UDC 334.772 Правоведение. 2021. Т. 65, № 1

Companies in Polish law

Maciej Mataczyński, Adrian Rycerski

For citation: Mataczyński, Maciej, Rycerski, Adrian. 2021. Companies in Polish law. *Pravovedenie* 65 (1): 106–122. https://doi.org/10.21638/spbu25.2021.106

The article outlines key features of the two types of companies that exist in Polish law — a limited liability company (*spółka z organiczoną odpowiedzialnością, spółka z o. o.*) and a joint-stock company (*spółka akcyjna, S.A.*). However, the work does not consider the matters of a simple joint-stock company (*prosta spółka akcyjna, P.S.A.*) also endowed with legal personality. Due to its specificity, a simple joint-stock company deserves a completely separate and complex analysis. The features of both companies are presented in a comparative form to show the main differences and similarities between the two. In particular, the authors discuss the incorporation procedure, the issues related to the deed of incorporation, requirements regarding share capital, and the rights and duties of shareholders. The article also presents the features of governing bodies and particular issues related to the abovementioned matters, such as pre-emptive right, share certificates and many more. The differences between a limited liability company and a joint-stock company are mainly due to the fact that the former exhibits many features of a partnership, meanwhile a joint-stock company fully embodies the essence of a capital company. There are also many similarities. For instance, both a limited liability company and a joint-stock company cannot be formed solely by a single-member limited liability company. In the opinion of the authors of the article, the approach taken to the subject matter should be of interest and useful for the reader. It should also help to select the most favorable business model under Polish law. The article provides an analysis of the current legal situation as well as the newest amendments to Polish company law (related to capital companies). Special attention should be paid to dematerialization of shares which have revolutionized the perception of the shares and the rules governing the disposal of shares.

Keywords: limited liability company, joint-stock company, company, shares, management board, supervisory board, general meeting of shareholders.

Introduction

There are tree types of companies in Poland. The first type of company endowed with legal personality introduced by The Commercial Companies Code[1] (hereinafter CCC) is a limited liability company (*spółka z ograniczoną odpowiedzialnością, spółka z o. o.*) (Art. 151–300 CCC). A limited liability company is suitable for small and medium-sized enterprises whose owners wish to benefit from the advantages of limited liability. The major legal limit on the growth of a limited liability company is its inability to offer its shares (*udziały*) in the capital market. According to Art. 174 § 6 CCC, no bearer share certificates, registered share certificates or endorsable documents may be issued in respect of shares or rights to participate in the profit of the company. The second type of company endowed

Maciej Mataczyński — Dr. hab., prof., Adam Mickiewicz University, 1, ul. Wieniawskiego, Poznań, 61-712, Poland; mataczyn@amu.edu.pl

Adrian Rycerski — PhD, Adam Mickiewicz University, 1, ul. Wieniawskiego, Poznań, 61-712, Poland; adrryc@amu.edu.pl

[1] The Commercial Companies Code of 15 September 2000 (Journal of Laws of 2020. Item 1526, as amended).

with legal personality introduced by The Commercial Companies Code is a joint-stock company (*spółka akcyjna, S.A.*) (Art. 301–490 CCC). This type of company is typically used to conduct business on a large scale, often involving large multinational enterprises. Another characteristic attribute of a joint stock company is the free transferability of its shares. On this score a joint-stock company is supposed to be the legal vehicle for companies whose shares are traded in the stock market.

Starting from 1 July 2021, a new type of company endowed with legal personality was added to CCC (Art. 300^1–300^{134} CCC). The "simple joint-stock company" (*prosta spółka akcyjna, P.S.A.*) combines the attributes of a limited liability company (*spółka z ograniczoną odopwiedzialnością*) and a joint-stock company (*spółka akcyjna*). Simple joint-stock companies are supposed to conduct innovative businesses (start-ups).

The shareholders of all of the abovementioned types of companies are not liable for the obligations of the company (Art. 151 § 4, Art. 300^1 § 4 and, Art. 301 § 5 CCC).

1. Incorporation of a limited liability company and a joint-stock company — specific rules applicable to a single-shareholder company[2]

A limited liability company may be formed by one or more persons for any legitimate purpose unless the law provides otherwise (Art. 151 § 1 CCC). A joint-stock company may also be formed by one or more persons (Art. 301 § 1 CCC). However, both a limited liability company and a joint-stock company cannot be formed solely by a single-member limited liability company (Art. 151 § 2 CCC and Art. 301 § 1 CCC)[3].

If there is only one shareholder in the company, additional legal requirements must be taken into account. Where all the shares in a limited liability company or a joint-stock company are held by a single shareholder or the single shareholder and the company itself, the declaration of intent made by the shareholder to the company must be made in writing to be valid (Art. 173 § 1 and Art. 303 § 2 CCC). Where the shareholder is also the single member of the management board, any juridical acts between the shareholder and the company which he represents must be made in the form of a notarial deed. The notary must notify the registry court each time such a juridical act is made, by the electronic system (Art. 210 § 2 and Art. 379 § 2 CCC). The form of a notarial deed is not required in the case of a juridical act that is effected using a template made available through the electronic system (Art. 210 § 3 and Art. 379 § 3 CCC).

2. Formation of companies

2.1. Formation of a limited liability company

According to Art. 163 CCC, the formation of a limited liability company requires the following:

— the adoption of the articles of association of the company;

— the payment of contributions to cover the entire share capital by the shareholders and, in the case of a subscription for shares at a price exceeding the share nominal value, the payment of the share premium;

[2] A company in which all the shares belong to one shareholder or the single shareholder and the company.

