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Research Paper

The Status of a Limited Liability Company in the Polish Legal System

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ABSTRACT: *The article provides some reflections on limited liability companies in Poland. There are six types of commercial companies in Polish law, but 82.27 % of the companies in Poland are limited liability companies. Therefore, we can speak about the occurrence of a specific phenomenon of this form of company in Poland. An attempt to find an answer to the question about the reasons for the great popularity of this particular company requires an analysis of legal solutions dedicated to it and comparison with other types of entrepreneurs. It is worth considering the reasons why this form of company has become the most popular form of doing business in Poland in the last thirty years.*
KEY WORDS: *polish law, limited liability company,*

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I. INTRODUCTION

The model of a closed company, equipped with legal personality, share capital, and operating through its bodies was developed at the end of the 19th century by the German legislature. The company became an alternative to a joint-stock company because, in contrast with its strict regulation, it provided for considerable organisational autonomy in the internal sphere. It underwent reception in the majority of European legal systems: these regulations were also applied in the Polish territories, which were then under partition. After Poland regained its independence, which took place in 1918, the regulations on a limited liability company were introduced by the decree of 8/2/1919 in the territory of the former Russian partition, but only in part of it where the French Commercial Code was in force. Then the Ordinance of the President of the Republic of Poland of 27 October 1933 was issued: the Law on Limited Liability Companies, which repealed the application of the regulations of the annexationists' laws and the decree of 1919. A year later, its content was incorporated into the Commercial Code issued in the form of the Ordinance of the President of the Republic of Poland of 30 June 1934. The authors of that Code followed the German model, but they significantly approximated the normative model of a limited liability company to a joint-stock company, thus blurring its essential feature consisting in the high freedom of shaping the internal relations of the company, inherent in partnerships [1].

The development of these forms of conducting business activity in Poland was interrupted by the outbreak of World War II, and then by the introduction of an economic system based on central planning and command and a distribution economy. The legal form of commercial companies was not used in that period, although the legal regulation concerning them was not repealed. It was not until the social and economic transformation which took place after 1989 that interest in the companies increased. The pre-war regulations relating to a limited liability company, despite the passage of over 50 years from their enactment, proved useful in the new economic environment. The need to amend the Commercial Code was much stronger in the area of joint stock companies and partnerships, as well as in the general principles of company law. The regulations of the German and Austrian limited liability companies are similarly sustainable, which is in contrast to the constantly improved regulations on joint stock companies [2] in those systems.

On 1 January 2001, a new Polish legal act - the Companies Code (hereinafter referred to as the C.C.) - entered into force. The regulation of a limited liability company was based on the principle of continuity, so the basic structures of the company, functioning in Polish law since the 1920s, were preserved, introducing only those modifications necessary in order to adjust the functioning of the company in the changed economic reality [3].

Currently, the limited liability company is the most popular form of company in Polish law. According to the data from the National Court Register as of 31 December, 2019, the register contained a total of 508,589 companies, including 34,400 registered partnerships, 2,379 partner companies, 40,125 limited partnerships, 3,620 limited joint-stock partnerships, 9,616 joint-stock companies, and 418,449 limited liability companies (data: https://www.gov.pl/web/sprawiedliwosc/SprawozdaniaKRS) . This means that 82.27 % of the companies in Poland are limited liability companies. Therefore, we can speak about the occurrence of a specific phenomenon of this form of company in Poland. An attempt to find an answer to the question about the reasons for the great popularity of this particular company requires an analysis of legal solutions dedicated to it and comparison with other types of entrepreneurs [4].

II. CONSTRUCTION OF A LIMITED LIABILITY COMPANY IN POLISH LAW

A limited liability company is a capital company, which may be formed by one or more members, for any legally permissible purpose. A company operates on the basis of articles of association, or of a deed of incorporation if there is only one founder. A limited liability company may also become a single-member company as a result of a purchase of all the shares by one shareholder. The regulations leave considerable freedom to the shareholders as to the content of the articles of association, but this autonomy is limited by the regulations of the C.C. The articles of association may be concluded either in the form of a notarial deed or using an electronic template available in the ICT system operated by the Ministry of Justice. A company is established upon entry in the Register of Entrepreneurs of the National Court Register, which is the official state register of Polish entrepreneurs.

