



# ESTABLISHMENT OF A LIMITED LIABILITY COMPANY

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## ESTABLISHMENT OF THE COMPANY

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Pursuant to article 163 of the Commercial Companies Code (CCC), the following are required in order to establish a limited liability company:

- a) conclusion of the company's articles of association,
- b) contribution by shareholders of the entire share capital and, in the case of subscribing a share at a price exceeding its nominal value – together with the payment of the premium (*agio*)<sup>1</sup>.

If the registration of the company, however, is performed via an electronic court system system (which means via basic electronic statutory templates), the bylaws do not include any specific clauses such as *agio*. When concluding the company's articles of association by electronic court system only cash contribution can be made to cover the share capital, which should occur not later than within 7 days from entry of the company into the Register.

- c) appointment of the management board,
- d) constitution of the supervisory board or the audit committee, if this is required by the articles of association or by the relevant acts of law,
- e) entry into the Register of Entrepreneurs (National Court Register).

Conclusion of the articles of association of a limited liability company entails the establishment of a **limited liability company 'in organisation'** (art. 161 § 1 CCC); such a company may acquire rights (including the right of ownership of real estate as well as other rights in rem), assume obligations and act as a claimant and as a defendant before courts. The limited liability company acquires legal personality upon its registration into the Register of Entrepreneurs in the National Court Register (art. 12 CCC).

A limited liability company may not be established solely by another limited liability company which has only one shareholder (art. 151 § 2 CCC).

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## ARTICLES OF ASSOCIATION

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Articles of association of a limited liability company shall determine at least the following issues (art. 157 CCC):

- a) business name and registered office<sup>2</sup> of the company,
- b) objects of the company,
- c) amount of the share capital with the minimum value of PLN 5.000,
- d) information whether a shareholder may hold one or more shares,
- e) number and nominal value of shares taken up by each of the shareholders,
- f) duration of the company, if defined.

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<sup>1</sup> *Agio* – the difference between the nominal value of purchased shares and the amount paid for the shares (higher than its value) which is transferred to supplementary capital.

<sup>2</sup> Registered Office – is to be located in Poland and is determined in the articles of association only as a city. However, the precise address of the company shall be notified to the register court.



The articles of association of a limited liability company shall be concluded in a form of a notarial deed except for the articles of association concluded by electronic court system (art. 157<sup>1</sup> CCC).

Concluding the articles of association in the form of a notarial deed is highly recommended, as a statutory template available via electronic court system is simple and does not allow to provide the share capital exceeding PLN 5.000 as well as does not foresee any other specific or less usual clauses relevant and necessary for certain undertakings and relationships between the shareholders.

In order to conclude the articles of association in the form of a notarial deed, the following documents are required:

- a) identity cards or passports of the signatories,
- b) a current extract from the commercial register if a shareholder is a legal person,
- c) a power of attorney for a person representing the shareholder while concluding the articles of association, unless the right of that person to represent the shareholder results from the relevant provisions of law which that person is subject to; the form of a notarial deed or the form provided by the law applicable in the place where the document has been drawn up shall be observed for the power of attorney as well.

The document mentioned in point c) has to be affixed with the “apostille” clause pursuant to the Hague Convention of 5<sup>th</sup> October, 1961. It refers to the signatory countries of this Convention.

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## REGISTRATION OF THE COMPANY IN THE NATIONAL COURT REGISTER

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Prior to undertaking business activity, an application to the District Court - Commercial Division of the National Court Register, which is territorially competent for the company's registered office, should be submitted within 6 months starting from the conclusion of the company's articles of association.

The application shall be submitted in forms available on the website of the Ministry of Justice and is subject to a fee. The fact of establishment of the limited liability company shall be announced in Court and Commercial Gazette (*Monitor Sądowy i Gospodarczy*).

### **The application to the National Court Register should include the following details:**

- a) business name, registered office and exact address of the company,
- b) objects of the company (up to ten items according to the list of Polish Classification of Business Activity, including one code of a predominant activity),
- c) the amount of an initial share capital,
- d) information whether a shareholder may hold only one share,



- e) first names, surnames and exact address of the members of the management board and the manner of the company's representation,
- f) first names, surnames and exact address of the members of the supervisory board or the audit committee, if the articles of association or relevant acts of law provide for their appointment,
- g) if the shareholder made any in-kind contributions to the company – a short information indicating this,
- h) duration of the company (if defined),
- i) indication of the gazette, if provided for in the articles of association as the gazette for announcements of the company,
- j) indication that the shareholder is a single shareholder of the company (if there is only one shareholder within the company).

