

Bird & Bird

Company conversions "anew"

Your practical guide

January 2024



Five facts about the new legislation

Purpose of the Act:

- implementation of the EU Directive 2019/2121
- creation of a single and transparent legal framework that provides for various types of domestic as well as cross-border company conversions and changes of legal form.

New terminology:

- conversions
- mergers – acquisitions or amalgamations
- divisions – split-ups or spin-offs

New Act No. 309/2023 Coll. on Conversions of Commercial Companies and Cooperatives and on Amendments and Supplements to Certain Acts ("Act") will enter into force on **1 March 2024**

Law:

- before the entry into force of the Act, conversions have long been part of the Commercial Code (Sections 69, 69a, 69aa, 69b)
- these will be completely excluded from the Commercial Code and included in the Act

New possibilities:

- spin-off
- cross-border division
- cross-border change of legal form

Five general rules

Effective date:

- a conversion takes effect **on the date of registration** of the conversion in the Commercial Register
- before the registration of the conversion in the Commercial Register, the admissibility of such conversion must be **certified by an auditor** in an auditor's report.

Conversion project:

- the basic document of each conversion is a so-called **conversion project** drawn up jointly by the statutory bodies of the participating companies, which will replace the acquisition agreement and the amalgamation agreement in the context of merger legislation.
- the general content of the conversion project applicable to all types of companies is defined in Section 8 of the Act.

Conversion approval:

- in the case of mergers of limited liability companies, joint-stock companies and simple share companies, i.e. in most mergers carried out in practice, the conversion project must be **approved by all shareholders** of the participating companies, usually at a general meeting, and drawn up in the form of a **notarial deed**.

Corresponding duties:

- a draft of the conversion project is to be **deposited with the register of deeds** for each participating company
- a notice of the deposit of the draft terms of conversion in the register of deeds needs to be **published in the Commercial Journal** at least one month before the date of the general meeting which is to decide on its approval
- in the case of pledged shares of a company that is being dissolved, **the pledgees also need to be notified** of the draft conversion project in advance.

Conversion notification:

- each company to be dissolved must provide advance **notification of the draft conversion project to the appropriate competent tax authority**, which is the tax office or customs office, at least 60 days before the date of the general meeting which is to decide on the approval of the draft conversion project

Most important effects of a conversion

Mergers

In **mergers**, on the effective date of the conversion:

1. the capital of a company that is being dissolved is transferred to the successor company,
2. the members of the company being dissolved become members of the successor company,
3. the original company(ies) is dissolved,
4. in the case of mergers specifically, new successor companies are created.

Split-ups

In the case of **split-ups**, on the effective date of conversion:

1. the capital of the company being dissolved is transferred to the successor companies,
2. the members of the company being dissolved become members of the successor companies,
3. the split-up company is dissolved,
4. in the case of a split-up by amalgamation, successor companies are created.

Spin-offs

In the case of **spin-offs**, on the effective date of conversion:

1. the capital of the company being divided, determined in the conversion project, is transferred to the successor companies,
2. the members of the company being divided also become members of the successor companies,
3. in the case of spin-offs by merger, successor companies are created.

