

WHAT SHOULD AN ENTREPRENEUR KNOW ABOUT CHANGES TO THE POLISH COMMERCIAL COMPANIES CODE 2022?

Changes on the operation of Polish companies, which came into force on 13 October 2022, are certainly worth familiarizing yourself with.

BY KAROLINA KLIMEK-KAŻMIERCZYK AND ROBERT MIKULSKI

NEW CHANGES FOR THE MANAGEMENT OF SUBSIDIARIES

One of the key changes is the introduction of a new statutory term – "group of companies." This refers to a parent company and a subsidiary company or companies, which are capital companies guided by a united strategy to pursue a common interest. This justifies the parent company's exercise of unified management over any subsidiaries.

A group of companies entails a peculiar relationship of dominance and dependence between its members, as these companies are guided by common economic goals that enable the parent company to provide efficient guidance and management. The amendment allows the parent company and subsidiaries to be guided

by a common economic strategy to advance the group's interests. The parent company will now be able to exercise unified management over its subsidiaries by, among other things, issuing binding instructions for the conduct of the subsidiary's affairs. The subsidiary will also be entitled to refuse to carry out orders in cases specified in the law.

The basic legal instrument through which the parent company manages a group of companies is by a binding instruction to the subsidiary. This instruction may concern the management of the company's affairs, and the reason for its issuance should be directly related to the group of companies' interests.

A binding order may be issued by the parent company's board of directors, or

its proxy and attorneys, within the scope of their authority. The subsidiary must inform the parent company of their acceptance or refusal of this order via a resolution from the subsidiary's board of directors. The subsidiary is legally required to refuse a parent company's order in several situations, which, generally speaking, may harm the subsidiary's interests. Therefore, the resolution to carry out an order should also include the reasons for refusal.

In addition, the amendment stipulates that a member of the subsidiary's board of directors will not be liable for damage caused by (i) carrying out the parent company's instruction in a manner consistent with the Companies Act, or (ii) acting in the interest of a group of companies.

Thus, the parent company will be liable on a fault basis for any damage caused by its binding instruction if it is not remedied to the subsidiary within the specified period.

However, the exclusion of liability will not apply in every case. For example, members of the subsidiary's bodies will be held liable for following a so-called informal order (one that does not meet the conditions set forth in the Polish Commercial Companies Code) or if the subsidiary carries out a binding order when, under regulations, there were grounds for refusing to carry it out. It should be noted that the regulations introduced do not protect against criminal or administrative liability for members of bodies who acted by claiming to carry out a binding order.



SHUTTERSTOCK



“IT SHOULD ALSO BE REMEMBERED THAT THE REGULATIONS INTRODUCED DO NOT PROTECT AGAINST CRIMINAL OR ADMINISTRATIVE LIABILITY FOR MEMBERS OF BODIES WHO ACTED BY CLAIMING TO CARRY OUT A BINDING ORDER

CHANGES IN POWERS AND DUTIES OF THE BOARD OF DIRECTORS

The amendment also sets out how the term of a board of directors members is calculated. If a board member is appointed for a term of more than one year, their term of office expires on the date of the shareholders' meeting approving the financial statements for the last full fiscal year of the board member's service unless the company's articles of association provide otherwise.

A former member of the Board of Directors has the right and obligation to provide explanations during the preparation of the Board of Directors' report on activities and financial statements covering the period of his/her performance as a

member of the board, and to participate in the shareholders' meeting approving these reports, unless a resolution of the shareholders' meeting provides otherwise.

The amendment also stipulates that board resolutions shall be documented. The protocol should include: the agenda, the names of board members present, and the number of votes cast for each resolution. It should also indicate any dissenting opinion submitted by a board member, and any reasons for it. The protocol shall be signed at least by the member of the board of directors presiding over the meeting or managing the vote, unless the articles of association or the bylaws of the board of directors provide otherwise.

The amendment also clarifies the hitherto unarticulated duty of loyalty of a board member. In addition, a board member may not disclose company secrets even after the expiration of their mandate.

NEW DUTIES AND POWERS FOR SUPERVISORY BOARDS

According to the amendment, a member of a board of directors, supervisory board, audit committee, and/or liquidator does not violate the duty of diligence arising from the professional nature of their activities if, acting in loyalty to the company, they act within the limits of reasonable economic risk, including on the basis of information, analysis, and opinions that should be taken into account after making a careful assessment.

The amendment also goes into quite some detail on the scope of the board's new duties and powers, and grants additional powers to the supervisory board and the audit committee in a limited liability company (LLC) and the board of directors in a simple joint-stock company (JSC), which are intended to provide these bodies with more effective oversight. The legislation establishes and clarifies the powers of a company's supervisory board in the context of auditing the company's books and documents. It imposes an obligation on the company's board of directors to promptly provide documents requested by the supervisory board. In addition, a new obligation is imposed on the auditor to attend a board meeting to evaluate the financial statements. ●