acquiring company, a creditor of the company not participating in the merger which directly holds all the shares in the target company will have the right to request that company to secure its claims within one month from the date of announcement of the merger plan, if such a creditor substantiates that their satisfaction is jeopardised by the merger.

In the event of a dispute, the court of competent venue, according to the seat of the non-participating company in the merger, will decide on the granting of security. An application to this effect will have to be filed by the creditor within two months of the announcement of the merger plan.

We address the changes regarding international reorganisations in our next article, which was published on 24 October 2023.

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