[3] The Polish Supreme Court has, in this respect, equated the German GmbH with the Polish limited liability company, stating that the German GmbH cannot form a limited liability company in Poland if it would be its sole shareholder: see the judgment of the Polish Supreme Court of 28 April 1997 (II CK 133/97).

— the appointment of the management board of the company;
— the establishment of the supervisory board or auditors' committee if the law or the articles of association so require; and
— entry of the company in the commercial register.

2.2. Formation of a joint-stock company

According to Art. 306 CCC, the formation of a joint-stock company requires the following:

— the formation of the company, including the execution of the company's statutes by founders;
— payment of shareholders' contributions covering the entire share capital (with reference to Article 309 § 3–4 CCC);
— the appointment of a management board and a supervisory board[4];
— the registration of the company.

A joint-stock company is formed (*zawiązanie spółki*) when all of its shares are subscribed for (Art. 310 § 1 CCC)[5].

The consent to the formation of a joint-stock company and the wording of the statutes, as well as to the subscription for the shares given by the single founder or founders or jointly with third parties, must be expressed in one or several notarial deeds (Art. 313 § 1 CCC). Such deed must detail in particular the persons who subscribe for the shares, the number and class of the shares subscribed for by each of them, the nominal value and the issue price of the shares and the dates of payment (Art. 313 § 2 CCC). The deeds must also state that the first company's governing bodies have been appointed (the full names of the persons appointed to the first company's governing bodies are not included in the statutes) (Art. 313 § 3 CCC).

If the shareholders make in-kind contributions for the shares or if any property is to be acquired for the company prior to the registration under other acts in law, the notarial deed must identify the persons who make the contributions or the transferors of the acquired property, specify the nature of the in-kind contribution or the acquired property, and the type and amount of remuneration or payment (Art. 313 § 4 CCC).

3. Additional requirements in the process of establishing a company

3.1. In-kind contributions in a limited liability company

Where a shareholder pays for his share in the company fully or partially with an in-kind contribution, the articles of association must specify in detail the nature of the in-kind contribution and the identity of the shareholder making such contribution, as well as the number and nominal value of shares subscribed for in exchange for the contribution (Art. 158 § 1 CCC)[6]. In the case of a company whose deed was made using a model deed, only initial capital may be paid for by cash contributions exclusively (Art. 158 § 1^1 CCC).

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[4] There are three obligatory governing bodies: 1) management board; 2) supervisory board; 3) general meeting of shareholders.

[5] *Napierała J., Sójka T.* Powstanie spółki akcyjnej // Prawo spółek handlowych / eds J. Napierała, A. Koch. Warszawa: Wolters Kluwer, 2017. P. 431–449.

[6] *Szumański A.* Wkłady niepieniężne do spółek handlowych. Warszawa: Wydaw. Prawnicze PWN, 1997.

3.2. In-kind contributions and payments for services in a joint-stock company

When the share capital is to be paid up with in-kind contributions or the company acquires assets or makes a payment for services provided in connection with its incorporation, the founders are required (with the exceptions indicated in Art. 312^1 CCC) to draw up a written report which should specify in particular:

— the in-kind contributions and the number and class of shares and other entitlements to participation in the profits or in distribution of company assets issued in exchange for such in-kind contributions;
— the property acquired prior to the registration of the company and the amount and manner of related payments;
— the services provided upon creation of the company and the amount and manner of remuneration;
— the persons who make the in-kind contributions, transfer property to the company or are remunerated for the services;
— the method of valuation of the in-kind contributions made (Art. 311 CCC).

The report of the founders must be audited by one or several auditors for its accuracy and reliability. Furthermore, the auditors must give their opinion as to the fair value of the in-kind contributions, their equivalence to at least the nominal value of the shares subscribed for in exchange for such contributions or the higher issue price, and whether or not the amount of the remuneration granted or the payment is justified (Art. 312 § 1 CCC). The auditor is appointed by the registry court which has jurisdiction for the seat of the company (Art. 312 § 2 CCC).

When the shareholders make in-kind contributions for the shares or if any property is to be acquired for the company prior to the registration under other acts in law, the notarial deed must identify the persons who make the contributions or the transferors of the acquired property, the nature of the in-kind contribution or the acquired property, and the type and amount of remuneration or payment (Art. 313 § 4 CCC). The notarial deeds on the formation of the company must state that each of the persons signing the deed has acquainted themselves with the report of the founders and with the opinion of the auditor (see above Art. 312 CCC).

4. Founding document

The most important corporate documents containing, for instance, provisions concerning the rights and obligations of shareholders, organizational matters and bodies are:

— articles of associations (‘*umowa spółki*’) — in a limited liability company; and
— statutes (‘*statut*’) — in a joint-stock company.

Each of them must meet the requirements specific to a given company type (details below).

4.1. Articles of association (a limited liability company)

The articles of association of a limited liability company must contain:

— the business name and the registered office of the company;
— the objects of the company;
— the amount of share capital;
— a statement as to whether a shareholder may hold one or more shares;

— the number and nominal value of shares subscribed for by individual shareholders; and
— the duration of the company, if definite (Art. 157 § 1 CCC).

The articles of association must be executed in a notarial form (§ 2). The deed of a limited liability company may also be concluded using a model form of a deed (Article 157[1]).

