

Poland: What New Developments in Corporate and Commercial Law Does 2020 Hold in Store for Us? Roundup of 2019 and Peek Into 2020

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2019 saw a number of changes in corporate and commercial law, which may have a bearing on Polish operations and transactions. Further developments are anticipated in 2020. The beginning of the new year is a good opportunity to round up issues essential for business.

Simplified Joint-stock Company

New provisions amending the Commercial Companies Code introducing a new company type – the simplified joint-stock company (PSA) – were slated to enter into force on 1 March 2020. [We addressed these provisions](#) in August last year.

The legislator's intention had been for PSA to be a new company type targeted chiefly at innovative start-ups. It was argued that this new entity would prompt entrepreneurs to be more willing to pursue new ventures. This was to be achieved by limited formalities (for the most part, reliance on documents in order to effect certain actions), minimum capital requirements, flexible approach to contributions (possibility to bring in work and services), as well as leaving it at the founders' discretion to determine the manner and principles of share preference. Strict capital requirements were, in fact, abandoned, setting minimum share capital at PLN1, and choice was given between traditional bodies (supervisory and management board) and a board of directors, inspired by the UK and US systems. These solutions were supposed to create a company that is cost-effective to operate, flexible to manage and safe for shareholders in terms of liability for corporate debts.

The PSA idea raised many eyebrows and spurred much discussion as to whether it is reasonable to introduce yet another company type to the Polish legal system; however, the legislator had anticipated that it would stimulate innovative enterprises.

Ultimately, though, the legislator, by virtue of a postponing act, deemed it necessary to put off the effective date – originally 10 January 2020 – to 1 March 2021.

Given the above, it remains to be seen whether the PSA regulations will, in fact, significantly boost the Polish economy's innovative energies.

Electronic Registration Procedures

The provisions introducing the digitisation of National Court Register (KRS) registration procedures were expected to come into effect on 1 March 2020. [We announced that toward the end of 2019.](#)

The amendment was hoped to visibly expedite registration procedures, which is of utmost importance for the functioning of companies, as well as for numerous transactions, seeing as certain register entries are of a constitutive nature. The new regulations provided for all KRS submissions are to be filed and signed electronically. This will accelerate submission processing and, perhaps, identify missing ones, thus expediting registration matters.

The effective date of these regulations has also been postponed until 1 March 2021 due to delays in adjusting the Ministry of Justice electronic systems to efficiently function under the new law.

Share Dematerialisation

1 January 2020 was the effective date of the [Commercial Companies Code amendment](#) introducing share dematerialisation. As of 1 January 2021, all shares in joint-stock companies and partnerships limited by shares will only exist as electronic entries in registries maintained by entities authorised to maintain securities registries, in accordance with the public trading laws, or by the Central Securities Depository of Poland (KDPW). Such registry will be available to the company and each of its shareholders. Once entered in the registry, existing physical documents will have become void. Notwithstanding, as of 1 January 2021, the issued physical shares will have lost their legal effect, it being understood that for five years thereafter, shareholders will be able to use such documents to evidence their shareholding entitlements.

As of the entry in the shareholder registry, each disposal or encumbrance of the shares (with certain exceptions) will require amending the registry accordingly.

Even though share dematerialisation will have come into effect on 1 January 2021, certain measures on the part of the companies are already necessary in 2020. By 30 June 2020, the companies are expected to specify the manner in which they will be dematerialising their shares and the entity that will be maintaining the shareholder registry, execute an agreement to that effect and issue five consecutive summons to the shareholders to file the physical shares held by them for dematerialisation. Failure to meet the above requirements within the set timeframe may be subject to a fine of up to PLN20,000.

The amendment also imposes an obligation on joint-stock companies and partnerships limited by shares to communicate with their shareholders via a dedicated website launched and maintained by the companies. The particulars of such a website ought to be registered with KRS already at the beginning of this year.

Beneficial Owners Registry

Since 13 October 2019, incorporated entrepreneurs (except limited liability partnerships and public companies) have been under a new notification obligation. Since that date, each newly established

company has had to notify certain information pertaining to their beneficial owners to the Central Beneficial Owners Registry. The registry is maintained electronically by the minister with jurisdiction over public finance. The notification ought to be made within seven days following KRS entry, which is also the deadline for notifying changes to existing entries. Companies operating prior to 13 October 2019 need to file the notification by 13 April 2020 – therefore, time is of the essence.

Company representatives (chiefly management board members) are obliged to effect the notification. The notification must be accompanied by a qualified electronic signature or a trusted profile (ePUAP) confirmed signature. Each irregularity in notifying on beneficial owners will be subject to criminal liability for misrepresentation. Further, failure to meet the notification obligation may incur a fine of up to PLN1,000,000.

Company Transformation Amendment

1 March 2020 is the effective date of the [Commercial Companies Code amendment](#) introducing a number of changes to the company transformation procedure. The new regulations assume a more limited extent of the requirement to have the transformation plan audited, namely only when transforming an entity into a joint-stock company or a sole proprietor into a private limited liability company or a joint-stock company. Waiving the plan audit obligation will add to company transformation costs reduction and expedite the procedure by shortening it by as much as several months.

Moreover, according to the amendment, adopting a transformation resolution will replace executing a transformed company's articles of association or incorporating a transformed joint-stock company and appointing the officers of a transformed company. This means that should it be necessary to draft a transformed company's articles of association in the form of a notarial deed, the notary will be drafting only one document rather than two (i.e. a transformation resolution and articles of association). Further, as of March, shareholders of a transforming company will no longer be obliged to file statements of a continued stake in a transformed company.

A share repurchase scheme is also an innovative solution. As per the regulation, a shareholder who cast a vote against the transformation resolution and requested that his objection be duly recorded may demand that the company repurchase – prior to the transformation – its stake or shares at the price corresponding to its fair value, indicated in the transformation plan.

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