Limited liability company in Poland

I. Introduction

The limited liability company (Polish: spółka z ograniczoną odpowiedzialnością or abbreviated: sp. z o.o.) enjoys popularity as a form of medium-size and large business in Poland. Relatively easy to incorporate, governed by flexible rules regarding its structure, protecting shareholders from liability to third parties – it suits the needs of entrepreneurs and investors active in almost all areas of the Polish market. The limited liability company may be formed for all business purposes or as a non-profit entity. Presently, the Commercial Companies Code (“the Code”) incorporates all EU directives regarding company law. The Polish regulations on the limited liability company are similar to the concept of the German ‘GmbH’.

We present below an outline of the main Polish regulations regarding the limited liability company. The information provided in this memorandum is of a general nature and should not be considered exhaustive.

II. Articles of association

II.A. Minimum contents

II.A.1. General

The articles of association determine the structure and manner of operation of the company.

The articles of association should provide at least for the following. Usually the articles of association cover a number of other issues as well, such as restrictions on share transferability or rules for adopting decisions by the company’s governing bodies.

It must be underscored that the articles of association of a company that is established following the expeditious procedure as described in point III.C. below (“a 24 company”) must conform to a statutory model as determined by the Minister of Justice. An English translation of this model is appended to this memorandum. Following the incorporation of a 24 company, its articles of association can be amended as in the case of any other company.

II.A.2. Business name

The business name of the company may be chosen freely provided that it is not misleading or similar to the business name of another company that is active on the same market.

The business name of a limited liability company must include the phrase ‘spółka z ograniczoną odpowiedzialnością’ (limited liability company). The abbreviated form of this phrase, i.e. ‘sp. z o.o.’ (Ltd), may be used for business purposes as well.

II.A.3. Seat

The seat of the company is the locality, such as a city or town, where the company’s management board has its office. The seat of a limited liability company governed by Polish law should be situated in Poland.
The address of the company must be located in the company’s seat (i.e. in the relevant locality). The company may thus change its address without moving its seat, if the new address is in the same locality as the previous one.

II.A.4. Objects

The objects of the company are a guideline for its management as to the nature of the company’s activity. Management board members can be liable to the company if they cause damage to the company by exceeding its objects. On the other hand, the fact that a transaction is beyond the company’s objects does not affect the transaction’s validity.

For practical reasons, it is recommended to draft the clause of the articles of association dealing with the objects by referring to the statistical classification known as ‘Polish Classification of Activities’ or ‘PKD’. Such a clause of the initial version of the articles of association of a 24 company must be drafted this way. The above classification will be applied to entering the objects into the National Court Register.

II.A.5. Amount of the share capital

The Code includes certain rules the purpose of which is, in simple terms, to ensure that the value of the company’s assets corresponds to no less than the amount of the company’s share capital.

The minimum amount of the share capital of a limited liability company is 5,000 zlotys.

II.A.6. Number and nominal value of shares

The nominal value of a share is the minimum value of the contribution to be made in consideration of subscribing for that share. The aggregate initial nominal value of the shares corresponds to the initial amount of the company’s share capital. For example, the company can have a share capital of 100,000 zlotys divided into 100 shares of a nominal value of 1,000 zlotys each.

Although the Code allows the limited liability company to issue shares that have different nominal values and are capable of being divided, in which case each shareholder can hold only one share, this solution is very uncommon. Almost all limited liability companies have equal, in terms of their nominal value, and indivisible shares, and their shareholders can hold more than one share.

The articles of association must set forth the number of shares and the nominal value of each share, which may not be lower than 50 zlotys. The articles of association should provide for the nature of the contributions to be made by shareholders. If the articles of association provide for an in-kind, i.e. other than cash, contribution, the contribution must be described in detail in the articles of association.

The value of the contribution that is made in consideration of a share can be equal to or higher than the share’s nominal value. In either case, except in the event referred to in the following paragraph, the contribution must be made prior to the incorporation of the company.
The initial version of the articles of association of a 24 company must provide for cash contributions of a value equal to the nominal value of the shares, and that the shares are equal, in terms of their nominal value, and indivisible, while the shareholders can hold more than one share. The initial share capital of such a company must be paid not later than seven days following the company’s incorporation.

II.A.7. Duration of the company

The duration of a limited liability company may be definite, in which case the company is wound up at the end of its term, or indefinite. The latter solution is adopted in most cases and is compulsory for the initial version of the articles of association of a 24 company.

