

## Incorporation of a Polish limited liability company in Poland

In this paper we present the incorporation process concerning the most popular corporate entity: the limited liability company (Sp. z o.o.).

### 1. Execution of the company's Articles of Association

<p><b>Form of the Articles of Association:</b></p>	<p>The Articles of Association drawn up:</p> <ul style="list-style-type: none"> <li>• before a notary in Poland; or</li> <li>• online via the S24 system, relying on a certified digital signature (possibly an EPUAP profile issued to Polish residents with a PESEL number), using a model Articles of Association which cannot be modified.</li> </ul>
<p><b>Required documents:</b></p>	<p><u>If one of the shareholders is a corporate entity</u>, an extract from the relevant corporate register showing the person authorized to represent the shareholder is required. However, if the corporate entity is a foreign one, the documents must be translated by sworn translator and – in most cases – should bear an apostille or they must get legalized.</p> <p><u>In case of individuals</u>, an ID card or passport is sufficient.</p> <p><u>Note:</u> The Articles may also be signed by an attorney – in that case a power of attorney in the form of a notarial deed would be required. If the power of attorney is drawn up in a foreign language, it must be translated by a sworn translator and apostilled or it must be legalized. It is also possible to establish a company using the S24 system through an attorney - in this case the power of attorney must be prepared using a format provided by the system.</p>
<p><b>Share capital:</b></p>	<p>Minimum PLN 5,000 (approx. EUR 1,100)</p> <p>It must be covered in full with monetary or in-kind contributions before the registration.</p>

<p><b>Numbers of shareholders:</b></p>	<p>One or more shareholders</p> <p><u>Note:</u> The Polish LLC cannot be incorporated by another sole-shareholder company.</p>
<p><b>Content of the Articles of Association:</b></p>	<p><u>Compulsory elements:</u></p> <ol style="list-style-type: none"> <li>1. Business name and registered office (city) of the company</li> <li>2. Object of the company's activity, as specified in the Polish Classification of Activities (<i>PKD</i>), substantially similar to the NACE classification</li> <li>3. Duration of the company, whenever established for a definite period (indefinite period is a rule)</li> <li>4. Amount of the share capital</li> <li>5. Provision as to whether a shareholder may hold more than one share</li> <li>6. Number and nominal value of shares subscribed for by each shareholder</li> </ol> <p><u>Additional elements:</u></p> <ol style="list-style-type: none"> <li>1. Management rules, including a precise division of powers between the Board of Directors, the Shareholders' Meeting and the Supervisory Board (if established).</li> </ol> <p>The Articles may specify the number of Directors, as well as provide for formalized rules of convening the Board of Directors or adopting resolutions.</p> <p>In companies where the share capital exceeds PLN 500,000.00 and which have more than 25 shareholders, the Supervisory Board (or an audit committee) is compulsory.</p>

The Articles may contain a list of matters (apart from those specified by the law) in which the consent of the Shareholders' Meeting is required as well as a list of places where the Shareholders' Meeting can be held.

2. Company's signature

In case of a multi-person Board of Directors it is advisable to specify whether the company's signature is made single-handedly or jointly. Otherwise, by default the provision of the Polish Code of Commercial Companies will be applied, i.e. representation by two members of the Board acting jointly or by one member of the Board acting jointly with a proxy.

3. Increase of the share capital

The Articles may contain a provision that an increase of the share capital performed within a specified time and not exceeding a specified amount would not require an amendment of the Articles of Association, which helps to avoid notarial costs in that respect.

4. Additional contributions

The Articles may provide for a possibility of obliging the shareholders – through a resolution of the Shareholders' Meeting – to bring in so-called additional contributions, up to an amount defined by the Articles. Such additional contributions can be returned to the shareholders upon a relevant decision of the Shareholders' Meeting, provided that certain requirements regarding the company's financial situation are fulfilled.

