Introduction to the Polish Company Law

Dr hab. Krzysztof Oplustil
Chair of Economic Policy, JU
Sources of the Polish Company Law

- **Code of Commercial Companies** (CCC) of 2000 - main and comprehensive source of the Polish company law (predecessor: Commercial Code of 1934, reinstated 1990 after the collapse of the „real socialism”). CCC contains
  - regulation of all commercial companies and partnerships
  - regulation of merger (including cross-border mergers), divisions and transformations of companies

- **Civil Code** of 1964: Civil partnership (articles 860-870)

- Act of 29.9.1994 on **Accountancy**

- Act of 30.8.1996 on **Commercialisation and Privatisation**
  - Commercialisation = transformation of state-owned entreprise in a limited liability company or joint-stock company in which the State holds all shares
  - Privatisation: shares are sold to private investors (e.g. in an IPO or in an open tender)

- Act of 2000 on **National Court Register** (*Krajowy Rejest Sądowy - KRS*)
  - each commercial company is registered in the entrepreneurs’ register being a part of National Court Register
Structure of the CCC

• **General Provisions** (Title I)
  • Common Provisions for all Commercial Companies (Section I)
  • Common Provisions for all Commercial Partnerships (Section II)
  • Common Provisions for Capital Companies (Section III)

• **Commercial Partnerships** (Title II)
  • Registered Partnership (Section I)
  • Professional Partnership (Section II)
  • Limited Partnership (Section III)
  • Limited Joint-Stock Partnership (Section IV)

• **Capital Companies** (Corporations) (Title III)
  • Limited Liability Company (private limited) (Section I)
  • Joint-Stock Company (Section II)

• **Mergers** (incl. Cross-border mergers), **Divisions** and **Transformations** of companies and Partnerships (Title IV)

• **Penal Provisions** (Title V)
Companies and partnerships in the Polish Law

Commercial companies

- Registered partnership (spółka jawna)
- Limited partnership (spółka komandytowa)
- Limited joint-stock partnership (spółka komandytowo-akcyjna)
- Professional partnership (spółka partnerska)

Civil partnership (Art. 860-870 Civil Code)

- Capital companies (corporations)
  - Limited liability company (spółka z o.o.)
  - Joint-stock company (spółka akcyjna – S.A.)

- Not listed companies (spółka niepubliczna)
- Listed companies (spółka publiczna)
  - Companies listed on the regulated market (Warsaw Stock Exchange)
  - Companies listed on the alternative market (NewConnect)
Partnerships and companies in 2009

- civil partnership – 267 615
- limited liabilities companies – 236 355
- registered partnerships – 31 353
- joint-stock companies – 8969 (incl. 545 public companies)
- limited partnerships – 5004
- professional partnerships – 1317
- limited joint-stock partnerships – 714
Sources of Polish capital market law

- three capital markets statutes of 29.07.2005:
  - Act on **Capital Market Supervision**
    - Supervisory authority over the Polish financial market (capital market, banks, insurers): KNF (*Komisja Nadzoru Finansowego* – Financial Supervision Commission)
  - Act on **Trading in Financial Instruments**
    - financial instruments: securities (shares, bonds) and other financial instruments (e.g., units in financial funds, future contracts, options)
  - Act on **Public Offering**, Conditions Governing the Introduction of Financial Instruments to Organised Trading, and **Public Companies**
    - special regulations concerning public (listed) companies („public companies” - *spółki publiczne*), e.g. regulation on information duties, takeover bids, protection of minority shareholders, squeeze out and sell out
Sources of the Polish Capital Market Law

- A **public company** is a joint-stock company in which at least one share is dematerialised. Shares which are offered in a public offering or are traded on a regulated market are dematerialised, i.e. they exist only in uncertificated form as an entry (registration) on the central registrar conducted by the National Depository of Securities and on the electronic securities account of a shareholder (in a broker firm).

- Public companies are listed:
  - on the **regulated market** (WSE: Warsaw Stock Exchange – *Giełda Papierów Wartościowych S.A.*); to become listed company IPO is needed, prospectus (a disclosure document that describes a financial security for potential buyers) has to be approved by KNF or
  - on the **unregulated market** (alternative trading system) – „NewConnect” market for innovative start-up companies with high growth potential, but without enough capital to reach it.

