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Capital Companies in Poland

General remarks

Polish law recognizes two types of capital companies: limited liability companies ("**LLC**") and joint-stock companies ("**JSC**"). Both have legal personality separate from their shareholders. A joint-stock company is intended for large-scale business, while a limited liability company can serve as a good form for activity on either a small or large scale, with a limited number of shareholders. Banks, insurance companies and general pension societies must be established in a form of a JSC. Lending companies may conduct business activity exclusively in the form of either LLC or JSC.

The main differences between LLCs and JSCs are presented in the table below:

Limited Liability Company	Joint-stock Company
Generally recommended for	
• Business venture with a limited number of shareholders. • Shareholders who want to have direct supervision over the company's business. • Smaller scale of business.	• Business venture with many shareholders. • Where supervision over the company's business is to be carried out only by the supervisory board. • Large scale of business. • Companies contemplating an IPO in the short term.
Obligatory form for	
N/A	banks, insurance companies, general pension societies.
Company's founders	
• One or more individuals/legal entities. • An LLC or 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 by acquisition of all of the shares in the LLC or joint-stock company.	
Prerequisites for incorporation	
• The conclusion of articles of association in a form of a notarial deed. • The contribution by shareholders of: a) the entire nominal value of the shares and b) the *agio* being the excess of the	• The conclusion of a statute in a form of a notarial deed. • The contribution by shareholders of: a) at least ¼ of the nominal value of the shares and b) the whole *agio* being the excess

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subscription price over the nominal value of the shares. • The appointment of a management board. • The appointment of a supervisory board or auditors' committee (obligatory only if the share capital exceeds PLN 500,000 and the number of shareholders exceeds 25). • Registration in the commercial register.	of the subscription price over the nominal value of the shares. • The appointment of a management board. • The appointment of a supervisory board – obligatory. • Registration in the commercial register.
Company in organisation (before registration in the commercial register)	
Represented by the management board or by a proxy appointed by a unanimous resolution of the shareholders.	Prior to the appointment of the management board, a JSC is represented by all shareholders acting jointly or by a proxy appointed upon a unanimous resolution of the shareholders.
Share capital	
• The minimum share capital is PLN 5,000. • The nominal value of a share may not be lower than PLN 50. • The share capital can be divided either into shares of equal or unequal nominal value. Shares of equal value are more common; one shareholder can have several shares of equal value. Shares of unequal value are less common; one shareholder can have only one share of unequal value. • The share capital must be paid in full before registration of the LLC.	• The minimum share capital is PLN 100,000. • The nominal value of a share may not be lower than PLN 0.01 (1 Polish zloty = 100 groszy). • The share capital is divided into shares of equal nominal value. • At least ¼ of the share capital must be paid before registration of the JSC. • There is a general obligation to verify the value of contributions in-kind by the statutory auditor, subject to certain exceptions provided for in the Commercial Companies Code ("**CCC**").
Increase of the share capital	
• The share capital may be increased by the shareholders under the existing provisions of the articles of association (written form) or through an amendment to the articles of association (notarial deed). • An increase can be made through new contributions or from company funds (supplementary capital or reserve capital).	• The share capital may be increased: a) upon a resolution of shareholders through new contributions or from company funds (supplementary capital or reserve capital). b) upon a resolution of the management board (authorized share capital) if authorised by the shareholders. • Resolutions shall be made in a form of a notarial deed.

<table>
<tr><th colspan="2">• Authorized capital</th></tr>
<tr><td>• N/A</td><td>• May not be larger than ¾ of the nominal share capital.
• Management Board authorization is limited in time – up to three years following authorization.</td></tr>
<tr><th colspan="2">Shares</th></tr>
<tr><td>• Non-material nature – shareholders are entered in the share register kept by the Management Board.
• A transfer/pledge of shares – in writing, with signatures certified by a notary.
• A transfer is effective with respect to the company as of the moment when the company receives notification of the transfer.</td><td>• Registered or bearer shares.
• Bearer share certificates may not be issued before full payment; as proof of partial payment, registered temporary certificates are issued.
• The owners of registered shares and temporary certificates are entered in the share register.
• Shares are indivisible. They may be issued in collective share certificates.
• A transfer of registered shares or temporary certificates – in writing; transfer of possession of the shares or temporary certificates required.
• A transfer of bearer shares requires the transfer of possession of the shares.</td></tr>
<tr><th colspan="2">Rights and obligations of shareholders</th></tr>
<tr><td>• The possibility of establishing preference shares with regard to:
a) the right of vote – a maximum of 3 votes per share,
b) the right to dividend – up to 150% of the dividend designated to non-preference shares,
c) the distribution of the company's assets in case of its liquidation.
• The articles of association may oblige the shareholders to make additional payments in proportion to their shareholding (Polish: dopłaty). Such payments do not increase the company's share capital, are transferred to the company's reserve capital, and can be subsequently returned to the shareholders.</td><td>• 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 such shares for which the right to vote has been excluded (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.</td></tr>
</table>