II.B. Governing bodies

II.B.1 Shareholders’ Meeting

The shareholders’ meeting is the main governing body of the limited liability company but is not involved in the day-to-day management of the company.

The powers of the shareholders’ meeting include in particular:
(i) approval of the financial statement and the management board’s report regarding the company’s activity in a financial year,
(ii) distribution of the company’s profit or the covering of its loss,
(iii) approval of the actions taken by the members of other governing bodies of the company in a financial year; the approval has, as a rule, the effect of releasing such members from their liability to the company for their actions,
(iv) deciding on the company’s merger, transformation or division,
(v) deciding on the company’s winding-up,
(vi) transferring or giving in tenancy the company’s business or its organized portion or encumbering the same with a limited property interest,
(vii) approving a contract whereby the company transfers its profit to its holding company or partnership or receives from a company or partnership that it controls the latter’s profit,
(viii) approving a contract providing for the company being managed by its holding company or partnership, or for the company managing a company or partnership that it controls,
(ix) amending the articles of association,
(x) increasing the share capital and, with a few exceptions, reducing it.

The shareholders’ meeting should take place at least once in a financial year of the company in order to adopt resolutions regarding the matters listed under (i), (ii) and (iii) of the preceding sentence in respect of the previous year.

Some powers of the shareholders’ meeting are optional in the sense that they are vested in the meeting unless the articles of association otherwise provide or only if the articles of association provide for such powers. For example, the company disposing of a right of a value exceeding twice the amount of the share capital requires a shareholder resolution unless the articles of association rule out this requirement. On the other hand, the articles of association can provide that approval by the shareholders’ meeting is needed for the company to enter
into any contract with its shareholder; this requirement is inapplicable in the absence of such a clause.

Where the company performs a transaction without the required approval of the shareholders’ meeting, the transaction is invalid only if this requirement is provided for in law (rather than in the articles of association only).

Most resolutions can be adopted without holding a meeting, i.e. by all shareholders expressing their written consent to a decision, or consenting to vote in writing.

Resolutions of the shareholders’ meeting are adopted by an absolute majority of votes cast. The articles of association may provide for other majority requirements. The Code further requires a supermajority to pass certain resolutions, such as amending the articles of association (two-thirds majority, unless the articles of association provide for a higher threshold) or transforming the company into a company of a different type (three-fourths majority corresponding also to at least one half of the share capital, unless the articles of association provide for a higher threshold). The articles of association may also introduce a quorum requirement. The Code provides for quorum in certain cases only.

The only clause referred to in this point that may be included in the initial version of the articles of association of a 24 company is the one whereby the company disposing of a right or contracting an obligation of a value exceeding twice the amount of the share capital, does not require a shareholder resolution.

II.B.2. Management Board

The management board is responsible for managing and representing the company. The remaining governing bodies may interfere with the company management only by giving or refusing their approval for certain actions where such approval is required by law or the articles of association.

The management board may consist of one or more members. The articles of association may determine the number of such members with more precision.

If the management board consists of one member only, that member can represent the company individually. If there are several members of the management board, the manner in which they can represent the company (e.g. two members acting jointly or the president of the management board individually) is determined by the articles of association.

The articles of association may provide for the position of president of the management board and determine his powers.

The members of the management board are appointed and removed by a shareholder resolution unless the articles of association otherwise provide. For example, the right to appoint and remove such members may be vested in a certain shareholder if the articles of association so provide.

Management board decisions are adopted collectively. Each member of the management board should be given notice of any board meeting in order for the meeting to be validly held.
II.B.3. Supervisory Board

The powers of the supervisory board cover mainly review of the company’s activity, financial statements and management reports as well as the management board’s motions to dispose of profit or cover losses. It is not uncommon to include in the articles of association a clause whereby some transactions of the company require the supervisory board’s approval.

In most cases the supervisory board is not a mandatory governing body of the limited liability company. The Code requires the supervisory board to be appointed in a limited liability company only if the number of shareholders exceeds 25 and the share capital amount is more than 500,000 zlotys. The articles of association may provide for the appointment of the supervisory board in other cases.

As a practical matter, the existence of the supervisory board is not a recommended solution as it contributes to complicating the company’s structure. The appointment of the supervisory board is worth considering only if it helps improve the decision-making process in joint-venture companies by delegating supervision from the shareholders to supervisory board members.

