



**AMENDMENTS  
TO THE  
COMMERCIAL COMPANIES CODE**

## ABOUT **ECOVIS**

**Ecovis** is a leading global consulting firm with its origins in Continental Europe.

It has almost 9,300 people operating in more than 80 countries. Its consulting focus and core competencies lie in the areas of tax consultation, accounting, auditing and legal advice.

The particular strength of Ecovis is the combination of **personal advice at a local level** with the **general expertise** of an international and interdisciplinary network of professionals.

Every Ecovis office can rely on qualified specialists in the back offices as well as on the specific industrial or national know-how of all the Ecovis experts worldwide.

This diversified expertise provides clients with **effective support**, especially in the fields of international transactions and investments – from preparation in the client's home country to support in the target country.

In its consulting work Ecovis concentrates mainly on mid-sized firms. Both nationally and internationally, its **one-stop-shop** concept ensures all-round support in legal, fiscal, managerial and administrative issues.

The name Ecovis, a combination of the terms **economy and vision**, expresses both its international character and its focus on the future and growth.



**Ecovis Legal Poland**  
**is a well-established law firm**  
**with more than 20 years of history!**



*Dear Sirs,*

Due to the dynamic developments and changes on the market, demands for better regulation of the functioning of companies in the existing Commercial Companies Code have been made for a long time, aimed at adapting its solutions to better suit the needs and current realities. The latest amendment to the Commercial Companies Code, which comes into effect on 13 October 2022, is also the largest in the past 20 years. The amendment introduces regulations related to the operation of groups of companies and regulations concerning the principles of management and supervision. We have summarised the most important of these changes below.

## I. Holdings

A **holding** (corporate group or a group of companies) is a collection of a parent company and one or more subsidiaries which agree to pursue a common economic interest under the control of the parent company.

All the companies in the group must adopt a relevant resolution on participating in the group and indicating the parent company. This resolution is adopted by the meeting of the shareholders or general meeting of a subsidiary company and require a three-quarters majority of votes.

Participation in a holding must also be disclosed by the parent company and all subsidiaries making a relevant entry in the National Court Register.

A particularly important concept introduced by the amendment concerns the interests of a holding, whereby, not only must each company participating in the holding respect its own interests, but must also take into account the interests of the holding.

This concept refers to **binding instructions** that the parent company may issue to its subsidiary concerning the management of the company's business. Binding instructions must be justified by the interests of the holding, and **must indicate at least:**

1. the actions that the parent expects the subsidiary to undertake;
2. the interests of the group that justify the subsidiary's compliance with the instruction;
3. the expected benefits or detriments for the subsidiary as a consequence of complying with the instruction; and
4. the anticipated manner and date of rectifying any damage suffered by the subsidiary following compliance with the instruction.

Binding instructions must be given in written or electronic form. Compliance with a binding instruction will require a relevant resolution of the subsidiary's management board.

A subsidiary may **refuse** to comply with a binding instruction if it could lead to or threaten it with insolvency.

A subsidiary, other than a sole-shareholder company, will also be required to **adopt a resolution refusing to comply with a binding instruction** if there is reasonable concern that it is contrary to the subsidiary's interests and may cause damage that will not be rectified within two years of the date of the event causing such damage, unless the articles of association provide otherwise.

To determine the **amount of damage caused by non-compliance with binding instructions**, the benefits obtained by a subsidiary in connection with participation in the holding over the past two financial years should be taken into account. It must be emphasised that the articles of association of a subsidiary may include additional reasons for refusing to comply with binding instructions.

The parent company is liable to its subsidiaries for damage caused by their compliance with a binding instruction issued by the parent company, if that damage is not remedied within the deadline specified in the binding instruction. The liability of the parent company is excluded if the damage was caused through no fault on its part.

The parent company is liable for damage caused to a sole-shareholder subsidiary only if the subsidiary became insolvent as a result of compliance with the binding instruction. However, members of the management board, supervisory board, audit committee and liquidator of a subsidiary will not be liable for damage caused to a subsidiary due to compliance with binding instructions. This also applies to members of the management board, supervisory board, audit committee and liquidator of a parent company who are acting in the interest of a holding.

The law also introduces other powers vested in the parent company, namely that the parent may at any time request an inspection of the subsidiary's books and documents and be provided with the required information. The supervisory board of the parent company exercises constant supervision over the proper implementation of the interests of the holding through the subsidiaries, unless the articles of association of the parent company or the subsidiary provide otherwise.

A subsidiary **ceases to participate in a holding** if the meeting of the shareholders or the general meeting of the subsidiary adopts a relevant resolution with a three-quarters majority of votes, or if the parent informs the subsidiary company that it is stopping its participation in the holding.