#### **Attachments to the application to the National Court Register:**

- a) the company's bylaws,
- b) declaration signed by all members of the management board stating that the contributions to cover the initial share capital have been made in full by all shareholders,
- c) proof of appointment of the corporate organs of the limited liability company specifying their members (if the notarial deed consisting of the articles of association does not provide for it),
- d) a list of shareholders signed by all members of the management board indicating the first name, surname (or the business name) of each shareholder as well as the number of shares and their nominal value held by them.

The same documents – prepared on special forms available for download from the Internet - shall be also filled for registration with regard to the company incorporated via electronic system. The abovementioned documents shall be provided with the electronic signature. Nevertheless, the management board of the company established via the electronic system is obliged to file in paper to the register court, within 7 days from the date of the company's registration, the document stating that the contributions for covering the entire initial share capital were made in full by all shareholders.

#### **the National Court Register- “single registration window scheme”**

As of 1 December 2014, the management board does need to apply for the statistical identification number REGON and the tax identification number (NIP), in order to undertake business activity. These numbers are namely assigned automatically to each company, without the necessity to file additional motions. Therefore, it is sufficient to fill in and file only one form along with a set of attachments. The statistical identification number REGON as well as the tax identification number (NIP) will be put up in the National Court Register after being transferred from the Central Register of Entities (National Taxable Person Records) and from the National Register of Business Entities.

The “single registration window scheme” shall also apply if an application for entry into the register of business entities is filed by the electronic court system.



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

- 1) setting up a bank account for the company, unless it has been already opened for the company "in organisation",
- 2) 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,
  - organising a training on safety and hygiene at work for employees.

The procedure of the establishment of a company via an electronic court system is aimed at entities which do not necessary need sophisticated articles of association (electronic statutory template), consisting of extra provisions. The registration procedure is quite fast, as it takes up to **24 hours**. Unfortunately, this procedure seems to be (for technical reasons) practically inapplicable for foreign investors. Moreover, a lawyer cannot establish a company on behalf of the shareholders. **However, the lawyer can register a new company on its own name via an electronic court system and then sell all shares to its client.**

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## COSTS

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### 1. Notarial fees

The amount of notarial fees for drawing up a notarial deed including the company's articles of association depends on the amount of the share capital of the company, with the maximum of 160 PLN + VAT for a limited liability company with the minimum share capital of 5,000 PLN. When the share capital is higher the notarial fees should rate as follows:

Amount of share capital	Fees
Up to PLN 10.000	PLN 100 + 3% of the surplus above PLN 3.000
Above PLN 10.000 up to 30,000	PLN 310 + 2% of the surplus above PLN 10.000
Above PLN 30.000 up to PLN 60.000	PLN 710+ 1% of the surplus above PLN 30.000
Above PLN 60.000 up to PLN 1.000.000	PLN 1.010 + 0.4% of the surplus above PLN 60,000



Above PLN 1.000.000 up to PLN 2.000.000	PLN 4.770 + 0.2% of the surplus above PLN 1.000.000
Above PLN 2.000.000	PLN 6.770+ 0.25% of the surplus above PLN 2000.000 but not more than PLN 10.000

23% VAT should be added to the above mentioned rates of notarial fees.

## 2. Tax on civil law acts

The amount of tax on civil law acts, (including the conclusion of the company's articles of association) depends on the share capital and amounts to 0.5% of its value. The tax is calculated by the notary public while drawing up the company's articles of association in a form of a notarial deed and is collected when signing the articles of association.

## 3. Registration fee

The fee for application for registration of a newly established company in the register of entrepreneurs of National Court Register amounts to PLN 500 and PLN 200 if the company is incorporated via the electronic system.. The fee for application for any amendment of the entry amounts basically to PLN 250.

## 4. Announcement in Court and Economic Gazette fee

The fee for any announcement in Court and Economic Gazette (*Monitor Sądowy i Gospodarczy*) amounts to PLN 100.