



# Company formation in Poland



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# FREEDOM OF BUSINESS ACTIVITY

## Freedom of business activity

Polish law stipulates the principle of freedom of business activity. This means that undertaking, pursuing, and terminating economic activity is free for everyone on an equal basis.



In some cases, running business requires consent of an appropriate authority, e.g., a license or a permit.

This applies to the performance of economic activity in areas of particular importance for the security of the state or citizens, or other important public interest. Granting of a license or a permit may be subject to the fulfilment of specific conditions, for example, no criminal records of board members.

## Foreigners

Citizens of the European Union and European Economic Area Member States who want to conduct business activity in Poland may:



Set up own sole proprietorship or any commercial company in Poland



Provide cross-border services - without registering business in Poland



Set up a branch or representative office of foreign entrepreneur in Poland

The EU member states are Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Denmark, Estonia, Finland, France, Greece, Spain, Netherlands, Ireland, Lithuania, Luxembourg, Latvia, Malta, Germany, Poland, Portugal, Romania, Slovenia, Slovakia, Sweden, Hungary, Italy.

The member states of the European Economic Area, apart from the EU member states, are Norway, Iceland, and Liechtenstein.

Citizens of the USA and the Swiss Confederation can establish a sole proprietorship, any commercial company, branch, or representative office in Poland.

Citizens of countries that do not belong to the European Union may:

- Set up a sole proprietorship or any commercial company in Poland, if they have a residence permit that entitles them to do so
- Set up a limited partnership, limited joint-stock partnership, limited liability, simple joint-stock company, and joint-stock company in Poland
- Join a limited partnership, limited joint-stock partnership, limited liability, simple joint-stock company, and joint-stock company, and acquire and take up shares or stocks in these companies
- Set up a branch of a foreign entrepreneur in Poland, if ratified international agreements signed with Poland do not exclude such a possibility

# REGISTERED PARTNERSHIP

## Minimum capital, minimum contribution

There are no requirements regarding the amount of company's capital.

## Business name



The business name of the Registered Partnership should include the surname or the business name of at least one partner.

## Minimum documentation



In order to establish a Registered Partnership, the founders of the company have to adopt articles of partnership. The articles of partnership shall be made in writing, or else they will be invalid.

Next, the motion to the National Court Register should be prepared. The Registered Partnership is considered established from the date of its registration at the commercial register.

## Details about shareholders

Each partner of a Registered Partnership is liable for the obligations of the company without limitation with all his assets jointly and severally with the remaining partners and the partnership. However, a creditor of the partnership may conduct execution from the partner's assets only if execution from the assets of the partnership proves ineffective.

Each partner has the right to represent the company. The right of representation includes all acts in court and out of court and cannot be limited with effect towards third parties. The partner may be deprived of the right to represent the partnership only for significant reasons under a final and court decision.

Management of the affairs of the partnership may not be entrusted to third parties to the exclusion of the partners. Management of the affairs of the partnership may be entrusted to one or several partners under the articles of partnership or under a subsequent resolution of the partners. In such a case, the remaining partners are excluded from managing the affairs of the partnership.

# PROFESSIONAL PARTNERSHIP

## Minimum capital, minimum contribution

There are no requirements regarding the amount of company's capital.

## Business name



The business name of the Professional Partnership should include the surname of at least one partner.

## Minimum documentation



In order to establish a Professional Partnership, the founders of the company must adopt articles of partnership. The articles of partnership shall be made in writing, or else they will be invalid.

Next, the motion to National Court Register should be prepared. The Professional Partnership is considered established from the date of its registration at the commercial register.

## Details about shareholders

Only natural persons qualified to pursue liberal professions, i.e., legal advisers, notaries, doctors etc. can be partners of Professional Partnership.

A partner is not liable for the obligations of the partnership which arise in connection with the pursuit by the remaining partners of the profession in the partnership, or for the obligations of the partnership which arise as a result of acts or omissions of persons employed by the partnership under an employment contract or another legal relationship who have been guided by another partner in the provision of services connected with the objects of the partnership.

The articles of partnership may provide that one or more partners agree to be liable as a partner of a Registered Partnership.

Each partner shall have the right to represent the partnership individually, unless the articles of partnership provide otherwise. A partner can be deprived of the right to represent the partnership only for significant reasons under a resolution adopted by a majority of three-fourths of the votes in the

presence of at least two-thirds of the total number of partners. The articles of partnership may provide for stricter requirements for such a resolution. Such depriving of a partner of the right to represent the partnership is effective from the date of registration of this fact in the commercial register.

