

Changes to national reorganisation procedures effective 1 June 3/31/23

Businesses often undergo changes during their lifetime as the national economy and legislation also keep evolving. Latvian reorganisation procedures had remained essentially unchanged for quite a while. Effective from 1 June 2023, the Commerce Act has been amended to change the procedures for conducting national and cross-border reorganisations of commercial entities. These amendments are quite extensive, so this article explores just a few aspects of changes to the national reorganisation procedures.

Changes to various aspects of reorganisation

Although the Commerce Act's Chapter C, "Reorganisation of Commercial Entities" has been recast, this doesn't mean the reorganisation procedures have been changed entirely. The amendments retain the previous rules on a national reorganisation but they change the timing of creditor protections, which significantly affects the reorganisation process. Substantial changes have been made to certain aspects of reorganisation:

- The timing of creditor protections has been moved towards the end of the reorganisation process. Previously, a reorganisation could not be completed without securing creditor claims. Creditor protections have now been moved to the period after the reorganisation has taken effect. This significantly reduces the reorganisation time frame.
- The national conversion rules and shareholder protection procedures have been changed.
- Additions have been made to the information that must be disclosed in a prospectus.
- The chapters dealing with private limited companies (SIA) and public limited companies (AS) as parties to a reorganisation have been combined.
- The clauses prescribing a simplified reorganisation procedure have been combined.

From 1 June 2023, shareholders in the reorganised entity become shareholders in the acquiring entity in all reorganisations. A deviation from the general principle is permitted in a split-off. For example, if all the shareholders consent, they may agree on a different composition of shareholders in the acquiring entity. Each shareholder who voted against the resolution on reorganisation and asked the entity to buy back his shares in the acquiring entity has the right of withdrawal, which includes an entitlement to compensation.

The Commerce Act's rules governing reorganisation agreements have also changed:

- Since 7 June 2023 the parties to a reorganisation must submit for posting on the commercial register's website not only a draft agreement verified before submission but also the signed reorganisation agreement, which includes a postponing condition, i.e. it doesn't take effect until after the general meeting of shareholders has approved it by the resolution on reorganisation.
- A prospectus and an auditor's opinion may also be prepared on the draft and on the final agreement. These changes are due to the fact that the previous rules required only the draft agreement to be submitted for publication on the entity's file, while in practice the signed agreement was also submitted for publication in national and cross-border reorganisations.
- The Commerce Act's section 338(4) permits commercial entities to amend the agreement or draft that has been filed with the commercial register and announced. The key difference is that if previously the agreement or draft was amended, the reorganisation had to be started

again.

The amendments shorten the time frame for challenging the resolution on reorganisation, thereby cutting the total duration of the reorganisation process and aligning the time limits set by the Commerce Act. Previously, the resolution could be challenged within three months and now this can be done within a month after the resolution was passed.

The Commerce Act now has a separate chapter titled “Simplified Reorganisation Procedure”, which summarises all cases where the reorganisation process involves preparing fewer documents or where these decisions are subject to different procedures, and where no decision needs to be made.

The amendments offer a new definition of “conversion” (section 337 of the Commerce Act) that stresses the essence of conversion – changing the type of entity while keeping its status as a subject of law:

- To make the application of draft laws more transparent, a distinction is made as to how the entity is referred to during its conversion. The entity is treated as the “converting” entity until the reorganisation takes effect and as the “acquiring” entity after its type has changed.
- Conversion starts by drafting a resolution on conversion. This must be filed with the Enterprise Registry and announced under section 338(5) of the Commerce Act only where a partnership is converted into a company. Here it’s especially important to secure the protection of creditors, which deteriorates as the form of entity changes from a partnership to a company because creditor protections no longer apply (the members’ personal liability for the entity’s debts disappears).
- Changes to share capital are also required:
 - Share capital must be established and paid up where a partnership is converted into a company.
 - Share capital must be increased where a private company (SIA) is converted into a public company (AS).
 - If a public company (AS) is converted into a private company (SIA) and seeks to reduce its share capital to the statutory minimum for a private company, such reduction should be made under the procedure prescribed for reducing share capital.
- The lawmaker has given up the requirement that the company should elect a board and a council (if a council is set up) once the resolution on reorganisation has been passed. The Commerce Act states that a board and a council should be elected only where a partnership is converted into a company because then it’s necessary to set up the company’s governing bodies.

For cross-border reorganisations, the amendments make changes that significantly reduce the time it takes to complete such a reorganisation. Specifically, two new types of cross-border reorganisation have been introduced: a cross-border split-up and a cross-border conversion.