

Amendment to the Act on Transformations of Commercial Companies and Cooperatives

On May 31, 2023, the Czech Government submitted to the Chamber of Deputies a bill amending the Act on Transformations of Commercial Companies and Cooperatives (the "Amendment"). Its primary objective is to transpose Directive (EU) 2019/2121 of the European Parliament and of the Council of November 27, 2019 amending Directive (EU) 2017/1132 as regards cross-border seat transfers, mergers and divisions. The amendment will bring changes in the following areas, among others:

Division of the company by spin-off. Companies will be enabled to be divided not only by splitting up and spinning off, but also by demerger, in which the demerged part of the assets will be transferred in exchange for a share or shares either to one or more newly emerging companies (so-called demerger with the creation of a new company or companies) or to one or more existing companies (so-called demerger by merger).

Creditor's rights and their regulation. The time period will be reduced from 6 to 3 months, in which creditors of the entities participating in the conversion need to register their outstanding claims to be allowed to request the provision of sufficient security in the event of deterioration in the recoverability of their claims. The time limit will newly start running from the date of publication of the conversion project in the collection of documents.

Changes to the information obligation. The persons involved in the conversion will only be obliged to deposit the conversion project and a notice to creditors of their rights in the collection of documents (and no longer obliged to publish a notice of the deposit of the conversion project and the notice to creditors at least 1 month in advance); the notice will apply not only to creditors, but also to representatives of employees, employees, partners or members of the company.

New ground for refusal of cross-border conversion certificate. Failure to submit certain documents required by the notary may be supplemented by the notary's finding that the cross-border conversions have an abusive or fraudulent purpose aimed at avoiding or circumventing national or EU regulations or at committing criminal activities.



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Waiver of appointment of an expert. The appointment of an expert by the court shall be waived. Instead, the expert will be selected by the person involved in the conversion.

Approval of the conversion of a joint stock company and a cooperative per rollam. The amendment introduces the possibility of approving the conversion of a joint stock company and a cooperative per rollam, i.e. outside the general meeting – which has been allowed in case of a limited liability company so far.

Demerger of listed companies with a majority shareholder. For a company with shares admitted to trading on a European regulated market which has a majority shareholder, it will be allowed to approve a demerger with an unequal share exchange ratio or a demerger by way of a spin-off with the termination of the participation of all other shareholders with the approval of at least 75 % of the votes of the shareholders present at the general meeting; a quorum will be present if shareholders holding shares with a value exceeding two-thirds of the share capital of the company are present.

Effectiveness of the Amendment. The entry into force of the Amendment should occur quickly after it is approved by the legislative bodies.



Practice Area News

Deletion of the entry of the reasons for removal from the position of the managing director.

The Supreme Court (file No. 27 Cdo 1744/2022) concluded that if the dismissed managing director is entitled to seek a change of registration in the event of his deletion from the Commercial Register, he shall be also entitled to request a change (deletion) of the entry of the reasons for which he was deleted from the Commercial Register.

Fulfilment of information obligation pursuant to Sec. 55 of the Act on Commercial Corporations.

The Supreme Court (file No. 27 Cdo 1206/2022) dealt with consequences of a breach of the information obligation relating to the duty of loyalty. The purpose of Section 55 may also be fulfilled by the fact that the managing director of the limited liability company informs about the content of an intended agreement all the shareholders who consent to his intention to conclude the agreement with the company.

Amendment to the Act on Commercial Corporations.

Act No. 416/2022 Coll., amending certain acts in connection with the use of digital tools and procedures in company law and the operation of public registers, entered into force on July 1, 2023. The Amendment is a response to the need to transpose the EU Directive on digitisation. The Amendment introduces several changes to the Act on Commercial Corporations.

Unauthorised conduct by a representative whose interests conflict with those of the represented party.

The Grand Civil/Commercial Chamber of the Supreme Court (file No. 31 Cdo 1640/2022) dealt with the legal consequences of the actions of a representative whose interests conflict with those of the represented party. The consequence of unapproved conduct of such an agent towards a third person who is not in good faith is not the invalidity of such conduct, but that such conduct does not bind the principal.

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