4.2. The statutes (a joint-stock company)

According to Art. 304 § 1 CCC, the statutes of a joint-stock company must specify:
— the name and the registered office of the company (the name of the company may be freely chosen but it should contain the additional indication '*spółka akcyjna*' i. e. joint-stock company; the company may use the abbreviated form "S. A." in business dealings);
— the objects of the company;
— the duration of the company, if defined;
— the amount of the share capital and the amount paid up before registration towards the share capital;
— the nominal value of shares and their number, and indication as to whether the shares are registered shares or bearer shares;
— the number of shares of a given class and the rights attached to them where shares of different classes are to be issued;
— the full names or business names of the founders;
— the number of members of the management board and the supervisory board or at least the minimum or maximum number of members of such governing bodies and the entity entitled to appoint the members of such bodies;
— the journal for the company's announcements if the company intends to publish announcements in addition to those published in the "Court and Business Gazette" (*Monitor Sądowy i Gospodarczy*).

To ensure the effectiveness of the following rights and obligations with respect to the company, the statutes must also include provisions on: the number and types of entitlements to participation in the profits or in the distribution of company assets and the rights attached to them, any obligations to provide performance to the company attached to the shares except for the obligation to pay for the shares, the terms and procedures for the redemption of shares, limitations concerning the transferability of shares, personal rights granted to shareholders referred to in Art. 354 CCC, at least an approximation of all costs incurred or those to be borne by the company in connection with its formation (Art. 304 § 2 CCC).

The statutes may include additional provisions unless it follows from the law that the law provides a comprehensive regime or such additional provisions of the statutes are contrary to the nature of the joint-stock company or good practices.

5. Share capital of a joint-stock company

5.1. Share capital of a limited liability company

The share capital of a limited liability company must be at least PLN 5,000 (Art. 154 § 1 CCC). The articles of association state whether a shareholder may hold one or more shares (*udziały*). If a shareholder may hold more than one share, all shares in the share

capital are equal and indivisible (Art. 153 CCC). The nominal value of one share cannot be less than PLN 50 (Art. 154 § 2 CCC). The most important difference between a limited liability company and a joint-stock company is that in a limited liability company no bearer share certificates, registered share certificates or endorsable documents may be issued in respect of shares or rights to participate in the profit of the company (Art. 174 § 6 CCC).

5.2. Share capital of a joint-stock company

The share capital of a joint-stock company must be at least PLN 100,000 (Art. 308 § 1 CCC) and the nominal value of a share cannot be lower than 1 grosz (1/100 PLN) (Art. 308 § 2 CCC). The share capital of a joint-stock company is divided into shares of equal nominal value (Art. 302 CCC). CCC lays down special rules for the subscription for shares (Art. 309 CCC). In particular, the shares cannot be subscribed for below their nominal value. When the shares are subscribed for at a price higher than the nominal value, the balance must be paid in full prior to the registration of the company. The shares subscribed for in-kind contributions must be paid in full not later than before the end of one year from the registration of the company. Insofar as shares subscribed for cash contributions are concerned, at least one fourth of their nominal value must be must be paid prior to the registration of the company. When the shares are subscribed for in-kind contributions only or for in-kind contributions and for cash contributions, at least one fourth of the share capital amount determined in Art. 308 § 1 CCC must be paid before the registration.

6. Registration of a capital company

Pursuant to CCC, a limited liability company in formation is incorporated upon the execution of the articles of association (Art. 161 § 1 CCC). On the other hand, a joint-stock company in formation is incorporated upon the formation of the company (Art. 323 § 1 CCC).

CCC states explicitly that companies in formation referred to in Art. 161, 323 (see above) and 300[11] CCC may, in their own name, acquire rights, including the ownership of real property and other property rights, assume obligations, and sue and be sued (Art. 11 § 1 CCC). They are not full legal persons, yet they are equipped with legal subjectivity (called "partial legal personality")[7]. Full legal personality is acquired at the moment of completion of the formation procedure with the entry of the company in formation in the register. As of that moment, it becomes the subject of the rights and duties previously acquired by a company in formation (Art. 12 CCC).

The company and the persons who have acted in its name bear joint and several liability for the obligations of the company in formation (Art. 13 § 1 CCC). Shareholders are also liable, but only up to the value of the unpaid contribution set forth in the articles of association (Art. 13 § 2 CCC).

A limited liability company in formation is represented by the management board or an attorney appointed by a unanimous resolution of shareholders (Art. 161 § 2 CCC). A joint-stock company in formation, prior to the constitution of the management board, is represented by all the founders acting jointly or by an attorney appointed by a unanimous resolution of the founders (Art. 323 § 2 CCC).

The management board is obligated to notify the competent registry court for the registered office of the company of the formation of the company for the purpose of its

[7] *Frąckowiak J.* Spółka akcyjna w organizacji // Prawo prywatne czasu przemian. Księga pamiątkowa dedykowana Profesorowi Stanisławowi Sołtysińskiemu / ed. A. Nowicka. Poznań: Wydaw. Naukowe UAM, 2005. P. 415–430.

registration. The application for registration requires the signatures of all members of the management board (Art. 164 § 1 and 316 § 1 CCC).

The application to register a limited liability company must contain all information that must be included in the articles of association (outlined in Art. 157 § 1 CCC) along with the full names and addresses or addresses for electronic delivery of members of the management board and information on the manner of representation of the company and the full names and addresses of members of the supervisory board or auditors' committee if the appointment of the supervisory board or auditors' committee is required under CCC or under the articles of association (Art. 166 § 1 CCC). Relevant enclosures to the application are specified in Art. 167 CCC.