Inadmissibility of a conversion

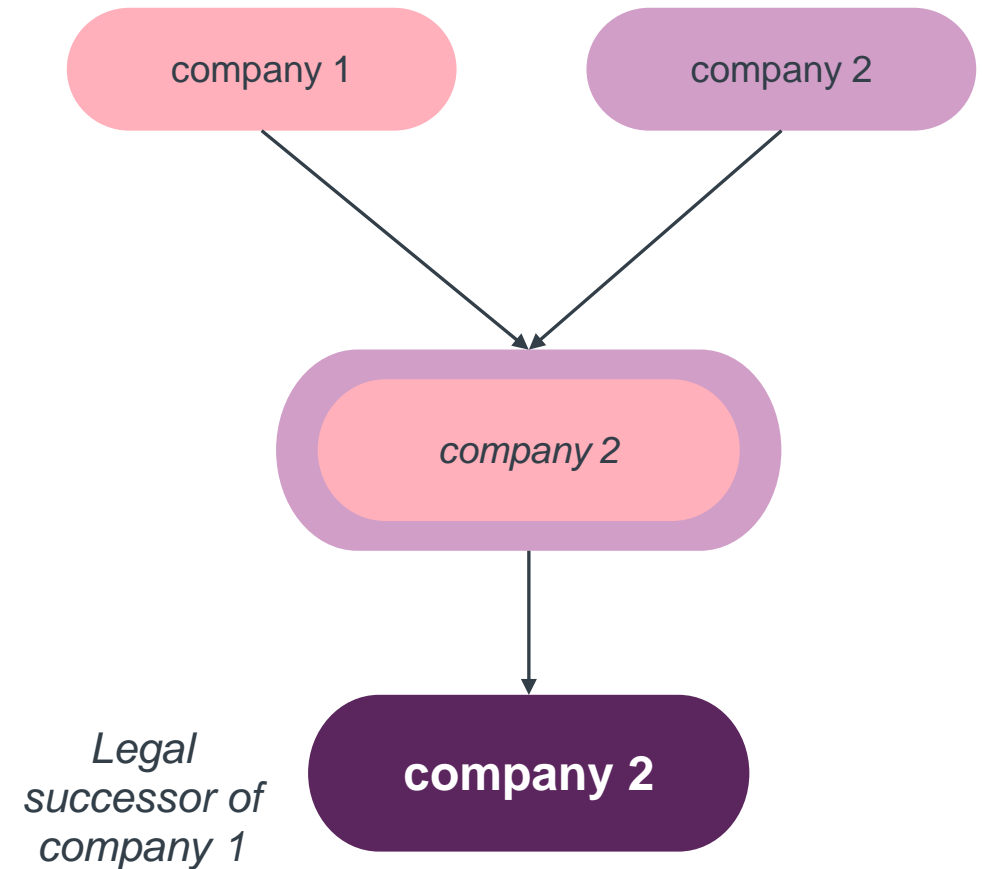
- Conversion is not permissible if the participating companies and the successor companies have a different legal form (exceptions are regulated by the Act).
- Conversion is also not permissible if:
 1. a participating company or successor company is in liquidation,
 2. a participating company or successor company is the subject of a declaration of bankruptcy (this does not apply if the trustee consents to the conversion),
 3. the effects of the commencement of restructuring proceedings or the authorisation of a restructuring are effective in relation to a participating company or successor company,
 4. the court is conducting winding-up proceedings in relation to a participating company or successor company,
 5. as a result of a spin-off, a company and any successor company would be exposed to imminent insolvency.

National mergers – "old" acquisition

An acquisition of companies occurs when **one or more companies are dissolved on the basis of dissolution without liquidation**, while the business assets of these companies being dissolved are transferred to another, already **existing** company, which becomes the legal successor of the companies being dissolved.

Acquisition:

- This form of conversion is permissible for all forms of companies.
- In general, all companies participating in a conversion must have the **same legal form**.
- An exception is made for the acquisition of a limited liability company or a simple share company with a public limited company if the successor company is a public limited company.

