

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

**Komitet Redakcyjny**

Krystyna Lisiecka (przewodnicząca), Anna Lebda-Wyborna (sekretarz), Halina Henzel, Marian Sołtysik, Janusz Wywiół, Anna Kostur,  
Maria Michałowska, Grażyna Musiał, Irena Pyka, Stanisław Stanek, Stanisław Swadźba, Teresa Żabińska

**Redaktor naukowy**

Jan Wojtyła  
Antoni Witosz

**Recenzent**

Jerzy Jacyszyn

**Redaktor**

Patrycja Keller

**SPIS TREŚCI**

WSTĘP .....	7
Antoni Witosz: DYLEMATY ZWIĄZANE ZE ZMIANĄ UKŁADU ZAWARTEGO W POSTĘPOWANIU UPADŁOŚCIOWYM W KONTEKŚCIE ŁĄCZENIA SIĘ SPÓŁEK I PODZIAŁU SPÓŁKI .....	9
Summary .....	27
Halina Buk: RESTRUKTURYZACJA SPÓŁKI AKCYJNEJ POPRZEZ WYKUP AKCJI NA PODSTAWIE ZADŁUŻENIA .....	29
Summary .....	47
Ewa Janik: CZYNNOŚCI WŁAŚCICIELSKIE W PROCESIE PRZEKSZTAŁCANIA SPÓŁEK HANDLOWYCH.....	49
Summary .....	68
Radosław Pacud: PRACOWNICZY PROGRAM EMERYTALNY W WARUNKACH RESTRUKTURYZACJI PRZEDSIĘBIORSTW .....	69
Summary .....	88
Dorota Benduch: DETERMINANTY PRAWNE TRANSGRANICZNYCH POŁĄCZEŃ SPÓŁEK KAPITAŁOWYCH.....	89
Summary .....	111
Borys Budka: ZMIANA KWALIFIKACJI PRACOWNICZYCH JAKO METODA RESTRUKTURYZACJI ZATRUDNIENIA .....	113
Summary .....	127
Dariusz Michta: UTWORZENIE EUROPEJSKIEJ SPÓŁKI AKCYJNEJ – FUZJA TRANSGRANICZNA .....	129
Summary .....	148
Łukasz Robaszkiewicz: PRAWO PODMIOTOWE Z ARTYKUŁU 583 KSH.....	149
Summary .....	157

## **STRESZCZENIA**

### **PROBLEMS CONNECTED WITH THE CHANGE OF THE INSOLVENCY PLAN IN THE FRAMES OF MERGER AND DIVISION OF A COMPANY**

#### **Summary**

Bankruptcy and rehabilitation law due to art. 298 has introduced an institution of alternation of the accepted insolvency plan. However, conditions which allow to introduce such procedure are imprecise and of general nature which causes many doubts in doctrine.

The article comprises one doubt of important nature relating to the possible creditors' claim to alter an insolvency plan in case when insolvent company after given insolvency plan had joined another company. Such situation may fulfill condition stipulated in art. 298 of bankruptcy and rehabilitation law described as "permanent growth of profit gained from enterprise". Nevertheless, statement assessing that art. 298 of bankruptcy and rehabilitation law covers also with its regulation the growth of profit which is a consequence of insolvent company's restructuring which may in obvious way cause that companies with concluded insolvency plan will avoid merger procedure.

The author tries to indicate possible implications which arises in this field and forms de lege ferenda conclusions.

### **COMMERCIAL COMPANIES RESTRUCTURING BY STOCK REPURCHASE ON THE DEBT BASE**

#### **Summary**

The aim of this article is to present the possible forms of commercial company financial restructuring with debt using. The key issues such restructuring is stock repurchase by preference shareholders, as management or private equity. With these investors there is a possibility to increase the benefits for all shareholders (old and new) in a long term.

Obligatory Polish commercial law isn't friendly to promote realisation of these forms of restructuring. But new act in this subject is prepared and we hope that it influences beneficially on the global economic and social situation in Poland. The main new regulation consists of repurchasing own shares by company and financing other investors who want to purchase shares from the new issue of stocks.

### **OWNERSHIP ACTIVITIES IN THE COMPANIES' TRANSFORMATION PROCESS**

#### **Summary**

Polish legislator introducing the crucial regulations for the companies transformation institution has assumed that the choice of one or the other type of a company as an economic activity conduct should provide the participants of the economic and legal turnover with direct benefits. Transformation is of use to adjust the type of the company to the scope of undertaking, capital engagement, scale of employment, reduction of the partner's influence on current management of the company or exclusion of the controlled partners' rights in the framework of running the economic activity. The criterion of a reasonable, effective, and appropriate organizational and legal form of the company should constitute the indicator of the commercial company choice through which entrepreneurs would be able to execute their activities in market economy.

Ownership activities (decisive ones) are particularly based on adoption of a resolution by the owners concerning the transformation and making declarations on the partners' participation in the transformed company. It is necessary to appoint members of the transformed company bodies or denominate partners who run company matters and who represent it in the ownership phase. Moreover, it is necessary to conclude company agreement or sign the statutes.