The application to register a joint-stock company must contain the business name, seat and address of the company or its correspondence address, the objects of the company, the share capital, the number and nominal value of shares, the authorised and unissued capital (*kapitał docelowy*)[8] if it is provided for in the statutes, the number of preference shares and the type of the privilege, information concerning what part of the share capital has been paid in prior to the registration, the full names of the members of the management board and the manner of representation of the company, the full names of the members of the supervisory board. Additionally, the application must include certain information depending on the provisions of the statutes: if shareholders make in-kind contributions — a mention to that effect, the duration of the company, if it is specified; if the statutes provide for a journal for the company's announcements — the name of such journal; and, finally, if the statutes provide for the granting of personal rights to certain shareholders or entitlements to participation in the profits or in distribution of company assets which are not attached to the shares — a mention to that effect (Art. 318 CCC). Furthermore, the application to register a single-shareholder company must include the full name or the business name and the seat and address of the single shareholder, specifying that they are the single shareholder of the company. The same rule applies when all shares in the company are acquired by a single shareholder following the registration of the company. Should that be the case, the management board must report such a fact to the registry court within three weeks of the date on which the management board learnt that all shares in the company were acquired by a single shareholder (Art. 319 CCC). The enclosures that must be appended to the application are specified in Article 320 CCC.

7. Shares in a joint-stock company

Shares incorporate shareholders participation rights and equivalents to contributions made by shareholders[9]. Currently, Polish law allows for issuing registered shares and bearer shares (Art. 334 § 1 CCC)[10]. Starting from 1 March 2021, a major amendment to Art. 328 CCC came into effect[11]. Share certificates were replaced by dematerialised shares. The new wording of the provision indicates that shares do not have the form of material certificates (Art. 328 § 1 CCC). Shares (of a company that is not a public company)

[8] *Maciąg M.* Konstrukcja kapitału docelowego w prawie polskim na tle wybranych praw obcych. Warszawa: C. H. Beck, 2012.

[9] *Szajkowski A.* Prawo spółek handlowych. Warszawa: C. H. Beck, 2000. P. 498; *Sójka T.* Shares as securities // Handbook of Polish Law / eds W. Dajczak, A. Szwarc, P. Wiliński. Warszawa, 2011. P. 529.

[10] According to Art. 334 § 2 CCC, registered shares may be converted to bearer shares or the opposite conversion may be made at the request of a shareholder, unless the law or the statutes provide otherwise.

[11] Amended by the Act of 30 August 2019 amending the act — the Commercial Companies Code and certain other acts (Journal of Laws of 2019. Item 1798).

are recorded in the register of shareholders available for viewing to the company and its shareholders (see Art. 328^{1}–328^{15} CCC).

The shareholder must make full contribution towards their shares and the payments must be made proportionately for all shares (Art. 329 § 1–2 CCC).

8. Rights and duties of shareholders

8.1. Pecuniary rights (*prawa majątkowe*)

8.1.1. Participation in the profits of a company

One of the most important shareholders' pecuniary rights in a company is the right to dividends. Shareholders' right to dividends is laid down in Art. 191 CCC (with respect to limited liability companies) and in Art. 347 CCC (as regards joint-stock companies). The abovementioned provisions state that a shareholder has the right to participate in the profits disclosed in the annual financial statements and intended for distribution according to a resolution of the shareholders' meeting. Detailed rules on profit distribution are set out in Art. 192–198 and Art. 348–350 CCC.

The amounts to be distributed among the shareholders cannot exceed the profits for the last financial year, increased by any amounts transferred to the supplementary and reserve funds in previous years, and decreased by any loss incurred and amounts transferred to the supplementary and reserve funds established in compliance with the law or the articles of association (or the statutes), which may not be used for dividend distribution (see Art. 192 and Art. 348 § 1 CCC).

In a limited liability company, the dividend for a given financial year must be allotted to shareholders who were entitled to shares on the date of adoption of the resolution on the distribution of profits (Art. 193 § 1 CCC). However, the articles of association may authorise the shareholders' meeting to set the date on which the list of shareholders entitled to a dividend for a given year is established (Art. 193 § 2 CCC). The dividend day must be fixed no later than within two months from the date of adoption of the resolution on the distribution of profits. If the resolution of the shareholders' meeting does not determine the dividend day, the dividend day must be the day of adopting of the resolution on the distribution of profits (Art. 193 § 3 CCC). The dividend must be disbursed on the day specified in the resolution of shareholders. If the meeting of shareholders does not determine the dividend disbursement time limit, its disbursement must be made immediately following the dividend day (Art. 193 § 4 CCC).

Slightly different rules regarding profit distribution apply to joint-stock companies. Moreover, it should be noted that new rules came into effect on 1 March 2021. This is due to the obligatory dematerialization of shares and their registration in the register of shareholders or in the central securities depository. Consequently, from 1 March 2021, the following profit distribution rules are applied. In a non-public company whose shares are registered in the register of shareholders, the shareholders entitled to the dividend for a specific financial year are the shareholders entitled to shares on the day of adoption of the resolution on profit distribution. Shareholders are able to specify in the statutes that the general meeting of shareholders is authorized to fix a reference date to determine a list of shareholders entitled to dividends for a given financial year (the dividend day) (Art. 348 § 2 CCC). The rules are different in the case of a public company and a non-public company whose shares are registered in the central securities depository. In such cases the dividend day is fixed by the general meeting of shareholders (Art. 348 § 3 CCC). The ordinary general shareholders meeting sets the dividend day not earlier than five days and not later than three months from the day on which the resolution is adopted. If the resolu-

tion of the ordinary general meeting of shareholders does not specify the dividend day, the dividend date must be five days from the date of adoption of the resolution on profit distribution (Art. 348 § 4 CCC). The dividend is paid on the date specified in the resolution of the general meeting of shareholders, and, if the resolution of the general meeting of shareholders does not specify the date of its payment, the dividend is paid on the date specified by the supervisory board. The dividend payment date is set within three months from the dividend date. If neither the general meeting of shareholders nor the supervisory board specify the dividend payment date, the dividend should be paid immediately after the dividend date (Art. 348 § 5 CCC).