The supervisory board must consist of no less than three members. Subject to this principle, the articles of association may include more precise rules in this respect. The members of the supervisory board are appointed and removed by a shareholder resolution unless the articles of association provide for a different solution, such as a shareholder’s personal right to appoint and remove any or all of such members.

Shareholders are authorized to exercise individual supervision over company matters. In particular they are allowed to access the company’s documents, request the management board to provide explanations and draw up a balance sheet for their own purposes. The articles of association may exclude the right of individual supervision in the event that they provide for the existence of the supervisory board.

II.C. Shares and share capital

II.C.1. Shares

A share reflects a set of shareholder rights. No documents incorporating share rights are issued to shareholders.

As a rule, shares of the limited liability company are transferable. Certain limitations of their transferability may be introduced in the articles of association. For instance, the limitations may consist in the consent of the shareholders’ meeting being required for such transfer. The right of pre-emption or the right of first refusal may also be stipulated in the articles of association.

A contract that purports to transfer a share needs to be executed in writing with the parties’ signatures being authenticated by a notary public, in order to be valid. The parties must notify the company about the transfer of shares. The management board keeps a share register and must update it as soon as it learns any transfer of shares.
The shares that belong to an individual are part of the estate in case of the shareholder’s death. However, the articles of association may limit or prevent the acquisition of the shares of the deceased shareholder by his heirs.

II.C.2. Increase and reduction of the share capital

The amount of the share capital can be increased by a shareholder resolution. This requires an amendment to the articles of association. The articles of association may, however, allow increasing the share capital without amending the articles of association, up to a certain amount and by a certain date. In this case, the new shares must be subscribed for by the existing shareholders proportionately to the number of shares that they have held thus far. This method of increasing the share capital spares certain formalities linked to an amendment to the articles of association. In any case, the increase becomes effective upon its registration by the registration court.

The share capital can be reduced. As a rule, this requires an amendment to the articles of association. One of the methods of reduction of the share capital is cancellation of shares.

II.D. Additional payments

Additional payments are a way of financing the company. If the articles of association so stipulate, a shareholder resolution may impose on all shareholders the duty to contribute additional payments to the company. Shareholders contribute additional payments proportionately to the number of their shares and up to such threshold as set out in the articles of association. Such payments do not increase the share capital. They are subject to repayment by the company at such time as decided by a shareholder resolution.

II.E. Liability

II.E.1. Shareholders

Shareholders are not liable for the debts of the limited liability company. Their financial risk is thus limited to the amount of their contributions.

A shareholder is, of course, liable to the company for paying or transferring the contribution that he must make pursuant to the articles of association or a shareholder resolution increasing the share capital.

II.E.2. Management Board members

Management board members can be liable to the company for mismanaging the company.

They can further be liable to the company’s creditors for its obligations, jointly and severally with the company, where enforcement proceedings against the company have proven inefficient, i.e. the company does not have sufficient assets to carry out a judgment or another execution title. A management board member can avoid such liability by proving that an application to declare the company’s bankruptcy has been timely filed, that he is not guilty of the failure to file such an application or that the creditor has suffered no damage as a result of such a failure.
II.F. One-shareholder company

A limited liability company needs not have more than one shareholder. However, it can not be established by another one-shareholder limited liability company.

On the other hand, the Code requires that any consent, e.g. to enter into a contract, given by the sole shareholder to the company should be made in writing in order to be valid. Given this formal requirement, it is not recommended to establish a one-shareholder company if it is to have commercial relations with the sole shareholder.

III. Incorporation

III.A. Preliminary remarks

A limited liability company can be established following the standard procedure or an expeditious procedure involving a statutory model of the articles of association and documents drawn up in electronic form.

The company becomes a legal person upon its registration (incorporation) in the National Court Register. The company is registered by the registration court following an application filed by the management board.

On the other hand, as soon as the articles of association are signed, a company in formation is established. The company in formation is allowed to enter into contracts and perform other transactions. The rights and duties of the company in formation are transferred to the company as such when the latter is registered. The company in formation is dissolved if an application to register the company is not filed with the registration court within six months of the day that the articles of association are drawn up or if that application is finally denied.

For practical reasons, in order to become fully operational, the company also needs a REGON statistical number, a NIP fiscal identification number and registration for the purposes of Value Added Tax.

III.B. Standard procedure

The company’s articles of association must be drawn up in the form of notarial deed. The deed is made by a notary public and signed on behalf of the first shareholders.

Before an application to register the company in the National Court Register is filed, the company should obtain a REGON statistical number and have its address.

