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Limited Liability Companies in Poland

- **ABSTRACT:** *This study discusses the construction of a limited liability company (LLC) under Polish law. Due to the short length of the article and the large scale of the issue, this study is limited to the presentation of basic concepts. The construction of an LLC under Polish law is flexible and has been modernised, as a result of a number of amendments, including a fast registration path.*
- **KEYWORDS:** company, limited liability company, shareholder, share, share capital, Polish law.

1. General issues

■ 1.1. History of the regulation of limited liability companies under Polish law

Poland regained its independence after World War I on 11 November 1918.² Almost immediately, regulations regarding limited liability companies (LLCs)³ appeared in the legislation of the reborn state.⁴

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2 Before the reunification of the law in Poland there were Russian, German, Austrian, French (the former Duchy of Warsaw), and Hungarian (in a part of Spisz and Orawa) regulations in force.

3 The operating rules of limited liability companies were developed ‘at a green table’ and were regulated for the first time in Germany (under the German name ‘Gesellschaft mit beschränkter Haftung’, abbreviated GmbH) by the Act of 20 April 1892 (Gesetz betreffend die Gesellschaften mit beschränkter Haftung), which is still in force. German standards were also adopted in Austria-Hungary (1906), in England (1907, as a private limited company), and later in other legal systems (e.g., in France in 1925). Szajkowski and Tarska, 2010, p. 128.

4 Namitkiewicz, 1925, p. 12; Namitkiewicz, 1927, p. 312; Rymar, 1938, p. 8.



Name of the legal act	Publication	Date of entry into force	Date of repeal	Remarks
1. Decree of 8 February 1919 on limited liability companies (Articles 1- 20)	Journal of Laws, 1919, No. 15, item 201	8 May 1919	1 July 1934	Applicable in the territories of the former Russian occupation territory where the French Commercial Code had been in force
2. Regulation of the President of the Republic of Poland of 10 December 1924 on the merger of joint-stock companies and limited liability companies (paragraphs 1-12)	Official Journal, 1924, No. 107, item 968	17 December 1924	1 July 1934	
3. Regulation of the President of the Republic of Poland of 27 October 1933 – Law on limited liability companies (Articles 1-157)	Official Journal, 1933, No. 82, item 602	1 January 1934	1 July 1934	
4. Regulation of the President of the Republic of Poland of 27 June 1934 – Commercial Code (Articles 158-306)	OJ, 1934, No. 57, item 502	1 July 1934	1 January 2001	

Legal invention, or the creation of a LLC, enjoyed tremendous popularity in the free market economy system during the years 1918–1939. From 1945 to 1989, in the centrally-controlled economy system and with the economic domination of the State Treasury, state-owned enterprises were the dominant legal entities. After 1989, state-owned enterprises were massively commercialised and became LLCs or joint-stock companies. Currently, state-owned companies and companies owned by local government units take the form of either LLCs or joint-stock companies. Due to the benefits of their legal personality, as well their relatively deformed and elastic nature (compared to joint-stock companies), LLCs enjoy great popularity in the private sector.

■ 1.2. Present sources of regulation regarding limited liability companies

In Poland, *de lege lata* (the law as it exists) applies the principle of uniformity of civil law.⁵ That is, there is no normative division into civil law and commercial law. The basic source of Polish law concerning LLCs⁶ is the Act of 15 September 2000, also known

⁵ Kidyba, 2009, p. 3; Safjan, 2007, p. 55.

⁶ Kidyba, 2009, p. 7.

as the Commercial Companies Code (Articles 151-300).⁷ In matters not covered by the Commercial Companies Code, the Civil Code shall be applied. If required by the nature of the commercial company's legal relationship, the provisions of the Civil Code shall apply accordingly (Article 2).⁸ In addition, there are a number of separate Acts regarding LLCs according to the subject of their activities (e.g., sports companies) or due to the status of their shareholders (i.e., whether the shareholder is the State Treasury or a local government unit).⁹

■ 1.3. *Legal status of a limited liability company*

There are three categories of person in Polish civil law: a) natural persons; b) incomplete legal entities, that is, organizational units with legal capacities, whose members are jointly and severally liable for the obligations of the legal entity; and c) legal entities. LLCs are legal entities.¹⁰ An LLC acquires legal personality upon entry into the court register. It loses its legal personality upon removal from the register. The LLC has its own assets, separate from the assets of the shareholders. The company itself is responsible for its obligations. The company may create branches. The company's branch has no separate legal personality.

The name of the LLC can be chosen freely; however, it should include the additional designation 'spółka z ograniczoną odpowiedzialnością' (limited liability company).¹¹ The abbreviation 'spółka z o.o.' or 'sp. z o.o.' (LLC) is also allowed (Article 160). The Civil Code and other laws shape certain requirements for the company name: the principle of unity of the name, the principle of the truth of the name, the principle of uniqueness of the name, and so on.