The articles of partnership of a Professional Partnership may provide that the management of the affairs and the representation of the partnership be entrusted to the management board.

# LIMITED PARTNERSHIP



## Minimum capital, minimum contribution

There are no requirements regarding the amount of company's capital.

## Business name



The business name of the Limited Partnership should contain surname or business name of at least one of the general partners. The surname of the limited partner may not be placed in the business name of the partnership or else that limited partner shall be liable to third parties like a general partner.

## Minimum documentation



In order to establish a Limited Partnership, the founders of the company must adopt articles of partnership. The articles of partnership of a Limited Partnership shall be made in the form of a notarial deed.

Next, the motion to National Court Register should be prepared. The Limited Partnership is considered established from the date of its registration at the commercial register.

## Details about shareholders

There are 2 types of partners in a Limited Partnership: general partners and limited partners.

**A general partner** is liable to the creditors for the obligations of the partnership without limitation

**A limited partner** is liable only up to the amount specified in the articles of partnership. Such amount is set up individually for each limited partner. The limited partner is released from liability up to the value of contribution made to the partnership

Unless the articles of partnership provide otherwise, the limited partner's contribution may be made in a value lower than this specified amount. However, a decision of the partners to release the limited partner from the obligation to make a contribution shall be invalid.

The Limited Partnership is represented by the general partners, who are not deprived of the right to represent the partnership under the articles of partnership or a final and non-appealable court judgement. A limited partner may represent the partnership only as a proxy.

The affairs of the company are managed by the general partners. A limited partner does not have the right or obligation to manage the affairs of the partnership, unless the articles of partnership provide otherwise.

# LIMITED JOINT-STOCK PARTNERSHIP



## Minimum capital, minimum contribution

The minimum capital in a Limited Joint-Stock Partnership amounts to PLN 50,000. The nominal value of the share cannot be lower than PLN 0.01.

## Business name



The business name of the Limited Joint-Stock Partnership should include the surnames of one or several general partners. The surname of a shareholder cannot be placed in the business name of the partnership or else that shareholder shall be liable to third parties like a general partner.

## Minimum documentation



For establishing a Limited Partnership, the founders of the company must adopt a statute of the company. The statute of a Limited Joint-Stock Partnership should be made in the form of a notarial deed.

Next, the motion to National Court Register should be prepared. Like other partnerships, Limited Joint-Stock Partnership is considered established from the date of its registration at the commercial register.

## Details about shareholders

In a Limited Joint-Stock Partnership there are 2 types of partners: general partners and shareholders.

<b>General partners</b>	are liable for the obligations of the partnership without limitation, while the shareholders are not liable for company's obligations.
<b>The partnership</b>	is represented by the general partners, who are not deprived of the right to represent the partnership under the statute or a final and non-appealable court judgement. Any subsequent deprivation of a general partner of the right to represent the partnership should constitute an amendment to the statute and requires the consent of all the remaining general partners. A shareholder may represent the partnership only as a proxy.

Affairs of the company are managed by general partners. The statute may provide that management of the affairs of the partnership shall be entrusted to one or several general partners. An amendment to the statute depriving a general partner of the right to conduct affairs of the partnership or granting such right to a general partner who was previously deprived of such right shall require the consent of all remaining general partners.

## **Supervisory board**

A supervisory board may be established in any Limited Joint-Stock Partnership. If there are more than twenty-five shareholders, the creation of a supervisory board is obligatory. The members of the supervisory board shall be appointed or revoked by the general meeting.

Under last year's amendment to the Code of Commercial Companies, the powers and duties of supervisory boards have been increased, enabling them to request management bodies to prepare or provide any information, documents, reports, or explanations regarding the company.

# LIMITED LIABILITY COMPANY



## Minimum capital, minimum contribution

The share capital of a Limited Liability Company shall be at least PLN 5,000. The share capital of the company can be divided into shares of equal or non-equal nominal value. However, the nominal value of a share may not be lower than PLN 50. The shares may not be subscribed for the amount below their nominal value. The amount of contribution shall not be lower than the share capital.

## Business name



There are no requirements regarding the business name of the Limited Liability Company.

## Minimum documentation



In order to establish a Limited Liability Company, the founders of the company must adopt articles of association. The articles of association should be made in a form of notarial deed.

In contrast to the partnerships, capital companies can start their activity right after execution of the articles of association. Until the date of registration at the commercial register, capital companies are obliged to add to their business name the term “in organization” (in Polish “w organizacji”). After the registration, the companies obtain legal personality.