The articles of association (in a limited liability company) and the statutes (in a joint-stock company) may authorise the management board to make a prepayment to the shareholders against a future dividend for the financial year provided that the company has sufficient funds for such payment (Art. 194 CCC and Art. 349 CCC)[12].

8.1.2. Pre-emptive right

8.1.2.1. Pre-emptive right in a limited liability company

CCC subscribes to the principle that, with the increase in the share capital of the company and the creation of new shares, the existing shareholders should be given the right to acquire new shares in the company and thus to preserve the status quo in the company[13]. According to Art. 258 § 1 CCC, unless the articles of association or the resolution on an increase in the share capital provide otherwise, the existing shareholders have the pre-emptive right to subscribe to new shares in the rights issue, in proportion to the shares held. The pre-emptive right must be exercised within one month of the invitation; the management board must send the invitations to all shareholders at the same time. A statement of the existing shareholder on the subscription for a new share or shares must be made in a notarial form (Art. 258 § 2 CCC). In case of a limited liability company whose deed was concluded using a model deed and was effected under Art. 255 § 4 CCC (Art. 259^1 CCC), the declarations must be submitted in an IT data transmission system and certified with a qualified electronic signature, a trusted signature (Trusted Profile) or a personal signature.

8.1.2.2. Pre-emptive right in a joint stock company

In a joint-stock company, the structure of the pre-emptive right to subscribe to new shares is similar to that applicable to limited liability companies. In accordance to Art. 433 § 1 CCC, shareholders have the right of priority in taking up the new shares in proportion to the number of shares they hold (the pre-emptive right)[14]. While in a limited liability company a shareholder consent to waive their pre-emptive right is required, in a joint-stock company these rules were formed slightly differently. The general meeting of shareholders can waive shareholders' pre-emptive right in whole or in part if the interests of the company so require. The relevant resolution of the general meeting of shareholders requires at least a majority of four fifths of the votes. There are also other requirements: for instance, the intent to waive shareholders' pre-emptive rights must be indicated in the agenda of the general meeting of shareholders and the management board must send a written opinion justifying the reasons for the waiver as well as the proposed issue price for the shares or

[12] *Pinior P.* Zaliczka na poczet dywidendy — zagadnienia wybrane // Prawo Spółek. 2008. No. 1. P. 25–26.

[13] See also: *Sójka T.* Umowa objęcia akcji. Warszawa: Wolters Kluwer Polska, 2012.

[14] See: *Grzejszczak P.* Prawo poboru akcji. Warszawa: Wydaw. Prawnicze, 1998. P. 21–22.

the method of its calculation prior to the meeting (Art. 433 § 2 CCC). The provisions of Art. 433 § 3 CCC do not apply in the following cases:

— the resolution on the increase of share capital provides that all the new shares are to be taken up by a financial institution (guarantor of the issue), which must subsequently offer them to the shareholders with a view of enabling them to exercise their pre-emptive rights on the terms stipulated in the resolution;
— the resolution provides that the new shares are to be taken up by the guarantor of the issue in the case where the shareholders who have the pre-emptive right do not take up some or all of the shares offered to them.

To enter into the agreement (see above) with the guarantor of the issue, the consent of the general meeting of shareholders is required. The general meeting of shareholders must adopt the resolution upon a motion of the management board opined by the supervisory board. The statutes or the resolution of the general meeting of shareholders may delegate such powers to the supervisory board (Art. 433 § 5 CCC).

The shares to which the pre-emptive right of the shareholders applies are offered by the management board in an announcement which must include: the date of the adoption of the resolution to increase the share capital, the amount by which the share capital is to be increased, the number, class and nominal value of the shares to which the pre-emptive right applies, the issue price of the shares, the rules for allocating the shares to the existing shareholders, the place, date and the amount of payments for the shares, as well as the consequences of a decision not to exercise the pre-emptive right and of a failure to make the payments due, the date after which the party subscribing for the shares ceases to be bound by the subscription if by that time the new issue is not filed for registration, the date by which the shareholders may exercise the pre-emptive right, which cannot fall earlier than three weeks of the date of the announcement, the date on which the allocation of shares will be announced. When all of the existing shares in the company are registered shares, the shareholders may be informed of the contents of the announcement by registered mail or to addresses for electronic delivery. The time for the exercise of the pre-emptive right cannot be shorter than two weeks of the date of dispatch of the registered letter to the shareholder (Art. 434 CCC). If, within the first term, the existing shareholders have not exercised the pre-emptive right, the management board announces the second, at least two-week term for the exercise of the pre-emptive right with respect to the remaining shares by all of the existing shareholders (Art. 435 § 1 CCC).

8.2. Corporate rights (prawa organizacyjne)

The most important of a shareholders' corporate rights in the company are the right to take part in the general meeting of shareholders, the right to vote at that meeting, the right to file a claim in court seeking the annulment of a resolution of the shareholders' meeting and, as a general rule, the right to be informed of the situation of the company.

Shareholders of a limited liability company also have the right to be informed of the situation of the company. Pursuant to Art. 212 § 1 CCC, every shareholder has the right of supervision and, for the purposes of exercising it, he or she may (alone or jointly with a person he or she authorises), at any time, inspect the books and documents of the company, prepare a balance sheet for his or her personal use or request that the management board provide explanations. CCC provides for an exception to this rule. Accordance to Art. 213 § 3 CCC where the supervisory board or auditors' committee has been established (which is not mandatory in a limited liability company — in contrast to a joint-stock company), the articles of association may exclude or restrict individual control by shareholders.

