

ABSTRACT AND KEY WORDS:

Mergers within a group of companies can be divided into three basic variants: a company merges into its shareholder (up-stream merger), a shareholder-legal entity merges into its company (down-stream merger), a company merges into other company given that both companies have at least shareholder in common (merger of sister companies). Capital interconnection of companies makes these mergers to be special and requires a specific regulation.

The present regulation of mergers of companies has particular weak points, the gravest is the fact, that the Act on Transformations does not take into account the specifics of the mergers within a group of companies. This entails that in some cases the word-to-word application of the Act on Transformations can lead to harming of shareholders and creditors of the companies participating on the merger. In some cases it leads to an absurd duty to file an application for dissolving of the company while the general meeting is convoked to approve the project of merger.

The thesis is dedicated exclusively to the capital aspects of mergers. Therefore I deal with the issues of the amount of the capital stock in the succession company pursuant to the Act on Transformations. I elaborate why it is not possible to apply word-to-word the law on the maximum possible amount of the capital stock in the succession company. Then the same issue I examine from a point of view of a shareholder. Here the amount of the share is the main issue to deal with. And at last I examine the question of mandatory evaluating of the assets of the company ceasing to exist as to whether this duty exists or not. All issues are being examined as regarding to up-stream, down-stream mergers and mergers of sister companies.

Mergers are the field which goes far beyond the sphere of commercial law. Mergers within a group of companies give a clear understanding that in the situation, when the law keeps silent, it is not enough to be guided by law, but economical and accounting analysis come into consideration. At present a huge amendment of the Act on Transformations is being prepared, which aim is to correct the main faults of the Act. However, in the meantime companies are to act pursuant to the existing law, and that is why it is the task of the legal councils to pay attention of their clients to the dangerous issues of the present law and to give such advice as to avoid such solutions for merger which could imperil the whole transaction.

KEY WORDS: up-stream merger, down-stream merger, equity capital, exchange of shares, evaluation of assets.