## II. Sell-out and squeeze-out

Pursuant to the provisions on holdings, minority shareholders representing up to 10% of the share capital of a subsidiary in a group may demand that the agenda of the subsidiary's next meeting of shareholders or its next general meeting include a resolution on the parent company buying out their shares.

This can happen if the parent company holds, directly, indirectly or based on agreements with other entities, at least 90% of the share capital of the subsidiary.

In turn, the meeting of the shareholders or the general meeting of the subsidiary can adopt a squeeze-out resolution whereby the parent company, holding at least 90% of the share capital, can acquire the shares held by minority shareholders representing up to 10% of the share capital.

If set out in the articles of association of a subsidiary, a parent company that directly or indirectly holds at least 75% of the share capital of the subsidiary can exercise the squeeze-out option.

## III. Changes regarding the mandates and terms of office of members of the governing bodies

The amendment clarifies the rules on determining the term of office of the management board and the supervisory board (audit committee) by assuming that the term of office is calculated in full fiscal years, unless the company's articles of association provide otherwise.

In addition, the amendments stipulate that the mandates and terms of office of members of bodies that are in effect on the date that the amendment comes into force will also be subject to the amended provisions.

## IV. Duty of loyalty

The legislator has introduced a general rule that members of the management board, supervisory board or audit committee must exercise due diligence resulting from the professional nature of their activity, must remain fully loyal to the company and must not disclose any secrets of the company, even after their term of office expires.





## V. Business judgment rule

---

The amendment introduces the principle that a member of the management board, supervisory board, audit committee and liquidator will not be deemed to have violated their duty to exercise due diligence resulting from the professional nature of their activity if they remain loyal to the company and act within the limits of justified economic risk (based on the information, analyses and opinions that should be taken into account in the given circumstances while making a careful judgment).

## VI. Strengthening the supervisory board's supervision over the company

---

New regulations will indicate that information, documents, reports and explanations requested by the supervisory board must be provided immediately – within two weeks from the date of the request, unless a longer period is specified in the request.

The management board may not restrict members of the supervisory board from accessing the information, documents, reports and explanations they have requested. If the company's financial statements are subject to statutory audit, the supervisory board is required to give at

least one week's notice to the key auditor who audited the company's financial statements of the date of a meeting on matters relating to the company's reports. The company must ensure that the key auditor, or other representative of the auditing firm, attends the meeting with the supervisory board.

During the meeting, the key auditor, or other representative of the audit firm, must present the audit report to the supervisory board, including an assessment of the basis for the adopted statement relating to the company's ability to continue as a going concern, and must answer questions from members of the supervisory board.

The amendments also set out that, if the company's articles of association so provide, the supervisory board may adopt a resolution on having a certain matter relating to the company's business or its assets examined by a selected advisor to the board at the company's expense. An advisor to the supervisory board may also be selected to prepare certain analyses and opinions.

Amendments have also been made to clarify the rules on holding supervisory board meetings and adopting resolutions.



The content of an invitation to a supervisory board meeting should include:

- the day
- the time
- the venue
- the agenda
- the means of direct remote communication used during the meeting.

The supervisory board may also hold meetings without being formally convened, as long as all the members agree and do not object to the inclusion of individual issues on the agenda.

Supervisory board resolutions must be recorded, with the minutes including at least the signature of the supervisory board member chairing the meeting or managing the vote. The amendment also introduces **open voting**.

## VII. **Other** amendments

The legislator has also introduced **criminal liability for a failure** to provide information, documents, reports or explanations on time, or providing incorrect information, documents, reports or explanations, or concealing data significantly affecting the content of such information, documents, reports or explanations, if required under the Commercial Companies Code to do so.

The ban on performing the duties of a member of the management board, supervisory board, audit committee, liquidator or commercial representative has also been extended to anyone **convicted by a final judgment of the crimes specified in Articles 228 - 231 of the Criminal Code**. These concern, among other things, accepting and giving financial benefits or exceeding the powers or failing to carry out the duties of public officials.

**An obligation to keep minutes of board resolutions has also been introduced.** The minutes should include the agenda, the names of the members of the management board present and the number of votes cast for each resolution. The minutes should also indicate any dissenting opinions submitted by a member of the management board, along with the reasons for it.



*Thank you for your trust,*

*Ecovis Team*

# DO YOU HAVE ANY QUESTIONS?

*Get in touch with us!*

**ECOVIS LEGAL POLAND**  
**Multan, Pruś and Partners**  
**Law & Tax Firm**  
**9a/5 Belwederska Street**  
**00-761 Warsaw**  
**+ 48 22 400 45 85**

**email: [warsaw-law@ecovis.pl](mailto:warsaw-law@ecovis.pl)**



## What is Ecovis?

- *18th largest professional network in the world  
by combined fee income*
- *Offices in 80 countries worldwide*
- *More than 9,300 in staff*