



<b>JOINT-STOCK COMPANY</b>
<b>Preferred form of business activity</b>
<ul style="list-style-type: none"><li>• Business venture with many shareholders.</li><li>• Where supervision over the company's business is to be carried out only by the supervisory board.</li><li>• Large scale of business.</li><li>• Companies contemplating an IPO.</li><li>• Obligatory form for banks, insurance companies, pension societies.</li></ul>
<b>Business name</b>
<ul style="list-style-type: none"><li>• Can be chosen freely, however should contain an additional designation "spółka akcyjna".</li><li>• The abbreviated designation "S.A." may be used in business dealings.</li></ul>
<b>Legal status of the company</b>
Commercial company.
<b>Legal personality</b>
It has legal personality.
<b>Relevant register</b>
Entrepreneurs' register of the National Court Register (KRS).
<b>Competent registry court</b>
District court competent for the registered office of the company.
<b>Founders</b>
<ul style="list-style-type: none"><li>• One or more entities from among:<ol style="list-style-type: none"><li>a) natural persons,</li><li>b) legal persons,</li><li>c) organizational units without legal personality to which the applicable laws have granted legal capacity.</li></ol></li><li>• A joint-stock company may not be formed solely by a single-shareholder limited liability company. However, a single-shareholder limited liability company may become a sole shareholder of a joint-stock company by acquisition of all of the shares therein.</li></ul>



### Duration of the company

- Definite term (including the time required to perform a specific task) or indefinite term.
- It becomes a separate legal entity from the moment of conclusion of the statute of the joint-stock company – so called joint-stock company in organization. It gains legal personality upon entry into the National Court Register.

### Statute of the company

- Must be prepared in a form of a notarial deed or will be invalid otherwise.
- The statute should specify, as a minimum:
  - a) the business name and registered office of the company,
  - b) the corporate purpose of the company,
  - c) duration of the company, if definite,
  - d) the amount of the share capital and the amount of the capital paid up prior to the registration,
  - e) the nominal value and number of shares with indication whether the shares are registered shares or bearer shares,
  - f) the number of shares of a given class and the rights attached thereto, if shares of different classes are to be issued,
  - g) full names or business names of the founders,
  - h) the number of members of the management board and the supervisory board or, alternatively, at least the minimum or maximum number of members thereof and the entity authorised to appoint members of these authorities,
  - i) the journal for the company's announcements, if the company intends to publish its announcements in other journals apart from the Court and Economic Journal (Monitor Sądowy i Gospodarczy).
- Moreover, in order to be legally effective with respect to the company, the statute shall also contain provisions on:
  - a) number and types of entitlements to participate in the company's profit or distribution of the company's assets and of rights related thereto,
  - b) any and all obligations towards the company resulting from shares held, except for the obligation to pay for shares,
  - c) conditions and manner of share redemption,
  - d) any restrictions on share transferability,
  - e) personal rights conferred upon shareholders,
  - f) at least the estimated total costs incurred or charged to the company in connection with its establishment.
- Amending the provisions of the statute requires the resolution of the general meeting of shareholders taken by a  $\frac{3}{4}$  majority, provided that a resolution which would result in a broader scope of shareholders' duties or a restriction of rights attached to shares or rights conferred upon particular shareholders shall require the consent of all shareholders concerned.



### Actions required to establish a company

- Adopting the statute of the company in a form of a notarial deed.
- Subscription of all shares in the company by the shareholders.
- Making contributions by the shareholders:
  - a) shares acquired for cash – the obligation to pay at least  $\frac{1}{4}$  of their nominal value,
  - b) shares acquired for in-kind contributions or for in-kind contributions and cash – the requirement to cover the share capital at least at PLN 25,000; the obligation to cover the shares acquired for in-kind contributions in full within one year from the registration of the company,
  - c) the share premium (the difference between the issue price and the nominal value of the shares) must be fully paid before registration of the company.
- The appointment of a management board.
- The appointment of a supervisory board.
- The entry of the company in the register of entrepreneurs of the National Court Register (KRS).
- The statute is subject to tax on civil law transactions (transfer tax). The tax rate is 0.5% of the company's share capital.

### Company in organization (prior to registration in KRS)

Until the appointment of the management board, the company is represented by all founders acting jointly or a proxy appointed by a unanimous resolution of the founders.

### Average time required to register

The average time required to register a joint-stock company is approximately 3 weeks.

### Shareholders' contributions

- A non-transferable right or performance of work or services cannot be the object of a contribution.
- In the event that a shareholder made a defective in-kind contribution, he shall compensate the company for the difference between the value assumed in the statute of the company and the sales value of the contribution. The statute of the company may provide that, in such circumstances, the company shall also have other rights.
- If in-kind contributions are envisaged, the founders shall draw up a written report which shall detail in particular:
  - a) the object of in-kind contributions, as well as the number and classes of shares and other entitlements to participate in the company's profit or in the distribution of the company's assets in exchange for such in-kind contributions,
  - b) the persons making in-kind contributions,
  - c) the employed method of valuation of the in-kind contributions.Such report, as a rule, should be audited by a statutory auditor.

### Shareholders' share in profits and losses



- Shareholders shall have the right to participate in profit shown in the annual financial statement, which was audited by a statutory auditor, and intended for distribution according to a resolution of the general meeting of shareholders.
- Profit shall be distributed in proportion to the number of shares. Where shares are not fully paid up, profit shall be distributed in proportion to the payments made for shares.
- The statute may provide for a different method of profit distribution.
- Shareholders do not participate directly in covering of the losses of the company. However, profit to be paid to shareholders in a given year shall be diminished by uncovered losses.