A statistical office assigns a REGON statistical number to the company in formation upon verifying the latter’s articles of association.

The contributions to the share capital of the company must be paid up before the filing of the application to register the company. It is therefore recommended to open a bank account for the company in formation.

The company applies for a NIP fiscal identification number, registration as a social insurance contribution collector and updating its REGON statistical number registration at the same
time as it applies for incorporation. As a result, the application to register the company in the National Court Register must include as attachments relevant NIP, REGON and social insurance application forms as well as a document stating the company’s legal title to the premises in which it has its registered office (for example a lease contract). Information on the company’s bank account is part of the NIP fiscal identification number application form.

If the company is to be registered in Warsaw, the registration proceedings will usually take about two weeks from the date of filing the application.

The following costs will be incurred in the process of establishing the company assuming that the share capital is PLN 100,000 and no unusual events occur:

(i) notarial fee – PLN 1,170 plus VAT at the rate of 23%,
(ii) costs of an official translator regarding the translation of the articles of association during their signing, if applicable – about PLN 600,
(iii) tax on acts in civil law – PLN 490,
(iv) costs of entry into the National Court Register – PLN 600,
(v) additional notarial fees – about PLN 300 plus VAT at the rate of 23%,
(vi) costs of obtaining an extract from the relevant register of a shareholder which is a legal person and of executing a power of attorney to sign the articles of association as well as of their authentication and translation, if required,
(vii) costs of VAT registration – PLN 170.

### III.C. Expeditious procedure

All documents in electronic form are drawn up by using a Ministry of Justice Internet system. Due to this system’s settings, a foreign individual or entity cannot be one of the first shareholders or management board members of the company or one of those signing the articles of association.

The company’s articles of association must be drawn up electronically according to the statutory model as attached to this memorandum. The articles of association cannot be amended until after the company incorporation.

The application to register the company in the National Court Register is filed electronically along with a list of shareholders signed electronically by all the management board members. The application must be reviewed by the court within one business day of its filing. Within seven days of the company registration, the company must file with the registration court a specimen of signature of each management board member.

The contributions to the share capital of the company must be paid up not later than seven days after the company has been registered. The payment of the contributions is confirmed by a declaration signed by all the management board members; the declaration is signed electronically if it is made prior to the company incorporation.

In practice, the company applies for a NIP fiscal identification number, registration as a social insurance contribution collector and a REGON statistical number after it has been incorporated. These applications are filed directly with the respective authorities to which they are addressed. The NIP fiscal identification number application form must be accompanied by a document stating the company’s legal title to the premises in which it has its registered office (for example a lease contract). Information on the company’s bank
account is part of the NIP fiscal identification number application form, which is why it is necessary to open such an account prior to filing this form.

The following costs will be incurred in the process of establishing the company assuming that the share capital is PLN 100,000 and no unusual events occur:

(i) tax on acts in civil law – PLN 497,
(ii) costs of entry into the National Court Register – PLN 600,
(iii) notarial fees – about PLN 60 plus VAT at the rate of 23%,
(iv) costs of obtaining an extract from the relevant register of a shareholder which is a legal person and of executing a power of attorney to sign the articles of association as well as of their authentication and translation, if required,
(v) costs of VAT registration – PLN 170.

Where the articles of association are amended, without increasing the share capital, after the company’s incorporation, the following costs must be paid:
(a) costs of entry into the National Court Register – PLN 500,
(b) notarial fees – about PLN 1,000 plus VAT at the rate of 23%,
(c) costs of an official translator regarding translation at the shareholders’ meeting, if applicable – about PLN 600.

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ARTICLES OF ASSOCIATION OF A LIMITED LIABILITY COMPANY DATED ………..

§ 1

Those appearing:
1) ..... ________________________________________ __;
2) ..... ________________________________________ __;
3) ..... ________________________________________ __

represent that under these articles of association they establish a limited liability company, hereinafter referred to as the “Company”.

§ 2

The Company’s business name shall be: _____________________ spółka z ograniczoną odpowiedzialnością.

§ 3

The Company’s seat shall be ______________________.

§ 4

The objects of the Company shall be:
1) (PKD .............) __________________________ _
2) (PKD .............) __________________________ _
3) (PKD .............) __________________________ _

§ 5

The share capital of the Company shall amount to __________________ zlotys (say: __________________) and be divided into ________________ (say: ________________) shares of a nominal value of __________________ zlotys (say: __________________) each.

