POLAND

Kochanski Brudkowski & Partners s.c.
Warsaw

A Corporate Buy-Back

Piotr Kochanski

A corporate buy-back belongs to a group of several institutions newly and more precisely regulated by the Commercial Companies Code dated September 15, 2000 (the "CCC"). In many legal systems a buy-back is understood generally – as a variety of contracts under which the seller undertakes to buy securities back form the purchaser at a specified price in future. Under Polish corporate law, however, the buy-back is interpreted narrowly - only as an operation of acquiring by a company of its own shares.

Generally, the Polish law prohibits the companies from acquiring their shares – mainly in order to protect the companies' creditors and shareholders interests (Art. 362 § 1 of CCC). There are, however, several exceptions allowing the companies to perform the buy-out. These include, for example, acquiring own shares in order to prevent a significant damage threatening the company, purchasing the shares in order to offer them to the company's employees or redemption purposes. The companies may also buy own shares in the course of enforcement proceedings against a shareholder, to satisfy the companies' such claims that could not be satisfied otherwise.

In some cases several conditions must be met, before the buy-out may effectively take place. First, the acquired shares must have been paid up in full. Then, the company must create a reserve capital fund, with a value no less than the shares' purchase price. Finally, the total nominal value of acquired shares must not exceed 10% of the company's share capital (including the nominal value of outstanding own shares, which have not yet been disposed of) (Art. 362 § 2 of CCC).

If the shares have been acquired contrary to aforementioned provisions of law, the company must dispose of such shares within one year from the date of their acquisition – otherwise the shares must be redeemed.

By Piotr Kochanski, (Managing Partner)
p.kochanski@kochanskioffices.com.pl
www.kochanskioffices.com.pl

KOCHAŃSKI BRUDKOWSKI & PARTNERS s.c.
PARTNERSHIP OF ADVOCATES AND LEGAL COUNSELLORS