

TGC CORPORATE
LAWYERS

**Procedure of establishing
a Limited Liability Company
in Poland**

Warsaw, 31 May 2021

Memorandum

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for

Client interested in establishing business in Poland

regarding

Procedure of establishing a Limited Liability Company in Poland

INTRODUCTION

This Memorandum was drawn up by TGC Ordowska Kancelaria Prawnicza Sp.k. (hereinafter referred to as: „**TGC**”) for clients interested in establishing business in Poland in order to present general procedure of establishing a limited liability company (hereinafter referred to as “**LLC**”) in Poland, its organizational structure and necessary costs - and provide general basic information.

Legal basis for establishing of the LLC can be found in Polish Commercial Companies Code (hereinafter referred to as the “Code”).

FOUNDERS

LLC may be established by one or more Polish citizens/entities, as well as by Foreigners (with one exception – it may **not** be established solely by another LLC as its single shareholder) for any legitimate economic activity.

Foreign company can establish LLC in Poland on the same basis as any Polish subjects/ companies and for this purpose has to provide either original or certified by notary documents confirming its proper corporate registration in the country of its origin, proper documents confirming its manner of representation and proper resolution deciding on establishments of the company in Poland and at least choice of second shareholder if this foreign company acts in a form of LLC in its parent country.

COMPANY FOUNDING DEED

LLC is founded by execution of an official document before a Polish notary called a “Deed of establishment of a limited liability company” or “founding deed “ or “company articles of association“ (hereinafter referred to as “**company deed**” or “**company articles of association**”) or electronically via s24 Platform (qualified electronic signatures are required) Both documents must determine at least:

- a) business name of the company,
- b) seat of the company,
- c) objects of the company's activity - in accordance with Polish qualification of business activities (PKD) - but not more than in 10 categories,

- d) amount of the initial capital,
- e) information whether a shareholder may have more than one share,
- f) number and nominal value of shares taken up by each shareholder,
- g) voting rights vested in one share – as its possible to have privileged shares in proportion of 3 votes for 1 share - which applies in particular to companies rendering licensed activity requiring professional majority of votes at company AGM a or EGM,
- h) duration of the company, if defined,
- i) object of the contribution and identity of the shareholder making the contribution and the number and nominal value of shares taken up in exchange, if contributions for covering initial capital is in whole or partially a non cash contribution (hereinafter referred to as **contribution in kind**).

Any special/ additional benefits owed by shareholders and additional duties imposed on the shareholders other than that of payment for shares also must be specified in detail in the company deed as otherwise they are ineffective.

Usually company founding deed covers a number of other issues as well, such as potential restrictions of shares transferability or rules for adopting decisions by the company's governing bodies, making advance payment on account of dividend and potential additional provisions concerning either division of profit or its retention in the company for further company development or shares inheritance provisions.

a) Business name of the company.

The business name of the company may be chosen freely provided that it is not misleading or similar to the business name of the another company that is active in the same market. The business name of a limited liability company must include the phrase "spółka z ograniczoną odpowiedzialnością" (limited liability company). The abbreviated form of this phrase "sp. z o.o." (Ltd), may be used for business purposes as well.

b) Seat of the company.

The seat of the company is the locality, such as a city or town, where the company's management board has its office. The seat of a limited liability company governed by Polish law should be situated in Poland.

c) Objects of the company's activity.

The objects of the company are a guidelines for its management as to the nature of the company's activity. It is important to notice that even if a transaction is beyond the company's objects it won't affect the transaction's validity.

For practical reasons, it is recommended to draft the clause of the articles of association dealing with the objects by referring to the statistical classification known as “Polish Classification of Activities” or “PKD”. The abovementioned classification will be applied when entering the objects into the National Court Register and the shareholders may not include more than 10 lines of business for registration purposes.

d) Amount of initial capital.

The minimum founding capital for a Polish LLC is PLN 5,000. Contributions of capital may be in cash or in kind. Capital contributions may be made after the company deed is signed; however, all capital contributions must be made prior to filing for registration (unpaid capital is not allowed).

This obligation in practice creates some problems as banks require at least filing with them confirmed copy of application for registration of the company in KRS (National Court Register) in order to open the company’s bank account. This later on causes the need to supplement the application to KRS by Management Board Members statements that the capital was “duly paid in” – which can happen only if company bank account is opened.

e) Information whether a shareholder may have more than one share.

Every company deed must contain information whether a shareholder may have more than one share. It means that every shareholder must acquire at least one share (or more). Abovementioned provision is immanently connected with number and nominal value of shares issue described below.

f) Number and nominal value of shares taken up by each shareholder.

