

# Reorganisation of limited liability company into joint stock company under Bulgarian Law

**U**nder Bulgarian law the reorganisation of a limited liability company ('LLC') into a joint stock company ('JSC') is a special form of reorganisation by change of the company's legal status with all shareholders in the LLC becoming shareholders in the JSC, the reorganising LLC winds-up without liquidation and the resulting JSC becomes the universal successor of all assets, liabilities and contracts of the LLC ('Reorganisation').

This article provides an overview of a Reorganisation from a corporate legal perspective based on the Bulgarian Law on Commerce<sup>1</sup> and Law on Commercial Register.<sup>2</sup> Tax, employment and other non-corporate legal aspects of the Reorganisation remain out of the scope of this article.

In terms of structure, this article will first outline typical reasons for the Reorganisation. An overview of major legal requirements and documents of the Reorganisation then follows. Thirdly, the Reorganisation procedure is listed. Finally, minority shareholders' protection is discussed.

## Reasons

A principle feature of a LLC under Bulgarian law is the binding relationship between its shareholders. In the LLC, important corporate resolutions, such as a capital increase, article amendments, expulsion and acceptance of a shareholder and transfer of shares, fall within the competence of the shareholders meeting and require a qualified majority approval of 75 per cent of all shares, whereas in the case of a capital increase the required approval is unanimity of all shares. Additionally, shareholders and transfers of shares in the LLC must be registered in the Commercial Register.<sup>3</sup> These limitations are inapplicable to the JSC, unless shareholders agree otherwise. Therefore, shareholders, and in particular majority/controlling

shareholder(s), in a LLC may decide to carry out the Reorganisation as a preparation for enlargement of a company's scope of activity, or new investment in the company, or a change in the company's capital structure, or an increase of a company's capital, or exit from the company.

## Major requirements

The capital of the JSC, incorporated as a result of the Reorganisation, must not be higher than the net asset value of the reorganising the LLC. The net asset value represents the difference between the fair value of the LLC's assets and liabilities.

Bulgarian law requires that the capital of a LLC be at least BGN 2.00 (approximately €1) and that of the JSC be at least BGN 50,000 (approximately €25,575), respectively.

Therefore, if the capital of the LLC amounts to less than BGN 50,000 and the net asset value of the LLC is such that it can not cover the minimum capital requirement for a JSC, the Reorganisation may be completed only if a capital increase is effectuated in the LLC before or simultaneously with the Reorganisation.<sup>4</sup>

Respectively, if the capital of the LLC is equal to or higher than BGN 50,000, the Reorganisation may be completed without any capital increase. The same applies if the capital of the LLC is lower than BGN 50,000 but the net asset value of the company is equal to or higher than BGN 50,000. In this case, the JSC may have capital of BGN 50,000 or of a higher amount, not exceeding the net asset value of the LLC, registered as a result of the Reorganisation without effectuating a capital increase.

Compliance with this requirement is subject to verification by the Reorganisation controller ('Controller'). The Controller is appointed by the general manager of the LLC and must be an auditor independent of the LLC and JSC.

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Each shareholder in the LLC must acquire a shareholding in the JSC equivalent in amount to the fair price of such shareholder's shareholding in the LLC prior to the Reorganisation. To this end, cash payments to shareholders in the amount not exceeding 10 per cent of the total nominal value of the respective shareholder's shareholding in the JSC are allowed.

No new shareholder may join the company upon or during the Reorganisation.

The Reorganisation must be registered in the Commercial Register. Such registration has a constitutive effect. Once the Reorganisation has been registered: (i) the LLC winds-up without liquidation; (ii) the JSC is incorporated; (iii) all shareholders in the LLC become shareholders in the JSC; and (iv) all assets, liabilities, contracts, licences, permits and concessions of the LLC pass through *ex lege* to the JSC.

### Major documents

The Reorganisation plan ('Plan') is prepared and issued by the general manager of the JSC in writing with a notary certification of his signature. The Plan must provide for the following:

- legal form, company name, corporate identification and seat of the JSC;
- share exchange ratio as of a specific date;
- amount and due date of cash payments to shareholders, if applicable in relation to the share exchange;
- description of shares and any lien on them that each shareholder acquires in the JSC;
- terms relating to the Reorganisation and the distribution of share certificates for shares in the JSC;
- rights of privileged shareholders; and
- any other material information relating to the Reorganisation, such as the Controller's identification.

