

PwC Legal Cyprus

Recent (modernising) amendments to the Cyprus Companies Law

PwC Legal Germany

German Stock Corporation Act amended

Réti, Antall & Partners Law Firm

PricewaterhouseCoopers Legal (Hungary)
Last call for Hungarian limited liability companies to comply with the new Civil Code

PwC International Business Reorganisations Network – Monthly Legal Update

Edition 2, February 2016

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Welcome

Welcome to the second edition of the PwC International Business Reorganisations (**IBR**) Network Monthly Legal Update for 2016.

The PwC IBR Network provides legal services to assist multinational organisations with their cross-border reorganisations. We focus on post-deal integration, pre-transaction separation and carve outs, single entity projects, and legal entity rationalisation and simplification as well as general business and corporate and commercial structuring.

Each month our global legal network brings you insights and updates on key legal issues and developments relevant to multinational organisations.

We hope that you will find this publication helpful, and we look forward to hearing from you.

In this issue

In our February 2016 issue:

- PwC Legal Cyprus highlights recent amendments to the Cyprus Companies Law;

- PwC Legal Germany considers amendments to the German Stock Corporation Act; and
- Réti, Antall & Partners Law Firm PricewaterhouseCoopers Legal (Hungary) highlights the need for Hungarian limited liability companies to comply with the new Civil Code.

Contact us

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PwC Legal Cyprus – Recent (modernising) amendments to the Cyprus Companies Law

At a glance

This update highlights the key changes introduced by Law 89(I)/2015 (**Amendments**) to the Cyprus Companies Law Cap 113 (as amended) (**Law**) which came into force in June 2015. The proposed changes were largely introduced to address the need to simplify, modernise and provide clarification on current provisions of the Law. The Amendments have introduced a number of changes including but not limited to the following:

- a a more simplified approach to the registration and filing requirements and notification processes with the Registrar of Companies;
- b clarification of existing provisions of the Law;
- c modernization of the provisions of the Law allowing it to bridge the gap and reconcile its provisions with modern technology; and
- d facilitation of the electronic submission and maintaining of information and documents at the Registrar of Companies.

In detail

Increased flexibility for the objects clause in the memorandum

Prior to the Amendments, companies were required to list all their objects in their memorandum and this led to companies adopting extensive lists of objects to cover for all possible business purposes. The Amendments allow the replacement of the extensive object clauses with a short general term. Particularly, it is now possible for the memorandum of association to provide that the purpose of the company is to be a “*commercial company for general purposes*” instead of adopting extensive object clauses. Companies adopting this general term may carry out any work, business or profession and enter into any contract, undertake any obligation or take any action that any natural person could do. Notwithstanding the above, the memorandum of a company which has adopted this general term can restrict its extent by adding relevant restrictive provisions in its memorandum.

Higher voting majorities by articles of association

The Law now expressly allows companies to include in their articles of association provisions requiring higher majorities than those prescribed by the Law for the approval of resolutions, except for resolutions for the removal of directors.

Clarification of the right of members to exercise each of their voting rights differently

Following the Amendments, it has been clarified that, the right of a member not to use all his votes or to choose to cast each one of his votes in a different manner, applies to members of any company (and not only to companies listed in a regulated market).

Additional power to strike off

An express (additional) authority has been granted to the Registrar of Companies to strike a company off the register:

- a following an application by directors of the company; or
- b in case the annual fee (levy) remains unpaid for a period of one year from the date it becomes due.

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Modernisation of the methods of participation in meetings

Unless otherwise expressly provided by the articles of association of a company, participation in a general meeting of shareholders or a meeting of the board of directors can be achieved via teleconference or any other means whereby participants may simultaneously hear and be heard by all other participants and the persons who participate in such manner shall be counted for quorum or any other purpose as being present at the respective meeting.

Clarifications in respect of registration of charges

The Amendments clarify the requirements and timeframes for registration of charges on companies' property. Moreover, the Amendments introduce requirements for registration of charges constituted by overseas companies in the cases of redomiciliation or where such overseas companies are absorbed into Cyprus companies under a cross border merger. Particularly, such registration should be effected within 42 days from the date of the issuance of the temporary certificate of continuation (in the case of a redomiciliation) or from the date of entry into force of the cross border merger.

New filing procedures

Following the Amendments, the Law now provides that all information or documents that must be submitted to the Registrar of Companies can only be delivered by the "Authorised Representative" of the company (a person appointed by the company to represent it before the Registrar of Companies) or by the company's secretary or any other person as the Registrar may determine.

The Amendments grant the power to former directors or secretary to notify directly the Registrar of Companies of their resignation if the respective company fails to do so within the prescribed time limit (14 days).

The Amendments further facilitate the electronic submission of documents and the maintaining by the Registrar of Companies of an eRegistry and the extensive use of electronic means.