All founding capital is divided into shares of a nominal value of PLN 50 or greater, which may be of equal or unequal value.

The value of the contribution that is made in consideration of a share can be equal to or higher than the share’s nominal value. In either case, except in the event referred to in the following section, the contribution must be made prior to the incorporation of the company.

Shares in a LLC may be transferred only by way of a written agreement with notarized signatures - non observance of this obligation causes invalidity of whole transfer.

The company deed may impose limitations to the free transfer of shares (such as a restriction requiring the consent of other shareholders or the granting of a “right of preemption” or “right of first refusal” to other shareholders, giving them a priority right to buy any shares to be sold). Shares in a LLC may be “preferred” to voting rights, dividends, and distributions upon liquidation. However, preferred voting shares are limited to a maximum of three votes per share and dividends of not more than 150 percent of the regular shares’ dividends.

g) Duration of the company.

The duration of a LLC may be definite, in which case the company is wound up at the end of stated term, or indefinite – which means that the company can last and operate as long as its shareholders do not decide otherwise.

COMPANY IN ORGANIZATION

After the company deed is signed and before completing the registration in National Court Register, the LLC is considered as “LLC in organization”. At this point, although the LLC is not formally established, it can start carrying out the business for which it was formed. The company in organization is allowed to enter into contracts and perform other transactions – but all bookkeeping entries made during this time must refer to “ company in organization “ and later on when the company is already registered must be properly “ rebooked “.

The rights and duties of the company in organization are transferred to the company as such when it got registered. LLC in organization is represented by the management board or by attorney appointed under unanimously shareholders resolution. The company in formation is dissolved if an application to register the company is not filed with the registration court within six months of the day that the articles of association are drawn up or if that application is finally denied.

REGISTRATION OF THE COMPANY

In order to establish a LLC, in addition to performing a company deed, the following steps must be completed:

- a) contributions by shareholders shall be made to pay up the initial capital,
- b) management board shall be appointed (always mandatory, it may consists of one or more members),
- c) supervisory board or audit commission shall be appointed only if Code or company deed so stipulates (it's not mandatory unless the number of shareholders exceeds 25 and the share capital amount exceeds PLN 500.000),
- d) company shall be successfully entered in the National Court Register.

I. The application to the National Court Register.

The application to the National Court Register shall be submitted in forms displayed on the website of the Ministry of Justice or via electronic system s24 and is subject to fee. The fact of establishment of the LLC shall be announced in official court bulletin.

The application to the National Court Register shall be signed by all members of management board and should state the following:

- a) business name, seat and address of the company,
- b) the object of the company's activity,
- c) amount of initial capital,
- d) whether a shareholder may have more than one share,
- e) surnames and forenames and addresses of the management board members and the manner of representing the company,
- f) surnames and forenames of the supervisory board members or audit commission members, where appointment of the supervisory board or audit commission is required under Code or under the company deed,
- g) whereas shareholders make non-cash contributions to the company, annotation to that effect,
- h) duration of the company, if defined,
- i) where the company deed provides for a specific paper in which company announcements are to be made, the designation of the same.

II. Attachments to the application.

Following documents must be attached to the abovementioned application:

- a) the articles of association of the company,
- b) declaration signed by all members of the management board that the contributions to cover the share capital have been made in full by all shareholders,
- c) an evidence of establishing the governing bodies of the company specifying their members in case the notarial deed with articles of association does not provide for it,
- d) a list of shareholders indicating first names, surnames, business names (firms) as well as the number of shares and their nominal value held by each shareholder, signed by all members of the management board,
- e) a address list of management board members and proxies;
- f) a list including the surname and first name and address for service or the business name or the name and seat of members of the bodies or persons authorized to appoint the management board. If the partner is a legal person, the first and last names and addresses for service of members of the body authorized to represent this legal person should be provided,

- g) specimens of signatures of the members of the management board placed before the court or certified by a notary public (the “apostille” clause being required in case of certification by a foreign notary public),
- h) a lease/ rental contract for the property where company got its seat.

III. Additional registrations

When the registration in the National Court Register is completed, the management board or a proxy of the company should register the LLC for the purpose of:

- VAT,
- EU-VAT,
- and corporate income tax issues.