Also, the motion to the National Court Register must be prepared. Following documents should be attached to the motion:

- Articles of association
- Board statement that the contribution has been made by all shareholders in full
- The list of shareholders
- Resolution of shareholders on board appointment
- The board members' statements concerning their addresses for delivery and consent for appointment on the position of a board member
- The document concerning full names and addresses for delivery or company's name, or name and registered office of the members of the bodies or persons authorized to appoint the management board; if the shareholder is a legal person, it is required to provide full names and addresses for delivery of members of the body authorized to represent that legal person.

## Details about shareholders

The shareholders of the Limited Liability Company can be natural persons, as well as companies. A Limited Liability Company cannot be formed solely by another single-shareholder Limited Liability Company. The shareholders are not liable for the obligations of the company.

## Management board

The management board manages the affairs of the company and represents the company. The management board is composed of one or more members. Members of the management board are appointed and dismissed by a resolution of the shareholders, unless the articles of association provide otherwise. If the management board comprises several members, the rules for representation should be stipulated in the articles of association. If the articles of association do not include any provisions in this respect, representations in the name of the company may be made by two members of the management board acting jointly or by one member of the management board acting together with a commercial proxy.

## Supervisory board

The articles of association may create a supervisory board or an audit committee or both. In companies where share capital exceeds PLN 500,000 and where there are more than twenty-five shareholders, the establishment of supervisory board or audit committee is mandatory. The supervisory board (or audit committee) consists of at least three members appointed and dismissed by a resolution of the shareholders. The articles of association may provide a different method of appointment and dismissal of members of the supervisory board. The supervisory board exercises permanent supervision over all areas of the activities of the company. However, the supervisory board does not have the right to give the management board any binding instructions with respect to the management of the affairs of the company. But, last year's amendment to the Code of Commercial Companies strengthens the position of supervisory boards by granting them the power to request management bodies to prepare or provide any information, documents, reports, or explanations concerning the company. Whereas the acquisition of new information by the supervisory board from the management boards of companies, will result in the imposition of new obligations on it with regard to the analysis of this information.



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# JOINT-STOCK COMPANY

## Minimum capital, minimum contribution

The minimum amount of share capital in Joint-Stock Company is PLN 100,000. The share capital shall be divided into shares of equal nominal value. Nominal value of the share may not be lower than PLN 0.01.

The shares subscribed for in-kind contributions shall be paid in full not later than within a year from the date of registration of the company.

The shares subscribed for cash contributions shall be paid prior to registration of the company to the extent of at least one fourth of their nominal value.

If the shares are subscribed solely for in-kind contributions or for in-kind contributions and cash contributions, the share capital shall be paid in prior to registration to the extent of at least one fourth of its amount.

## Business name



There are no requirements regarding the business name of the Joint-Stock Company.

## Minimum documentation



In order to establish a Joint-Stock Company, the founders of the company must adopt statute of the company. The statute of the Joint-Stock Company should be made in a form of notarial deed.

Establishment of a Joint-Stock Company also requires the consent to the formation of the Joint-Stock Company and the wording of the statutes, as well as to the subscription for the shares. The consents should be adopted in a form of one or more notarial deeds.

Also, the motion to National Court Register must be prepared. Following documents should be attached to the motion:

- Statute
- Notarial deeds on the formation of the company and subscription for the shares

- Statement of all members of the management board that the payments towards the shares and the in-kind contributions required under the statute have been legally made
- Confirmation, certified by a bank or an investment company, of payment for the shares made to the account of the company in organization or, in the event of coverage of share capital by in-kind contributions after the registration, the statement of all board members that payments of the contributions within statutory period is ensured by the statute
- Document confirming that the governing bodies were formed with details about members of the bodies
- The board members' statements concerning their addresses for delivery and consent for appointment on the position of a board member
- The document concerning full names and addresses for delivery or company's name, or name and registered office of the members of the bodies or persons authorized to appoint the management board; if the shareholder is a legal person, it is required to provide full names and addresses for delivery of members of the body authorized to represent that legal person.

## Details about shareholders

The shareholders of the Joint-Stock Company can be natural persons, as well as companies. A Joint-Stock Company may not be formed exclusively by a single-shareholder Limited Liability Company. The shareholders are not liable for the obligations of the company. The shareholders are not liable for the obligations of the company.

There are two kinds of shares: registered shares and bearer shares. The registered shares indicate the shareholder. The registered shares certificate can be issued before making a full payment. The statute can state that the sale of registered shares requires a consent of the company or limits such sale in a different way. The bearer share does not indicate entitled party, which is the holder of the share certificate. Such share cannot be issued before the full payment. Sale of the bearer shares cannot be limited. The change of the ownership of the bearer share requires handing over the share certificate.