There are two ways in which a company can raise capital on **New Connect**: through a private placement with up 99 investors, and through a public offering.
Corporate Governance

- UK Corporate Governance Code (2010):

„Corporate Governance is the system by which companies are directed and controlled. Boards of directors are responsible for the governance of their companies. The shareholders’ role in governance is to appoint the directors and the auditors and to satisfy themselves that an appropriate governance structure is in place. The responsibilities of the board include setting the company’s strategic aims, providing the leadership to put them into effect, supervising the management of the business and reporting to shareholders on their stewardship. The board’s actions are subject to laws, regulations and the shareholders in general meeting.”
Corporate Governance – determinants:

• **ownership structure** (dispersed or concentrated ownership) – different kinds of agency problems (managers – shareholders *or* majority shareholder – small investors)
  - Berle -Means corporation *vs.* Companies with dominating (controlling) shareholder

• **efficiency of market mechanism** (in particular transparency, liquidity and efficiency of capital market, behaviour of institutional investors, competition on market for managerial services, existence of market for corporate control)

• **Legal frame** – e.g. regulations on: shareholders’ rights, managerial remuneration („say on pay”), liability of managers („business judgment rule”), intern structure of company:
  - one tier (monistic) structure: board of directors, administrative board
  - two tier structure: management board and supervisory board
Corporate Governance codes:

- **comply or explain rule** (provided for in listing rules or in company law) - „let the market decide“-approach: companies *are not formally obliged* to obey the provisions of the Code, but they have to declare in the annual report which provisions they do not comply with and to give reasons for the non-compliance (so called „comply or explain rule). The market shall put pressure on companies to comply with the Code provisions.

- „**Code of Best Practice** for WSE Listed Companies (2007) – „soft law“:
  - Recommendation for Best Practices
  - Best Practices for Management Board
  - Best Practices for Supervisory Board
  - Best Practices for Shareholders
European Company Law

- **Harmonisation** of national company law through EC-directives, e.g.:
  - First Directive of 1968 (68/151/EEC) for the protection of interests of shareholders and other persons (creditors)
  - Second Directive on capital maintenance in the joint-stock company (77/91/EEC)
  - Directive on annual accounts (78/660/EEC) and consolidated accounts (83/349/EEC)
  - Directive 2006/43/EEC on statutory audits of annual accounts and consolidated accounts
  - Directive 2007/36/EC on the exercise of certain rights of shareholders in listed companies (Shareholders Rights Directive)
European Company Law

- **Uniform EU-Law** > supranational company forms:
  - EU-Regulation No. 2137/85 on the **European Economic Interests Grouping** (Polish: *Europejskie Zgrupowanie Interesów Gospodarczych* – EZIG)
  - EU-Regulation No. 2157/2001 on the Statute for a **European Company** (*Societas Europaea, SE*)
    - Act of 4.3.2005 on **European Economic Interest Grouping** and on **European Company** (Act introducing the EEIG and the SE into the Polish law – supplementary provisions on EEIG and SE registered in Poland)
  - EU-Regulation No. 1135/2003 on the Statute for a European Cooperative (*Societas Cooperativa Europaea, SCE*)
  - Draft of the regulation of the Statute for a **European Private Company** (*Societas Privata Europaea – SPE*) – uniform legal form for SMEs conducting cross-border activities
Civil Partnership (articles 860-870 Civil Code)

- Civil Partnership has **neither legal personality nor capacity**, is a mere contract (obligation) among partners.

- Article 860 CC: „In the contract of partnership the partners shall oblige themselves to **achieve a common economic purpose** by acting in a specified manner, in particular by making contributions.”

- Contributions of partners may consist in **money, contributions in kind** or in **performance of work or service** (Art. 861 CC)

- Civil partnerships **are not** registered in the Polish Court Register, but the partners, as entrepreneurs, shall be registered in the **Central Evidence of the Economic Activity** administered by the Ministry of Economy.