Any civil law entity known to Polish law, i.e. a natural person, a legal person, or a so-called statutory person (organizational unit without legal personality to which the law grants legal capacity) may be a shareholder in a limited liability company. The last group includes four commercial partnerships: registered partnership, professional partnership, limited partnership, and limited joint-stock partnership. Thus, there are no subjective restrictions related to the partners of the partnership: the only exemption which has been established is a ban on forming a one-person partnership by another one-person partnership.

The construction of the limited liability company is based on the share capital, the minimum amount of which is PLN 5,000. After the entry into force of the Companies Code, the minimum amount of capital was higher - it amounted to PLN 50,000, but was reduced in 2008. This capital is created from contributions made by the shareholders, which must be in the form of property, cash, or non-cash (in-kind) contributions. The share capital may be subject to changes consisting in increasing or decreasing its amount, so long as the minimum amount is not violated. Changes in the amount of this capital are treated as changes in the articles of association, so they require a resolution of the shareholders' meeting and entry in the register.

A company operates on the market through its bodies, with the management board being an obligatory body in addition to the shareholders' meeting. The management board may be a single-person or a multi-person board, and the method of representation of the company may be established in the articles of association. Usually a formula of representation by two members of the management board or one member of the management board together with a holder of a commercial power of attorney is adopted.

As far as supervision is concerned, the establishment of a supervisory board is required if there are more than 25 shareholders and the share capital exceeds PLN 500,000. In other cases, the establishment of a supervisory body is optional, and the legislator permits the establishment of either a supervisory board, or an audit committee, or both bodies at the same time. In the absence of a supervisory body, control functions are performed by each of the shareholders.

All the shareholders form a shareholders' meeting, which adopts resolutions on important matters concerning the functioning of the company, such as: appointing and dismissing members of the management board, approving financial statements, and deciding on the distribution of profit or coverage of loss.

An expression of the bond between a shareholder and the company is a share which cannot take the form of a document. A share has a specific nominal value and the sum of the nominal value of all shares in the company consists of the share capital. A share is a source of the rights of a partner, which traditionally, in the doctrine of commercial law, are divided into corporate rights and property rights. Property rights include the right to participate in profit, the right of priority to take up new shares in the increased share capital in relation to their existing shares, and the right to participate in the liquidation estate. Corporate rights are also property rights, which include the basic right to vote, the right to participate in the shareholders' meeting, and the right to control. An important shareholder's right is the right to challenge a resolution, which, however, must be regarded as an instrument for the exercise of other shareholder rights [5], rather than an independent corporate right. Preference shares may be created in a limited liability company. The Code limits the amount of preferences by setting a limit of the number of votes that may be given per one share to three votes, and an upper dividend limit of 150% of the dividend per ordinary share. The shareholders are free to determine the personal preference of the shareholders, which may be freely determined in the articles of association.

A limited liability company as a legal person is responsible for its liabilities with all its assets. The shareholders are not liable for the company's obligations. The legislator provides an instrument to protect creditors in the event that enforcement from the company's assets proves ineffective in the form of liability of the company's management board members for the company's liabilities. At the same time, the provisions formulate the prerequisites for the members of the management board to free themselves from this liability. These are situations in which a board member demonstrates that a petition for bankruptcy was filed in due time, or that at the same time a decision was issued on the opening of restructuring proceedings, or on the approval of an arrangement in the proceedings for the approval of an arrangement, or that the failure to file a petition for bankruptcy was not his fault, or that despite the failure to file a petition for bankruptcy and the failure to issue a decision on the opening of restructuring proceedings, or non-approval of an arrangement in the proceedings for the approval of an arrangement, the creditor has not suffered any damage.

The possibility of using the legal form of a limited liability company is statutorily limited in the case of a few selected types of activities, such as, for example, banking or insurance activities (the requirement of the legal form of a joint stock company has been established here), as well as legal activities - the profession of advocate or legal adviser (in this case the formula of a partnership is acceptable).

Over the years during which the provisions of the Commercial Code, and later the Companies Code were in force, a number of rulings concerning the interpretation of regulations governing the establishment and operation of limited liability companies were issued. The judicial output in this respect is very large. There are also numerous statements of the doctrine in the form of glosses to court decisions, scholarly articles, comments to the Companies Code, and monographs devoted to various aspects related to the establishment, functioning, and liquidation of limited liability companies. Undoubtedly, this facilitates the application and interpretation of the C.C. regulations governing limited liability companies.