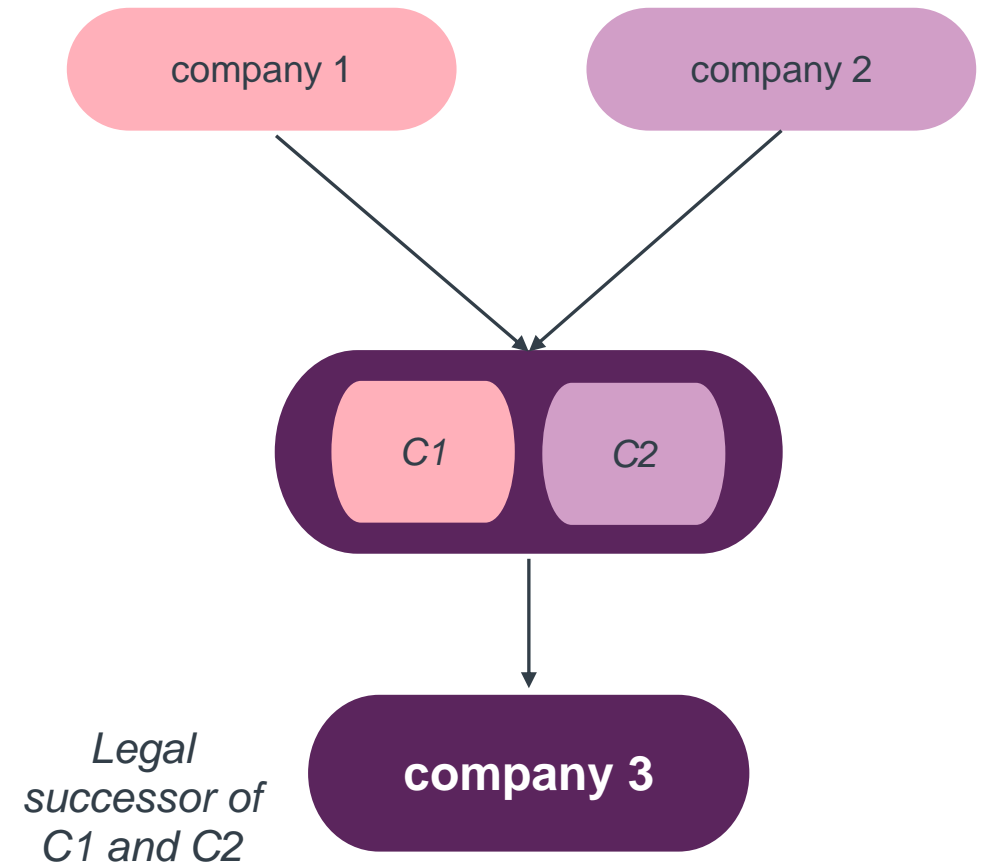


National mergers– "old" amalgamation

Amalgamation of a company occurs when **one or more companies are dissolved on the basis of dissolution without liquidation**, while the business assets of these companies being dissolved are transferred to another, **newly established** company, which becomes the legal successor of the companies being dissolved.

Amalgamation:

- This form of conversion is permissible for all forms of companies and cooperatives.
- All companies participating in this type of conversion must have **the same legal form**.