§ 6

The shares of the Company are subscribed for as follows:
1) shareholder __________________ subscribes for __________________ (say: __________________) shares of an aggregate nominal value of __________________ zlotys (say: __________________ zlotys);
2) shareholder __________________ subscribes for __________________ (say: __________________) shares of an aggregate nominal value of __________________ zlotys (say: __________________ zlotys).

§ 7

The Company’s duration shall be indefinite.
§ 8

Option A
1. The shares of the Company shall be equal and indivisible. Each shareholder can hold more than one share.
2. One vote shall correspond to each share.

Option B
1. The shares of the Company shall be equal and indivisible. Each shareholder can hold more than one share.
2. One vote shall correspond to each share.
3. A share can be cancelled with the shareholder’s consent by the Company acquiring the share.

§ 9

The contributions in consideration of the shares of the Company shall be made in cash.

§ 10

Option A
Transfer and pledge of a share shall require the Company’s consent.

Option B
Transfer and pledge of a share shall not require the Company’s consent.

Option C
1. Transfer and pledge of a share shall require the Company’s consent.
2. The pledgee and the usufructuary can exercise the voting right attached to the share that is subject to the pledge or the usufruct where the transaction whereby the limited property interest is established so provides and a mention of its establishment and of the right to exercise the voting right has been entered into the share register.

Option D
1. Transfer and pledge of a share shall not require the Company’s consent.
2. The pledgee and the usufructuary can exercise the voting right attached to the share that is subject to the pledge or the usufruct where the transaction whereby the limited property interest is established so provides and a mention of its establishment and of the right to exercise the voting right has been entered into the share register.

§ 11

Option A
The Company can create reserve and supplementary capitals.

Option B
1. The Company can create reserve and supplementary capitals.
2. The Management Board can pay an advance payment towards an expected dividend for a financial year where the requirements provided for by law are met, including but not limited to where the company has sufficient funds to make the payment.

§ 12

Option A
The Company’s governing bodies shall be:
1) the Management Board;
2) the Shareholders’ meeting.

Option B
The Company’s governing bodies shall be:
1) the Management Board;
2) the Supervisory Board;
3) the Shareholders’ meeting.

Option C
1. The Company’s governing bodies shall be:
   1) the Management Board;
   2) the Supervisory Board;
   3) the Shareholders’ meeting.
2. A shareholder shall not have the right of individual supervision, subject to section 3.
3. A shareholder can exercise his right of individual supervision where the Supervisory Board has not been appointed or where the number of Supervisory Board members is lower than that required by the articles of association.

§ 13

1. The Management Board shall consist of one or more members appointed and removed by a shareholder resolution. A shareholder resolution can determine the functions of the several members of the Management Board.
2. The term of office of a Management Board member shall be ……
3. The mandate of a Management Board member shall expire upon the lapse of the term of office, removal from the Management Board, death or resignation.

Additional option applicable where the supervisory board is appointed, i.e. options B or C in §12 are chosen

4. The Supervisory Board shall consist of at least …… members appointed and removed by a shareholder resolution.
5. The term of office of a Supervisory Board member shall be ……
6. The mandate of a Supervisory Board member shall expire upon the lapse of the term of office, removal from the Supervisory Board, death or resignation.

§ 14

Option A
Where the Management Board consists of one person, the Management Board member shall give notices on the company’s behalf. Where the Management Board consists of two or more
persons, two members of the Management Board or one Management Board member along with a permanent commercial representative (prokurent) shall jointly give notices on the company’s behalf.

Option B
Each Management Board member shall be entitled to give notices on the company’s behalf individually.

§ 15

A. The shareholders appoint the first Management Board of the Company as follows:
1) _______________________/function: ______________________;
2) _______________________/ ______________________;
3) _______________________/ ______________________.

Additional option applicable where the supervisory board is appointed, i.e. options B or C in §12 are chosen

B. The shareholders appoint the first Supervisory Board as follows:
1) _______________________/function: ______________________;
2) _______________________/ ______________________;
3) _______________________/ ______________________.

§ 16

Option A
Disposing of a right or contracting an obligation to make a performance of a value exceeding twice the amount of the Company’s share capital, shall require a shareholder resolution.

Option B
Disposing of a right or contracting an obligation to make a performance of a value exceeding twice the amount of the Company’s share capital, shall not require a shareholder resolution.

§ 17

1. The financial year shall correspond to the calendar year, subject to section 2.
2. The first financial year shall end on 31 December ______________________.