

21. June 2019

THE TRANSFER OF ALL COMPANY ASSETS OF A GMBH - STILL SUBJECT TO THE PARTICIPATION OF THE SHAREHOLDERS' MEETING

THE FEDERAL COURT OF JUSTICE [BGH] DEALS IN ITS DECISION DATED 28 JANUARY 2019 (FILE NO. II ZR 364/18) WITH THE ISSUE, WHETHER IN ANALOGOUS APPLICATION OF SECTION 179 GERMAN STOCK CORPORATION ACT [AKTG] THE TRANSFER OF ALL COMPANY ASSETS OF A LIMITED LIABILITY COMPANY [GMBH] WITHIN THE FRAMEWORK OF A SALE AND PURCHASE AGREEMENT IS INEFFECTIVE TOWARDS THE BUYER WITHOUT AN APPROVING RESOLUTION OF THE SHAREHOLDERS' MEETING. THE BGH EXTENSIVELY COMMENTS ON THE STRUCTURAL DIFFERENCES BETWEEN A GMBH AND A STOCK CORPORATION AND REJECTS AN ANALOGOUS APPLICATION OF SECTION 179 AKTG TO A GMBH. NEVERTHELESS, THE BGH CONSIDERS AN APPROVING SHAREHOLDERS' RESOLUTION INTERNALLY NECESSARY. ACCORDING TO THE BGH, THE CONTRACTING PARTY MAY ONLY RELY ON THE UNRESTRICTED POWER OF REPRESENTATION OF THE MANAGING DIRECTOR IF HE WAS UNAWARE OF THE ABUSE OF THE REPRESENTATIVE POWER AND IF THIS ABUSE WAS NOT OBVIOUS TO HIM. [\(more...\)](#)

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