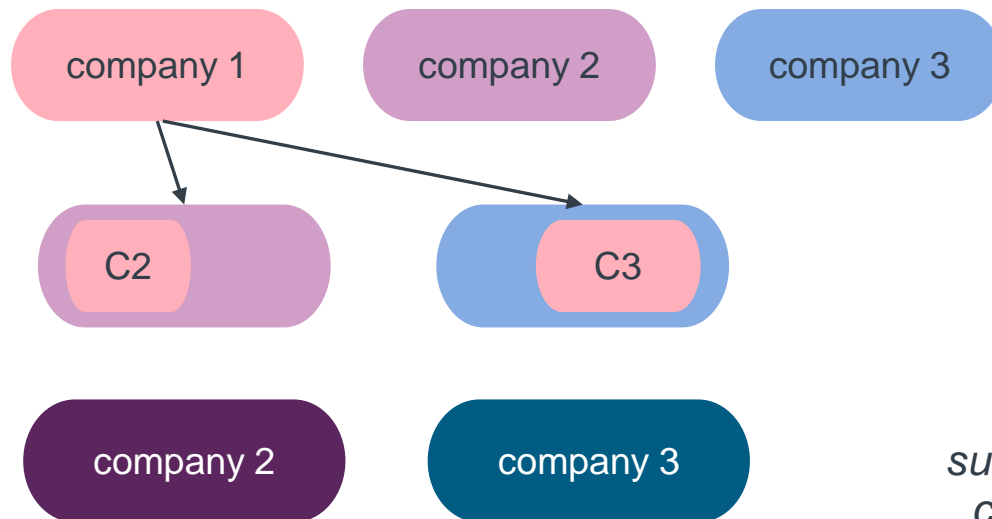


National divisions – split-up

The Act distinguishes the following forms of splitting-up companies, namely **splitting-up by acquisition**, **splitting by amalgamation** and **splitting by a combination of acquisition and amalgamation**.

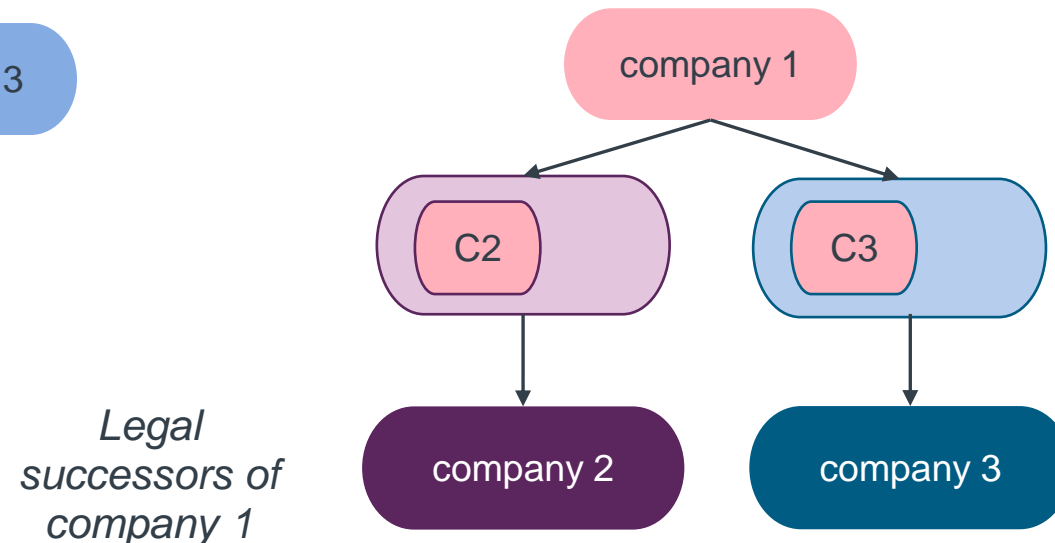
Split-up by acquisition:

- occurs when a company being divided is dissolved and all of the business assets of that company are transferred to other, already existing companies, which become the legal successor of the dissolved company



Split-up by amalgamation:

- occurs when the company to be divided is dissolved, while all of the business assets of this company are transferred to other, newly established companies, which become the legal successor of the dissolved company

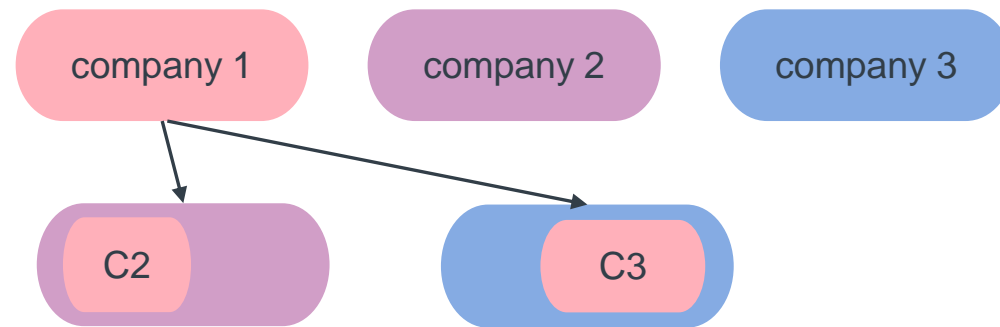


National divisions – spin-off

The Act also introduces a completely new legal term, the so called "spin-off" of companies and distinguishes between the following forms: **spin-off by acquisition**, **spin-off by amalgamation** and **spin-off by combination of acquisition and amalgamation**. Spin-offs (regardless of which of the mentioned forms is applied) do not apply to all forms of companies, but are only permissible for limited liability companies and public limited companies.