- Civil partnership **is not** legal owner of the contributions made by partners and other assets; the partners are co-owner (**joint co-ownership with no fraction shares**)

- Article 863 sec. 1 and 2 CC: „1. A partner may dispose **neither over the share** in the common assets of the partners **nor over the share in individual components** of these assets. 2. During the existence of the partnership a partner may not require the division of the common assets of partners.”
Civil Partnership (articles 860-870 Civil Code)

• Each partner is obliged and entitled to conduct partnership’s affairs and to represent it towards third persons and authorities (within the ordinary scope of partnership’s business).

• However, if, before finishing such an affair, at least one other partner will oppose it, the resolution of all partners is needed.

• In case of affairs that exceed the ordinary scope of business of a specific partnership, the resolution of all partners is needed.

• Moreover, each partner may, without the prior resolution, take an action in case of urgency, i.e. if non-performing of such an action would expose the partnership to irreparable damages.
Civil Partnership (articles 860-870 Civil Code)

• For the liabilities of the partnership the partners are liable *jointly and severally* with their private assets (*unlimited liability*), Art. 864 CC

• In order to conduct an execution *upon the assets of the partnership* its creditors have to sue and obtain an execution title *against all of partners* (article 778 Polish Civil Procedure Code)

• The shares of partners in profits and losses are equal (unless the contract provide for otherwise)

• death of each partner results in the dissolution of the partnership; the contract may provide for the entry of the heirs of the partner into the partnership (Art. 872 CC)

• if the contract of partnership was concluded for an unlimited time, each partner may exit from the partnership by terminating her share (art. 860 CC): under certain conditions creditors of each partner may terminate the share of her debtor, i.e. partner (article 870 CC)
Cases

1. Civil partnership exists among three persons: Jan K., Ewa K. and Andrzej O. On 15. January 2010 all partners acting in the name and on behalf of their partnership incurred a bank credit in amount of 100 000 Zloty. Two months later partnership’s contract was changed: Andrzej O. stepped out from the partnership and a new partner, Zofia B., stepped in the partnership in his place. The bank wants to know, who is liable and who can be sued for paying off the credit (See decision of the Polish Supreme Court – Sąd Najwyższy, SN – of October, the 28th 2003, signature I CK 201/02).

2. According to the ABC-partnership’s contract, in contracts which value exceeds 50 000 Zloty the partnership shall be represented by two partners acting jointly.

Partner Henryk Z. acting in the name of the partnership incurred the debt (loan) of 60 000 Zloty. Is the contract effective? Are the other partner liable for paying off the loan?
Registered partnership (spółka jawna – sp. j.), articles 22-85 CCC

• reg. p. has so called „flawed” legal personality, i.e. it may, in its own name, acquire rights, including the ownership of real property, to assume obligations, and to sue and be sued (Art. 10 sec. 1 CCC) → reg. p. is legal owner of its property (no joint ownership)

• reg. p. shall conduct a business enterprise under its own name (Art. 10 sec. 2), → reg. p. is entrepreneur and shall be registered in the Polish Court Register

• Contributions of partners may consist in money, contributions in kind or in performance of work or service

• each partner shall be liable for the obligations of the reg.p., with all her assets, jointly and severally with other partners and with the partnerships (Art. 22 sec. 2)

• However, the liability of partners has subsidiary character, i.e., the partnership’s creditor may execute upon assets of a partner only if execution upon assets of the partnership has proved ineffective (art. 31 CCC)

• Each partner shall have the right and duty to conduct the partnership ‘s affairs (see Art. 39 sec. 1-3 CC)
Registered partnership (*spółka jawna – sp. j.*)

- Each partner shall have the **right to represent** the partnership (Art. 29 sec. 1); the right cannot be restricted; however, a partner may be deprived of this right in the partnership contract (Art. 30 sec. 1 CCC)

- All affairs **beyond the normal course** of the partnership’s business shall require **the consent of all partners**, including partners excluded from conducting the partnership’s affairs (art. 43 CCC)

- Each partner shall have the right **to an equal share in profits** and shall participate in the losses in the same proportion, regardless of the type and value of her contribution (Art. 51 sec. 1 CCC)

- **Death or bankruptcy** of a partner results in the dissolution of the partnership (Art. 58 CCC); however, the contract may provide for otherwise