■ 1.4. *Legal status of shareholders*

Shareholders may be natural persons, incomplete legal entities, or legal entities.¹² There is no censorship of nationality, citizenship, or place of seat. One can become a shareholder in an original manner as a founder of the company or in a consequential manner (following the acquisition of shares, transformation of companies, inheritance, etc.). In external relations, the shareholders are not responsible for the company's obligations (Article 151 § 4). In internal relations, shareholders are required only to perform the duties specified in the articles of association (Article 151 § 3).¹³

7 Unless otherwise stated, all articles come from the Commercial Companies Code by its legal status as at 1 December 2019.

8 Nita-Jagielski, 2010, p. 150; Sołtysiński, 2001, p. 19.

9 Kopaczyńska-Pieczniak, 2010, p. 32; Nita-Jagielski, 2010, p. 149.

10 Kopaczyńska-Pieczniak, 2010, p. 67; Szajkowski and Tarska, 2010, p. 121.

11 Kopaczyńska-Pieczniak, 2010, p. 54.

12 Kidyba, 2002, p. 15.

13 Kidyba, 2002, p. 35; Kopaczyńska-Pieczniak, 2010, p. 279.

■ 1.5. *Public register for the company*

LLCs are subject to entry in the Register of Entrepreneurs of the National Court Register, and obtain legal personality upon entry into this register.¹⁴ Data regarding the LLC disclosed in the register are, among others, the following: name of the company; registered office and address; company branches (if any), as well as their registered offices and addresses; the amount of the share capital, and if the shareholders make in-kind contributions – an indication of this circumstance; the value of shares; whether shareholders may have one or more shares; designation of shareholders holding, solely or jointly with others, at least 10% of the share capital, the number of shares held by those partners, and their total amount; if the company has only one shareholder, confirmation that they are the company's only shareholder; designation of the body authorised to represent the company and its members, indicating the method of representation; designation of supervisory authorities and their composition.

■ 1.6. *Admissibility of a sole proprietorship of a limited liability company*

The company's essence is based on *affectio societatis*.¹⁵ However, the legislation explicitly allows a sole proprietorship.¹⁶ A sole proprietorship may be formed in a primary or successive manner as a result of accumulation of shares by one person, for example, by means of a purchase transaction or as a result of the redemption of other partners' shares.¹⁷ Moreover, an entrepreneur who is a natural person conducting business activities on his or her own behalf within the bounds of the Act of 6 March 2018, also known as the Entrepreneurs' Law, may transform the form of activity being conducted into a sole proprietorship (Article 551 § 5).

In a sole proprietorship, the sole shareholder exercises all rights vested in the shareholders' meeting, and the provisions regarding the meeting of shareholders shall apply accordingly (Article 156). If all of the company's shares are vested in the sole shareholder or in the sole shareholder and the company, such a shareholder's declaration of intent requires a written form to be submitted to the company, otherwise it is null and void, unless the law stipulates otherwise (Article 173).

■ 1.7. *Holding structures with the participation of a limited liability company*

Under Polish law, the regulations regarding holding companies (groups of companies) are still rudimentary.¹⁸ An LLC may participate in a holding structure. However, in accordance with Article 151 § 2, an LLC cannot be established solely by another sole-proprietorship LLC.

14 Kidyba, 2009, p. 68; Nita-Jagielski, 2010, p. 171.

15 Szajkowski and Tarska, 2010, p. 132.

16 Kidyba, 2002, p. 15; Kopaczyńska-Pieczniak, 2010, p. 250.; Nita-Jagielski, 2010, p. 156; Szajkowski and Tarska, 2010, p. 130.

17 Kidyba, 2001, *passim*.

18 Kidyba 2009, p. 230; Opalski, 2012, *passim*; Szumański, 2010, p. 675.

■ 1.8. *Participation of a limited liability company in a limited partnership*

An LLC (including a sole-proprietorship LLC) may participate in atypical constructions. An LLC may be a partner in a limited partnership, which is responsible with all its assets for the obligations of this limited partnership (as the so-called general partner). A natural person — the sole partner of an LLC — may be a partner in a limited partnership which: a) is responsible for the limited partnership's obligations up to a specified amount, the so-called 'limited amount'; and b) shall not be liable within the limits of its contribution into the partnership (as the so-called limited partner).¹⁹

■ 1.9. *A ban on a limited liability company acquiring its own shares*

Neither an LLC — nor its subsidiary — can: a) subscribe shares in its own share capital; b) acquire its own shares; or c) pledge its own shares. However, exceptions include: a) the acquisition of its own shares by way of execution to satisfy the company's claims, which cannot be satisfied by other assets of the partner; b) the acquisition for redemption of shares; or c) the acquisition or subscription for shares in other cases allowed by law (Article 200 § 1).²⁰ If shares acquired by way of execution are not disposed of within one year of the acquisition date, they should be redeemed in accordance with the provisions regarding the reduction of the share capital, unless a special reserve capital was created in the company for redemption of shares (Article 200 § 2).