Spin-off by acquisition:

- occurs when part of the business assets of the company being spun-off are transferred to one or more **existing** companies

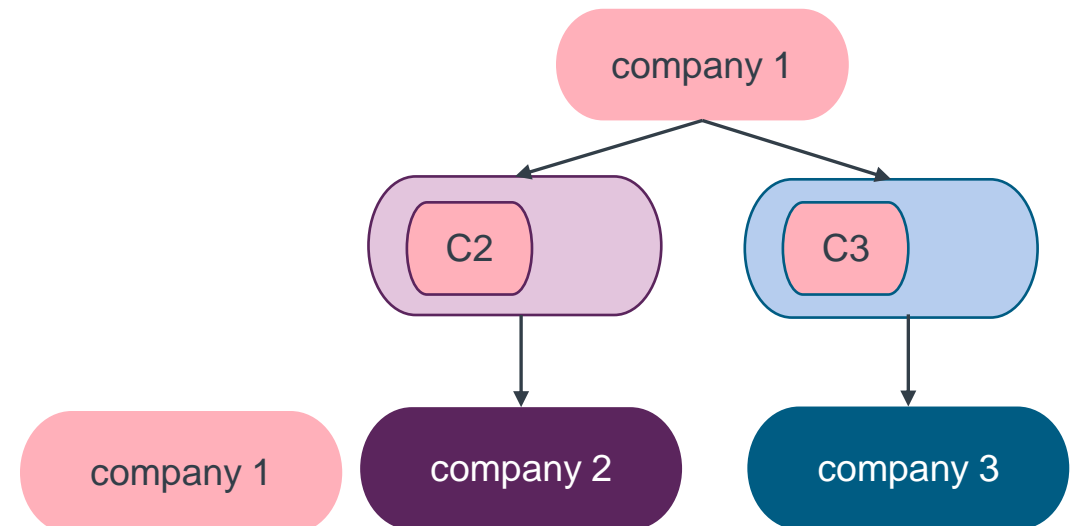


Spin-off by amalgamation:

- occurs when **part of the** business assets of the company being spun-off is transferred to one or more **newly established** companies



Legal successors



Cross-border conversions – five specifics

Definition:

- a cross-border conversion is a **foreign merger** (if at least one participating company or successor company is a Slovak company and at least one participating company or successor company is a foreign company) or
- a **cross-border division** (if at least one participating company or successor company is a Slovak company and at least one participating company or successor company is a foreign company, where the successor company can only be the newly formed company)

Conversion project:

- for cross-border conversions, a cross-border **conversion project is required**
- the general content of a cross-border conversion project are defined in Section 77 of the Act

Limitations:

- a **cooperative cannot participate** in a cross-border merger
- the participating foreign company cannot be a company other than a company of a similar legal form allowed in another EU Member State

Additional duties:

- prior to the general meeting which decides on the cross-border conversion, the statutory body of each participating Slovak company is obliged to prepare a **written report** explaining and justifying the cross-border conversion, especially with respect to the consequences of the cross-border conversion for the future business operations of the company and the consequences of the cross-border conversion for the employees of the company

Impermissibility:

- in the case of the cross-border division of companies, it is **not permissible** for a Slovak company being divided or a successor company to be a company other than a joint-stock company or a limited liability company

Cross-border conversion – other relevant aspects

Cross-border mergers

- In addition to the requirements imposed by Section 77 of the Act, the draft cross-border conversion project must also satisfy **the requirements set forth in Section 96(1) of the Act**. The draft of cross-border conversion project shall be drawn up jointly by the statutory bodies of the participating companies.
- If the cross-border merger requires amendments to the memorandum and articles of association of the successor company and such amendments are not part of the draft cross-border conversion project, **the successor company must approve them** together with the draft cross-border conversion project.
- If, in the case of a cross-border merger, a successor company owns all the shares of the companies dissolved in the cross-border merger to which voting rights are attached and the successor company does not acquire any new shares, the **simplified cross-border merger procedure** referred to in Section 99 of the Act can be applied.