- All rights and duties of a partner **may be transferred** to another person **only if** the contract of partnerships so provides; writing consent of remaining partners is necessary (see Art. 10 CCC).
Registered partnership – case

- ABC” reg. partnership, consisting of three partners Karol P., Anna P. (wife of Karol P. while the partnership’s contract was signed in 2007) and Roman R., conducts catering services (annual turnover does not exceed 500 000 Zloty). The partnership owes a real estate which has been contributed to the partnership by Karol P. and Anna P. According to partnership’s contract Anna P. is excluded both from the representation of the partnership and from conducting the partnership’s affairs.

At 5th March, 2011 the partnership represented by Karol P. and Roman R. sold the real estate in a notarial deed (selling price: 700 000 Zloty). Anna P., who has meanwhile divorced Karol P., claims that the contract is invalid because she did not consented to it and selling the real estate lies beyond the normal course of the partnership’s business.
Limited partnership (*spółka komandytowa – sp. k.*, art. 102-124 CCC)

- the partnership’s contract shall be drawn up in the form of a **notarial deed** (Art. 106)

- **Two kinds** of partners: **general partner** (*komplementariusz*) bears unlimited liability for partnership’s obligations, and **limited partner** (*komandytariusz*) bears liability which is limited up to the limited liability amount (*suma komandytowa*) determined in the partnership’s contract (Art. 102, 111 CCC)

- **limited partner** shall be free from the liability up to the value of the contribution made to the partnership. In the event of **reimbursement (return) of the contribution** to that partner, her liability shall be restored in the amount equal to the value of the reimbursement made (Art. 112)

- Limited partner shall participate in the profit of the partnership **in proportion to her contribution actually made** to the partnership unless the partnership’s contract provides otherwise (art. 123 CCC)

- **General partners** are „active” partners, i.e. they are entitled to conduct partnership’s affairs and to represent it. Limited partners may represent the partnership **only as a proxy** (attorney-in-fact), Art. 118;
Limited partnership (spółka komandytowa – sp. k.)

- Limited partners have some inspections rights (Art. 120); they don’t have the right or duty to conduct the partnership’s affairs; in matters exceeding the ordinary scope of partnership’s business the consent of all limited partners is required unless the contract provides otherwise (Art. 121 CCC)

- legal person (e.g. limited liability company – sp. z o.o.) as a general partner – it is possible and profitable for tax reasons (avoidance of double taxation) but:
  - the business name of the limited partnership shall contain the full business of the legal person – Art. 104 sec. 4, (e.g., „Krak sp z o.o. i s-ka, sp. kom.” or „SATURN Planet sp. z o.o., spółka komandytowa”,
  - the shares in the limited liability company or in joint stock company being general partner cannot be the object of the limited partner’s contribution (Art. 107 sec. 3)

- the death of the limited partner shall not constitute grounds for the winding-up of the partnership (Art. 124 sec. 1)
Limited partnership – case

• „Cracovia” limited partnership consists of two partners: Jan O. (general partner) and Grzegorz P. (limited partner). According to the partnership’s contract limited liability amount of Grzegorz P. equals 50 000 Zloty. He contributed effectively 40 000 Zloty to the partnership.

At 15th April, 2010, the partners change the partnership’s contract and reduced the limited liability amount of Grzegorz P. to 30 000 and the partnerships paid him back 10 000 Zloty. This change of the partnership’s contract was registered by the register court only at 1st August 2010. One month earlier, at 1st July 2010, the partnership incurred a bank loan amounting 100 000 Zloty.