Shareholders of a joint-stock company do not have access to current information about the company's business because they do not control or govern a joint-stock company. Nevertheless, CCC grants shareholders the right to obtain information, for instance during the general meeting of shareholders. During the general meeting of shareholders, the management board must provide a shareholder, at his or her request, with information concerning the company whenever this is required so that a matter included on the agenda could be considered. Information can be also given in writing outside of the general meeting of shareholders if there are important reasons to do so. The management board must provide information not later than within two weeks from the date of request at the general meeting of shareholders. The management board may refuse to provide information where such disclosure could cause damage to the company, an affiliated company, a subsidiary or a subsidiary cooperative, in particular due to the disclosure of technical, commercial or organisational secrets relating to the enterprise. A member of the management board may also refuse to provide information where such disclosure could be a basis for his criminal, civil or administrative liability (Art. 428 CCC).

What is more, a shareholder has the right to file a claim in court seeking the annulment of a resolution of the general meeting of shareholders (see explanation below in section 11.3.).

9. The management board of a company

The management board is the executive body of a company (established both in a limited liability company and in a joint-stock company), responsible for its day-to-day business[15]. The management board represents the company and manages its affairs (Art. 201 § 1 and Art. 368 § 1 CCC). This power embraces all actions of the company, whether in court or out of court (Art. 204 § 1 and Art. 372 § 1 CCC).

Where the management board is composed of more than one member, and the articles of association or the statutes do not provide otherwise, two members of the management board acting jointly or one member of the management board acting together with a holder of a commercial power of attorney are authorised to make statements on behalf of the company (Art. 205 § 1 and Art. 373 § 1 CCC).

Members of the management board of a limited liability company are appointed and removed by a resolution of shareholders, unless the articles of association provide otherwise (Art. 201 § 4 CCC). In a joint-stock company, members of the management board are appointed and dismissed by the supervisory board, unless the statutes provide otherwise. A member of the management board may also be dismissed or suspended from their activities by the general meeting of shareholders (Art. 368 § 4 CCC). A resolution of the general meeting of shareholders or the statutes of the joint-stock company may define the requirements that should be met by the candidates to serve on the management board (Art. 368 § 5 CCC).

In a contract between the company and a member of the management board, as well as in a dispute with a member of the management board, the company is represented by the supervisory board or an attorney appointed by a resolution of the general meeting of shareholders (Art. 210 § 1 and Art. 379 § 1 CCC).

[15] *Pyzioł W., Szumański A., Weiss I.* Prawo spółek. Warszawa: C. H. Beck, 2014. P. 435.

10. The supervisory board (or the auditors committee) of a company

The supervisory board is a central supervisory body of the company responsible for controlling the actions of the management board[16]. The supervisory board exercises permanent supervision of the company's activities in all aspects of its business. In particular, the supervisory board is responsible for the evaluation of the management board's report on the company's operations and the financial statements for the previous financial year in respect of their compliance with the financial books and documents and the facts, and of motions of the management board concerning the distribution of profits or the coverage of losses (Art. 219 § 3 CCC and Art. 382 § 3 CCC). In order to perform their duties, the supervisory board may inspect all company documents, request reports and explanations from the management board and employees, and review assets and liabilities of the company (Art. 219 § 4 CCC and Art. 382 § 4 CCC).

CCC does not require every limited liability company to establish a supervisory board or an audit committee (the articles of association may create a supervisory board or an auditors' committee or both[17]), whereas in a joint-stock company a supervisory board is an obligatory governing body[18]. Art. 213 § 2 CCC introduces this obligation in companies whose share capital exceeds PLN 500,000 and where there are more than twenty-five shareholders.

The supervisory board of a limited liability company consists of at least three members appointed and dismissed by a resolution of the shareholders (Art. 215 § 1 CCC). The auditors' committee consists of at least three members, appointed and dismissed in accordance with the same rules (Art. 217 CCC). The supervisory board of a joint-stock company consists of at least three members, and in the case of public companies of at least five members, appointed and dismissed by the general meeting of shareholders (Art. 385 § 1 CCC).

11. The general meeting of shareholders

11.1. Convening a general meeting of shareholders

The general meeting of shareholders may be ordinary (annual) or extraordinary. Both in a limited liability company and in a joint-stock company, the ordinary general meeting of shareholders must be held within six months of the end of each financial year (Art. 231 § 1 and Art. 395 § 1 CCC). The mandatory agenda of the general meeting of shareholders includes the examination and approval of the management board's report on the company's operations, the financial statements for the previous financial year and the acknowledgement of the fulfilment of duties by the members of the company's management board, as well as the adoption of a resolution on the distribution of profits or coverage of losses (Art. 231 § 2 CCC and Art. 395 § 2 CCC). In the companies referred to in Art. 90c § 1 of the Act of 29 July 2005 on Public Offer and the Conditions of Introducing Financial Instruments to Organized Trading System and on Public Companies[19] the matter coming before the ordinary general meeting shall also be adoption of the resolution referred to in Art. 90g § 6 of this Act or holding the discussion referred to in Art. 90g § 7 of this Act. If the balance sheet of a limited liability company drawn up by the management board shows a loss exceeding the aggregated supplementary and reserve capitals and half of the share

[16] *Oplustil K.* Instrumenty nadzoru korporacyjnego (*corporate governance*) w spółce akcyjnej. Warszawa: C. H. Beck, 2010. P. 482–486.

[17] Article 213 § 1 CCC.

[18] *Opalski A.* Rada nadzorcza w spółce akcyjnej. Warszawa: C. H. Beck, 2006. P. 280–284.

[19] Journal of Laws of 2021. Item 1983, as amended.

capital, the management board must immediately convene the general meeting of shareholders so that a resolution on the continued existence of the company can be adopted (Art. 233 § 1 CCC). The same rule applies to a joint-stock company when the balance sheet drawn up by the management board shows a loss exceeding the aggregate of the supplementary and the reserve capitals and one third of the share capital (Art. 397 CCC).

