

## Not so fast

### Creating a company online is easy, but takes time

The option of concluding the articles of association of a limited-liability company (sp. z o.o.) over the Internet was introduced into Polish law at the beginning of 2012 by the Act of April 1, 2011, Amending the Commercial Companies Code and Certain Other Acts, which went into effect on January 1, 2012. A notarial deed, which was previously mandatory, is therefore now only one of two possible forms for concluding the articles of association.

#### First steps

A limited-liability company may be established online only by using a standard form for the articles of association, available through the IT system at the Ministry of Justice ([ems.ms.gov.pl](http://ems.ms.gov.pl)). The first step is to set up a user account in the IT system. An account must be established not only by the person completing the form, but by each shareholder of the new company or their attorneys.

When registering in the system, the user is required to enter his or her name, date and place of birth, identity document and personal number (PESEL)—or, in the case of a legal person, the name, tax number (NIP), registered office and statistical number (REGON)—in order to verify the user of the system. The need to enter a PESEL number means, in practice, that foreigners not holding a Polish PESEL number will not be able to use the online option for concluding the articles of association.

Conclusion of the articles of association requires completion of the form in the IT system, with an electronic signature. Any electronic signature may be used that meets the requirements set forth in Art. 3(1) of the Act on Electronic Signatures. It is not necessary (although possible) to use a secure electronic signature verified with a valid, qualified certificate.

Once all of the data necessary for conclusion of the articles have been introduced into the IT sys-



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tem and an electronic signature has been affixed to the data, the articles of association are concluded.

#### Standard form

The form for the articles of association available in the IT system contains only standard solutions and minimum requirements provided by the Commercial Companies Code. The form does contain several options for clauses, however, enabling the form to be adapted to the needs of the shareholders to a certain degree.

So far, the standard form contains provisions concerning such matters as the company name, the registered office, the shareholders, the members of the management board and supervisory board (if there is one) and their terms of office, the share capital, and the rules for representation of the company.

When selecting the subject of the company's business, it is necessary to use the codes provided in the Polish Classification of Activity, rather than providing a free description of the company's business.

Shares in the company may only be of equal par value, as the form does not provide for the option of unequal par values of shares, which is permitted by the Commercial Companies Code. The standard form provides for the ability to redeem shares, but only through a voluntary redemption. The form also provides for the option of paying the shareholders an advance dividend, as well as requiring consent of the company to sale or encumbrance of the shares (in practice, only given by the management board). The only option for the financial year is the calendar year.

When establishing a company online the shareholders are not free

to draft the articles of association any way they wish. If they prefer to frame their rights differently than provided in the standard form, or include additional provisions, they must use the traditional method and sign the articles of association before a notary. Amendments after registration will also be made using the traditional form, i.e. through adoption of a shareholder resolution with the minutes recorded by the notary, followed by a motion to the National Court Register to register the amendments.

#### Establishing the company

In order to establish a limited-liability company, beyond concluding the articles of association using the online form it is also necessary to:

- appoint the management board
- appoint the supervisory board or audit committee (if required by law or the articles of association)
- register the company.

It is not necessary for this purpose, however, to make contributions to cover the share capital.

#### Registering the company

After conclusion of the articles of association online, registration of the company is also done electronically, with certain exceptions. In order to register the company, in addition to the articles of association with an electronic signature, the following documents prepared on the forms provided by the IT system must be enclosed:

- list of shareholders, with their names and the number and par value of shares held by each, with the electronic signature of all management board members
- statement by all members of the management board, with an electronic signature, that cash contributions to cover the share capital have been paid in full by all shareholders, if the contributions were paid as of filing for registration of the company (i.e. prior to entry of the company in the National Court Register).

The motion for registration is subject to a court fee and publication in the official journal *Monitor Sądowy i Gospodarczy*, currently totaling PLN 1,000.

The fee is paid using a module linked with the system for handling the registration proceeding.

Within seven days after the company is entered in the National Court Register, the management board also files with the registry court:

- a statement by all of the members of the management board that the contributions to cover the share capital have been made by all of the shareholders, if such a statement was not enclosed when registering the company
- specimen signatures of the management board members, made before the court or a notary.

#### No "one-stop shop"

In the case of online registration of a company, the "one-stop shop" rule does not apply. This means that it is necessary for the company to register itself with the tax office, the social insurance office and the statistical office. The management board will be required to file a separate notice of establishment of the company with these institutions.

#### Covering the share capital

In the case of a company whose articles of association are concluded using the online form, the initial share capital may be covered only in cash. If the share capital is raised later, contributions may be made under general rules, i.e. either in cash or in kind. The new rules also do not require that cash contributions be paid prior to filing the motion to register the company, but permit contributions to be paid within seven days after the company is entered in the register.

#### 24 theoretical hours

In the amendment, the Parliament sought to assure that online registration could be carried out within a single day, as the National Court Register Act provides that a motion for registration of a company established using the online form should be decided within one day after filing. This is only a guideline, however, not a firm deadline, and the admittedly brief practice so far suggests that the courts do not actually manage to register companies so fast. •