Upon the request of shareholder, registered shares can be changed to bearer shares (or vice versa), unless the law or the statute provide otherwise.

## Management board

The management board manages the affairs of the company and represents the company. The management board is composed of one or more members. Members of the management board are appointed and dismissed by the supervisory board unless the statute provides otherwise. The board member can be dismissed or suspended also by the general meeting of the shareholders. The board members can be appointed for maximum 5 years term of office.

If the management board comprises several members, the rules for representation should be stipulated in the statute. If the statute does not include any provisions in this respect, representations in the name of the company may be made by two members of the management board acting jointly or by one member of the management board acting together with a commercial proxy.

## Supervisory board

Establishment of a supervisory board in the Joint-Stock Company is mandatory. The supervisory board exercises permanent supervision over all areas of the activities of the company.

The supervisory board consists of at least three members (five in case of public companies) appointed and dismissed by the general meeting of shareholders. The statute may provide a different method of appointment and dismissal of members of the supervisory board. Members of the supervisory board can be appointed for maximum 5 years term of office.

The amendment to the Code of Commercial Companies strengthens the position of supervisory boards by granting them the power to request management bodies to prepare or provide any information, documents, reports, or explanations regarding the company. However, the supervisory board's acquisition of new information from the management boards of companies imposes new obligations on it in terms of analysing this information.



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# SIMPLE JOINT-STOCK COMPANY



## Minimum capital, minimum contribution

The minimum amount of share capital in Simple Joint-Stock Company is PLN 1. The shares have no nominal value, do not constitute part of the share capital and are indivisible.

The amount of the share capital is not specified in the articles of association. The provisions on amendments to the articles of association do not apply to changes in the amount of share capital.

The contributions shall be paid in full within three years from the company's entry in the register.

## Business name



There are no requirements regarding the business name of the Simple Joint-Stock Company.

## Minimum documentation



In order to establish a Simple Joint-Stock Company, the founders of the company have to adopt articles of the association. The articles of association should be made in a form of notarial deed.

Establishment of a Simple Joint-Stock Company also requires the establishment of company bodies required by the law or the articles of association and making contributions by shareholders to cover the share capital.

Also, the motion to National Court Register must be prepared. Following documents should be attached to the motion:

- Articles of association
- A declaration of all members of the management board on the amount of the share capital
- Declaration by all members of the management board that the contributions to cover the shares were made in the part provided for in the articles of association

- If the appointment of members of the company's governing bodies does not constitute a notarial deed containing the articles of association - proof of their appointment, specifying their personal composition
- A list of shareholders signed by all members of the management board, giving the surname and first name or company (name) as well as the number and series of shares taken up by each of them
- The board members' statements concerning their addresses for delivery and consent for appointment on the position of a board member
- The document concerning full names and addresses for delivery or company's name, or name and registered office of the members of the bodies or persons authorized to appoint the management board; if the shareholder is a legal person, it is required to provide full names and addresses for delivery of members of the body authorized to represent that legal person.

## Details about shareholders

The shareholders of the Simple Joint-Stock Company can be natural persons, as well as companies. A Simple Joint-Stock Company may not be formed exclusively by a single-shareholder Limited Liability Company. The shareholders are not liable for the obligations of the company. Shareholders are only obligated to perform the services specified in the articles of association.

Shares are not in the form of a document, and they are registered in the register of shareholders.

## Management board

It is mandatory to establish a management board or board of directors.

The management board manages the affairs of the company and represents the company. The management board is composed of one or more members. Members of the management board are appointed and dismissed by the shareholders, unless the article of associations provide otherwise.

If a supervisory board has been established in the company, the members of the management board shall be appointed, dismissed, and suspended for important reasons by the supervisory board, unless the articles of association provide otherwise.

If the management board comprises several members, the rules for representation should be stipulated in the articles of association. If the article of association do not include any provisions in this respect, representations in the name of the company may be made by two members of the management board acting jointly or by one member of the management board acting together with a commercial proxy.

## Board of Directors

The board of directors manages the company's affairs, represents the company, and supervises the conduct of the company's affairs. It is composed of one or more directors.

Directors are appointed, dismissed and suspended by shareholders for important reasons by a resolution, unless the articles of association provide otherwise.

