

Track Changes

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NEW TYPE OF COMPANY STRUCTURE IN POLAND WILL CREATE NOVEL SOLUTIONS FOR BUSINESSES

COMING INTO FORCE ON 1 JULY 2021

Starting from 1st July 2021, a new form of business activity will be possible: a simple joint-stock company (Polish: *prosta spółka akcyjna*) ("**SJSC**"). The introduction of SJSC has been already postponed from the original date of 1st March 2020 twice, due to a delay in the introduction of electronic registration proceedings. As the SJSC is a highly anticipated business vehicle, we welcome this opportunity to recap on some of the most important information related to the SJSC.

BASIC FACTS ABOUT THE SJSC

- **Novelty.** A new type of company was created especially for start-ups and other innovative projects, as an alternative to limited liability company ("**LLC**"). It is intended to be far more flexible and less expensive than the LLC or a regular joint-stock company.
- **Setting up the SJSC.** It is possible to establish SJSC online or in the traditional manner, i.e. by the shareholder(s) adopting the statute in the form of a notarial deed, but it is only possible to tailor-make the statute if the traditional manner is chosen; otherwise the model statute applies.
- **Joint-stock capital.** The minimal joint-stock capital of the SJSC is PLN 1 and can be covered by cash contributions or in-kind contributions. The joint-stock capital or its increase are not subject to the civil law transaction tax (as opposed to other commercial companies, where the share capital and its increases and contributions are taxed at 0,5%).
- **Shares.** Shares have no nominal value and they do not constitute part of the joint-stock capital. In other words, shares jointly do not account for the company's joint-stock capital (but they do reflect the shareholding rights). They may be covered by cash contributions or in-kind contributions.

- **In-kind contributions.** As shares are unrelated to the SJSC's joint-stock capital, the rules for making the in-kind contributions have been differentiated, i.e., the shares, unlike the joint-stock capital, can be covered by in-kind contributions consisting of provision of work and services.
- **Share ledger.** Shares are not in a material form. The SJSC is obliged to enter into an agreement with a notary or licensed operator of securities accounts in order to maintain the electronic share ledger, in which all trading and issuance operations are recorded.
- **Share transfers.** The sale of shares requires only a so-called "document form", meaning that for the sale agreement to be valid, it can be made, e.g., by e-mail or text message. A disposal of SJSC shares is effective when the relevant entry is made in the electronic share ledger.
- **Pay-outs.** Under certain circumstances, shareholders can pay out a dividend from the assets of the SJSC, including from the joint-stock capital. In the LLC and in a joint-stock company, payments cannot be made from a company's declared capital.
- **Two models of corporate governance.** The shareholders of an SJSC may choose between a traditional two-tier model with a management board and optional supervisory board, or a one-tier model, with a board of directors (dividing functions between executive and non-executive is also possible).
- **Simple liquidation.** Under certain circumstances, the SJSC can be liquidated within 3-4 months, by way of taking over all assets by a shareholder of the SJSC.

POSSIBILITY OF TRANSFORMATION INTO THE SJSC

Any LLC or joint-stock company may be transformed into the SJSC. A transformation of a Polish capital company into the SJSC would take 2-4 months and requires, among others, preparation of a transformation plan and adoption of a resolution on the transformation of the company. Importantly, the joint-stock capital of the SJSC must not be lower than the share capital of a transformed company. Under the principle of continuity, the SJSC takes over all obligations and rights of the transformed company (e.g. permits, contracts). However, any rights and obligations of a shareholder of the transformed company, which are in conflict with legal provisions on the SJSC, expire by force of law on the date, where the new SJSC is disclosed in the National Court Register (Polish: *Krajowy Rejestr Sądowy*). The remaining part of the transformation is similar to registration of a new company and requires registration of the new SJSC in the National Court Register and deleting the transformed company.

The transformation into the SJSC constitutes an opportunity for existing companies to facilitate their business model and introduce new solutions unavailable in the previous form. However, with the SJSC being in untested waters, the uncertainties as to how it will be treated by the authorities, e.g., in terms of length of registration proceedings in

the National Court Register, will continue for several months yet. Thus, it is still to be seen if the introduction of the SJSC will bring about a significant change in the Polish business and commercial environment.

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