

## **LIMITED LIABILITY COMPANY IN POLAND**

### **INCORPORATION, REGISTRATION AND LEGAL GROUNDS**

The limited liability company is the most popular, except an individual business activity, form of running a business in Poland and the most popular form of a business activity in Poland chosen by foreigners.

Amendments to the Commercial Partnerships and Companies Code, which regulates this company, subsequently facilitated its incorporation, especially by limiting the minimal share capital amount. But what rules applies to this company, how it is constructed, how it may be registered and how much commitment it will require from us? And what it is this 24 - hours company? I invite you to read my paper.

#### **1. WHAT IS A LIMITED LIABILITY COMPANY (LCC)**

The limited liability company (hereinafter: the “Company”) is the most common company in Poland. The limited liability company may be formed by one or more shareholders, however it cannot be incorporated by another sole-shareholder being a limited liability company. The shareholders are not liable in respect of the Company’s obligations. The Company’s share capital equals now to a minimum amount of PLN 5,000 and the shareholders are obliged to contribute it. The Company is a corporate tax payer (CIT). There are two bodies mandatory in the Company: Shareholders’ Meeting and the Management Board. Establishment of a Supervisory Board is voluntary.

To set up a limited liability company the following is required:

- ✓ incorporation of a Company, that is execution of the Company’s Articles of Association in the form of a notarial deed;
- ✓ appointment of the first Management Board of the Company, eventually the first Supervisory Board if we decided on its creation;
- ✓ contribution of the entire share capital;
- ✓ registration in the commercial register (the National Court Register) and in Fiscal Office and Statistical Office (through so-called „one desk”).

Once the limited liability company is incorporated, the Company operates as a so-called “company in organization” and may already act in a limited scope. Once the company is registered in the registry of entrepreneurs, the Company becomes a legal entity, having a full legal personality.

## **2. ARTICLES OF ASSOCIATION**

The Polish Commercial Partnerships and Companies Code set forth the minimal requirements on the Articles of Association of the Company. And so, the Articles of Association shall stipulate at least:

### **2.1. business name and registered office of the Company**

The shareholders are in general free in choosing a business name of the Company, yet it must differ sufficiently from other business names of companies acting on the same market. Provisions of Polish law require that the business name includes additional designation "spółka z ograniczoną odpowiedzialnością" (limited liability company). One may also use its abbreviation: "spółka z o.o." or „sp. z o.o.” (LCC).

### **2.2. subject of activity**

The subject of the Company's activity shall be determined according to the Polish Classification of Activities (PKD), substantially similar to the NACE classification.

### **2.3. the amount of the share capital**

The minimal share capital equals to PLN 5,000.00 (five thousand zlotys) and may be covered with cash or contribution-in-kind.

### **2.4. whether the shareholder may possess one or more shares**

The share capital is divided into shares which may have equal or unequal value. The Company's Articles of Association shall determine whether the shareholders may have one or more shares. In case the shareholders may have more than one share, the shares should be equal and indivisible. The minimal value of one share equals to PLN 50.

### **2.5. number and nominal value of shares subscribed for shareholders**

The Articles of Association shall indicate precisely which shareholder subscribed for which part of shares.

## **2.6. time, if limited**

The Company may be incorporated for unlimited time.

## **2.7. subject of a contribution and the shareholder contributing an in-kind-contribution, as well as number and nominal value of shares subscribed for this contribution in-kind**

The Articles of Association may be limited only to the above indicated clauses, however, it may also provide for many other issues. From my professional experience I would recommend not to limit it to the simplest model but to prepare a “tailor-made” draft. This effort will pay-off in the future. Provisions of Polish Commercial Partnerships and Companies Code provides for that if the Articles of Association does not provides for a given issues, the general rules of law applies, but often, lack of regulations in the Articles of Association means lack of a regulation in our Company at all. Lack of a given regulation may also slow down or make impossible its activity in some cases (e.g. serious disease of one of major shareholders, who may not attend a Shareholders’ Meeting for a significant time and thus some resolutions may not be adopted at all).

In particular, I would recommend regulations on share capital increase without a need of adopting resolution by the Shareholders’ Meeting, an obligation to make additional payments by shareholders, a possibility to repay an advance payment, optimal solutions on representation of the Company, optimal requirements regarding issues which requires prior resolution of the Shareholders’ Meeting and suitable requirements on required majority of votes to adopt resolutions, compulsory or automatic redemption of shares, rules governing inheritance of shares or privileged shares.

## **3. REGISTRATION**

3.1. Except drafting and signing the Articles of Association in the form of a notarial deed it is also required to draft a statement on payment of the whole share capital and to draft a shareholders’ list.

It is a common practice that the notarial deed includes, except the Articles of Association, also a resolution on appointment of the first Management Board and Supervisory Board, if it was established in the Articles of Association.

I also recommend that by the time of visiting the notary public the new appointed members of the Management Board deposited their specimen signatures certified by the notary = it is required in the further registry procedure of the Company.

3.2. The next step is to prepare an application to register the Company in the registry of entrepreneurs of the National Court Register (KRS). The application is prepared on special forms for which additional attachments are required, including:

- two copies of the Articles of Association,
- a statement signed by all members of the Management Board certifying that the Company's entire share capital has been paid up,
- the list of shareholders signed by all members of the Management Board,
- specimens of signatures of the members of the Management Board made before a notary public,
- names, surnames and addresses of the members of the Management Board,
- a document confirming the Company's rights to the premises or real estate, where the Company has its registered office.

Additionally, if the member of the Management Board is a foreigner, it is required to make a statement on lack of the PESEL number (Polish Universal Electronic System for Registration of the Population).

3.3. Due to so-called "one desk" procedure in Poland together with the motion for entry into the National Court Register it is necessary to submit also the following documents: motion for the REGON statistical number issued by the Central Statistics Office and application for the NIP tax identification number with information indicating the relevant tax authorities under the pain of return of the registry motion. The registry court shall deliver the motion and application respectively to the relevant statistics office and tax authorities.

Irrespective of the indicated documentation the Company must be also registered as the VAT payer, which may be done by attaching respective motion to the registry application or at a later stage.

It is worth to mention that the whole process of registration may be conducted by the attorney-in-fact based on a respective power of attorney. If the attorney-in-fact shall also incorporate the Company in the name of the shareholders such a power of attorney shall be granted in the form of a notarial deed.

On the later steps (except the shareholders' list and statement of the Management Board on payment of contribution) all documents and motions may be signed by the attorney-in-fact.

#### 4. 24 – HOURS COMPANY

Since January 1, 2012, there is also a possibility to conclude an Articles of Association by using a template Articles of Association shared in an computer (IT) system. The Articles of Association shall be signed by using so-called an electronic signature under the pain of invalidity. Any amendment is possible only after registration of the Company and shall require the form of a notarial deed. Such form of registration contains several restrictions and is conducted in the form imposed on us in advance. But its unquestionable advantage is the promise of registration of the Company within 24 hours from the day of filing the completed application by using an IT system. Subsequently, within 7 days, there is an obligation of providing additional documentation to the registry court.

More information on the e-registration you will find in my paper dedicated to this subject.

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If you are interested in incorporation of a Company or need a legal advice on amendment of an Articles of Association 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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