Management Board	
• One or more natural persons. • Period of holding office – no time limits. • Non-compete obligation – by law.	• One or more natural persons. • Period of holding office – up to five years. • Non-compete obligation – by law.
Supervision	
• Each shareholder individually. Individual supervision can be restricted or excluded by the articles of association if a supervisory board was established in the LLC. • Supervisory Board: a) The supervisory board or the audit committee are optional. Obligatory if the share capital exceeds PLN 500,000 and the number of shareholders exceeds 25, b) At least three members, c) No right to give the management board any binding instructions on how to manage the company, d) Term of office – one year, unless the articles of association provide otherwise. • The right of a shareholder or shareholders representing at least 1/10 of the share capital to request that a registry court appoint an auditor to examine the accounts and operations of the company.	• No individual supervision by a shareholder. • Supervisory board: a) Obligatory, b) At least three members or, in the case of public companies, at least five members, c) No right to give the management board any binding instructions on how to manage the company, 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. A member of the supervisory board so appointed can be authorized to perform individual supervision. Such an SB member is bound by the non-compete obligation, e) Term of office – no longer than five years, • No right of any shareholder to request that a registry court appoint an auditor to examine the accounts and operations of the company.
General Meeting of Shareholders	
• Minutes drawn up by a notary only if the articles are being amended, otherwise in writing. • Held in the company's registered office or in any other place on the territory of Poland, if so provided by the articles of association.	• Minutes drawn up by a notary. • Held in the company's registered office or in any other place on the territory of Poland, if so provided by the statute. Shareholders may participate in general meetings by means of electronic communication, if the statute provides so.
Exclusion from the company	

Right to seek expulsion of a shareholder by the court by the rest of shareholders if their shares amount to more than 50% of share capital. The Articles of Association may entitle the smaller number of shareholders to seek the expulsion of a shareholder, nevertheless they have to represent more than 50% of share capital. The court may rule on the expulsion of shareholder only if it is justified by significant reasons.	Resolution of general meeting of shareholders on forced buyout of shares of shareholders representing not more than 5% of the share capital held by shareholders holding a total of not less than 95% of the share capital.
Company liability	
The Company is liable for its debts and obligations with its whole property without any limitations.	
Liability of Shareholders and Management Board	
• The shareholders are not liable for the obligations and debts of the company. • The members of the management board are jointly and severally liable for the obligations of the company if recovery against the company was not effective. However, any member of the management board may release himself from liability by showing that a petition for declaration of bankruptcy was filed or arrangement proceedings were instituted in due time, or that a failure to file a petition for declaration of bankruptcy or institute arrangement proceedings was not due to his fault, or that the creditor suffered no damage even though no petition for bankruptcy was filed or no arrangement proceedings were instituted. • Management board liable to the company on the basis of culpability for damage caused by action or negligence against the law or the company's articles. Liability of the management board for damage caused to the company time-barred after three years from the date on which the company learnt of the damage and of the person liable to redress it. However, in any case, the claim shall be time-barred after ten years from the date of the event	• The shareholders are not liable for the obligations and debts of the company. • No liability of the management board for the obligations of the company. • Management board liable to the company on the basis of culpability for damage caused by action or negligence against the law or the company's statute. Liability of the management board for damage caused to the company time-barred after three years from the date on which the company learnt of the damage and of the liability of the management board for damage caused to the company time-barred after three years from the date on which the company learnt of the damage and of the person liable to redress it. However, in any case, a claim shall be time-barred after five years from the date of the event which caused the damage.

which caused the damage.	
Tax	
As a result of conducted business activity, the companies are subject to Corporate Income Tax (CIT). The company may be subject to VAT and excise duties.	