The articles of association, the rules of the board of directors or a resolution of the board of directors may delegate some or all the activities of the company's business to one director or some directors (executive directors). Directors who are not executive directors (non-executive directors) exercise permanent supervision over the conduct of the company's affairs.

If the board of directors comprises several directors, and the articles of association do not contain any provisions on this matter, two directors or one director together with a commercial proxy are required to make statements on behalf of the company.

## Supervisory board

Establishment of a supervisory board in the Simple Joint-Stock Company is not mandatory. However, the articles of association may provide that, in addition to establishing a management board, the company must also establish a supervisory board. The supervisory board exercises permanent supervision over all areas of the activities of the company.

The supervisory board consists of at least three members appointed and dismissed by a resolution of shareholders. The articles of association may provide a different method of appointment and dismissal of members of the supervisory board.

The mandate of a body member shall expire on the date of the general meeting approving the financial statements for the first full financial year following the date of appointment, unless the articles of association provide otherwise for an indefinite period.

If the articles of association provide the appointment of a member of the body for a term of office, it shall be counted in financial years, unless the articles of association provide otherwise. In such a case, the mandate of the body member shall expire on the date of the general meeting approving the financial statements for the last year of the body member's term of office, unless the articles of association provide otherwise.

The amendment to the Code of Commercial Companies grants the supervisory board the power to request management bodies to prepare or provide any information, documents, reports, or explanations regarding the company. However, the supervisory board's acquisition of new information from the management boards of companies imposes new obligations on it in terms of analyzing this information.



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# COMPANY REGISTRATION VIA THE INTERNET



## Two ways of online registration

Currently, an application for company registration can be submitted in the National Court Register online only. It is not possible to submit a paper application. However, there are two methods of applying for registration with the National Court Register:

- **Via the S24 system** - in the case of companies whose articles of association has been concluded in this system
- **Via the Court Registers Portal** - in the case of companies whose articles of association has been concluded in a traditional form.

## Types of companies that can be set up online (S24)

Registration of a company via Internet, in the S24 system, is a good form for the companies established by one person or those that have only standard provisions in their articles of association.

In the S24 system, it is possible to conclude an agreement and register:



S24

- Registered partnership
- Limited partnership
- Limited liability company
- Simple joint-stock company

## Registration process

The main condition for establishing a company in the S24 system is that all persons signing the articles of association and participating in its registration should have a qualified electronic signature, a trusted signature (ePUAP) or an electronic personal signature.

It is possible to use S24 portal after creating an account. To log in, it is necessary to provide login and password. Each person who will sign the registration application (each of the management board



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members listed in the articles of association that is not suspended, or their representative), and shareholders or their representatives should have an account.

The system will notify which documents are needed and will guide through all stages of their preparation. S24 provides most of the model documents, but not all of them, for example, a declaration of the status of a foreigner should be prepared independently.

After correctly completing the previous steps, the S24 system will automatically transfer applicant to the electronic payment system.

After payment, the application will be sent to the registry court competent for the company's seat. The court should verify an application within one day from the date of receipt. However, the verification time may be extended if the court asks for additional documents, e.g., if the shareholder is a foreign company (then a translated excerpt from the foreign company's register along with an apostille may be required).

## Advantages and disadvantages of registering a company via S24

### Advantages:

- All formalities related to the establishment and registration of companies may be done online
- There is no obligation to visit a notary public, as opposed to setting up a company in a traditional way
- The court fee is lower. Instead of PLN 600, it is PLN 350.

### Disadvantages:

- Fewer possibilities of adjusting the articles of association than in the case of using the services of a notary public
- No possibility to modify the financial year
- Share capital may be covered only with cash contributions.



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## Additional notifications

In addition to the registration of the company in the National Court Register, the following data should also be reported:

- **Supplementary information** for the tax office, for example bank account numbers, information on the special status of companies, expected number of employees or place of business and detailed contact details, within:
  - 21 days from the date of entry of the company into the National Court Register
  - 7 days from the date of commencement of business activity - if it is planned to pay social security contributions.
  
- **Ultimate beneficial owner** to the Central Register of Real Beneficiaries (CRBR),
  - the application should be made within 7 days from the date of entry into the National Court Register.

# BRANCH



## Purpose

Foreign entrepreneurs can conduct business activity on the territory of Poland through a branch. A branch can only conduct such activity which coincides with the scope of business activity of foreign entrepreneur. According to Polish law, the branch is considered a part of mother company, not an independent entity. However, the branch may hire employees on its own behalf.

## Business name



The branch operates under the same business name as the mother company.

