

## **S24 COMPANIES – HISTORY, ANALYSIS, EVALUATION**

### **SUMMARY OF THE DOCTORAL DISSERTATION**

The main purpose of this dissertation is to clarify the legal situation of companies and partnerships defined in article 4 sec. 1 point 15) of Commercial Companies Code (hereinafter: c.c.c.) whose articles of association have been concluded via IT system using templates. The view presented in the thesis is that the shape of current regulations concerning the abovementioned companies justifies their distinction as subtype of commercial companies. The term "S24" indicated in the title is a name given to this subtype. The monograph presents the characteristics of historical regulations that led to the creation of the discussed subtype. It also contains analysis of the S24 regulations in the context of constitutionality of ordinances issued basing on article 23<sup>1</sup> § 5 c.c.c., article 106<sup>1</sup> §5 c.c.c., and article 157<sup>1</sup> §5 c.c.c., in which are placed articles of association template and other templates used in the discussed subtype. The need for analysis in scope of the compliance or non-compliance of said ordinances with the Constitution is essential in the light of the rule of law principle. The dissertation evaluates the regulations concerning S24 companies also through the certainty of trade principle and ease of doing business, considering the international competition of regulations and selected foreign and international law.

The dissertation is provided with introduction and conclusion as well as five chapters divided into subchapters and smaller editorial units. The first chapter deals with general issues related to the subject of the thesis as well as with issues important for further deliberations. There are subchapters devoted to the etymology and definition of "company S24" and "company subtype" terms. The first chapter also defines the criteria used in the evaluation of the S24 companies. In particular it concerns the certainty of trade, which is the basic principle of civil law and ease of doing business. It plays an important role in the context of World Bank Group rankings and in eliminating barriers for business in Poland.

The second chapter presents the evolution of legal regulations concerning S24 companies. It analyzes not only the laws in their final form, but also presents the legislative process with emphasis on the opinions expressed in social consultations. This chapter also includes a description of the progress of work on the implementation of S24 companies into the Polish legal system in a holistic manner. In addition, opinions of the doctrine on the solutions adopted by the legislator that led to creation of S24 subtype are discussed.

Historical analysis is also important for evaluating the introduction of S24 companies into the legal system.

The third chapter is devoted to the analysis of the current legal regulations dedicated to S24 companies. As in the previous chapter it refers to the legislative justification of the adopted law. This part of the thesis presents the registration process as well as performance of internal operations in S24 companies. It is extremely interesting in the context of the limited liability company, under which the legislator decided to introduce an electronic shareholders meeting. This deliberation has a significant importance for the evaluation of the discussed regulations expressed in the fifth chapter.

The fourth chapter is a comparative law part of dissertation. My research shows that introducing company subtypes, electronic registration process and templates is a global trend in commercial law, as was already stated during the 19<sup>th</sup> International Congress of Comparative Law, which took place in 2014 in Vienna<sup>1</sup>. An attempt to discuss all foreign regulations of this subtype is broader than the scope of this thesis, hence the fourth chapter contains comparative legal analysis of a few selected examples. It focuses on the German legislation which introduced the subtype GmbH in the form of UG (*Unternehmergesellschaft haftungsbeschränkt*) and a simplified registration mode using the *Musterprotokolle* templates; Spanish legislation, which introduced the electronic registration of companies and two subtypes of S.R.L in the form of *Sociedad Limitada Nueva Empresa* (SLNE) and *Sociedad Limitada de Formación Sucesiva* (SLFS). This chapter analyses the project of the Societas Unius Personae directive, which was about to introduce a new subtype of limited liability company into the European legal systems. This part also analyses European Model Company Act project, in which the proposed solutions contain many similarities to the solutions used in S24 companies. Due to the efficiency and dynamics of development of Asian economies, the regulations regarding electronic registration of companies in the Republic of Korea are presented in this chapter.

Fifth chapter is the crowning part of the dissertation and provides a substantive reminiscence of it. In particular, evaluation of the S24 companies as a subtype and evaluation of the constitutionality of regulations containing templates used in this subtype. Chapter also sums up the issues regarding the legal form of article of associations and provides practical comments on the functioning of the IT system used in creation of S24 company

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<sup>1</sup> Congress resulted in publication: *General Reports of the XIXth Congress of the International Academy of Comparative Law Rapports Généraux du XIXème Congrès de l'Académie Internationale de Droit Comparé*, red. M. Schauer, B. Verschraegen, Dordrecht 2017.



subtype. This part of the thesis also includes the analysis of statistical data as well as the evaluation of S24 regulations from certainty of trade and ease of doing business point of view. In the fifth chapter, a number of *de lege ferenda* postulates are also submitted.

The research carried out in the dissertation entitles to formulate conclusions. First of all, it should be noted that a number of discrepancies between S24 companies and classical companies justify the existence of a separate subtype of companies. The doctrinal name "S24" due to its informational value and popularity in legal and colloquial language supports the point that it should be an obligatory element of this subtype company name.

Ordinances containing contract templates for establishing S24 companies and performing its internal activities cause a number of constitutional doubts. In particular they violate the statutory exclusivity principle, because regulations cannot concern matters reserved for the statutes. In addition, the ordinances do not comply with statutory guidelines. A comprehensive analysis of all S24 regulations leads to the conclusion that they do not adequately implement the certainty of trade principle. The lack of mandatory participation of a public notary during the creation of some S24 companies and departure from notarial form needs to be critically evaluated. Contrary to legislative assumptions and expectations, the regulation of S24 companies did not significantly contribute to ease of doing business. Despite the growing popularity of S24 companies, their regulation has not abolished nor has it significantly reduced the key barriers to business operations. It also did not ensure Poland's promotion in international rankings of economic freedom.

In the context of the comparative legal analysis, it was found that digitalization of companies is a worldwide trend. The Polish S24 companies are therefore part of the trends in commercial law visible both in Europe and worldwide. Overall however, the characteristics of this kind of companies and the speed of changing technologies used to create, run and supervise them speaks for their separate statutory regulation. In Polish conditions, this direction would also solve the problem of the unconstitutionality of the regulations governing S24 companies.

In the light of research carried out in the dissertation, it is necessary to postulate *de lege ferenda* for the transfer of the regulation of S24 companies into a separate act of law, being a *lex specialis* in relation to c.c.c. Previous "mixing" within c.c.c. regarding classical and electronic companies does not serve either trade nor the addressees of legal norms. In addition, having S24 regulations in c.c.c may significantly impede further digitization of company law. The legislator should be looking for solutions that will not only ensure using

new technologies in commercial law, but above all that will comply with the constitution and will be an accepted legal doctrine.

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