To what extent can Jan O. be liable to the bank for the return of the loan.
Professional partnership (*spółka partnerska – sp. p.*, art. 86-101 CCC)

• professional partnership shall be a partnership formed by partners for the purpose of practising a **freelance profession** in the form of a partnership (Art. 86 sec. 1)

• Partners may only be natural persons who have the right to practise freelance professions (art. 87 sec. 1)

• the **business name of professional partnership** shall contain the surname of at least one partner and the additional designation „*i partner*“ („and partner“) or „*i partnerzy*“ („and partners“) or „*spółka partnerska*“ and a specification of the freelance profession practised in the partnership (Art. 90), e.g. *Kowalski Nowak radcowie prawni, spółka partnerska* or *Kowalski i partnerzy, adwokaci*

• Each partner shall have the right to represent the partnership individually unless the partnership’ s contract provides otherwise (Art. 96)

• the partnership’ s contract may provide for that the conduct of the affairs and representation of the partnership shall be entrusted to the **management board**; regulation on management board of the limited liability company is applicable (Art. 97 CCC)
Professional partnership (**spółka partnerska**)

- **Liability of partners (art. 95 CCC):** A partner shall not be liable for the partnership’s obligations arising in connection with the **practising** of a freelance profession within the partnership by the **remaining partners** or for obligations of the partnership resulting from actions or omissions of persons employed by the partnership under an employment contract or on the basis of a different legal relationship, if that person reported to another partner (worked under the leadership of another partner) when performing services related to the objects of the partnership.

- For other obligations (e.g. loans, credits), partners are liable as partners of registered partnership (unlimited, but subsidiary liability)
Professional partnership (spółka partnerska) - case

• Professional partnership consisting of five doctors (surgeons) is running the surgery clinic. In result of the professional mistake made by a nurse during the heart surgery conducted by one of the partner, doctor Antoni U., the patient died. The family of the defunct wants to know who can be sued for the damages.

The partnership represented by Antoni U. as managing partner incurred the bank credit amounting 1 million Zloty in order to extend the surgery clinic. Who is liable for the return of the credit?

• A limited joint-stock partnership is shall be a partnership whose purpose is to conduct a business enterprise under its own business name, in which at least one partner (general partner, komplementariusz) shall bear unlimited liability towards the creditors for obligations of the partnership and at least one partner shall be a shareholder (Art. 125)

• S.K.A. is a hybrid form of limited partnership and joint-stock company; in matters not regulated specifically for the S.K.A., it shall be governed by provisions of registered partnership or by provisions of joint-stock company (see Art. 126)

• S.K.A. has a share capital which amounts at least 50 000 PLN

• General partners are „active” partners, they are entitled to conduct the partnership’s affairs and to represent it; their liability for the obligations of partnership is unlimited and subsidiary

• Shareholders are not liable for obligations of the partnership (Art. 135)
Limited joint-stock partnership (*spółka komandytowo-akcyjna*)

- Articles of the S.K.A. may provide for the appointment of the **supervisory board**; however, the supervisory board is obligatory in the S.K.A., in which the number of shareholders **exceeds 25 persons** (Art. 142).

- The supervisory board shall **exercise permanent supervision** over the business of the partnership in all areas of its activity (Art. 143); in particular, it shall supervise the general partners conducting partnership’s affairs.

- The **general meeting** of shareholders is an obligatory body of the S.K.A. Resolutions of the general meeting shall be taken specified matters (Art. 135), e.g. approval of the annually report of general partners, acknowledgement of the fulfillment of duties by general partners conducting the partnership affairs, appointment of a certified auditor.

- **Some resolutions** of the general meeting require the **consent of all general partners** (e.g. allocation of profit for a given financial year, disposal of real properties of the partnership, amendments of the articles).
Limited liability company

(spółka z ograniczoną odpowiedzialnością – sp. z o.o.)

- Sp. z o.o. may be established by one or more persons for any legitimate purpose unless the law provides otherwise. A limited liability company may not be formed solely by another single-member sp. z o.o. (Art. 151 sec. 1 and 2 CCC)

- Low minimal share capital (5 000 PLN, Art. 154 sec. 1); the share capital shall be divided into shares of equal or unequal nominal value (art. 152), the nominal value of one share may not be less than 50 PLN; The articles shall state whether a shareholder hold more than one share; if a shareholder may hold more than one share, all shares in the capital shall be equal and indivisible (Art. 153)