2. Flexibility of a limited liability company

■ 2.1. *The limited liability company's goals*

In accordance with Article 151 § 1, an LLC may be established for any legally permissible purpose, unless the law stipulates otherwise.²¹ This means that an LLC may be created for a purely non-profit goal, rather than for profit. Thus, the construction of an LLC may compete with the construction of a foundation, an association with legal personality, a cooperative, and so on. Some economic purposes are reserved for joint-stock companies (e.g., banking and insurance).²²

■ 2.2. *Codex regulation: Ius cogens and ius dispositivum standards*

Construction of an LLC is flexible and deformed, in contrast to the construction of a joint-stock company.²³ Most of the provisions regarding the sphere of internal relations (*forum internum*) in an LLC are disposable in nature (*ius dispositivum*). The provisions regarding external relations (*forum externum*) in an LLC and on issues concerning responsibility are mainly built by mandatory provisions (*ius cogens*).

¹⁹ Kidyba, 2002, p. 23.

²⁰ Herbet, 2010, p. 251; Kopaczyńska-Pieczniak, 2010, p. 166.

²¹ Kidyba, 2002, p. 16; Kopaczyńska-Pieczniak, 2010, p. 23.

²² Kidyba, 2002, pp. 13-14.

²³ Kopaczyńska-Pieczniak, 2010, p. 39; Szajkowski and Tarska, 2010, p. 128; Szumański, 2010, p. 438.

■ 2.3. *Limited liability company articles of association in a traditional form*

The articles of association of an LLC should not be complicated and should specify: a) the company name and registered office; b) the subject of the company's business; c) the amount of share capital; d) whether a shareholder may have more than one share; e) the number and nominal value of shares taken up by individual shareholders; and f) the duration of the company, if marked (Article 156 § 1). The articles of association of an LLC should be concluded in the form of a notarial deed (Article 156 § 2).²⁴

■ 2.4. *Standard company agreement in the ICT system. Quick company registration*

The legislation has provided for a simplified formula (with typical provisions) for the conclusion of a company agreement and an accelerated registration procedure. The conclusion of an LLC's articles of association is possible using the template agreement. This requires completing the contract form available in the ICT system, and providing the contract with a qualified electronic signature, trusted signature, or personal signature (Article 157¹). Only cash contributions are made to cover the share capital. The share capital should be covered within no more than seven days from the date of its entry in the register.

■ 2.5. *Regulation flexibility: From a model similar to a partnership to a model similar to a joint-stock company*

An LLC is a capital company, but in particular cases it can be shaped by its founders to be an entity based more on a personnel substrate, or more on a capital substrate.²⁵ For instance, trading in shares may be limited to maintaining a permanent composition of shareholders, or it may be completely free, without any control of who buys the shares. The articles of association may exclude or limit the joining of a shareholder's spouse or heirs. The members of the management board (and supervisory board) may only be shareholders, or may be persons from outside the group of shareholders. The members of the management board may be appointed for an indefinite period, without a term of office. The control of the company's activities may take the form of direct and personal control by the shareholders, or may be institutionalised by creating a supervisory board. The articles of association may grant shareholders extra personal rights, or the position of shareholders may be standardised.

²⁴ Kopaczyńska-Pieczniak, 2010, p. 235.

²⁵ Kopaczyńska-Pieczniak, 2010, p. 40; Szajkowski and Tarska, 2010, p. 128; Szumański, 2010, p. 436.

3. The share capital. Contributions to the company. Shares

■ 3.1. *The company's share capital and its functions*

An LLC has its 'own capitals'.²⁶ Belonging to them are: a) obligatory share capital; b) voluntary supplementary capital; and c) voluntary reserve capital. The share capital is obligatory.²⁷ Its minimum amount is PLN 5,000²⁸ (Article 154 § 1). The company's share capital is divided into shares of equal or unequal nominal value (Article 152). The share capital has a legal function.²⁹ It is divided into shares and determines which company position a stockholder occupies.³⁰ However, this guarantee function³¹ of the share capital is illusory in practice. The symbolic minimum amount of share capital gives no realistic guarantee to creditors of the company. Because the share capital is only a provision on the liabilities side in the balance sheet, even if it is high, its protective functions are limited. The law protects share capital. During the duration of the company, shareholders may not be refunded their contributions in whole or in part, unless the provisions of this section stipulate otherwise (Article 189 § 1). Shareholders may not receive, on any account, payments of the company's assets needed to fully cover the share capital (Article 189 § 2), and so on.

