

FINANCING FOR THE LIMITED LIABILITY COMPANY IN POLAND

Currently binding law enable an incorporation of limited liability companies with the minimal share capital equals to 5,000 PLN. By this reason frequently shareholders face the problem how subsidize the Company in a short time when e.g. need urgent more funds for the purchase of goods. How, then, a shareholder may subsidize a limited liability company (the “Company”). The quick way to raise funds for the Company may be financial aid granted to a Company by its shareholders. Three such possibilities are discussed below.

1. ADDITIONAL PAYMENTS

Using this method is possible only if the Articles of Association stipulate this option (thus, a well-done draft of the Articles of Association is so important). To make the provisions governing additional payments valid and effective - they must set forth a maximum amount of an additional payment, quantifiable in relation to shares.

In case the Articles of Association do not stay for additional payments but shareholder intends to subscribe for them, amendment of the Articles of Association and its registration in the National Court Register (KRS) shall be required.

If the Articles of Association regulate such an option the Shareholders Meeting must adopt a resolution on additional payments whereas the Management Board is not obliged to register the resolution with the registry court. The obliged shareholder may make the payment on the bank account of the Company immediately after its adoption (unless the resolution stays otherwise).

It must be remembered that if the shareholder fails to make the payment in the due term she/he is obliged to pay statutory interests on behalf of the Company.

Additional payments which are made according to the provisions of the Articles of Association do not constitute a tax profit for the Company, whereas refund of the payments for both, the Company and the shareholders will be tax neutral also. But the additional payments are considered by the civil law transactions law as amendment of the Articles of Association and are subject to this tax. The Company is obliged to notify that fact to the fiscal office (PCC-3 tax return) and pay the tax within 14 days since the adoption of the resolution regarding the additional payments.

2. A LOAN

For the evidence purposes it is recommended that the loan agreement was concluded in writing. In a loan agreement you must decide on the amount of the loan, amount of the interests and terms of repayment. There is no requirement that the loan is subject to interest rates, however, no interest will have tax consequences - as far as I know the tax authorities tends to treat such loan as a privilege of the Company and no interest charge deem as a gratuitous benefit from the shareholder for the Company.



As a consequence the Company will be charged with taxable income in the amount of the interest that would have paid if using a commercial loan. Also the shareholder can be charged with increased income due to the conclusion of the loan agreement between the related parties. So to avoid this type of a problem, it is safe to take out a loan to the Company from its shareholders at the interest rate close to the average interest rate used by banks.

Repayment of the loan is not taxed on either side. However, the interest on the shareholder's side constitute an income that should be added to your income and taxed.

The loan agreement is effective immediately and thus only after its signing the money may be transferred on the bank account of the Company.

3. INCREASE OF THE SHARE CAPITAL

The increase of the share capital, in general, requires amendment of the Articles of Association (in the form of a notarial deed) and thus its registration in the National Court Register. Only after registration of changes the share capital is increased. However a well-drafted Articles of Association usually prescribed for, allowed by the law, increase of the share capital without amendment of the Articles of Association (and a need to go to the notary public) option. To make such a provision valid the Articles of Association must provide both - the amount of the capital increase and the date by which such increase will be possible. In this case, the increase of the share capital requires only a resolution of the Shareholders Meeting on the capital increase and the registration in the registry court.

Even before the registration of the increase with the registry court the contribution to cover the increased capital shall be made in full. The statement on subscription for shares in the increased share capital and statement of all members of the Management Board that contributions were made in full must be attached, apart from the resolution on increase of the share capital, to the motion for registration of the share capital increase.

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If you are interested in subsidize a Company or need a legal advice on subsidizing or current legal services on behalf of the Company, please contact me.

I want to underline that information contained in this paper is true and correct when posted on my website, but it does not constitute a legal advice. Specific legal advice may be provided only in response to a specific inquiry and in relation to a specific facts.

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