

Quo Vadis Company Law?
Modern institutions of company law
through the prism of new regulation on simple joint-stock company

“Ta pantha rei kai ouden menei” – as claimed Heraclitus, everything changes, nothing remains in one place. Although by saying these words 2500 years ago he certainly did not mean changes in company law, his phrase ideally depicts today’s dynamics of commercial relations. And even despite the nature of these relations probably remains the same over the centuries, the institutions that enable economic activity constantly change.

A company, described once as the greatest single invention of modern time, serves a variety of purposes, ranging from trade between individuals through medical research, creation of computer software to charitable activities. Although it is not easy to find the ideal legal entity for such a diverse range of activities, the experience of the last 150 years has proven that such basic features as legal personality, limited liability of shareholders, transferability of shares and transfer of the day-to-day management and supervision of the company by investors to officers appointed by them constitute the core features of the company worldwide.

These universal characteristics remain unchanged over the years, but in a changing world, it is necessary to take into account the current needs of entrepreneurs, especially in rapidly growing economic sectors. It is often necessary to introduce new company law institutions so that domestic law can meet the requirements of the regulatory competition and attract foreign investors. Following international legislative trends, a new form business entity - a simple joint-stock company (hereinafter: P.S.A.) is scheduled to be introduced into Polish law on 1 March 2021. The regulation of the new company brings four revolutionary institutions to Polish company law.

The regulation provides for a uniform board of directors (instead of the previous management and supervisory boards), new rules on directors’ liability (such as business judgment rule), new types of shares (founders’ shares, unlimited preference shares, while at the same time all of P.S.A. shares do not have a par value) and the abolishment of the minimum capital requirement, which makes it possible to form a company by contributing just PLN 1 (instead of the previous PLN 5.000).

The research team led by Prof. Konrad Osajda aims to analyse new institutions with the use of dogmatic, empirical, and comparative legal methods. The analysis will be carried out not only from the perspective of P.S.A. regulation but primarily based on well-established institutions existing in other legal systems (American, English, German and French laws). This will allow highlighting advantages and disadvantages, as well as the effectiveness of solutions adopted abroad thanks to many years of experience in their application. The project deals with issues fundamental for social and economic relations, such as freedom of economic activity, social responsibility of entrepreneurs, and the limits of contractual freedom.

The results of the research will help to understand the theoretical background of the discussed institutions, the economic reasons for their introduction into the Polish law, and set a stage for further discussion on company law by inspiring interpretation of regulations and future research. Additionally, the research will be valuable for various professional groups - researchers, judges, corporate law practitioners. The project may also be important for entrepreneurs who will decide to conduct business activity in the new form, as well as for directors of P.S.A., who should know about the scope of their duties and responsibilities before taking up their function.

This on the one hand will allow the research group to conduct a complex study concerning the examined institutions in various legal systems, on the other hand, it will highlight the particularities of Polish regulations against the background of their international counterparts. The comprehensive approach to the research will allow answering the question of the direction in which company law is heading.