
Legal Alert

Latest Amendments in the Mergers & Divisions Rules in Bulgaria

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Tsvetkova Bebov & Partners,
Attorneys at law

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Issue 101 of the State Gazette, dated 28 December 2010, published an Act for Amendment of the Bulgarian Commercial Act. The purpose of the amendments is to comply with the requirements of Directive 2009/109/EC of the European Parliament and of the Council of 16 September 2009 amending Council Directives 77/91/EEC, 78/855/EEC and 82/891/EEC, and Directive 2005/56/EC as regards reporting and documentation requirements in the case of mergers and divisions.

The amendments, introduced in the above directive, reflect the willingness of the European Council to reduce the administrative burden on companies in order to enhance their competitiveness in the Community.

The latest amendments in the regulatory framework on mergers and divisions in the Bulgarian Commercial Act ("CA"), which will enter into force on 1 January 2011, could be outlined as follows:

1. The management bodies of each of the merging companies will not be required to draw up a detailed written report explaining the draft terms of merger / division, if all shareholders of each of the companies involved in the merger / division have agreed so in writing.

2. A company, participating in a merger / division, will be released from the obligation to provide to the materials required to approve the merger / division if the company publishes those materials on its website and ensures full access by electronic means to them until final resolution on the application for registration of the merger / division or until the expiration of the term for filing of the application for merger / division under Art. 263b, art. 1 of the CA. The materials could be provided also by electronic mail if a shareholder has consented to the use by the company of electronic means for conveying information.

3. The supplements in Art. 263s of the CA provide for new scenarios, where will be applied new simplified rules for completion of the merger / division, and namely:

- In the event a merger by acquisition is carried out by a company which holds more than 90 % of the shares conferring the right to vote at the general meeting of the company being acquired, then it is not required to draw up a report by the management body about the merger, to audit the draft terms of merger, to draw up the auditor's report on the draft terms of merger and to make available the materials required for approval of the merger. Furthermore, the general meeting

of the acquiring company is not required to resolve on the merger, unless shareholders, holding at least 5% of the capital, require convocation of the general meeting pursuant to Art. 223a, para. 2 of the CA not later than 5 days before the scheduled date of the general meeting for approval of the merger;

- In the event a division by acquisition is carried out and provided the recipient companies together hold all the shares of the company being divided, an approval of the division will not be required by the general meeting of the company being divided;

- In the event a division by formation is carried out and provided the shares in the new companies (the recipient companies) are allocated among the shareholders pro rata their shares in the company being divided, then it is not required to draw up a written report of the management body about the division, to audit the draft terms of the division, and to draw up the respective independent expert's report. In addition, it is not required to provide the balance sheet as to the last day of the month before the date of the draft terms of the division.

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4. Merger / division procedures, which were initiated before 1 January 2011, will be continued and carried out in compliance with the rules, which were effective prior to 1 January 2011, provided the draft terms of merger / division were executed before 1 January 2011.

For additional information or assistance in connection with the aforesaid, please do not hesitate to contact us.

Contacts

Irina Tsvetkova
Country Managing Partner
E-mail: irina.tsvetkova@tbp.bg

Galina Bunkova
Senior Managing Associate
E-mail: galina.bunkova@tbp.bg

Venelin Dimitrov
Senior Legal Counsel
E-mail: venelin.dimitrov@tbp.bg

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Tsvetkova Bebov & Partners, Attorneys-at-Law
9-11 Maria Louisa Blvd., 7th floor
1000 Sofia, Bulgaria
Telephone +359 2 93 55 100
Facsimile +359 2 93 55 166

<http://www.tbp.bg>

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