

**RESTRUKTURYZACJA SPÓŁEK HANDLOWYCH. ZAGADNIENIA EKONOMICZNE
I PRAWNE**

Komitet Redakcyjny

Halina Henzel (przewodnicząca), Anna Lebda-Wyborna (sekretarz), Henryk Bieniok, Anna Lipka,
Krzysztof Marcinek, Maria Michałowska, Irena Pyka, Stanisław Stanek, Janusz Wywiół, Urszula Zagóra-Jonszta,
Teresa Zabińska

Redaktor naukowy

Jan Wojtyła
Antoni Witosz

Recenzent

Jerzy Jacyszyn

Redaktor

Paweł Sarna

SPIS TREŚCI

WSTĘP	7
Dorota Benduch: Sposoby ustalania parytetu wymiany udziałów lub akcji w łączeniu się spółek kapitałowych.....	9
Summary.....	23
Borys Budka, Michał Kuźnik: Przedsiębiorstwo jako przedmiot wkładu niepieniężnego (aportu) do spółki z ograniczoną odpowiedzialnością	25
Summary.....	47
Halina Buk: Parytet wymiany udziałów lub akcji w podziale spółek kapitałowych	49
Summary.....	68
Marzena Czarnecka: Restrukturyzacja spółek w sektorze energetycznym – <i>unbundling</i>	69
Summary.....	87
Ewa Janik: Następstwo prawne w przekształcaniu spółek handlowych	89
Summary.....	108
Aleksandra Lubicz-Posochowska: Zakaz łączenia funkcji w spółkach kapitałowych	109
Summary.....	123
Dariusz Michta: Prawo zarządu majątkiem spółki z ograniczoną odpowiedzialnością w postępowaniu upadłościowym obejmującym likwidację majątku	125
Summary.....	134
Józef Pfaff: Badanie sprawozdania finansowego spółki powstałej w wyniku połączenia (spółek handlowych).....	135
Summary.....	145
Antoni Witosz: Problematyka tzw. ustawowego przekształcenia spółki komandytowej	147
Summary.....	159

STRESZCZENIA

SHARES OR STOCKS EXCHANGE PARTY IN CAPITAL COMPANIES' MERGING PROCESS

Summary

According to the current law, the legislator introduced a requirement to create the written merging plans at the preliminary stage of joining the capital companies. The main thing in the subject matter is to depict the mutual relation of shares or stocks exchange of the merging companies, i.e. exchange parity. However, its determination is practically very controversial.

The following article concentrates both on the basis for exchange parity and the practical ways of its determination. The conclusion of this work is that the exchange parity of shares or stocks, which should be a relation of two integer numbers, depends on the way of the valuation of the participating companies' shares or stocks as well as on the determination of which of the companies should take over the incorporated subject. The relation of the shares or stocks exchange will determine directly the value of the joined company's assets.

BUSINESS ENTERPRISE AS AN OBJECT OF NON - CASH CONTRIBUTION MADE BY A SHAREHOLDER TO THE LIMITED LIABILITY COMPANY

Summary

The share capital, which is collected from contributions made by shareholders, is recognized as one of the major limited liability company's institutions. According to the division made by legislator these contributions might be either of cash or non – cash nature. The issue of cash contributions, especially what can be an object of such contributions does not rise any controversy in doctrine. On the contrary, the problem of non – cash contributions, especially, what can be an object of these contributions was always a debatable issue both in doctrine and jurisdiction. Taking into account the above mentioned remarks business enterprise as an object of non – cash contribution can be observed as a matter of a significant nature.

This article comprises: (1)the notion of business enterprise as an object of turnover, (2)the capacity of business enterprise to become an object of non – cash contribution, (3)the description of the principles governing the procedure of making a contribution to the limited liability company. What's more within this article the authors want to present a problem of the company's liability for the debts relating to the economic activity undertaken within the business enterprise that was made a contribution.

PAR OF SHARE' S CHANGE AS A CONSEQUENCE OF DIVIDING UP THE COMPANIES

Summary

The following paper presents a methodology of the assessment of a par of share's change in consequence of dividing the companies. The par of change defines quantity and total value of the convertible stocks instead of the assets and simultaneously annuled shares in the divided company.

Determination of the par of share's change is based on the share's correct valuation of every company which takes part in dividing process, that is both divided company and the taken companies. Valuation of the securities according to different methods of division admitted by trading law is discussed, too. On the basis of several examples a practical problem of how to assess the par of share's change is presented. The existing cases of the necessary extra payments for the shareholders/ partners of one or the other group of the companies which participate in dividing a company are also shown in the paper.