To the business name should be added the form of business of the mother company translated into Polish (e.g., LTD = spółka z ograniczoną odpowiedzialnością) and the term “oddział w Polsce” (in English: branch in Poland).

## Minimum documentation

The branch can start conducting business activity after the registration in the National Court Register. The following documents should be attached to the registry motion:

- Articles of association, statute, or other document on basis which the foreign entrepreneur conducts the activity
- Excerpt for the register of foreign entrepreneur
- Document stating name and address of the person entitled to represent foreign entrepreneur in branch.

## Additional notifications

In addition to the registration of the company in the National Court Register, additional data must be submitted to the tax office, such as bank account numbers, information on the special status of companies, the expected number of employees or place of business, and detailed contact details. Applications must be made within the:

- 21 days from the date of entry of the foreign entrepreneur's branch into the National Court Register
- 7 days from the date of commencement of business activity - if you intend to pay social security contributions.

# SOLE PROPRIETORSHIP



## Purpose



The sole proprietorship is an alternative for establishment of a company. In this case natural person conducts business activity on his/her own behalf. Such entrepreneur is solely liable for obligations connected to business activity without limitation.

## Registration

Natural persons who conduct business activity are registered in the Central Registration and Information on Business (CEiDG). The entrepreneur can register in CEiDG, tax office and social insurance institution (ZUS) with a single application. Such application can be submitted electronically by CEiDG website, sent by post to a selected municipal office or filed in person in selected municipal office.

## Documentation

Together with the application, the entrepreneur shall provide a statement that he owns legal title to the real estates, with addresses already entered into the register (i.e., correspondence address and all addresses of conducting business, including main address of business and addresses of branches - if there are such). The legal title can be for example a property sales agreement or a lease agreement.

Such legal title is not attached to the registry motion, but the ministry responsible for economic affairs may request the entrepreneur to provide it within 7 days from receiving the request. If the entrepreneur will not provide it or changes the addresses in the register, the ministry can decide on erasing the entrepreneur from the register.

# INCORPORATION TIME AND FEES



## Incorporation time



All types of companies must be registered at the commercial register held by district courts. The duration of the registration procedure depends on the relevant court. The procedure in Warsaw currently lasts approximately 2-3 weeks.

## Fees



The court fee for registration of the company in the National Court Register amounts to PLN 600 or PLN 350 in case of registration via S24 platform.



# REGISTRATION OF A GROUP OF COMPANIES

## Creation of a group of companies

In connection with the amendment of the provisions of the Polish Code of Commercial Companies, the rights of groups of companies were introduced to the Polish legal order.

A group of companies within the meaning of the new regulations should be understood as a parent company and a company or subsidiaries that are capital companies and follow a common strategy to pursue the common interest of the group of companies.

## Decision to create a group of companies

In order to establish a group of companies, the partners or shareholders of a subsidiary should adopt an appropriate resolution specifying the parent company in its content. A resolution is passed by a majority of three-fourths of votes. However, it is possible to determine in the articles of association or the company's articles of association a number of votes higher than the statutory number of votes necessary to adopt such a resolution.

## Disclosure of accession of a subsidiary to a group of companies

Participation in a group of companies is disclosed in the National Court Register, and the application of the provisions of the law on groups of companies is possible only after disclosing this information in the register.

- **If the registered office of the parent company is in Poland** - the management board of the parent company and the subsidiary notify the registry court of the fact of joining the group of companies of the subsidiary
- **If the parent company has its seat abroad** - the obligation to disclose in the register the fact of joining a group of companies rests only with the management board of the subsidiary.

## Supervisory Board

The amendment to the Code of Commercial Companies, in force since last year, gave new powers and duties to supervisory boards of companies belonging to the group. When supervising a subsidiary, the parent company's supervisory board may request the management board of a subsidiary participating

in a group of companies to provide books and documents and to provide information for supervision. However, in the absence of a supervisory board in the parent company, its competencies will fall to the management board (or the board of directors in the case of a simple joint-stock company).

# TAXES ON CORPORATE INCOME

## Income and capital gains

**19%** is the standard corporate income tax rate

**9%** is the reduced rate for small taxpayers and new companies in the first year of business activity

## Withholding tax on cross boarder payments

**Withholding tax of 20%** is levied on income from interest, copyright or related rights, rights to inventive designs, trademarks, and decorative designs, disclosing the secret of a recipe or production process, for the use or right to use an industrial device. The taxation may be diminished by application EU Directives or double taxation treaties.

**Withholding tax of 19%** covers payment of dividends, also in this case tax burden may be diminished by application of EU Directives or double taxation treaties.