Cross-border divisions

- In addition to the particulars required by Section 77 of the Act, the draft cross-border conversion project for a cross-border division must also contain the **particulars specified in Section 101(1) of the Act**. The draft of cross-border conversion project is to be drawn up by the statutory body of the company being divided.
- If, in the case of a cross-border spin-off, the divided company transfers part of its capital to one or more successor companies in exchange for the granting of shares in the successor companies to the divided company itself, the **simplified procedure referred to in Section 104 of the Act** can be applied.
- In a cross-border split-up, each of the successor companies is liable for the liabilities that have passed from the company being split to the other companies up to the amount of the net assets that have passed to the company on the effective date of the split-up. The successor companies are **jointly and severally** liable for the performance of the obligation.
- In a cross-border spin-off, the company is liable for the liabilities that have passed from the divided company to the successor companies. The obligation is borne **jointly and severally** by the company being divided and by the company to which the obligation has been transferred. The company being divided and the successor company are liable as indicated in the first sentence up to the amount of the net assets transferred to that company on the effective date of the division.

Change of legal form

National

- The types of changes in legal form recognised by law are listed in Section 105 of the Act. To effect a change in legal form, it is necessary for the statutory body of a company to prepare a **draft of the project for a change of legal form**. The proposal must, in particular, contain the elements specified in Section 106(3) of the Act.
- If a simple stock company, a joint stock company or a limited liability company is planning to change its legal form the statutory body of the company is obliged to draw up a written report in which it explains and justifies the change of legal form from a legal and economic point of view.
- If a limited liability company, joint-stock company or simple stock company are planning to change its legal form, and if after the change of legal form, the commercial company **does not create capital or creates capital that is lower than before the change of legal form**, the statutory body of the company is obliged to **provide notification** of the change of legal form within 30 days from the effective date of the change of legal form to those creditors of the company that are known and who have incurred claims against the company before the date of publication of the notice of registration of the change of legal form, and **publish information about the change of legal form** in the Commercial Journal twice in succession at least 30 days apart, together with an invitation to the creditors to register their claims.

Cross-border

- A cross-border change of legal form is **not permissible** if the Slovak company that changes its legal form cross border or the Slovak converted company is a company **other than a joint stock company or a limited liability company**.
- A foreign company that changes its legal form cross border or a foreign converted company cannot be a company other than a limited liability company or a public limited company under the law of another EU Member State.
- In addition to the requirements set forth in Section 77 of the Act, a cross-border change of legal form project must also contain the **requirements set forth in Section 114(1)(a), (b) of the Act**. The cross-border change of legal form project is to be prepared by the statutory body of the company.
- Creditors of the company that have outstanding claims against the company as of the date of publication of the draft of the cross-border change of legal form pursuant to Section 83 of the Act and that do not consider the guarantees offered in the cross-border change of legal form project to be sufficient **have the right to demand of the company that the satisfaction of their outstanding claims be adequately secured**.

New legislation – five positive impacts

Encourages greater cross-border mobility for companies

Protects shareholders that do not become shareholders of successor companies by way of payment in the form of compensatory shares

Enhances protection and the right of employees to information and to participation in consultations under the labour law provisions in cross-border company transfers

Improves the functioning of the internal market for companies and the exercise of the freedom of establishment

Guarantees the right of creditors of the participating companies to obtain sufficient security for outstanding claims from the successor companies



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