

Preface

It is my pleasure to present a collection of my papers on *lex societatis* and company migration to English-speaking readers. In this volume, published in cooperation with the Adam Mickiewicz University Press in Poznań, I have attempted a synthetic analysis of key problems related to this topic based on EU law on the one hand, and Polish international and commercial law on the other. The specific purpose of releasing this collection in English is to open the debate that has been taking place in the Polish legal sciences to a broader, international group of readers. This comes at a pivotal moment for Polish legislation. After the request for a preliminary ruling lodged by the Polish Supreme Court on 22 October 2015 in the case C-106/16 *Polbud-Wykonawstwo sp. z o.o., in liquidation*, which is of crucial importance to the interpretation of Article 49 in conjunction with Article 54 of the Treaty on the Functioning of the European Union, as well as Article 270(2) and Article 459(2) of the Code of Commercial Companies of 15 September 2000, Polish company law has begun to attract much more attention from the international community.

This volume consists of four substantive chapters.

In the first, I discuss the concept of *lex societatis* from the perspective of the rules of conflict of laws. In particular, I put forward a suggested interpretation of Article 17(1) of the Private International Law Act of 4 February 2011. In this chapter my primary focus is on the understanding of the term 'seat' of a legal person, as used by the Polish legislator in the abovementioned provision. I suggest the term be construed as 'registered office', in agreement with the prevailing opinion among Polish international law scholars. The chapter also contains certain *de lege ferenda* comments on the need to regulate the activity of pseudo-foreign companies in Poland, as well as broader remarks on the possibility of mitigating legal risks related to the abuse of the *lex societatis* connecting factor.

In the second chapter, entitled *Cross-border transfer of a Polish company's registered office abroad*, I present my view on the compliance with EU law of the Polish provisions of the CCC that require the winding-up of a company

whose general meeting resolved to transfer the seat abroad, with special focus on Article 49 in conjunction with Article 54 TFEU. In my opinion, these provisions, although they restrict the freedom of establishment, are justified by overruling reasons of public interest, such as the protection of creditors, employees, minority interest, and public finance. But the opposite view also enjoys broad support in Polish literature. I believe that to eventually determine the validity of one perspective against the other, a binding opinion of the Court of Justice of the European Union is required. This will be developed further in chapter four. Further on, the chapter also contains a discussion of the interpretation of Article 19 PILA, examining, among other things, the hypothesis on the requirement to apply the laws of emigration and immigration states cumulatively.

The third chapter, *Cross-border transfer of a company to Poland*, is my attempt at interpreting the CCC in a way that ensures the effectiveness of the company's right to immigrate, as enshrined by the Treaty. The starting point for the discussion is the Swiss private international law act. The third chapter lays out a number of detailed dogmatic law theses related to, for example, the form of a notary deed, so-called equivalence of terms, and the adjustment of company's articles of association (by-laws) to the requirements of foreign law.

Finally, the fourth chapter presents certain critical remarks to the opinion of advocate general Kokott and the judgment of the Court of Justice of the European Union, issued in the case C-106/16 *Polbud-Wykonawstwo sp. z o.o., in liquidation*.

To conclude, I would like to add that the first chapter is the English version of my paper entitled *Kolizyjnoprawne pojęcie siedziby osoby prawnej* published in *Kwartalnik Prawa Prywatnego*, R. XXII: 2013, No. 2, p. 277-316. The second chapter is the English translation of my article *Transgraniczne przeniesienie siedziby statutowej polskiej spółki handlowej zagranicę*, which originally appeared in *Problemy Prawa Prywatnego Międzynarodowego*, Vol. 13, *Prace Naukowe Uniwersytetu Śląskiego* No. 3165, Katowice 2013, p. 23-64. Finally, the third chapter is the English version of my paper entitled *Transgraniczne przeniesienie spółki handlowej do Polski*, which can be found in *Przegląd Prawa Handlowego* 2015, No. 1, p. 24-33 and is co-authored by Mr. Maksymilian Saczywko, who has consented to the inclusion of the text in this collection. The publishers of the three journals have given me their written permission to have the papers republished in a volume in the English language, for which I owe them my gratitude. Fourth article was prepared exclusively for this publication.