Furthermore, within 21 days of the completion of the registration procedure, the management board or the proxy should also submit additional documentation to the relevant tax authority consisting of a list of the bank accounts of the LLC, list of addresses of locations of economic activities, the address where the accounting records of LLC are kept, and the expected number of employees of the LLC. Tax authority will forward this information accordingly to the Statistical Office and National Social Insurance Institution.

Irrespective of filing the application and forms to the National Court Register to register the company, the following actions should be performed for commencement of the company’s activity:

- a) opening a bank account for the company, unless it has been already opened during the process of registration of the company in KRS for making a proper statement that the company’s capital was duly paid in;
- b) if the company intends to employ employees: making a declaration to the Social Insurance Institution (ZUS) within 7 days from the date of employing the first employee or from the date in which the legal relationship justifying covering first person with retirement and pension insurances emerged and organizing a training in safety and hygiene at work for employees.

COMPANY GOVERNING BODIES

I. Shareholders meeting.

The shareholders’ meeting is the main governing body of the limited liability company but is not involved in the day-to-day management of the company.

The powers of the shareholders' meeting include in particular:

- a) approval of the financial statement and the management board's report regarding the company's activity in a financial year (mandatory, once a year during ordinary meeting of shareholders),
- b) distribution of the company's profit or the covering of its loss (mandatory, once a year during ordinary meeting of shareholders),
- c) approval of the actions taken by the members of other governing bodies of the company in a financial year; the approval has, as a rule, the effect of releasing such members from their liability to the company for their actions,
- d) deciding on the company's merger, transformation or division,
- e) deciding on the company's winding-up,
- f) transferring or giving in tenancy the company's business or its organized portion or encumbering the same with a limited property interest,
- g) approving a contract whereby the company transfers its profit to its holding company or partnership or receives from a company or partnership that it controls the latter's profit,
- h) approving a contract providing for the company being managed by its holding company or partnership, or for the company managing a company or partnership that it controls,
- i) amending the articles of association,
- j) increasing the share capital and, with a few exceptions, reducing it.

The shareholders' meeting should take place at least once in a financial year of the company no later than six months after end of financial year (usually overlapped with calendar year) in order to adopt resolutions regarding the matters listed under a), b) and c) of the preceding sentence in respect of the previous year.

Some powers of the shareholders' meeting are optional in the sense that they are vested in the meeting unless the articles of association otherwise provide or only if the articles of association provide for such powers. For example, the company disposing of a right of a value exceeding twice the amount of the share capital requires a shareholder resolution unless the articles of association rule out this requirement.

On the other hand, the articles of association of the company can provide that approval by the shareholders' meeting is needed for the company to enter into any contract with its shareholder; this requirement is inapplicable in the absence of such a clause – but pursuant to generally binding law the company has to establish its “plenipotentiary” for such action.

If the company performs a transaction without the required approval of the shareholders' meeting, the transaction is invalid only if this requirement is provided for in law (rather than in the articles of association only).

Resolutions of the shareholders' meeting are generally adopted by an absolute majority of votes cast. The articles of association may provide for other/ stricter majority requirements. The Code of Commercial Companies further requires a qualified majority to pass certain resolutions, such as amending the articles of association (two-thirds majority, unless the articles of association provide for a higher threshold) or for transforming the company into a company of a different type (three-fourths majority corresponding also to at least one half of the share capital, unless the articles of association provide for a higher threshold). The articles of association may also introduce a quorum requirement. The Code of Commercial Companies provides for quorum in certain cases only - but it is quite frequent that shareholders establish specific restrictions in the Company Articles of Association in order to secure their rights.

II. Management board of the company.

Management board is responsible for managing and representing the company. The remaining governing bodies may interfere with the company management only by giving or refusing their approval for certain actions where such approval is required by law or the articles of association.

Management board may consist of one or more members. The articles of association may determine the number of such members with more precision. If the management board consists of one member only, that member can represent the company individually. If there are several members of the management board, the manner in which they can represent the company (e.g. two members acting jointly or the president of the management board individually) is determined by the articles of association. The articles of association may provide for the position of president of the management board and determine his powers (eg casting vote in case of equal division of votes among board members in a situation when the resolution of the Management Board of the company is required).

Members of the management board are appointed and removed by a shareholder resolution unless the articles of association otherwise provide. For example, the right to appoint and remove such members may be vested in a certain shareholder or in supervisory board if the articles of association so provide.

Management board decisions are adopted collectively. Each member of the management board should be given notice of any board meeting in order for the meeting to be validly held.

III. Supervisory board of the company.

The powers of the Supervisory board cover mainly review and potential control of the company's activity, financial statements and management reports as well as the management board's motions to dispose of profit or cover losses. It is not uncommon to include in the articles of association a clause whereby some transactions of the company require the supervisory board's approval or at least opinion.

