

Track Changes

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THE OBLIGATORY DEMATERIALIZATION OF SHARES IN JOINT-STOCK COMPANIES AND LIMITED JOINT-STOCK PARTNERSHIPS IN POLAND

On 1 January 2021, an important change enters into force for all joint-stock companies and limited joint-stock partnerships in Poland, consisting of the obligatory dematerialization of shares of those entities. Paper forms of share documents will cease to exist, and they will be replaced with an electronic record.

Although most of the changes come into force at the beginning of 2021, companies and shareholders are obliged to undertake many preparatory and organizational measures related to the dematerialization in the first half of 2020. Failure to perform these obligations may result in a high fine.

WHAT IS THE DEMATERIALIZATION OF SHARES?

The dematerialization of shares in joint-stock companies and limited joint-stock partnerships means that paper-based share documents will be converted to an electronic form.

As a result of the dematerialization, shares will be recorded in a register of shareholders or in the securities depository. Only the person(s) in the register of shareholders or in the deposit will be considered a shareholder of the company. Registers and deposits will be maintained by entities authorized to keep securities accounts, including brokerage houses and trust banks.

In order to dematerialize shares, companies will be required to select an entity holding the register of shareholders and to enter into an appropriate agreement with this entity (alternatively – to adopt a resolution on registering shares in the securities depository and to conclude a share registration agreement in the deposit). Competence in this respect will be vested in the general meeting of shareholders or, in case of newly formed companies, in the founders. In addition, due to the dematerialization of shares, it will also be necessary to amend the articles of association of existing companies and to collect share documents from existing shareholders.

In order to exchange paper share documents for shares in the dematerialized form, companies will have to carry out five (5) calls for shareholders to submit share documents to the company. Information on the calls for submission must be available on the company's website, and the establishment of such a website is already obligatory for every joint-stock company and limited joint-stock partnership as of 1 January 2020.

The entire procedure of dematerialization of shares should be completed by 1 January 2021. From this date, existing share documents will expire and the only form of shares permitted will be the dematerialized form (however, a share document will keep its evidential value for a period of five years from the date of entry into force of the amendment, so that shareholders can prove to the company that they have share-related rights).

STAGES OF THE DEMATERIALIZATION

1. Establishment and maintenance of a company website with sections dedicated to communication with shareholders;
2. Holding general meetings of shareholders in order to adopt resolutions:
 - on the selection of an entity holding the register of shareholders (alternatively – on the registration of shares in the securities depository);
 - on the amendment to the company's articles of association relating to the change of the form of shares.
3. Conclusion of an agreement on the maintenance of the register of shareholders with the authorized entity (alternatively – in the case of a company in which the general meeting of shareholders adopted a resolution on the registration of shares in the securities depository – an agreement on the registration of shares in the securities depository);
4. Carrying out calls for the shareholders to submit share documents in the company and to convert them to shares in the electronic form;
5. Submission of share documents to the company by the shareholders;
6. Other activities not directly related to the dematerialization of shares, including, for example, adjustment of shareholder agreements or investment agreements or, the introduction of appropriate changes in the case of established pledges over the shares (which may involve a change in a pledge contract).

IMPORTANT DATES

- **As of 1 January 2020**, all joint-stock companies and limited joint-stock partnerships must maintain a website with sections dedicated to communication with shareholders
- **By 30 June 2020**, all companies must convene general meetings of shareholders and adopt a resolution on the choice of the entity which will hold the register of shareholders (alternatively – a resolution on the registration of shares in the securities depository)
- **Immediately after the general meeting of shareholders and after the adoption of resolutions**, all companies must enter into an agreement with the entity authorized to keep the register of shareholders (alternatively – an agreement on the registration of shares in the securities depository)

- **By 30 June 2020**, all companies must carry out the first call for shareholders to submit their share documents to the company
- **By 31 October 2020**, the remaining mandatory shareholder calls must take place, which should be carried out at intervals of up to one month but not less than two weeks
- **By 1 January 2021**, the dematerialization procedure must be completed – the existing share documents will expire on this date

PENALTIES

Obligations relating to the dematerialization of shares are imposed on a company's management – in practice on management boards. Failure to comply with these obligations will be met with strict penalties. Failure to make shareholder calls on the dates indicated above or failure to enter into the agreement with the entity authorized to keep the company's register of shareholders, or failure to enter into the agreement on the registration of shares in the securities depository may result in a fine of up to PLN 20,000 (ca EUR 5,000).

SUMMARY

The upcoming changes mean a number of requirements for companies, including the need to carry out many corporate actions to comply with the new requirements. Please note that the dematerialization of shares requires planning and implementation in order to avoid potential problems – so it is important to prepare for them in advance.

The obligatory dematerialization of shares will also have financial implications. There will undoubtedly be an increase in the operational costs of joint-stock companies and limited joint-stock partnerships. On the other hand, the introduction of the register of shareholders will reduce the anonymity of company shareholders.

The changes may also result in a number of conversions of joint-stock companies and limited joint-stock partnerships into, for example, limited liability companies. This would be to avoid excessive "red tape" related to the dematerialization of shares and to preserve the flexibility and privacy of shareholders.

HOW CAN WE HELP YOU?

Wolf Theiss provides comprehensive legal advice regarding the dematerialization of shares. In particular, we provide legal assistance in:

- Conducting general meetings of shareholders and adopting appropriate resolutions;
- Adjusting articles of association to include dematerialization requirements;
- The selection of the entity holding the register of shareholders;
- The preparation and conclusion of the agreement with the entity holding the register of shareholders or the agreement on the registration of shares in the securities depository;

- Conducting shareholder calls for the submission of share documents to the company;
- The creation of other documents, contracts or securities in companies that will need to be modified as a result of the dematerialization of shares;
- Choosing an alternative legal form of the company, if the form of a joint-stock company with dematerialized shares is too problematic for existing shareholders.

About WOLF THEISS

Wolf Theiss is one of the leading law firms in Central, Eastern and Southeastern Europe (CEE/SEE). We have built our reputation on a combination of unrivalled local knowledge and strong international capability. We opened our first office in Vienna over 60 years ago. Our team now brings together over 340 lawyers from a diverse range of backgrounds, working in offices in 13 countries throughout the CEE/SEE region.

For more information about our services, please contact:



Jakub Pietrasik
Senior Associate
jakub.pietrasik@wolftheiss.com
T: +48 22 378 89 00



Izabela Podleśna
Associate
izabela.podlesna@wolftheiss.com
T: +48 22 378 89 00

Additional contributor:



Michal Koperski
Legal Trainee
michal.koperski@wolftheiss.com
T: +48 22 3788 968

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Wolf Theiss
Schubertring 6
AT – 1010 Vienna

www.wolftheiss.com