	<p>5. Dividend</p> <p>The Articles may provide for the possibility to pay out an advance dividend upon fulfilment of certain requirements imposed by the law. Such distribution of an advance dividend, if authorized by the Articles, may be decided by the Board of Directors.</p> <p>6. Pre-emption right</p> <p>7. Rules of redemption of shares</p> <p>8. Non-competition rules between the shareholders</p> <p>9. Dispute resolution, including arbitration clauses</p> <p>10. Rules of distribution of assets upon liquidation of the company</p> <p>11. Privileges in the area of dividend, number of votes attached to one share or distribution of assets upon liquidation</p> <p>12. Rules governing inheritance of shares</p> <p>13. <i>Individual provisions relating to the participation of the company in the "group of companies" as provided by the law of 9 February 2022 amending the law - Code of Commercial Companies and some other acts, which comes into force on 13 October 2022.</i></p>
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## 2. Appointment of the company bodies

Normally, a resolution concerning the appointment of the first Board of Directors is included in the notarial deed executed in order to establish the company. However it can be adopted at a later stage, not necessarily in the notarial form.

The Board of Directors may also appoint a so-called proxy (*prokurent*) who can represent the company on his/her own, except for the sale or encumbrance of property, as well as the sale or grant for use of the company's enterprise. The proxy should be entered in the National Court Register.

Every Director and proxy must give his/her consent to the appointment in writing and indicate his/her correspondence address in Poland or another EU country, otherwise it will be necessary to appoint an attorney for service in Poland (this obligation does not apply in case of company registration through the S24 system).

It is also necessary to file a list of members of the bodies or of individuals authorized to appoint the Board of Directors of the Polish company. In practice the Shareholders' Meeting is the body that appoints the Board of Directors. Therefore, usually the above mentioned list will contain the data relating to the shareholders and their correspondence addresses. In case the shareholder is a legal person, the data of the members of the body authorized to represent the shareholder and their correspondence addresses must be reported. In case of addresses outside of the EU, it will be necessary to appoint an attorney for service in Poland.

### 3. Contribution of the entire share capital before registration

The entire share capital must be paid before the registration of the company and the Board of Directors is obliged to sign a declaration in that regard. However, if the Articles of Association are signed using the model available in the S24 system, the contributions in cash and the declaration of coverage of the share capital can be submitted within 7 days from the date of registration of the company in the register.

Normally, the share capital is paid to the company's bank account, however, it is also possible to make the above declaration even before such an account is opened, acting on the assumption that the share capital, particularly when its amount is small, has been deposited in cash.

### 4. Registration in the commercial register

<b>Competent authority:</b>	Registry court which holds the register of entrepreneurs competent for the company's registered office.
<b>Deadline:</b>	The application for registration with the required documentation attached must be filed within six months calculated from the date of signing the Articles of Association/ within 7 days from the date of signing of the Articles of Associations in the S24 system. If the application for registration of the

	company is not filed with the National Court Register within the above respective terms, the Articles of Associations are no longer binding
<b>Duration:</b>	Although the law provides for a maximum term of 7 days for each registration request, in practice registering a company through the S24 system can take several days and - if done in the traditional way, using customised Articles drawn up at the notary's- usually it takes a couple of weeks.
<b>Costs:</b>	Registration fee: PLN 600 (when the Articles of Association have been executed before a notary public) or PLN 350 (when the Articles of Association have been executed through the S24 system)  Stamp duty on the Power of Attorney (if applicable): PLN 17
<b>Additional information:</b>	Before filing an application for registration the company operates as a so-called "company in organization", with the capacity to make valid contracts, though in practice its activity can be impeded.

## 5. NIP, REGON, VAT registration, Social Insurance Institution

NIP and REGON are assigned to commercial companies automatically, by electronic means, immediately after registration of the data transferred from the National Court Register in the CRP KEP register (National Register of Taxpayers) and REGON. Then, the company's NIP and REGON numbers are electronically transferred from the official registers of the Revenue Agency and the Central Statistics Office to the National Court Register and are registered there.

Note: once the company is registered, it needs to contact the competent Tax Office and submit the NIP-8 form with additional data that were not subject to registration in the National Court Register. The NIP-8 form can also be submitted by your lawyer or accountant.

Once the company files for registration with the Tax Office, it can also be registered as a VAT and VAT UE payer. Sometimes the VAT registration is mandatory by law. When deciding to proceed with VAT registration, it is advisable to consult a tax advisor/an accountant.

If the company plans to employ personnel it must also submit an application for the registration as a social contributions payer; such application is filed with the Social Insurance Institution (ZUS).

According to the AML legislation, the Board of Directors of a limited liability company must submit information on the beneficial owners of the company to the Central Register of Real Beneficiaries within 7 days from the date of the company's registration in the National Court Register.

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If you intend to establish a limited liability company in Poland or seek advice regarding any corporate matters, you are welcome to contact the **authors of this paper:**

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