■ 3.2. *Changes in share capital: Increase and reduction*

The share capital may be increased by either increasing the nominal value of existing shares or establishing new shares (Article 257 § 2).³² The entry of share capital increase into the register is constitutive in effect. The share capital may be increased either under the existing provisions of the company's articles of association, providing for the maximum amount of share capital increase and the date of the increase, or pursuant to an amendment to the articles of association (Article 257 § 1). The share capital is increased by making external contributions to the company. There is the possibility of increasing the share capital from the company's own resources. The share capital may be increased by allocating funds from supplementary capital or reserve capital (funds) created from the company's profit by resolution of the shareholders to amend the articles of association. In such a case, the shareholders have new shares in addition to their existing shares, and their subscription is not required (Article 260 § 1, 2).³³

26 Herbet, 2010, p. 185, 192; Kidyba, 2009, p. 352; Nita-Jagielski, 2010, p. 169.

27 Kopaczyńska-Pieczniak, 2010, p. 97.

28 About 1150 EUR. For comparison, the minimum share capital in a joint-stock company is PLN 100,000.

29 Herbet, 2010, p. 195; Kidyba, 2002, p. 35.

30 Herbet, 2010, p. 187; Kidyba, 2002, p. 37.

31 Herbet, 2010, p. 196; Kidyba, 2002, p. 40.

32 Herbet, 2010, p. 218; Kidyba, 2009, p. 355; Kopaczyńska-Pieczniak, 2010, p. 123.

33 Herbet, 2010, p. 226.

The share capital may be reduced to a minimum amount.³⁴ As a rule, a resolution of the shareholders to amend the articles of association is essential. The management board immediately announces the adopted reduction of the share capital, calling on the company's creditors to raise objections, if there are any, within three months from the day of announcement. Creditors who object within this period should be satisfied or secured by the company. Creditors who do not object are considered to agree with reducing the share capital (Article 264 § 1). The above described convocation procedure shall not apply if, despite the reduction of the share capital, the shareholders have not returned to the contributions they had made to the share capital, and at the same time with the reduction of the share capital, it shall be increased at least to the original amount (Article 264 § 2).

■ 3.3. *Mandatory contributions to a limited liability company*

A commercial company in Poland may not be 'contribution-free'.³⁵ Contributions made by shareholders may be non-monetary, or made in cash.³⁶ Making in-kind contributions³⁷ requires that the articles of association should specify in detail the subject of the contribution, the identity of the contribution-making shareholder, and the number and nominal value of the shares taken up in exchange (Article 158 § 1). If the value of in-kind contributions is significantly overstated in relation to their sale value on the date of concluding the company's articles of association, the shareholder who made the contribution and the members of the management board who knowingly reported the company to the register, are obliged to jointly and severally equalise the missing value (Article 175). If the issue price is higher than the nominal value of the share, then the surplus (agio) is transferred to supplementary capital. As a rule, all contributions should be made before registering the company.³⁸

■ 3.4. *A shareholder's maximum number of limited liability company shares*

The articles of association state whether a shareholder may have one or more shares.³⁹ If a shareholder may have more than one share (which is a common practice), then all shares in the share capital should be equal and indivisible (Article 153). The nominal value of the share may not be lower than PLN 50⁴⁰ (Article 154 § 2). Shares may not be subscribed below their nominal value (Article 154 § 3). Neither bearer documents nor personal or commission documents may be issued for shares or rights to profit in a company (Article 174 § 6).

34 Herbet, 2010, p. 233; Kidyba 2009, p. 358; Kopaczyńska-Pieczniak, 2010, p. 127.

35 Herbet, 2010, p. 198; Kidyba, 2009, p. 334.

36 Herbet, 2010, p. 199; Kidyba, 2009, p. 347.

37 Szumański, 1997, passim.

38 Herbet, 2010, p. 197.

39 Herbet, 2010, p. 241; Kidyba, 2009, p. 362.

40 About 11,50 EUR. For comparison, the minimum nominal value of a share in a joint-stock company is PLN 0.01 (one Polish penny).

■ 3.5. Possibility of trading shares

LLC shares may be sold (as part of both the singular and the general succession), pledged, and encumbered with a right *in rem* (use).⁴¹ The articles of association may stipulate that a pledgee or user of shares may exercise the right to vote (Article 187 § 2). The sale of a share, its part or a fraction of a share and its pledge should be made in writing, with signatures authenticated by a notary public (Article 180 § 1). Share-trading restrictions are unique and may arise from a) the specific provision of law; b) the articles of association; or c) a contract between a shareholder and a third party. The trading of shares can be restricted by the articles of the association in two ways (Article 182): by making the sale of shares subject to the company's approval and/or by granting the existing shareholders pre-emptive rights to shares which are to be sold.⁴²

■ 3.6. Cancellation of shares

Shares in an LLC may be cancelled only after the company has been entered in the register, and only if the articles of association allow.⁴³ Shares may be cancelled either with the consent of the shareholder through the purchase of shares by the company (voluntary cancellation) or without the consent of the shareholder (compulsory cancellation). The conditions and procedure of compulsory cancellation should be specified in the articles of association (Article 199 § 1). The cancellation of shares requires a resolution of the meeting of shareholders, which should specify in particular the legal basis for the cancellation and the amount of remuneration due to the shareholder for the cancelled shares. This remuneration, in the event of compulsory cancellation, may not be lower than the value attributable to the share of net assets disclosed in the financial statements for the last financial year, less the amount to be distributed among the partners. In the event of compulsory cancellation, the resolution should also contain a statement of reasons (Article 199 § 2). With the shareholder's consent, shares may be cancelled without any remuneration – *volenti non fit iniuria* (Article 199 § 3).

