

01/2009

CHANGES TO THE PROVISIONS REGARDING LIMITED LIABILITY COMPANIES

We would like to present the essential changes to the Polish Commercial Companies Code which are in force since 8 January 2009. New provisions amended by the act of 23 October 2008, implement essential changes in the area of commercial companies operation. Please find below the most important amendments regarding formation and operation of limited liability companies.

Change of the minimum amount of share capital

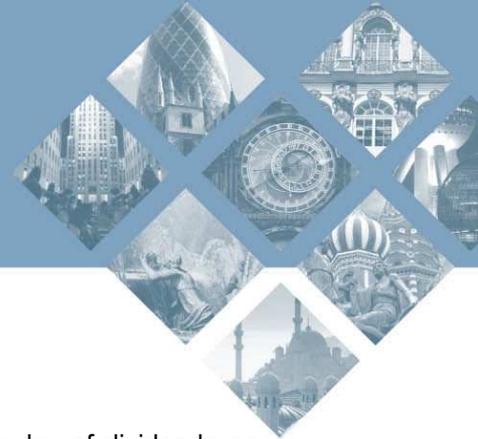
Since 8 January 2009 the minimum amount of share capital of a limited liability company is PLN 5,000 (five thousand zlotys), instead of PLN 50,000, as was the case so far. In practice this means that companies may be established with a capital of PLN 5,000, but also the capital in existing companies may be reduced to this amount. The amendments within the abovementioned scope are aimed at facilitation of establishing capital companies by entrepreneurs.

It is also worth reminding about the so-called thin capitalization rule, which limits the inclusion of paid interest on loans granted by a shareholder in the tax costs. As a rule, the interest on loans and credits granted by a shareholder, who has minimum 25% of shares in the company or by a daughter company, if in both companies, the shareholder has minimum 25 % of shares (i.e. the interest on the part of a loan or a credit which exceeds three times the amount of the share capital of the company which repays a loan or a credit), cannot be treated as tax costs.

Declarations made to the company by a sole shareholder

According to new provisions, the only shareholder is no longer required to abide by the written form with notarized signatures. Currently, written form is required under the pain of nullity, unless a notarized deed or other specific form is necessary for a given activity pursuant to specific regulations.

The purpose of the amendment is limitation of formal requirements for one-man capital companies. However, the consequences of this facilitations can involve risk of frauds arising from the antedating of statements by shareholders in one-man companies problem, thus the creditors of such companies shall pay special attention to the above.



Date of dividend payment

The amendment implements also changes to the manner of specifying the day of dividends payment. According to new provisions, the dividend may be paid out on the date specified upon shareholders' resolution. If no such date is set by a shareholders' resolution, dividends will be paid on the date determined by the management board. Therefore, the date of dividends' payment shall be dependent on the will of company governing bodies.

Repayment of additional contributions

According to new provisions, the additional contributions may be repaid after one month from announcing the intended repayment in the gazette selected for publication of company announcements. Prior to the amendment, repayment could not be made earlier than after three months since the announcement.

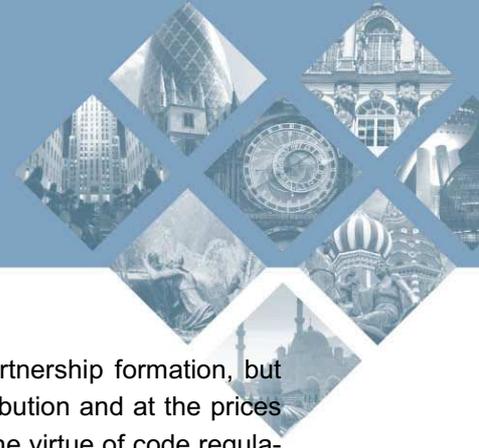
Parent company/ subsidiary

According to the previous wording of the Polish Commercial Companies Code, the "parent company" was a commercial company in which the members of the management board or the members of the Supervisory Board constitute not more than one half of members of the Management Board of other capital company (subsidiary). The amendment implements new wording of the art. 4 § 1 clause 4 letter d) of the Polish Commercial Companies Code and it narrows the premise of recognition the company as a parent company only to the members of the Management Board. It means that being a member of the Supervisory Boards in two companies has no influence on the fact, that there is a parent company/subsidiary relationship between the both appointed companies.

The following other essential changes should be indicated, which do not directly apply to either limited liability companies, but may influence their relationships with contracting parties:

Other changes

- Civil law companies no longer need to be transformed into registered partnerships in case they exceed the limit of annual turnover necessitating bookkeeping within the meaning of the Accountancy Act.
- The liability of the person concluding a registered partnership agreement with a person who contributed an undertaking to the partnership is limited. The former is liable for obligations arising



ing as a result of operations of the undertaking before the date of partnership formation, but only to the value of the undertaking contributed as of the date of contribution and at the prices as of the time of creditor satisfaction. It should be emphasized that by the virtue of code regulations, this provision will also apply to other partnerships (professional partnership, limited partnership and limited-joint-stock partnership).

- The necessity of concluding partnership agreement in the form of a notarized deed was excluded. Written form under the pain of nullity will be sufficient.

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We hope the above information proves useful. It should not be construed as legal advice or opinion. If you wish to obtain further information or legal advice, please do not hesitate to contact us.

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