

# Legal Alert

**"S-24" - establishing a limited-liability company in Poland in 24 hours**

**April 2012**

**From 1 January 2012, entrepreneurs now have the ability to establish a limited-liability company in Poland, electronically, within just 24 hours. The new procedure for forming and registering a limited-liability company (sp. z o.o.) was introduced pursuant to the Act of 1 April 2011 Amending the Commercial Companies Code and Other Acts (Journal of Laws Dz. U. No. 92 item 531).**

Alongside the traditional method of establishing a company, the amendment introduced the "S-24" procedure, which enables formation and registration of a limited-liability company within 24 hours after proper entry of data into the IT system via an online form available at the website of the Ministry of Justice.

## **How it works**

Establishing a company under the S-24 procedure involves creating an account in the IT system, filling in a standard form for the articles of association, enclosures and motions to the National Court Register, and stamping the documents with an electronic signature. The completed application is forwarded to the registry court, which - according to the law - is required to enter the company in the National Court Register within one day.

When a company is registered using this method, the management board of the new company is required to supplement the application with the missing documents that must be in paper form, i.e. the specimen signatures of the management board members and the declaration by the management board that the contributions for the share capital have been made, within 7 days after registration of the company.

Meanwhile, because the S-24 procedure bypasses the existing "one-stop shop" system, the company itself will also have to register with the tax office, the statistical office, and the Social Insurance Institution.

## **Standard form for articles of association**

The form for the articles of association which entrepreneurs may use via the IT system is very general and is not subject to modifications at the registration stage. The articles of association are concluded in ordinary written form rather than in the traditional form of a notarial deed. This approach is intended to reduce the costs of establishing a limited-liability company. Nonetheless, once the company is entered in the National Court Register, if the shareholders decide to amend the articles of association they will need to do so in notarial form, and the amendments will be subject to registration under the same rules as before.

## **Not for everyone**

Although the act simplifies the procedure and cuts the time and expense of establishing a limited-liability company, the new procedure is not without its drawbacks.

The first problem arises at the stage of registration in the IT system. Because it is necessary to enter a Polish personal identity number (PESEL) for the shareholders (in the case of individuals) and the management board members, foreigners who do not hold a PESEL cannot establish a company using the simplified procedure. A solution for them is to apply first for a PESEL number, or else register the company using the traditional method.

Another barrier that may be encountered by entrepreneurs is the inability to modify the

standard form for the articles of association before the new company is entered in the National Court Register. Because the standard form provides only for covering the share capital in cash, shareholders do not have the option of making in-kind contributions to cover the share capital. Persons whose needs are not met by the proposed standard form for the articles of association may use only the traditional method for establishing the company, i.e. concluding the articles of association in the form of a notarial deed.

Accuracy and precision when completing the online forms are also crucial. If an error is made, the registry court may, depending on the nature of the error, summon the applicant to supplement the application, or reject the application, which significantly prolongs the registration procedure.

Notwithstanding the Parliament's goal of 24-hour registration, applications filed with the National Court Register online will actually be considered during regular business hours of the registry courts.

## Summary

Paradoxically, because the less formal online procedure opts out of the existing "one-stop shop" approach, in a certain sense it imposes more obligations on the new company than the traditional procedure does, at least when it comes to the need for the company to make a separate registration at the tax office, the statistical office, and the Social Insurance Institution.



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