4. Rights and obligations of shareholders

■ 4.1. Rights of shareholders

Unless the provisions of law or articles of association stipulate otherwise, shareholders have equal rights and obligations in the company (Article 174 § 1).⁴⁴ Shareholders have property rights and corporate rights.⁴⁵ The basic property right is the right to dividend (Article 191).⁴⁶ If the articles of association or resolution on the increase in capital do not stipulate otherwise, shareholders have the pre-emptive right to subscribe for new

41 Herbet, 2010, p. 279; Kopaczyńska-Pieczniak, 2010, p. 151.

42 Herbet, 2010, p. 291.

43 Herbet, 2010, p. 255; Kidyba 2009, p. 360; Kopaczyńska-Pieczniak, 2010, p. 191.

44 Herbet, 2010, p. 349; Kidyba 2009, p. 365; Kopaczyńska-Pieczniak, 2010, p. 292.

45 Herbet, 2010, p. 354.

46 Herbet, 2010, p. 377; Kidyba, 2009, p. 369.

shares⁴⁷ in the increased share capital in relation to their existing shares (Article 258 § 1). All shareholders have the right to participate in the meeting of shareholders and the right to vote. Shareholders also have the right to appeal the court resolutions of the meeting of shareholders.⁴⁸

If the articles of association allow for shares with special rights, these rights should be specified therein. These are so-called 'preferred shares' (Article 174 § 2). Preference may relate in particular to: a) voting rights for shares of equal nominal value, at up to 3 votes per share; b) dividend rights (for a preferential share in the scope of the dividend, a dividend may be granted to the entitled person, and it shall not exceed by more than half the dividend due to the non-preferential shares); c) priority rights to receive dividends; and d) special rights to participate in the distribution of assets in the event of the company's liquidation. The articles of association may make the granting of special rights conditional on the fulfilment of additional benefits for the company, the expiry of a fixed period, or the fulfilment of given conditions (Article 174 § 5).

■ 4.2. *Minority rights*

There are predicted minority rights of shareholders.⁴⁹ A shareholder or shareholders representing at least one-tenth of the share capital may request that an extraordinary meeting of shareholders be convened, and that specific matters be placed on the meeting agenda (Article 236 § 1). A shareholder or shareholders representing at least one-twentieth of the share capital may request that specific matters be placed on the agenda of the next shareholder meeting (Article 236 § 1).¹ The articles of association may grant the abovementioned rights to shareholders representing a lower amount of share in the share capital.

■ 4.3. *Obligations of shareholders*

The articles of association may oblige shareholders to make additional payments within an indicated amount in relation to the share. Additional payments should be imposed and paid by partners evenly in relation to their shares (Article 177 § 1, 2).⁵⁰ A shareholder may be obliged to make recurring non-cash benefits for the company. In such a case the articles of association must indicate the type and extent of such benefits. A shareholder's remuneration for such benefits for the company shall also be paid by the company when the financial statements show no profit. The remuneration may not exceed the prices or rates accepted in the market.

47 Herbet, 2010, p. 386.

48 Herbet, 2010, p. 397.

49 Herbet, 2010, p. 362; Kidyba, 2009, p. 375; Kopaczyńska-Pieczniak, 2010, p. 340; Radwan, 2016, passim.

50 Herbet, 2010, p. 425; Kopaczyńska-Pieczniak, 2010, p. 356.

■ 4.4. *Personal rights granted to shareholders*

The articles of association of the company may grant specific personal rights to shareholders, for example, the right to appoint and remove a certain number of members of the management board or the supervisory board, or the right to convene a meeting of shareholders.⁵¹

■ 4.5. *Loss of shareholders status: Involuntary cancelation of all shares and exclusion of a shareholder from the company*

Shareholders can be forcibly deprived of their status in the company. This can be done through two different channels. In each case, adequate equivalent and the possibility of judicial review of the procedure are ensured. First, a shareholder may have all shares cancelled in a compulsory manner.⁵² For this to occur, the resolution of the majority of shareholders is essential. Second, in extenuating circumstances involving a given shareholder, the court may order his or her exclusion from the company at the request of all other partners, if the partners requesting exclusion hold more than half of the share capital (Article 266 § 1).⁵³ The articles of association may also grant the right to bring the above-described action about if a smaller number of shareholders possess shares constituting more than half of the share capital (Article 266 § 2). The shares of the excluded shareholder must be taken over by shareholders or third parties. The acquisition price is determined by the court based on the actual market value on the day of the claim's delivery (Article 266 § 3).