Draft articles of association of the JSC ('Draft Articles') must stay enclosed to the Plan until the Reorganisation registration in the Commercial Register is completed and they are subject to the same approvals to which the Plan is. Draft Articles must meet all requirements applicable to the articles of a newly incorporated JSC.

The LLC must prepare a financial statement as of the last date of the month preceding the date of the Plan ('Financial Statement'). Share value, share exchange ratio and net asset value of the LLC in the Plan must be based on the Financial Statement.

A written report by the controller ('Controller's Report') must confirm to the shareholders whether or not the share exchange ratio and the Reorganisation as a whole transaction, as provided in the Plan, are compliant with the law, and are adequate and reasonable.

The LLC's shareholders' meeting must adopt a written corporate resolution approving the Reorganisation ('Resolution'). The Resolution must incorporate the shareholders' approval of the Plan, the Draft Articles, the Controller's Report, the corporate boards and directors sitting on them in the JSC and the Reorganisation costs. The Resolution may be adopted at a shareholders' meeting or *in absentia*. In the former case, the shareholders' meeting must be convened and held in accordance with applicable requirements and the Resolution, approved by at least 75 per cent of all shares. In the later case the Resolution must be approved in writing by all shareholders.

### Procedure

Typically the Reorganisation takes about two to three months and includes the following steps:

- The LLC's general manager prepares and files the Plan, Draft Articles and Financial Statement for registration in the Commercial Register under the corporate file of the LLC.
- The Plan, Draft Articles and Financial Statement are registered in the Commercial Register. Those documents stay available for information to the shareholders for 30 days as of such registration.
- The LLC's general manager appoints the Controller and the Controller prepares the Controller's Report.
- A shareholders' meeting in the LLC hears the Controller's Report and adopts the Resolution.
- The board(s) in the JSC hold first meeting and appoint chairperson, vice-chairperson and executive director(s), as applicable.
- An authorised director of the JSC issues certificates for shares in the JSC and delivers such certificates to a custodian.
- Executive director of the JSC files the Reorganisation for registration in the Commercial Register under the corporate file of the LLC.
- The Reorganisation is registered in the Commercial Register under the corporate files of the LLC and JSC. As of such date, the Reorganisation produces legal effect vis-à-vis everyone.



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- A closing financial statement for the LLC and an opening financial statement of the JSC are issued as of the date of Reorganisation registration in the Commercial Register.
- The custodian distributes the share certificates for the JSC shares among shareholders in accordance with the Plan.

### Minority shareholders' protection

Any shareholder in the LLC may bring a claim against the company prior to the Reorganisation registration in the Commercial Register in the event that the Plan is null and void or there is no Plan issued or the Reorganisation is effectuated in violation of other applicable requirements. If the claim is satisfied, the Reorganisation may not be registered in the Commercial Register and, respectively, may not come into effect.

Within three months as of the effective date of the Reorganisation, any shareholder may bring a claim against the JSC seeking damages for the implemented share exchange ratio in the event that such ratio has not provided the

claiming shareholder with a shareholding in the new JSC that is equivalent to the fair price of such shareholder's shareholding in the LLC.

Finally, a shareholder whose shareholder's status changes as a result of the Reorganisation and who has voted against the Resolution may exit the JSC following the completion of the Reorganisation. Upon exiting, such shareholder is entitled to be paid by the JSC the amount of his/her share in the LLC as such amount is provided in the Plan for the purpose of the share exchange ratio.

### Notes

- 1 Promulgated, *State Gazette*, Issue 48 of 18 June 1991, effective as of 1 July 1991, last amended, *State Gazette*, Issue 34 of 29 April 2011.
- 2 Promulgated, *State Gazette*, Issue 34 of 25 April 2006, effective as of 1 January 2008, last amended, *State Gazette*, Issue 34 of 29 April 2011.
- 3 Bulgarian Commercial Register administered by the Registry Agency with the Minister of Justice of Republic of Bulgaria. The Commercial Register is one for the entire country, it is public and all Bulgarian companies and corporate changes in them are subject to registration therein.
- 4 A capital increase in the LLC, however, requires unanimity of all shareholders' votes.