



EPC and the Central and Eastern European Company Law

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Business Environment and Company Law in the CEE Countries

- „Competition for incorporation“ vs. „competition for investment“
- German influences on the CEE company laws
 - separate regulation of two types of formally incorporated companies: *Ltd and PLC*
- „Europeanization“ of the law of private ltd – extension of the EC company law solutions on ltds
- English ltd as a pseudo-foreign company much less popular in CEE than in the „old“ EU
- EPC and the „vertical competition“ of company forms

Advantages of the EPC – CEE Perspective

- Reduction of costs of cross-border activity (in particular with regard to subsidiaries in other MS)
- Flexibility (in particular with regard to the management and capital structure)
- Simple registration procedure
- „European label“ facilitating access of the SMEs to the Common Market
 - who knows what „sp. z o.o.“, „s.r.o.“ or „Kft“ stand for?

Formation of the EPC

- Methods of formation:
 - creation of a SPE from scratch („ex nihilo“) by one or more natural persons and/or legal entities
 - transformation of an existing company
 - merger of existing companies
 - division of an existing company
- All those formation methods are provided for in the CEE national laws with regard to private limited company.

Formation of the EPC

- Lack of cross-border element („transnational link“)
 - negative impact on the political acceptability of EPC?
 - welcomed solution from the CEE perspective
- Access to the EPC for national companies
 - no restriction in the EPC Regulation
 - conditional upon national law
- Need for an uniform transformation procedure in the EPC Regulation
 - easier access to the EPC for existing national companies

Formation of an EPC „ex nihilo“

- EC Commission Draft (2008) – simple procedure and contractual freedom:
 - minimum capital 1 Euro, flexible regulation of capital contribution
 - Different approach in the EP Proposed Amendments
 - regulatory instructions („drafting tasks“) with regard to the content of articles of associations
 - no form requirements for the articles of associations
 - single legality check on formation (certification by notary **or** control by an administrative/judicial body)

CEE Example - Formation of the Polish ltd (*spółka z o.o.*)

- Mandatory notarization of the articles of associations
- Minimum capital – 5.000 PLN (ca. 1.100 EUR), all contributions have to be effectively delivered to the company before it is registered
- Work or services are not permitted as contributions
- Application for registration is filed on a official form and any mistake results its rejection
- Legality check by the registry court → the registration procedure may last few weeks
- Company „in organization” comes into existence with certification of the articles of associations and it may conduct the business prior to registration

EPC Formation - Single Legality Check

- Who should be responsible for the legality control?
 - Vesting the responsibility with the national **registry court** may result in delay of the formation procedure as the court will need time to check the fulfillment of the “regulatory tasks”
 - Advisable solution: single compliance check performed by **notary public** → Certificate of legality issued by a notary would provide a basis for the automatic registration by the court

Employee Participation

- Diverse regulatory landscape in the CEE countries:
 - No employee participation (Baltic States)
 - Participation only in the state-owned or privatized enterprises (Czech Republic, Slovakia, Poland)
 - Participation also in private ltd with number of employees exceeding a predetermined threshold (Hungary – 200; Slovakia – 50)
- Need to prevent the (mis)use of the SPE (as a “pseudo foreign” SPE) to undermine national participation rules

Thank you for attention!