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Title: Prawo właściwe dla spółki w świetle orzeczenia Polbud oraz projektu dyrektywy o transgranicznym przekształcaniu spółek / Law applicable to a company in the light of a judgment of the Court of Justice in Polbud and the proposal for a Directive on cross-border conversions

Source: Kwartalnik Prawa Prywatnego (“Quarterly of Private Law”)

Year: 2019, vol. XXVIII, number 1, pages: 221–240

Keywords: cross-border conversion of companies; Polbud; proposal 2018/0114 (COD); directive (EU) 2017/1132; corporate conflict of laws, law applicable to companies, real seat theory, statutory seat theory, incorporation theory

Discipline: Private Law

Language: Polish

Document Type: Article

Publication order reference: Warsaw [piotr.franczak@pflegal.pl]

Abstract:

The author argues that the judgment of the Court of Justice in Polbud weakens the position of mutual, neutral conflict of laws rules, which give the same weight and consideration to both domestic and foreign substantial law. It follows from the judgment in Polbud, as well as from the previous decisions of the Court, that a Member State may impose its conflict of laws rules, e.g. a requirement to maintain the real head office in its territory, on its own companies – whether created by it or admitted through a cross-border conversion – but it is not allowed to do so with respect to foreign companies. It could be even questioned if, under this approach, connecting factors constitute conflict of laws and not substantial rules.

The proposal for a Directive does not introduce its own connecting factor, but, on the substantive law level, requires transfer of the registered office to an immigration state, which may result in the strengthening of the registered office (statutory seat) theory.

The author’s view is that the incorporation theory is the best way to implement the Court’s guidelines. The incorporation should be characterized (classified) in accordance with *lege causae* (the law of incorporation).