5. Organs of a limited liability company

■ 5.1. *Structure of company organs*

According to the theory of organs, a company operates through its organs.⁵⁴ There are three types⁵⁵ of possible organs in an LLC: a) organs for managing (management board);⁵⁶ b) organs for supervising (supervisory board or audit committee);⁵⁷ and c) organs for making decisions about key issues for the company (shareholders' meetings).⁵⁸ The management board consists of one or more⁵⁹ members (Article 201 § 2). Both shareholders and non-shareholders may be appointed to the management board (Article 201 § 3). The articles of association may establish a supervisory board, commission audit

51 Herbet, 2010, p. 423; Kopaczyńska-Pieczniak, 2010, p. 342.

52 Herbet, 2010, p. 263; Kopaczyńska-Pieczniak, 2010, p. 196.

53 Herbet, 2010, p. 333; Kopaczyńska-Pieczniak, 2010, p. 377.

54 Grzybowski, 1974, p. 373; Klein, 1985, p. 122; Pazdan 1969, pp. 205-206; Wolter, Ignatowicz and Stefaniuk, 1996, p. 196.

55 Kidyba, 2009, p. 381; Szajkowski and Tarska, 2010, p. 135; Szumański, 2010, p. 437..

56 Kidyba, 2009, p. 381; Kopaczyńska-Pieczniak, 2010, p. 396.

57 Kidyba, 2009, p. 395; Kopaczyńska-Pieczniak, 2010, p. 452.

58 Kidyba, 2009, p. 402; Kopaczyńska-Pieczniak, 2010, p. 498.

59 Szumański, 2010, p. 446.

authorities, or both (Article 213 § 1). In practice, the audit committee is generally not appointed. The supervisory board is obligatory⁶⁰ only in select companies. In companies whose share capital exceeds PLN 500,000 and there are more than twenty-five shareholders, a supervisory board or an audit committee should be established (Article 213 § 2). The supervisory board consists of at least three members (Article 215 § 1).⁶¹ There are either management or supervisory bodies, not both. Apart from regulations concerning state enterprises that have turned into companies, employees do not have the authority to participate in the management of the company.

■ 5.2. *The method of appointing permanent organs*

Members of the management board are appointed and dismissed by a resolution of shareholders, unless the articles of association stipulate otherwise (Article 201 § 4).⁶² The mandate of a member of the management board expires at the end of the fixed term, as well as due to death, resignation, or dismissal from the board (Article 202 § 2, 3).⁶³ A member of the management board may be dismissed at any time by a resolution of shareholders (Article 203. § 1). The articles of association may contain other provisions, and may in particular limit the right to dismiss a member of the management board to extenuating circumstances only (Article 203 § 2).⁶⁴

Similarly, the supervisory board is appointed and dismissed by a resolution of shareholders (Article 215 § 1). The articles of association may allow for a different way of appointing or dismissing members of the supervisory board (Article 215 § 2).⁶⁵

■ 5.3. *Convening organs operating in sessions*

The shareholders' meeting may proceed ordinary (e.g., summarizing the previous financial year) or extraordinarily.⁶⁶ The shareholders' meeting is convened a) by the management board (Article 235 § 1); b) by either the supervisory board or the audit committee if the management board fails to convene an ordinary meeting of shareholders within the time limit specified in law or in the articles of association, and an extraordinary meeting of shareholders if it is deemed necessary and if the management board does not convene a meeting of shareholders within two weeks from the date of submission of the relevant request by the supervisory board or the audit committee (Article 235 § 2); or c) by other persons granted entitlement to convene a meeting of shareholders under the articles of association (Article 235 § 3). If, within two weeks of a request being submitted to the management board, the extraordinary shareholders' meeting is not convened with an agenda in accordance with the request, the registry

60 Szumański, 2010, p. 445.

61 Szumański, 2010, p. 447.

62 Szumański, 2010, p. 459, 464.

63 Szumański, 2010, p. 465.

64 Szumański, 2010, p. 467.

65 Szumański, 2010, p. 479.

66 Szumański, 2010, p. 494.

court may authorise the convening of an extraordinary meeting of the partner or partners submitting the request (Article 237 § 2).

■ 5.4. Competence of organs

The management board conducts the company's affairs and represents the company (Article 201 § 1).⁶⁷ The management board has the presumption of competence.⁶⁸

The supervisory board exercises constant supervision over all areas of the company's activity (Article 219 § 1).⁶⁹ However, the supervisory board has no right to issue binding instructions to the management board regarding the management of the company's affairs (Article 219 § 2).⁷⁰ The specific duties of the supervisory board include: a) the assessment of the annual financial statements and activity reports regarding their compliance with the books and documents, as well as with the facts; and b) the assessment of the management board's annual conclusions regarding distribution of profit or coverage of loss (Article 219 § 3). The articles of association may extend the powers of the supervisory board, and in particular: a) stipulate that the management board is obliged to obtain the consent of the supervisory board before performing the actions specified in the articles of association; and b) delegate to the supervisory board the right to suspend, under extenuating circumstances, an individual member or all members of the management board (art. 220).⁷¹