For the following payments “pay and refund” mechanism is applicable:

- To the related entities
- Of interest, royalties, and dividends
- In case yearly payment towards a certain contractor exceeds PL 2M.

Under this mechanism WHT rate needs to be withheld at a standard rate (19% and 20% respectively) and may be refunded on the later stage upon taxpayer's/tax remitter's application if according to Double Tax Treaty or EU Directives lowered rate or WHT exemption would be applicable.

In order not to apply pay and refund mechanism a tax remitter should obtain an opinion on WHT preferences or submit a statement

## Flat tax rate on the revenue of capital companies (the so-called Estonian CIT)

In this form of taxation, the company's profit is not taxed as long as it remains in the company and is allocated for investment.

Estonian CIT tax is available to a certain catalogue of entities. Estonian CIT tax rules may be applied by joint-stock companies, limited liability companies, limited partnerships, limited joint-stock partnerships, and simple joint-stock companies. There are some additional requirements in terms of investors' structure (natural persons only) and minimal employment (3 employees).

If the entrepreneur decides to apply the Estonian CIT regulations, they will be applied for the next 4 tax years. If the entrepreneur does not resign from the flat-rate income tax during this period, the tax period based on these rules will be automatically extended by another 4 tax years.

## Regime for holding companies

Holding company is a Polish entity with unlimited tax obligation, not benefiting from CIT exemption, running real business activity, having at least 10% of shares in companies with seat in countries other than tax heavens, not part of a CIT group.

Special method of taxation for holding companies assumes the CIT exemption of 95% of the amount of dividends received by the holding company from subsidiaries and under certain conditions full CIT exemption for profits from the sale of shares or stocks in subsidiaries.

## Tax on transferred income

If advisory, royalties, debt financing, remuneration for transfer of functions, risks etc. costs exceed 3% of taxpayer's costs, tax on transferred income may be due. Subsequent requirements concern:

- Relations between entities (related entities)
- Effective tax rate for related entity
- Structure of costs/revenues/dividend in the related entity.



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## Corporate income tax – general information

### Residence



A company is treated as resident if it has its legal seat or place of effective management in Poland.

### Taxable income



Resident companies are taxable on their worldwide income, including capital gains. The taxable income is computed based on the accounting profits and is adjusted for several items as described in the tax law. Revenues are divided into two sources – business activity and capital gains.

### Tax period



Tax settlement period for a corporate income tax is tax year. Standard tax year is 12 months, it can be similar to calendar year but also may be changed. Tax advances are paid throughout the year on a monthly or quarterly basis and reconciled annually.

### Tax returns and assessment

The taxpayer has to calculate and report revenues, tax deductible costs and tax due in the annual tax return (self-assessment). The deadline for filing the return is by the end of the third month following the end of the tax year.

### Tax advances

Tax advances should be calculated and paid by the taxpayer generally on a monthly basis. Quarterly payments are possible, in the first year or if gross sales did not exceed EUR 2,000,000 in the previous year. Basis for calculation are current taxable revenues and tax-deductible costs. In certain cases, a taxpayer may pay simplified advances monthly, being as a rule 1/12 of a tax paid in the tax year preceding the previous year (current year - 2).

### Deductions

As a rule, expenses incurred in connection to obtaining, ensuring and maintaining taxable income are fully deductible, unless they are listed as non-deductible items. Some items are deductible only up to a limit set by the law.

### Carry forward of losses

Tax losses may be carried forward up to 5 tax years. During each year the company cannot utilize more than 50% of the loss incurred in a given year. Alternatively, a taxpayer may utilize PLN 5M of loss from

a given year at once, whereas remaining part of loss will be settled compliant with general provisions. Loss from one source (business activity/capital gains) must be utilized within the same source.

## Expected changes in income taxes

Minimal income tax was supposed to be implemented from 2022, however it has been postponed. Implementation in an amended version is expected to enter into force since 2024.