- Shareholders are not liable for the obligations of the company

- For incorporation of the sp. z o.o. the following shall be required (Art. 163):
  - Execution (conclusion) of the articles of association (umowa spółki) in a notarial form
  - The payment of contributions to cover the entire share capital; contribution may be in money (cash) or in kind (e.g., property rights); a non-transferable right or performance of work or service must not be the object of a contribution (Art. 14 sec. 1)
  - The appointment of the management board and, if required, supervisory board or auditors’ committee
  - Entry of the company in the register (KRS)
**Limited liability company (sp. z o.o.) – formation procedure**

- Upon execution of the articles of association a limited liability **company in organisation** comes into being (Art. 161 sec. 1 CCC)

- Company in organisation shall be governed **accordingly by provisions concerning a given type of company** after its registration (Art. 11 sec. 2); the business name of a company organisation shall contain the additional designation „w organizacji“ („in organisation“)

- Company in organisation may, **in its own name**, acquire rights (including the ownership of real property), to assume obligations, and to sue and be sued (Art. 11 sec. 1 CCC). It means that the company in organisation has already „flawed“ legal personality (as commercial partnerships)

- Company in organisation may **start running the business**, it doesn’t have to wait with it until the registration; it is represented by the management board or by an attorney appointed by the unanimous resolution of shareholders (Art. 161 sec. 2)

- For **obligations** of the company in organisation are liable (Art. 13 sec. 1, 2):
  - the company itself
  - the persons who acted in its name (jointly and severally with the company)
  - shareholders of the company in organisation, however only up to the value of the the unpaid contribution to cover the shares taken-up by a shareholder
Limited liability company (sp. z o.o.) – formation procedure

• Upon its registration, the company in organisation shall gain the full legal personality. The registered company shall become the subject of rights and duties of the company in registration (Art. 12 CCC). With other words, the registered company “steps in” (ex lege) in the entire legal situation of the company in organisation.

• Liability for the overestimation of in-kind contributions (Art. 175 CCC): shareholder who made such contribution and managers are liable to compensate the shortfall

• Liability for the defective in-kind contribution (Art. 14 sec. 2): shareholder shall be obliged to compensate the company for the difference between the value assumed in the articles of association and the sales value of the contribution

• Liability of the management board members: All of them have to make a statement before the register court that all contributions to the share capital have been fully made by all shareholders (Art. 167 sec. 2). If the statement is untrue they are liable towards the company’s creditors jointly and severally with the company for a period of three years following the registration of the company (Art. 291 CCC)
Formation procedure of sp. z o.o. – case, cont.:

On 3.3.2011 Marek T., Iwona O., Beata C., Tomasz G. concluded the notarial company’s articles of “C.H.E.A.T. spółka z o.o.” Marek T. committed himself to contribute (as a contribution in kind) the ownership right on his real property which was valuated in the company’s articles at 120 000 Zloty. For this contribution Marek T. took over shares of such a nominal value. However, the property was charged with a mortgage as a collateral for the bank credit taken by Marek T. He didn’t tell about it other shareholders. Because of this mortgage the market value of the real estate was only 90 000 Zloty (see Art. 14 sec. 2, Art. 175 CCC).

Iwona O. committed herself to contribute cash for shares of 70 000 Zl nominal value. However, on 10.3.2011 the sale contract was concluded between Iwona O. and the company in organization. By this contract Iwona C. sold her car to the company for 60 000 Zl. The contract contained also a set off-clause, that provided for a set off of the seller’s (Iwona O.) claim for the purchase price with the company’s claim for the share contribution. In result Iwona O. effectively contributed only 10 000 Zl. The market price of the car was, however, only 40 000 Zl because of the engine defect (see 14 sec. 4 CCC).
Formation procedure of sp. z o.o. – case:

Beata C., who is a lawyer, committed himself to contribute cash for shares of 30 000 Zl nominal value. However, she effectively contributed only 10 000 Zl because she compensated the company’s claim for share contribution of 20 000 Zl with her claim for remuneration for legal services rendered to the company in the formation process (see Art. 158 sec. 2 CCC).