Resolutions of shareholders are adopted at the shareholders' meeting (Article 227 § 1). The articles of association may allow participation in the shareholders' meeting to use electronic means of communication (Article 234¹ § 1). Resolutions may be adopted without holding a shareholders' meeting if all shareholders agree in writing or by a written vote to the decision in question (Article 227 § 2). In accordance with Article 228, resolutions of shareholders require,⁷² among other things: a) review and approval of the management board's report on the company's operations, the financial statements for the previous financial year, and acknowledgment of the fulfilment of duties by members of the company's governing bodies; b) a decision regarding claims for compensation for damage caused when establishing the company or exercising management or supervision; and 3) sale and lease of the enterprise or its organised part and establishment of a right effective *erga omnes* thereon.

■ 5.5. Representation of a company

The company may be represented based either on the theory of the organ or on the theory of power of attorney. The right of a management board member to represent the company applies to all court and extrajudicial activities of the company (Article

67 Szumański, 2010, p. 448.

68 Kidyba, 2009, p. 385; Szumański, 2010, p. 447.

69 Szumański, 2010, p. 482.

70 Szumański, 2010, p. 450.

71 Szumański, 2010, p. 486.

72 Szumański, 2010, p. 497.

204 § 1),⁷³ and cannot be restricted by legal effect to third parties (Article 204 § 2). If the management board is composed of several persons, the manner of representation is specified in the articles of association. If the articles of association do not contain any provisions in this regard, the submission of statements on behalf of the company requires the cooperation of two members of the management board, or one member of the management board together with a commercial proxy-holder (Article 205 § 1). Statements submitted to the company and the delivery of letters to the company (passive representation) may be made to one member of the management board or to a proxy (Article 205 § 2). In any contract between the company and a member of the management board or in a dispute between the two, the company is represented by the supervisory board or a proxy appointed by resolution of the meeting of shareholders (Article 210 § 1).

6. Establishment, liquidation, transformation, insolvency, and restructuring of a limited liability company

■ 6.1. Establishment of a company

In accordance with Article 163, the establishment of an LLC requires: a) conclusion of the articles of association; b) contributions by shareholders to cover the entire share capital, and in the event of taking up a share for a price higher than the nominal value, to create a surplus; c) appointment of the board; d) establishment of a supervisory board or an audit committee, if required by statute or articles of association; and e) entry in the register.⁷⁴

■ 6.2. A limited liability company in organization

Upon the conclusion of the articles of association, an LLC in organization is established (Article 161 § 1).⁷⁵ An LLC in organization is represented by the management board or a proxy-holder appointed by a unanimous resolution of the founders (Article 161 § 2). The liability of persons acting for an LLC in organization ceases as soon as their activities are approved by a meeting of shareholders (Article 161 § 1).⁷⁶

■ 6.3. Merger, division, and transformation capability of a limited liability company

Capital companies may merge with each other and with partnerships; a partnership cannot, however, be an acquiring company or a newly formed company (Article 491 § 1). An LLC may merge with a foreign company, as is referred to in Article 2 § 1 of Directive 2005/56/EC of the European Parliament and of the Council of 26 October 2005

73 Kidyba, 2009, p. 385; Kopaczyńska-Pieczniak, 2010, p. 425..

74 Kidyba, 2009, p. 336; Kopaczyńska-Pieczniak, 2010, p. 235.; Nita-Jagielski, 2010, p. 163..

75 Kopaczyńska-Pieczniak, 2010, p. 48; Nita-Jagielski, 2010, p. 163.

76 Kidyba, 2009, p. 237.

on the cross-border merger of LLCs. An LLC may be divided into two or more capital companies (Article 528 § 1) or may be transformed into another commercial company (Articles 551 § 1).⁷⁷

■ **6.4. Liquidation of a company. Bankruptcy and restructuring**

The dissolution of a company⁷⁸ is caused by: a) the reasons provided for in the articles of association; b) a resolution of the shareholders on the dissolution of the company or on the transfer of the company's registered office abroad, confirmed by a report drawn up by a notary public; c) the company's declaration of bankruptcy; or d) other reasons provided by law (Article 270). The court may, by judgment, order the dissolution of the company: a) at the request of a shareholder or member of the company's governing body, if achieving the company's purpose has become impossible or if there are other extenuating circumstances caused by the company's relations; or b) at the request of a state body designated in a separate act, if the company's activity infringes on the law and threatens public interest (Article 271). The dissolution of the company takes place after liquidation, when the company is removed from the register (Article 272). The liquidators are the members of the management board, unless the articles of association or a resolution of the shareholders stipulate otherwise (Article 276 § 1). The liquidation activities include terminating the company's current interests, collecting claims, fulfilling obligations, and liquidating the company's assets. A new business can only be started if it is necessary for completing ongoing cases. Real estate may be sold by public auction, and by free hand (only on the basis of a resolution of the partners), at a price not lower than that adopted by the shareholders (Article 282 § 1). The division of assets remaining after satisfying or securing creditors may only be made beginning at six months after the date of the announcement of the commencement of liquidation and summoning creditors for their claims (Article 286 § 1). The property is divided among shareholders according to their shares. The articles of association may specify other rules for the distribution of assets (Article 286 § 2, 3). An LLC has a bankruptcy and restructuring ability.⁷⁹