### **EMPLOYEES' PENSION PROGRAM IN THE PROCESS OF ENTERPRISE' S RESTRUCTURING**

#### **Summary**

Employees' Pension Programs (abbreviation: EPP) may be offered by one employer or in cooperation by at least two employers acting according to the Bill of law of April 20, 2004. Enterprise pension agreement is concluded between employer (employers) and representation of employees. In such pension programs employers and workers pay pension contribution in order to collect financial means for additional pension. It is a long-standing process which requires stable cooperation between the representation of the employees and the employer which is endangered in circumstances of the economic and legal restructuring of the enterprises. Even in such conditions enterprises pension agreement can not be unilaterally changed by the employer. In the article it is discussed how an enterprise having employees' pension program faces restructuring in relation to: a sale of enterprise, a suspension of EPP caused by difficult financial state of enterprise, a limitation of financial commitment of employer within EPP, and liquidation of EPP. Then the duration of the pension program has been analyzed in case of law restructuring (conversion, merger or division of commercial companies that commenced pension program).

## **LEGAL DETERMINANTS OF CROSS-BORDER MERGERS OF THE COMPANIES**

### **Summary**

Achieving the fundamental goal of the Treaty establishing the European Community (EC Treaty), entrepreneurs are guaranteed such freedoms as: the freedom of establishment and the free movement of goods, people (including employees), capital, and services. In order to meet these expectations, on October 26, 2005 the Directive N° 2005/56/EC – regarding the cross-border merger of the companies – was passed, which since December 15, 2005 has taken effect. According to the Directive, a cross-border merger may be effected through a takeover of the corporate assets by an existing company, or by means of creating an entirely new entity made up of previously separate companies located in different member states. In the Directive the elementary principles and final date of its implementation into each member national law has been determined.

The following article focuses mostly on the practical issues of the cross-border mergers, whose participant was Polish company. Therefore, an effort was taken to identify the fundamental legal determinants of the cross-border mergers as well as the critical appraisal of the obligatory legal framework for the cross border mergers both in Directive N° 2005/56/EC and in Polish Commercial Companies' Code (CCC). The conclusion of this work is that the CCC should be altered. Firstly, companies limited by shares should be the capital companies and possess legal personality. Secondly, Polish legislator should extend merging ability and allow all types of the personal companies for the supranational consolidation.

## **CHANGE OF THE EMPLOYEES' QUALIFICATIONS AS A METHOD OF EMPLOYMENT RESTRUCTURING**

### **Summary**

Employment restructuring is a common phenomenon occurring in Polish economy with its special intensification in the period of the constitutional transformation in the 90s of the last century. Obviously, changes in the employment structure are the only one of the elements of widely comprehended restructuring of enterprises within the framework of restructuring of the obligations or property structure. From social point of view in the doctrine of the labour law some authors underline the necessity of initiation of the protective regulations, which they would aim to protect the employee – the weaker side of the employment relations – against the too far going negative results of restructuring of the employment which most often appears with the loss of the workplace as a consequence of redundancies made by the employers. In this paper I underlined other possibilities of the employment restructuring, moving to the change of the workers' appraisals. Certainly, they are less painful for workers and can call out the similar, affirmative effects pursuing improvements of the effectivity led by an entrepreneur of the economic activity, particularly through the adaptation to the changing market reality, the increase of competitiveness and improvement of the quality of offered products or services. They are also a part of the observed nowadays on the Polish labour market the lack of high qualified workers who after joining the European Union by our country undertook the employment in other member states of EU, mostly due to the better financial conditions.

## **THE ESTABLISHMENT OF THE EUROPEAN JOINT-STOCK COMPANY. A STUDY OF A TRANSBORDER MERGER**

### **Summary**

The present article is designed to discuss one way of the establishment of the European Joint – Stock Company by the merger of at least two joint-stock companies. The companies are supposed to have their statutory headquarter and the Main Board in the European Union structures. Besides, the management of the companies is a subject to the law, which is applicable in at least, two different member states. The establishment of the European Joint – Stock Company by the merger of the joint-stock company constitutes a complex process, particularly due to the fact that legal basis of the merging process derive, not only from the European regulations, but also from the domestic rules.

The article discusses one by one the rules of law which are applied in the merging process, merging plan, the publication of information about company, the protection of the creditors and minority shareholders, reports, experts' opinions, the approval of the merging plan, the control over legality of the merging process as well as the admissibility of the raising objections by the body of a member state, entry in the register, legal effects of the merger, and in its turn, the simplified merging process.

## **RIGHT LAW ACCORDING TO THE ARTICLE 583 OF THE COMMERCIAL COMPANIES' CODE**

### **Summary**

If a heir to a deceased partner of a registered partnership claims to be granted the status of a limited partner, the registered partnership is obliged to grant the status of a limited partner to such a heir unless other living partners adopt a resolution to dissolve the partnership.

The claims made by the heir to the deceased partner of the registered partnership are also taken into consideration if other living partners of the registered partnership adopt a resolution to transform the registered partnership into a limited joint-stock partnership and to grant the heir the status of a limited partner.

The heir is obliged to report the claim within six months of coming into the inheritance, in accordance with Art. 584 § 4 of the Polish Commercial Companies' Code. If the registered partnership takes into consideration claims of the heir to the deceased partner, it is obliged to fulfill conditions provided for in Art. 557-561 of the Polish Commercial Companies' Code. It must be noted that in the process of transforming the partnership heirs to the deceased partner are not partners. Heirs become partners at the moment of making a statement about participation in the transformed partnership. Such a statement must be made in writing because of the clause of nullity.

If within six months of coming into the inheritance the heir is granted the status of the limited partner or the shareholder of the limited joint-stock partnership, or the partnership is dissolved during that period, then he is liable for the partnership liabilities in accordance with the regulations of the law of succession.

Analysis of the issues regulated in Art. 583 of the Polish Commercial Companies' Code makes it possible to state that the regulation is vague, uncommunicative, has loopholes, and raises problems and arguments in practice.