The extraordinary general meeting of shareholders is convened at times provided for by law or the articles of association (or statutes in joint-stock company), and whenever the governing bodies or persons authorised to convene the general meetings of shareholders consider this desirable (Art. 232 and 398 CCC).

The procedure of convening a general meeting of shareholders is determined by Article 238 CCC (a limited liability company) and Article 402–402^3 CCC (a joint-stock company). The general meeting of shareholders is principally convened by the management board (Art. 235 § 1 and Art. 399 § 1 CCC). CCC also grants other governing bodies and persons the power to convene the general meeting of shareholders and grants them the power to request that the extraordinary general meeting of shareholders be convened. It should be noted that the power to request that the extraordinary general meeting of shareholders be convened is granted to a shareholder or shareholders of a limited liability company representing at least one-tenth of the share capital (or even less if the articles of association so provide). A shareholder or shareholders of a limited liability company representing at least one-twentieth of the share capital may request that certain matters be placed on the agenda of the next general meeting of shareholders (Art. 236 § 1, 1^1 and 2 CCC). In case of a joint-stock company, the power to convene the general meeting of shareholders is granted to the shareholders representing at least half of the share capital or at least half of the total number of the votes in the company — should that be the case, the shareholders appoint the chairman of that general meeting of shareholders (Art. 399 § 3 CCC). The shareholder or shareholders of a joint-stock company representing at least one twentieth of the share capital may also request that the extraordinary general meeting of shareholders be convened, as well as that certain matters be placed on the agenda of that meeting (the statutes may authorize shareholders representing less that one twentieth of the share capital to request that the extraordinary general meeting of shareholders be convened (Art. 400 § 1 CCC).

11.2. Resolutions of the general meeting of shareholders

The general meeting of shareholders is a body that represents the owners of the company — shareholders. The resolutions of the general meeting of shareholders of a limited liability company are recorded in the minutes book and signed by those present or at least by the chairman and the person who records the minutes. If the minutes are recorded by a notary, the management board must file an official copy of the minutes in the minutes book (Art. 248 § 1 CCC). The resolutions of the general meeting of shareholders of a joint-stock company are recorded in the minutes drawn up by a notary (Art. 421 § 1 CCC).

The resolution of a general meeting of shareholders of a limited liability company is required in many cases, the most important of which are:

— the examination and approval of the management board's report on the company's operations, the financial statements for the previous financial year and the acknowledgement of the fulfilment of duties (*absolutorium*) by members of the company's authorities;

— decisions concerning claims for redressing damage inflicted during the formation of the company or which arose in the exercise of duties associated with management and supervision;

— the disposal or lease of the business enterprise or an organised part thereof, or the establishment of a limited right in property thereon;
— the acquisition and disposal of real property or of an interest therein unless the articles of association provide otherwise;
— the reimbursement of additional payments;
— the conclusion of a contract referred to in Art. 7 CCC (a contract concerning the management of a dependent company by the dominant company) (Art. 228 points 1–6 CCC);
— the distribution of profits or the financing of losses (Art. 231 § 2(2) CCC);
— the conclusion of a contract for the acquisition of real property or an interest therein for the company, or a contract for fixed assets at a price exceeding one-fourth of the company's share capital, but not less than PLN 50,000, executed prior to the lapse of two years after registration of the company, unless such contract has been provided for by the articles of association (Art. 229 CCC);
— the disposal or encumbrance of a right or assumption of a duty to perform the value of which exceeds twice the amount of the company's share capital, unless the articles of association provide otherwise (Art. 230 CCC); and
— an amendment to the articles of association (Art. 255 § 1 CCC).

The articles of association may require the adoption of resolutions by the general meeting of shareholders in other matters as well (Art. 228 CCC).

Resolution of a general meeting of shareholders of a joint-stock company are required in many cases, the most important of which are the following:

— the consideration and approval of the report of the management board on the operations of the company and the financial report for the previous financial year and the acknowledgement of the fulfilment of their duties by members of the company's authorities;
— decisions concerning claims for redressing damage inflicted during the formation of the company or which arose in the exercise of duties associated with management and supervision;
— the disposal or lease of the business enterprise or an organised part thereof, or the establishment of a limited right in property thereon;
— the acquisition and disposal of real property or of an interest therein unless the articles of association provide otherwise;
— the issue of convertible bonds or bonds with the right of priority, and issue of subscription warrants referred to in Art. 453 § 2 CCC;
— the acquisition of the company's own shares in the case referred to in Art. 362 § 1 (2) CCC and authorisation to acquire them in the case referred to in Art. 362 § 1 (8) CCC;
— the conclusion of a contract referred to in Art. 7 CCC (Art. 393 CCC);
— the distribution of profits or the financing of losses (Art. 395 § 2 (2) CCC);
— the acquisition for the company of any property for a price exceeding one tenth of the paid in share capital, from the founder or the shareholder, or for the dependent company or co-operative from the founder or the shareholder, concluded before the end of two years of the date of registration of the company (Art. 394 § 1 CCC)[20];
— an amendment to the statutes (Art. 430 § 1 CCC).

[20] *Sokołowski J.* Ukryte wkłady niepieniężne w prawie niemieckim, europejskim i polskim // Przegląd Prawa Handlowego. 2001. No. 2. P. 20.