### New minimal income tax

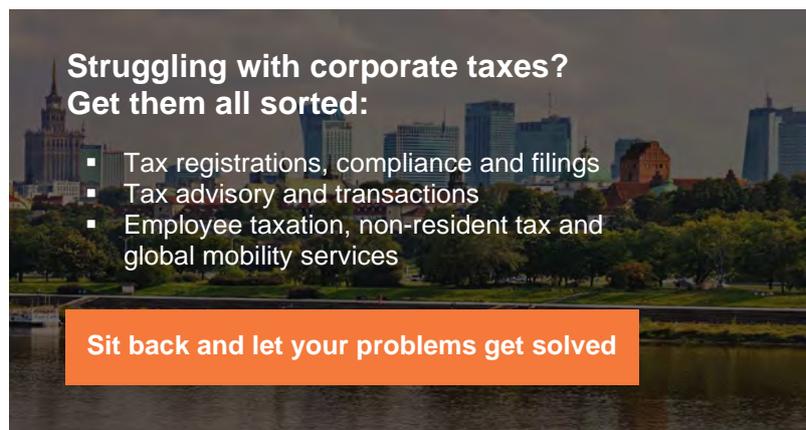
The regulation will apply to corporations incurring a loss or whose share of income in revenue is less than 2%. Taxpayer will have the right to choose the way of calculating the tax base:

- (i) 3% of the revenues;
- (ii) 1,5% of the revenues and excess of debt financing costs exceeding 30% of tax EBITDA and costs of intangible services from related entities exceeding 5% of tax EBITDA

Tax rate is 10%.

Exempt will be i.a:

- taxpayers in the year in which they set up their business and in the two following tax years,
- financial enterprises,
- small enterprises;
- companies if in one of the 3 years prior the current year 2% rentability ratio was exceeded;
- taxpayers, if their revenues are lower by at least 30% compared to the year preceding;
- taxpayers that are owned exclusively by natural persons and do not hold certain shareholding rights in other entities;
- taxpayers that are part of a group of at least two companies if the rentability of the group is greater than 2%;
- taxpayers in bankruptcy, liquidation or restructuring proceedings.



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# INVESTMENT INCENTIVES

## Special Economic Zones

Certain territory of Poland is considered as a **Special Economic Zone**, however, the intensity of public aid is different and depends on the region. General rule is that depending on the volume of investment, number of employees and additional local requirements, the taxpayer may benefit from tax exemption. Conditions are established for each taxpayer by a special agency responsible for Special Economic Zone which after application procedure issues a decision granting exemption in the particular case.

## Research and Development (R&D)

Polish CIT act provides for special taxation regime encouraging investments into new technologies. Main tool is special Research and Development (R&D) relief based on which taxpayer can additionally deduct expenses on R&D, including development of prototypes and pilot projects, demonstration, testing, and validation of new or improved products, processes or services whose main purpose is to improve the technical encoding products.

Polish Investment Sphere is a kind of tax relief for new investment based on the decision on support in Polish Investment Sphere (dedicated for industrial sector and sector of innovative services).

Another tax benefit dedicated to the investor is so called IP Box. Based on the IP Box provisions, income derived from intellectual property can be preferentially taxed with 5% tax rate.

Remaining preferences in the CIT Act are i.a.:



Tax relief for robotization



Tax relief for consolidation



Tax relief for trial production of a new product and its market placement

**There are also other tax benefits for various economic sectors and legal forms.**

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# COMPLEX CORPORATE AND SECRETARIAL SERVICES IN POLAND



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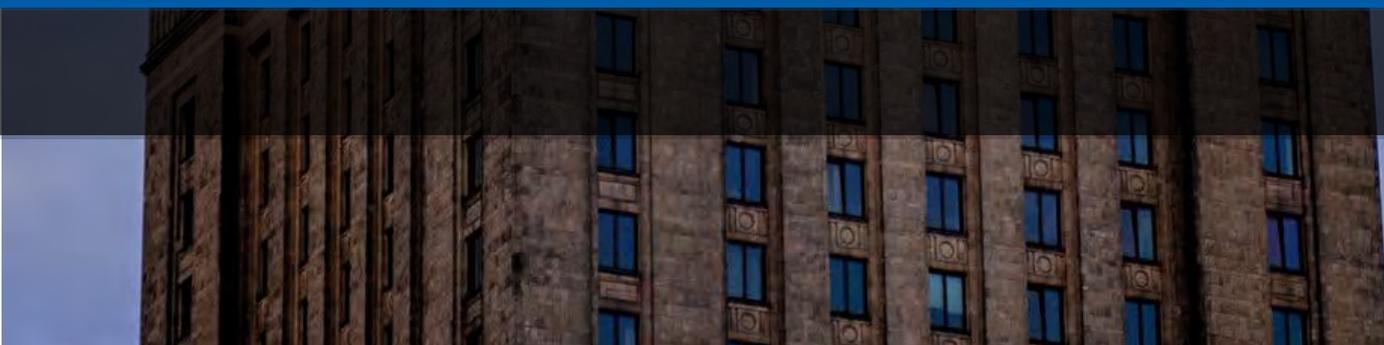
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