

## LONG-AWAITED AMENDMENTS TO COMPANIES LAW – HOLDING LAW AND OTHER DEVELOPMENTS

On 12 April 2022, the Act of 9 February 2022 was published in the Journal of Laws, thereby introducing provisions on corporate groups (the so-called holding law) previously unknown to the Polish legal order into the Commercial Companies Code. Moreover, these amendments also include provisions significantly expanding the competencies of supervisory boards intended to increase the effectiveness of corporate supervision, as well as other changes related to, among others, the terms of office of members of corporate bodies and rules governing their liability.

The new provisions will enter into force 6 months from their date of publication, i.e., 13 October 2022.

We present the most important aspects of the enacted amendments below.

### HOLDING LAW

#### > Corporate groups

The amendments allow existing holdings to establish, so-called, corporate groups if the conditions specified in the Act are fulfilled.

With respect to formal requirements, the subsidiary or related company's Shareholders' Meeting (General Meeting) must adopt a resolution on its membership in the corporate group. However, the majority of the rights and duties associated with membership in the corporate group will only arise after a company's membership therein is registered in the National Court Register.

#### > What are the effects of membership in a corporate group? – Binding instructions and liability

**First and foremost, the amendments provide that**, in addition to their own interests, companies being members of a corporate group can also pursue the corporate group's interest, insofar as they do not aim to harm creditors or the subsidiary's minority partners of stockholders.

**Parent companies gain new management tools in the form of, so-called, binding instructions**, which they will be entitled to issue to subsidiaries being members of the corporate group. A subsidiary's management board, as the entity to which such instructions are directed, will be obliged to carry them out. Refusal will be possible only in strictly defined situations. Both binding instructions as well as the acceptance or refusal to perform them must satisfy strict formal requirements, which will impact their validity.

**Parent companies will be liable for harm suffered by their subsidiaries resulting from the performance of their binding instructions.** With respect to wholly-owned subsidiaries, the parent company's liability for compensation will be narrower and limited to cases where the performance of binding instructions caused the subsidiary's insolvency.

To the extent provided for in the Act, **parent companies will also be liable to a subsidiary's creditors or minority partners (stockholders)** for certain consequences of the subsidiary's performance of the binding instructions.

Members of a subsidiary's management board, supervisory board and audit committee, as well as its liquidator, **shall not be liable towards the subsidiary for harm caused by the performance of binding instructions.**

> **Squeeze out provisions and other parent company entitlements**

Parent company will be entitled to buy-out the shares (stock) held by the minority partners (stockholders) of its subsidiaries (a so-called 'squeeze-out'), even where the subsidiary is a limited liability company (*spółka z ograniczoną odpowiedzialnością*) (which is a novelty in comparison to the law as it currently stands) or a simple joint stock company (*prosta spółka akcyjna*).

They will also be entitled to, at any time, review the books and documents of subsidiaries being members of the corporate group and request information from them.

The parent company's supervisory board (or, in its absence, its management board) will, as a rule, exercise ongoing supervision over the pursuit of the corporate group's interests by subsidiaries being members of the corporate group.

> **Rights of minority partners (shareholders) in subsidiary companies**

The amendments entitle minority partners (stockholders) to demand the compulsory purchase of the shares or stock they hold in the subsidiary (a so-called 'sell-out').

Minority partners or stockholders which hold, either alone or jointly with other partners of stockholders, at least one-tenth of the share capital will be entitled to demand that the registry court appoint an audit firm to audit the corporate group's accounts and activities.

## STRENGTHENING THE POSITION OF SUPERVISORY BOARDS

Another important change relates to the competences of supervisory boards, which have been significantly expanded. In particular, they now include **the right to demand information and documents, including in particular information, reports and/or explanations concerning subsidiaries and related entities.**

It is worth noting that the Act provides for **criminal penalties**, in the form of fines or limitations on liberty, if information or documents are not provided in a timely manner, the information or documents provided do not reflect the actual state of affairs, or data with a material effect on their content is not disclosed.

Supervisory boards will be entitled to appoint an external **advisor** who, at the company's cost, will examine a specified matter regarding the company's activities or financial condition.

In joint-stock companies (*Spółka Akcyjna*), supervisory boards will gain one additional competence – their **consent will be required for transactions with companies with respect to which the company in question is a subsidiary or a related entity**, if the value of such transactions within a given financial year exceed 10% of the company's total assets (for transactions with the same company).

In addition to their new entitlements, supervisory boards will also be subject to expanded reporting duties.

Strengthening the position of **supervisory boards necessitates increased information obligations on management boards, however, only in the case of joint-stock companies.** The management boards of such companies will be obliged to provide their supervisory boards with detailed information on a range of matters concerning the company, including its material transactions, resolutions adopted by the management board, and changes in the company's situation, without being called to do so.

## OTHER CHANGES

- > **Introduction of the business judgment rule** with respect to the members of the corporate bodies of limited liability companies and joint-stock companies – this rule is based on the exclusion of liability for harm caused to the company as a result of decisions which turned out to be faulty, provided that they were taken within the limits of reasonable business risk and were based on information, opinions, and analyses adequate to the circumstances.
- > **The terms of office of the members of corporate bodies of limited liability companies and joint-stock companies shall be calculated in full financial years** (unless the articles of association or statute provide otherwise).
- > **Codification of the duty of loyalty for members of the corporate bodies of limited liability companies and joint-stock companies.**

## ENTRY INTO FORCE

The Act provides for a 6-month *vacatio legis*, which will allow companies to make any potentially necessary amendments to their articles of association (statutes) in order to comply with the new legal regime. The new provisions will enter into effect on 13 October 2022.

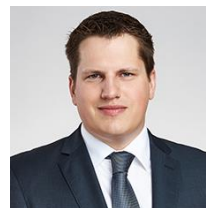
If you have any questions related to any of the topics above, please contact the lawyers from our corporate law and corporate governance team:



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### **Legal basis:**

*Act of 9 February 2022 amending the act – Commercial Companies Code and certain other acts.*