In most cases the supervisory board is not a mandatory governing body of the LLC. The Code requires the supervisory board to be appointed in a limited liability company only if the number of shareholders exceeds 25 and the share capital amount is more than PLN 500,000. The articles of association may provide for the appointment of the supervisory board in other cases and potentially a member of the supervisory board can be temporarily delegated to the Management Board should such specific need arise.

The appointment of the Supervisory board is worth considering from shareholders' point of view as generally it helps to improve the decision-making process by delegating supervision from the shareholders to supervisory board members and makes the decision process transparent.

The Supervisory board must consist of no less than three members. Subject to this principle, the articles of association may include more precise rules in this respect. The members of the Supervisory board are appointed and removed by a shareholder resolution unless the articles of association provide for a different solution, such as a shareholder's personal right to appoint and remove any or all of such members.

Shareholders are authorized to exercise individual supervision over company matters. In particular they are allowed to access the company's documents, request the management board to provide explanations and draw up a balance sheet for their own purposes. The articles of association may exclude the right of individual supervision in the event if they provide for the existence of the Supervisory board.

SHARE AND SHARES CAPITAL

I. Shares.

A share reflects a set of shareholder rights. No specific separate documents like eg. "share certificates" incorporating share rights are issued to shareholders - but the company has obligation to keep the shareholders' book and register all transfers of shares.

Furthermore all share transfers are filed to KRS and shareholding over 10 % is recorded and "visible" in court register publicly accessible extracts from KRS.

As a rule, shares of the LLC are transferable. Certain limitations of their transferability may be introduced in the articles of association. For instance, the limitations may consist in the consent of the shareholders' meeting being required for such transfer. The right of pre-emption or the right of first refusal may also be stipulated in the articles of association.

A contract that purports to transfer a share needs to be executed in writing with the parties' signatures being authenticated by a notary public in order to be valid. The

parties must notify the company about the transfer of shares. The management board keeps a share register and must update it as soon as it learns any transfer of shares.

The shares that belong to an individual are part of the estate in case of the shareholder's death. However, the articles of association may limit or prevent the acquisition of the shares of the deceased shareholder by his heirs- or vice versa.

II. Increase and reduction of the share capital.

The amount of the share capital can be increased by a shareholder resolution. This requires an amendment to the articles of association. The articles of association may, however, allow increasing the share capital without amending the articles of association, up to a certain amount and by a certain date. In this case, the new shares must be subscribed for by the existing shareholders proportionately to the number of shares that they have held thus far. This method of increasing the share capital spares certain formalities linked to an amendment to the articles of association. In any case, the increase becomes effective upon its registration by the registration court.

The share capital can also be reduced. As a rule, this requires an amendment to the articles of association. One of the methods of reduction of the share capital is cancellation of shares – which allows the shareholders to get back their capital.

LIABILITIES WITHIN THE LIMITED LIABILITY COMPANY

I. Shareholders.

Shareholders generally are not liable for the debts of the limited liability company as their financial risk is thus limited to the amount of their contributions.

A shareholder is liable to the company for paying or transferring the contribution that he must make pursuant to the articles of association or a shareholder resolution increasing the share capital.

II. Management board members.

Management board members can be liable both to the company for mismanaging the company and to third parties if company's assets proved insufficient to satisfy the creditors.

Thus management board members can be liable to the company's creditors for its obligations, jointly and severally with the company, where enforcement proceedings against the company have proven inefficient, i.e. the company does not have sufficient assets to carry out a judgment or another execution title. A management board member can avoid such liability by proving that an application to declare the

company's bankruptcy has been timely filed, that he is not guilty of the failure to file such an application or that the creditor has suffered no damage as a result of such a failure.

Management Board members are also personally liable for unpaid taxes of the LLC.

COSTS

The costs to establish a LLC (excluding legal fees and employment, leasing, and other operational costs) include:

- a) civil transactions tax (PCC), collected by the Notary preparing the company deed, amounting to 0.5% of the initial capitalization of the LLC;
- b) the Notary fee, collected by the Notary preparing the company deed, in an amount that varies according to the initial capitalization of the LLC from PLN 160 to not more than PLN 10,000 in any event (in company with PLN 5000 initial capital abovementioned fee will be PLN 160);
- c) a PLN 500 registration fee and a PLN 100 fee for publishing the required announcement in the official court bulletin.

Regards,



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