

# Simple joint stock company introduced to Commercial Companies Code

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### Introduction

On 19 July 2019 Parliament passed an act introducing a new type of company (a corporation with a legal personality) to the Commercial Companies Code: the simple joint stock company.<sup>(1)</sup> The act was formally announced on 30 August 2019, which completed the legislative process. Its provisions will enter into force in March 2020.

The government has worked on the draft act since 2016. The simple joint stock company project aims to provide a simpler and cheaper option than standard joint stock companies regarding company formation, operation and liquidation and a more modern and flexible company model with a legal personality that will be particularly attractive to start-ups. However, the introduction of this new type of company has provoked divergent opinions.

### Characteristics of simple joint stock companies

According to the act, simple joint stock companies have the following essential characteristics:

- Simple joint stock companies can be incorporated and registered online in just 24 hours. At present, this type of simplified formation is possible only for limited liability companies.
- Promoters can choose the management model (ie, a management board or a board of directors combining managerial and supervisory functions). When a management board is chosen, a supervisory board may also be appointed. At present, joint stock companies must have a management board and a supervisory board, whereas, in principle, only a management board is mandatory for limited liability companies.
- No stated capital is required for simple joint stock companies. Instead, they require only a symbolic share capital of Zł1, which is not regulated in the articles of association. This means that a simple joint stock company could, in theory, begin operation with no financial contribution. At present, limited liability companies must have a minimum stated capital of Zł5,000, while joint stock companies must have a minimum stated capital amount of Zł100,000. The fact that the stated capital of the latter companies must be regulated in their articles of association and that modification of such capital requires the articles to be amended (with a few exceptions) is also of significance.
- Shares possess no nominal value and are unrelated to a simple joint stock company's share capital. At present, shares in joint stock and limited liability companies must possess a nominal value and jointly account for the company's stated capital.
- With certain requirements and exceptions, shareholders can pay out a dividend from the assets of a simple joint stock company, including share capital. At present, limited liability companies and joint stock companies cannot make payments from stated capital.
- Shareholder and board resolutions in simple joint stock companies can be adopted via electronic communication.
- Simple joint stock companies have no shares in paper form. Instead, they are registered in a digital register of shareholders (which can include blockchain).
- If enforcement against the assets of a simple joint stock company proves ineffective, management board members bear personal liability for the company's obligations. They can be released from such liability by demonstrating that they filed a bankruptcy petition in due time.
- With the courts' permission, simple joint stock companies can be dissolved without a

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liquidation procedure by transferring assets and obligations to a designated shareholder. At present, the dissolution of joint stock companies and limited liability companies requires a liquidation procedure in which company assets are cashed out and creditors satisfied.

## Controversy

The simple joint stock company project has created controversy among Polish legal scholars from the outset. Some scholars have argued that there is no need for such a comprehensive reform of the system, as the existing company types are suitable for start-ups – in particular, limited liability companies, which are relatively uncomplicated and require only a small amount of stated capital (Z15,000).

However, scholars in favour of the introduction of simple joint stock companies have argued that the new company type facilitates a simpler means of obtaining capital through the issue of new shares and simple transactions therein. A limited liability company with shares acquired and transferred only in the form of a notary deed creates no such possibilities.

In turn, opponents of the simple joint stock company project have argued that new entrepreneurs expect facilitation through public law (eg, taxes, social insurance and administrative procedures) rather than private law. They also contend that a simple joint stock company does not protect the interests of contractors and provides extensive possibilities for abuse due to the non-existence of stated capital, which many see as being synonymous with the possibility of a simple joint stock company operating with no assets.

Conversely, advocates have argued that considering a lack of stated capital to be synonymous with a total lack of capital is groundless. They have also pointed out that the low minimal stated capital amount for limited liability companies does not provide protection either.

## Comment

The introduction of simple joint stock companies to the Commercial Companies Code will result in significant changes to Poland's company law system – in particular, the move from the stated capital concept to the broader admissibility of a monistic model of a board of directors, which to date was regulated only in cases of *societas Europaea*, which are rarely encountered in Poland.

The abovementioned changes and the majority of legal changes that simple joint stock companies will introduce may be positive. However, there is no doubt that there will be a period of adjustment. Problems and unclear situations will come to the surface and legal practice, case law and jurisprudence will have to address them. At present, it is difficult to assess whether a natural risk stemming from the adoption of multiple new solutions and concepts will be an acceptable price for modernising Poland's company law. However, it is beyond dispute that this risk will have to be considered by entrepreneurs interested in launching a business activity as a simple joint stock company and all remaining participants in commercial transactions.

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## Endnotes

(1) The text of the act is available [here](#) (in Polish).

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