RESTRUCTURING OF THE COMPANIES IN ENERGY SECTOR – *UNBUNDLING*

Summary

In 2005 r. there was an amending of the Energy Law because of the obligatory restructuring of the companies but in the scope referring to the obligation to gain independence in terms of the legal form from the distribution system operators it has been applicable since 1.07.2007. The transmission system operator, the distribution system operator and the interconnected system operator which are part of a structure of a vertically integrated enterprise should remain independent with respect to their legal and organisational form and decision-making capabilities from other activities not related to: 1) transmission, distribution and storage of gas fire fuels or condensation of natural gas, or 2) transmission or distribution of electricity. In this way the instituted European directives were implemented into Polish energy market. Also we have to state that legislator didn't clearly regulate all the problems connected with the restructuring of the energy enterprises and that's why there is a lot of doubts.

LEGAL EFFECTS IN THE COMMERCIAL COMPANIES TRANSFORMATION

Summary

Analysis of the content of art. 553 of the Commercial Companies Code and provisions concerning tax law (art. 93a Tax Ordinance Act) allows concluding a general conclusion that, on the background of public law, similarly like in case of merging companies, there is a valid legal effect (universal succession), as opposed to the rule of continuation valid in private law. Admittedly, such a dualism seems a kind of inconsequence, however the performed analysis of both groups of regulations doesn't allow, according to the valid legal condition to accept another opinion.

In the tax regulations the following expressions are used: "established company (set up) as a result of transformation shall enjoy all the rights and bear all the obligations of a company being transformed" (art. 93a Tax Ordinance Act), or a tax identification number "is moved to legal successor in case of being transformed". They suggest that, during a period of transformation, we consider two entities. In case there are two entities, we can't apply the rule of continuation but a legal effect only (universal succession). This regulation differs from regulations of Commercial Companies Code, especially when discussing the clear expression "a transformed company shall enjoy all the rights and bear all the obligations of a company being transformed". Perhaps, the cause of the lack of coherence between regulations of private law and public law constitutes the fact that those previous ones come from the period of the Commercial Code validation which regulation didn't settle up clearly the rule of continuation.

PROHIBITION OF JOINING POSTS IN COMPANIES

Summary

This work aims at explanation of the provisions concerning joining posts prohibition (Articles 214 and 387 of Commercial Companies Code) along with the arising here misinterpretations and doubts. For company's proper functioning Commercial Companies Code establishes separation of the supervision and management according to the principle that who is under supervision cannot be the supervisor. The separation of the supervision and the company's affairs conduct is necessary to keep distance between an inspector and one being inspected. As a consequence of this position there is the prohibition of joining posts in the Management Board and other subordinated ones to the management on the one hand with the membership in the Supervisory Board on the other hand.

THE CAPITAL MANAGEMENT LAW OF A LIMITED LIABILITY COMPANY IN RESPECT TO A BANKRUPTCY PROCEEDINGS THAT INCLUDE BANKRUPTCY CAPITAL LIQUIDATION

Summary

A state of bankruptcy results in far reaching changes in a body of a company at bankruptcy. Those changes include competences, depending on a character of a bankruptcy, whether this is a bankruptcy with a possibility of concluding an agreement or a bankruptcy that includes a capital liquidation.

Some of them are only subject to a limitation, others are subject to an exclusion (limitation or exclusion) depending on whether a prerequisite specified in a respective regulation occurs.

The paper presents only a study of an issue regarding the limited liability company. This is caused by a fact, that in many cases solutions may not be the same regarding other associations of capital. The paper ends with the specified de lege ferenda conclusions, though, not every matter may be solved by an interpretation.

AUDIT OF THE FINANCIAL STATEMENT OF A COMPANY ORIGINATED FROM A MERGER

Summary

The merger process of the companies requires the execution of many law procedures demanded by the Commercial Code and the clearing of this process from the accounting law point of view. The purpose of this clearing is the evaluation of joint (common) property that is presented in the financial statement of the company that originated from the merger process. In order to verify the correctness of this assessment, the annual financial statement prepared after the accounting year, during which the merger took place, is subjected to a statutory examination by a certified public accountant.

THE PROBLEM OF A LEGISLATIVE CONVERSION OF A LIMITED PARTNERSHIP

Summary

Commercial Company's Code (KSH), Title IV, points out a catalogue of conversions. However, other provisions of this code, mentioned in the titles that specify types of commercial companies, contain a fragmentary regulation of such agencies that seem to include some elements which are proper regarding a conversion.

Such a provision, that has been analyzed is a provision art. 115 of CCC(KSH), regarding a possibility of a limited partner to gain a status of a general partner.

This may only occur by an amendment in a limited partnership's agreement. Therefore, a major problem occurs, whether all limited partners agree to such amendment.

It may seem, however it is not, clear, whether art. 115 of CCC (KSH), permits to the so called legislative conversion, or by the result of such action, a common conversion procedure ought to be started.

Otherwise, a legal action that has been taken, shall be considered as invalid.