Moreover, provisions have been introduced prescribing what the Registrar of Companies is obliged to make available electronically such as the memorandum, articles of association, annual report, certificate of incorporation and other corporate information relating to companies.

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PwC Legal Germany – German Stock Corporation Act amended

At a glance

The German “Aktienrechtsnovelle 2016” includes amendments in several key areas for German stock corporations (Aktiengesellschaft or **AG**):

- a the use of bearer shares by unlisted AGs is restricted;
- b higher flexibility in the use of preferred stock;
- c higher flexibility in the use of convertible bonds;
- d number of supervisory board members subject to reduced statutory provisions; and
- e amendments to corporate procedure (general meeting; due date for dividend payments).

A number of imminent reform projects will come from Brussels and have an impact not just in Germany but also within the European Union.

In detail

The legislative process of the “Aktienrechtsnovelle 2016” (Amendment of the Stock Corporation Act, the **Act**) has taken five years and finally came into effect on January 1, 2016. The most disputed topics have not been included and left to further discussion in the future. On the other hand, some interesting amendments have survived.

Restrictions regarding bearer shares

With the risk of money-laundering in mind, unlisted AGs issuing bearer shares will have to deposit a global certificate with a depository bank. For smaller AGs, the costs of this deposit will regularly surpass the costs of maintaining a share register. As a result smaller AGs will in the future issue registered shares rather than bearer shares. The tradability of registered shares is reduced in comparison to bearer shares.

Preferred stock as Tier 1 capital

Previously, if the preferred dividend was not paid on time, it had to be repaid in subsequent years. This obligation for repayment prevented preferred stock from consideration as regulatory Tier 1 capital under the Capital Requirements Regulation. In view of this, the Act includes the option of issuing preferred stock with an additional dividend that does not require repayment.

Flexibility with convertible bonds

Under the Act convertible bonds may now not only be issued with the bondholder being able to opt for shares. In the future a convertible bond may also be issued with the issuer holding the right to decide whether the bondholder will be repaid or have shares assigned.

Also, the limit of the amount of conditional capital of up to 50% of the company’s stock capital for AGs threatened by insolvency was removed.

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Number of supervisory board members

The composition of the supervisory board, a special feature of the two-tier board system in Germany, is and has been strictly regulated. The following regulation has been removed: the number of board members no longer has to be divisible by three. This is true for all stock corporations which do not fall under the German One-Third Participation Act (Drittelbeteiligungsgesetz).

Further amendments and corporate procedure

Dividends on shares will be due on the third banking day following the general meeting of the AG. The Act also contains a number of procedural clarifications and small amendments regarding general meetings.

Outlook – European perspective

A number of issues have been dropped in the course of the legislative process but rather left pending. Especially with respect to the fact that the European legislator is set to amend the Shareholder's Rights Directive, the coming changes will concern stock corporations all across Europe. Possible changes to the Shareholder's Rights Directive include:

- a so called "Say on Pay" (i.e. publication of compensation of executives);
- b publication of related party transactions;
- c Know Your Shareholders (bookkeeping requirements on certain minimum investments); and

- d Uniform Record Date (exercise of shareholder's rights presupposes a certain minimum holding period).

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Réti, Antall & Partners Law Firm

PricewaterhouseCoopers Legal (Hungary) – Last call for Hungarian limited liability companies to comply with the new Civil Code

At a glance

In Hungary, a new Civil Code entered into force in 2014. One of the important changes it introduced was raising the statutory minimum of the registered capital for limited liability companies to HUF 3 million. As previously the statutory minimum was only HUF 500,000, many companies could be affected by the rules under which limited liability companies whose registered capital is below HUF 3 million must increase it to at least HUF 3 million by 15 March 2016. This date may be significant as well for companies whose registered capital reaches or exceeds HUF 3 million, too, because the law requires all limited liability companies to ensure by that deadline that their founding document is in compliance with the new Civil Code.

In detail

Capital increase

If the registered capital of a limited liability company does not reach the amount of HUF 3 million, this does not mean that the increased registered capital needs to be provided by the 15 March deadline – it is enough to resolve on the capital increase (by means of cash contribution, contribution in-kind, from the company's capital reserves or from a capital contribution made by a new shareholder joining the company) until this deadline. The date for actually providing the capital can be set in the resolution of the shareholders' meeting or the founder concerning the capital increase. If however such deadline is longer than one year, the company may not distribute dividends to the shareholders concerned until their share of the increased capital is actually provided or is deemed to be provided through offsetting with dividend that would be due to such shareholders.

Amendment of the company's founding document

The new Civil Code allows companies greater flexibility in regulating their internal matters. Thus, current founding documents will only have to be amended if conflicting with a provision of the new Civil Code that prohibits derogation. At the same time, especially because of this greater flexibility, it may be advisable to review the founding document of a company to satisfactorily resolve matters that used to be explicitly regulated by law, but are now left to the company's shareholders to address (e.g. determining matters falling within the competence of the shareholders' meeting).

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