11.3. Right to appeal against a resolution of a general meeting of shareholders

CCC distinguishes between a claim seeking the annulment of a resolution of the general meeting of shareholders which is in conflict with the provisions of the articles of association or good commercial practice and detrimental to the company's interest or aimed at harming a shareholder (Art. 249 § 1 and Art. 422 § 1 CCC) and a claim seeking the annulment of a resolution of the shareholders' meeting that is null and void (Art. 252 § 1 and Art. 425 § 1 CCC)[21].

According to Article 250 CCC (in a limited liability company) and Art. 422 § 2 CCC (in a joint-stock company), the following parties have the right to file a claim to repeal a resolution adopted by the general meeting of shareholders:

- the management board, the supervisory board (the auditors' committee)[22] and individual members thereof;
- a shareholder who voted against such resolution and, upon the adoption thereof, requested that his objection be recorded in the minutes[23];
- a shareholder who was prevented from participating in the general meeting of shareholders without a sound reason;
- a shareholder who was absent from the general meeting of shareholders –only in the event that the meeting was improperly convened or a resolution on a matter not included on the agenda was adopted; and
- in a limited liability company in the case of a written vote, a shareholder who was omitted from voting or who did not consent to a written vote, or who voted against the resolution and, upon being notified of the resolution, filed his objection within two weeks.

The persons or company governing bodies listed above may bring a claim seeking the annulment of a resolution of the shareholders' meeting that is null and void (Art. 252 § 1 CCC and Art. 425 § 1 CCC).

It should be noted that the Polish Supreme Court stated that a dismissed member of the management or the supervisory board cannot file a claim for the annulment of a resolution of the general meeting of shareholders[24]. The court explained that such a person no longer belongs to the management or the supervisory board and cannot claim the right to file a claim on the basis of the Article 250 CCC.

The Polish Supreme Court also stated that the court judgement declaring the resolution of the general meeting of shareholders of a limited liability company or a joint-stock company breach of the law is constitutive[25].

Conclusions

The purpose of this paper was to outline key regulations governing companies in Poland. The reader had an opportunity to learn about the specificity of the two vehicles existing in Polish law and the differences between them. Unfortunately, given the constraints of space, the analysis is rather introductory. For a more detailed description of these issues the reader should consult specialist studies on a specific topic. Nevertheless, it can be

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[21] *Koch A.* Podważanie uchwał zgromadzeń spółek kapitałowych. Warszawa: C. H. Beck, 2011; *Sołtysiński S.* Nieważne i wzruszalne uchwały zgromadzeń spółek kapitałowych // Przegląd Prawa Handlowego. 2006. No. 1. P. 4–15.

[22] Only in a limited liability company.

[23] The requirement as to the voting do not apply to a holder of a non-voting share.

[24] The judgment of the Polish Supreme Court of 1 March 2007 (III CZP 94/06).

[25] The judgment of the Polish Supreme Court of 18 September 2013 (III CZP 13/13).

said that the main challenge for Polish company law is the need to adapt the legislation to the rapidly changing reality, and respond to the business needs. The forthcoming changes to the legal framework, including the dematerialization of shares and the introduction of a new type of a company — a simple joint-stock company — should meet these expectations.

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Received: November 1, 2020
Accepted: April 23, 2021

Хозяйственное общество в польской правовой системе

М. Матачиньский, А. Рыцерский

Для цитирования: *Mataczyński M., Rycerski A.* Company in Polish law // Правоведение. 2021. Т. 65, № 1. С. 106–122. https://doi.org/10.21638/spbu25.2021.106

В статье представлены наиболее важные вопросы, связанные с функционированием в польской правовой системе двух видов хозяйственных обществ: общества с ограниченной ответственностью и акционерного общества. За рамками статьи остается простое акционерное общество, также имеющее статус юридического лица, которое в силу своей специфики заслуживает совершенно отдельного и всестороннего исследования. Сравниваются характеристики общества с ограниченной ответственностью и акционерного общества, с тем чтобы показать сходства и различия между ними. В частности, описаны принципы создания хозяйственных обществ, подняты вопросы, связанные с учредительными договорами, требованиями к капиталу, а также правами и обязанностями участников (акционеров) хозяйственного общества. Дана характеристика органов хозяйственного общества и подробно раскрыты такие темы, как преимущественное право приобретения новых долей (акций), акция как документ и др. Различия между обществом с огра-

ниченной ответственностью и акционерным обществом в основном обусловлены тем, что первое демонстрирует многие черты хозяйственного товарищества, в то время как второе полностью воплощает сущность хозяйственного общества. Однако есть и много общего. Например, и общество с ограниченной ответственностью, и акционерное общество не могут быть созданы обществом с ограниченной ответственностью, состоящим из одного лица. По мнению авторов, предложенный подход к теме интересен и полезен для читателя, он способен помочь при выборе наиболее выгодной модели осуществления предпринимательской деятельности в соответствии с польским законодательством. В статье представлен анализ действующего правового регулирования, а также учтены те изменения в польском законодательстве о юридических лицах, которые вступят в силу в ближайшем будущем (в отношении обсуждаемых хозяйственных обществ). Особое внимание обращается на дематериализацию акций, что поможет кардинально изменить подход к акциям и правила распоряжения ими.

Ключевые слова: общество с ограниченной ответственностью, акционерное общество, хозяйственное общество, акции, исполнительные органы, наблюдательный совет, общее собрание.

Статья поступила в редакцию 1 ноября 2020 г.
Рекомендована к печати 23 апреля 2021 г.

Матачиньский Мацей — д-р юрид. наук, проф., Университет им. Адама Мицкевича в Познани, Польша, 61-712, Познань, ул. Венявского, 1; mataczyn@amu.edu.pl

Рыцерский Адриан — PhD, Университет им. Адама Мицкевича в Познани, Польша, 61-712, Познань, ул. Венявского, 1; adrryc@amu.edu.pl