### Share capital

- The minimum share capital is PLN 100,000.
- The nominal value of a share may not be lower than PLN 0.01.
- The share capital is divided into shares of equal nominal value.
- Mandatory verification by the auditor of the value of in-kind contributions made to the company. The obligation is excluded in respect of contributions, the value of which has already been reliably established (e.g. in the financial statement).

### Increase of the share capital

- Modes of increasing the share capital:
  - a) on the basis of shareholders' resolution through new contributions or from the company's funds (spare or reserve capital created from the profit of the company),
  - b) on the basis of the management board's resolution (within the so called authorized share capital); the management board has to be explicitly authorized to do so by the resolution of the general meeting of shareholders adopted by a majority of  $\frac{3}{4}$  of votes.
- The shareholders may be deprived of pre-emptive rights (priority of existing shareholders in subscribing for new shares) in full or in part - a resolution of the general meeting of shareholders adopted by a majority vote of  $\frac{4}{5}$  is necessary (also in case of increasing the share capital under the management board's resolution within the authorised capital – however the statute may authorize the management board to deprive the shareholders of the pre-emptive rights in full or in part with a consent of the supervisory board, without the resolution of the general meeting of shareholders).

### Shares

- The registered shares or bearer shares.
- The issuance of share certificates to shareholders:
  - a) the bearer share certificates may not be issued before full payment is made; as a proof of partial payment, registered temporary certificates shall be issued,
  - b) the registered share certificates may be issued before full payment – an exception: the shares subscribed for in-kind contributions shall remain in the partnership until the date of approval by the earliest ordinary general meeting of shareholders of the financial statement for the financial year in which such shares have been paid for.



- Share register:
  - a) is kept obligatorily by the management board,
  - b) contains the entries of registered shares and temporary certificates,
  - c) may be kept in paper or in electronic form.
- The shares are indivisible. They may be issued in collective share certificates.
- The transfer of shares:
  - a) the transfer of a registered share or a temporary certificate requires: (i) a written declaration either in the share certificate or in the temporary certificate, or in a separate instrument, and (ii) the transfer of possession of the share or the temporary certificate,
  - b) the transfer of a bearer share requires the transfer of possession of the bearer share certificate.

#### **Selected rights and obligations of shareholders**

- The possibility of establishing preference shares with regard to:
  - a) the right of vote – a maximum of 2 votes per share,
  - b) the right to dividend – up to 150% of the dividend designated to non-preference shares; this restriction does not apply to shares without the right of vote (so called non-voting shares),
  - c) the distribution of the company's assets in case of its liquidation.
- The statute may limit the voting rights of shareholders possessing more than 1/10 of the total number of votes. The limitation may only apply to the exercise of the voting rights attached to shares above the limit of votes provided for in the statute.

#### **Management board**

- Consists of one or more members (only natural persons with full capacity for legal actions).
- Period of holding office – a maximum of 5 years.
- Non-competition obligation – by law.

#### **Supervision**

- No individual supervision right of a shareholder over the company.
- The supervisory board:
  - a) obligatory establishment of the supervisory board,
  - b) shall comprise at least 3 members; in the case of public companies – at least 5 members,
  - c) is not entitled to issue binding instructions to the management board concerning running the company's affairs,
  - d) upon demand of the shareholders, representing at least 1/5 of the share capital, the election of the supervisory board shall be made by the next general meeting of shareholders by way of separate groups' voting, even if the statute provides for a different procedure for appointing the supervisory board,



e) period of holding office – a maximum of 5 years.

#### General meeting of shareholders

- The minutes of the general meeting of shareholders shall be drawn up in a form of a notarial deed.
- The venue of the meetings:
  - a) location where the company has its registered office,
  - b) other place within the territory of Poland – only if permitted by the statute.
- Participation in the general meeting of shareholders:
  - a) possibility to participate by means of electronic communication, if the statute provides so,
  - b) possibility to vote by correspondence, if the general meeting's bylaws provide so.

#### Tax

The company is a corporate income tax payer - the tax rate is 19% or 15% (depending on the size of business and its duration).

The company may be subject to VAT and excise duties.

#### Liability of the company

The company bears unlimited liability for its obligations up to the full value of all of its assets.

#### Liability of the shareholders

The shareholders are not liable for the obligations of the company. The shareholders' risk arising from the participation in the company is limited to the capital invested in the subscription or purchase of shares.

#### Liability of the members of the management board for the company's obligations

- Liability towards the company's creditors for submission of false information:
  - a) false information on making payments for the shares, required by statute, in-kind contributions at the formation of the company or at the increase of its capital,
  - b) joint and several liability for all the company's obligations for a period of 3 years following the registration of the company or registration of the increase in the share capital.
- Liability towards the creditors for the damage caused as a result of failure to request for a declaration of bankruptcy within the period of two weeks following the day on which the grounds for the declaration of bankruptcy occurred.

#### Exclusion from the company

The squeeze-out of shares of shareholders representing no more than 5% of the share capital by not more than 5 shareholders holding jointly not less than 95% of the share



capital.

#### **Transformation/merger/division**

- The following actions must be taken to transform a civil partnership into a limited joint-stock partnership:
  - a) convert the articles of association of a civil law partnership into the statute of a joint-stock company (including a fulfilment of other requirements related to formation of a joint-stock company),
  - b) enter the joint-stock company in the National Court Register.
- A joint-stock company:
  - a) may merge with another commercial company and partnerships,
  - b) may merge with the European company,
  - c) may be divided into two or more companies. If the share capital is not covered in full division is not allowed.
  - d) may be converted into any other commercial partnership or corporation (general partnership, professional partnership, limited partnership, limited joint-stock partnership, limited liability company).