Tomasz G. effectively contributed 20 000 Zl for shares taken over by him. Yet before registration of the company in organization, it paid him 10 000 Zl back as a loan (see Art. 189 sec. 2 CCC).
Joint-Stock company (spółka akcyjna – S.A.) – formation procedure

- S.A. may be established by **one or more persons** for any legitimate purpose unless the law provides otherwise. A joint-stock company may not be formed solely by a **single-member sp. z o.o.** (Art. 301 sec. 1). Shareholders are not liable for the obligations of the company (Art. 301 sec. 5)

- Minimum share capital is **100 000 PLN**, the minimum nominal value of shares is **1 Grosch** (Art. 308 CCC); the share capital is divided into shares of equal nominal value

- For the **incorporation of a S.A.** shall be required:
  - execution of the statutes (articles of association, Polish: *statut*) of the company in notarial form; persons who sign the statutes are founders of the company
  - Taking-up of all shares of the company; taking-up means that the shareholder oblige themselves to bring contributions to cover at least the nominal value of shares taken up. Taking-up of shares shall be expressed in one or more notarial deeds
  - the payment of contributions to cover the share capital; before the registration at least one-fourth of the share capital shall be paid up; in-kind contribution shall be brought in the company no later than one year after its registration (Art. 309 sec. 3). The value of contribution in kind must be audited by one or more certified auditors
  - the appointment of the management board and supervisory board
  - entry of the company in the register (KRS)
Company’s organs (Sp. z o.o. and S.A.)

**Sp. z o.o.:**

- management board – consisted of one or more members, only natural persons having full legal capacity, not convicted for offences specified in Art. 18 sec. 2 CCC; members are appointed by shareholders for limited or unlimited term of office; a member of the management board may be removed at any time by a resolution of shareholders

- shareholders’ meeting – shareholders may also adopt resolution without holding a shareholders’ meeting, if all shareholders consent in writing to the decision to be taken or to voting in writing

- supervisory board or auditors’ committee – obligatory only in companies whose share capital exceeds PLN 500 000 and there are more than 25 shareholders

**S.A.:**

- management board – consisted of one or more members, only natural persons having full legal capacity, not convicted for offences specified in Art. 18 sec. 2 CCC; members shall be appointed and removed by the supervisory board unless the statutes provide otherwise (e.g. that members shall be appointed by general meeting). However, a member of the m.b. may also be removed or suspended by the general meeting. Term of office must be limited and last no

- supervisory board – consisted of at least three, and in listed S.A. – at least five members

- general meeting of shareholders
Company’s organs – management board (m.b.)

- M.b. shall **manage the company’s affairs** and **represent the company**

  management of company’s affairs means **taking decisions** concerning both strategic matters (e.g. taking-over another company, establishing subsidiary abroad) and day-to-day management

- **sp. z o.o.**: each member of the m.b. may, without a prior resolution of the m.b., conduct the company’s affairs within the ordinary course of company’s business; in more important matters the resolution of the board is required

- **S.A.**: members of the m.b. have the right and duty to **jointly** conduct the company’s affairs unless the statutes provide otherwise; resolutions of the m.b. shall be adopted by an absolute majority of votes

- in the S.A.: The general meeting and the supervisory board may not give binding instructions to the m.b. concerning the m.b. of the company’s affairs
Company’s organs – management board (m.b.)

- representation of company means **making statements** on behalf of the company (**active representation**) as well as receiving statements made by other persons towards the company (**passive representation**)  

- the right of a member of the m.b. to represent the company may not be restricted with a legal effect with respect to third parties,  

- however, the articles of association (the statutes) may determine the manner of representing the company. If the articles (statutes) lacks the relevant provisions, joint action of two members of the m.b. or one member and a holder of a commercial power of attorney shall be required to make statements on behalf of the company  

- the manner of representing company **must be disclosed** in the register (KRS) in order to be effective in relation with third persons  

- statements to towards the company and delivery of letters to the company may be made towards one member of the m.b.
Company’s organs – supervisory board (s.b.)

- The s.b. shall exercise **permanent supervision** over the company’s activities in all aspects of its business

- in order to perform its duties, the s.b. may inspect all documents of the company, request reports and explanations from the m.b. and employees, and review the assets and liabilities of the company

  - **Sp. z o.o.**: each member of the s.b. may exercise the right of supervision *individually* unless the articles provide otherwise

  - **S.A.**: the s.b. shall perform its duties *collectively*; it may, however, delegate its members to independently perform specific supervisory tasks

- the s.b. in the S.A. is also entitled to **suspend** from the m.b. all or individual members thereof for important reasons and to **delegate members of the supervisory board**, for a period no longer than 3 months, to temporarily perform the duties of members of the m.b. who have been removed, resigned or who, for other reasons, are incapable of performing their duties
Company’s organs – supervisory board (s.b.)