7. Civil responsibility in a limited liability company

■ **7.1. Abuse of a company structure by shareholder**

As a rule, an LLC — as a legal person — is itself responsible for its obligations. Under Polish law, there is no direct regulation regarding the abuse of a company's legal personality by shareholders. Nevertheless, legal doctrine indicates that general provisions regarding, for example, torts, invalidity, and so on, allow for 'piercing the corporate veil'. In practice, courts often ignore the company's legal personality in

77 Kidyba, 2009, p. 502; Nita-Jagielski, 2010, p. 160..

78 Kidyba, 2009, p. 415; Kopaczyńska-Pieczniak, 2010, p. 68; Michalski, 2010, p. 511.

79 Adamus, 2019, p. 19; Kopaczyńska-Pieczniak, 2010, p. 92; Michalski, 2010, p. 534..

matters of social security, and charge its shareholders with liability for social security contributions. In such situations, the courts ignore the fact that a natural person works in the management board of the company, and instead treat each shareholder as if it were a natural person conducting business activity.⁸⁰

■ 7.2. *Liability of members of the company's management board to creditors*

Under Polish law, there are a number of provisions regarding the liability of management board members for the company's obligations.⁸¹ If enforcement against the company proves ineffective, members of the management board shall be jointly and severally liable for its obligations. A member of the management board may be released from liability if he/she demonstrates that: a) the bankruptcy petition was filed without delay; b) at the same time, a court's decision was issued to open the restructuring procedure or to approve the arrangement in the proceedings regarding approval of the arrangement; c) failure to file for bankruptcy was not his/her fault; or d) despite failure to file for bankruptcy, failure to issue a resolution to open restructuring proceedings, or failure to approve the arrangement in proceedings regarding approval of the arrangement, the creditor did not suffer damages (Article 299).⁸²

■ 7.3. *Liability of management board members to the company*

Members of the management board, supervisory board, and audit committee, as well as liquidators, shall be liable to the company for damage caused by an act or omission contrary to the law or the provisions of the articles of association, unless he/she is not at fault. Members of the management board, supervisory board, and audit committee, as well as liquidators should, when performing their duties, exercise due diligence because of the professional nature of those duties (Article 293).⁸³

■ 7.4. *Actio pro socio*

If the company does not bring an action to repair damages caused to it within one year from the date of disclosure of the damaging act, any shareholder may bring a claim for compensation of the damages caused to the company.⁸⁴

8. Future of limited liability companies in Poland

National LLCs in the European Union do not yet have a 'competitor' in the form of a European private company. Work on this EU construction has not been completed.⁸⁵

⁸⁰ Kopaczyńska-Pieczniak, 2010, p. 608; Siemiątkowski, 2010, p. 568.

⁸¹ Kopaczyńska-Pieczniak, 2010, p. 586; Osajda, 2014, *passim*; Siemiątkowski, 2010, p. 625.

⁸² Siemiątkowski, 2010, p. 635.

⁸³ Kopaczyńska-Pieczniak, 2010, p. 570; Siemiątkowski, 2010, p. 582.

⁸⁴ Bilewska, 2008, *passim*; Siemiątkowski, 2010, p. 671.

⁸⁵ Opalski, 2010, p. 604.

In the Polish legal system, there recently appeared a mutation of a joint-stock company: a ‘simple joint-stock company’. It may prove to be a competitor to LLCs.

It should be noted here that there was an interesting debate in Poland about the introduction into company law of the admissibility of zero share capital.⁸⁶ Though this concept has been seriously criticised in the doctrine of law, it did have some supporters.⁸⁷ Ultimately, however, this idea was not implemented.

9. Summary

In the conditions of a common market, the construction of an LLC should be able to compete with similar institutions in other countries. The more amenable the laws regarding LLCs are, the greater the chance of facilitating the development of domestic business, attracting investment, and achieving the so-called ‘Delaware effect’ in the global market.

Under current Polish law, regulations regarding LLCs are modern and elastic. Of course, there is no ‘end of history’, and the construction of LLCs is subject to change. Further attempts should be made to simplify the functioning of this type of company.

⁸⁶ Herbet, 2010, p. 217.

⁸⁷ Frąckowiak, 2011, p. 5; Katner, Kappes and Janeta, 2011, p. 13; Kidyba and Kopaczyńska-Pieczniak, 2011, p. 9; Opalski, 2011, p. 11; Oplustil, 2011, p. 31; Osajda, 2011, p. 25; Romanowski, 2010, p. 5; Sobolewski, 2011, p. 54.

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