• The statutes may provide for a broader scope of powers of the s.b., and in particular provide for the **obligation of the m.b. to obtain consent of the s.b.** prior to undertaking actions specified in the statutes (e.g. to conclude a specified contract)

• Special duties of the s.b. include the **evaluation of the annual reports** and statements of the m.b. as well as motions of the m.b. concerning distribution of profit or coverage of losses; s.b. shall submit its own writing report to the annual general meeting

• Meetings of the s.b. shall be convened as the need arises, however, **no less than three times in a financial year**

• The s.b. shall adopt resolutions if **at least one-half** of its members are present at the meeting (quorum) and all its members have been duly invited to the meeting.

• Resolutions of the s.b. shall be adopted by an **absolute majority** of votes unless the statutes provide otherwise
Shareholders’ meeting (s.m.)/general meeting (g.m.)

• **Annual ("ordinary") s.m./g.m.** must be held within six months after the end of each financial year. The matters to be resolved by the annual s.m./g.m.:
  - examination and approval of the reports of the m.b. on the company’s operations
  - resolutions on distribution of profit or coverage of losses
  - acknowledgment of the fullfilment of duties by member of the company’s authorities

• An **extraordinary s.m./g.m.** shall be convened in other cases specified in the law or in the statutes (articles of association) as well as on demand of authorised persons (e.g. minority shareholders representing 5% of the share capital of the S.A.) or organs (e.g. the s.b. may convene the the g.m. in the S.A. if it deems it necessary)

• the s.m./g.m. may adopt resolution only in matters included **in the agenda** published (announced) prior to the meeting; in other matters the s.m./g.m. may adopt resolutions only if the entire share capital is represented thereat and no person present objected
Shareholders’ meeting (s.m.)/general meeting (g.m.) Rights of shareholders in the company

- the s.m./g.m. must decided by resolution **in matters most important** for the company and shareholders, e.g.:
  - amendment to the articles of association (the statutes), incl. increase or decrease in the share capital
  - winding-up company, merger, division, transformation of company
  - disposal or lease of the business enterprise or an organised part thereof
  - acquisition and disposal or real property unless the statutes provide otherwise
  - issue of convertible bonds

- In principle resolution shall be adopted by an absolute majority of votes (i.e. votes „for” are more than the sum of votes „against” and „abstained”); many resolutions require qualified majority of votes (e.g. amendment to the statutes of S.A.: three-fourths of votes)

- each shares in the S.A. gives one vote; in the sp. z o.o. each shares of equal nominal value gives one vote and shares of unequal value shall carry one vote per 10 PLN of the nominal value (Art. 242 CCC); voting privileges are allowed

- resolutions **may be challenged** by shareholders as well as the members of m.b. and s.b. (i.e. an action against the resolution may be filed to the court) on the conditions specified in the CCC (Art. 249, 422 CCC)
Rights of shareholders in the company

**individual** rights of each shareholders:

- right to obtain dividend from the company
- pre-emptive right, i.e. priority right to take up the newly issued shares (in case of increase of the share capital) in proportion to the number of shares currently held
- right to attend the s.m./g.m.
- right to obtain information concerning the company at the g.m.
- voting rights
- right to challenge the resolution of s.m./g.m.
- right to file an action for redressing the damage suffered by the company (*actio pro socio*)
- individual right of control in the sp. z o.o. (not in the S.A.)

**rights of minority shareholders** – the execution depends of holding a specified part of the share capital, e.g. right to request to designate special auditor by the court in order to audit the company’s accounts and operations (one or more shareholders who represent 10% of share capital), right to request from m.b. that it convenes the s.m./g.m. (10% in sp. z o.o., 5% in S.A.), right to place certain items on the agenda of the next s.m./g.m. (10% in sp. z o.o., 5% in S.A.) and more others.