III. POLISH REGULATION OF A LIMITED LIABILITY COMPANY IN THE LIGHT OF THE CASE LAW OF THE COURT OF JUSTICE OF THE EUROPEAN UNION

The provisions of the Polish Companies Code are rarely the subject of decisions of European Union courts. Recently, the decision of the Court of Justice of the European Union on the provision of Article 270 of the Polish Companies Code, which regulates the reasons for dissolution of a limited liability company, has become a cause celebre. In accordance with its wording, the companies may be dissolved owing to: (1) reasons provided for in the articles of association, (2) resolution of the shareholders on dissolution of the company or transfer of its registered office abroad, stated in minutes drawn up by a notary, (2^1) in the case of a company whose articles of association were concluded using a model agreement, also a resolution of the shareholders on dissolution of the company with a qualified electronic signatures, trusted signatures, or personal signatures of all the partners, (3) declaration of bankruptcy of the company, (4) other reasons provided by law.

Doubts arose as to the premise of transferring the company's registered office abroad which, according to the above mentioned regulation, results in the obligation to conduct liquidation proceedings. In the case which became the subject of the decision, the limited liability company moved its registered office to Luxembourg and demanded to be removed from the National Court Register as it ceased to conduct business activity in the Republic of Poland. The lower instance courts dismissed the request for removal from the register, indicating that the company had not submitted evidence of liquidation, as required by Article 270 of the C.C. Following an appeal to the Supreme Court, the Supreme Court made a reference to the Court of Justice of the European Union for a preliminary ruling on the interpretation of Articles 49 and 54 of the Treaty on the Functioning of the European Union, signed in Athens on 16 April, 2003. Following that reference, the Court of Justice of the European Union (Grand Chamber), in its judgment of 25 October 2017, Case C-106/16 (Judgment ECLI:EU:C:2017:804.), ruled that freedom of establishment applies to the transfer of the registered office of a company incorporated under the law of one Member State to the territory of another Member State in order to convert it into a company under the law of that other Member State, in accordance with the conditions laid down by the legislation of the latter State, without that transfer being accompanied by the transfer of the real registered office of that company. Articles 49 TFEU and 54 TFEU must be interpreted as precluding legislation of a Member State which makes the transfer of the registered office of a company incorporated under the law of one Member State to the territory of another Member State with a view to its conversion into a company under the law of that other Member State, in accordance with the conditions laid down by the law of the latter State, conditional upon the winding-up of the first company. In the current state of EU law, each Member State is entitled to determine the connecting factor required for a company to be considered as a company formed under its national law. However, the Member State in which the company was formed cannot, for migrant companies, lay down conditions which are so restrictive as to make cross-border conversion impossible or significantly more difficult than those applicable in the host country.

The Court has accepted that making a migrant company subject to compulsory liquidation operations under Article 288 of the C.C. may hinder or even prevent it from carrying out the planned cross-border

conversion. It has stressed that a restriction on the freedom of establishment is permissible only if it is justified by overriding considerations of public interest. However, even in such a situation, it should be appropriate to guarantee the achievement of the objective in question and not go beyond what is necessary to achieve it. In connection with this CJEU judgment, the Polish Supreme Court, in its decision of 25 January, 2018, Case No IV CSK 664/14 (LEX № 2466214), ruled that the registry court re-examining the application for registration is obliged, despite the failure to repeal the provisions considered by the CJEU judgment of 25 October, 2017, Case No C-106/16 to be in breach of Articles 49 and 50 TFEU, which set out the principles of freedom of establishment, to refuse to apply the provisions of Polish law providing for the full liquidation procedure of the company and to interpret the remaining provisions in application of the pro-EU interpretation directive, breaking the rules of language interpretation. In so doing, it must assume that the applicant's registered office has been effectively transferred. The conversion of that company established in Poland into a company governed by Luxembourg law was carried out in accordance with the conditions laid down by the legislation of that State. The CJEU ruling and the Supreme Court judgment on the cross-border transfer of the company's registered office abroad met with divergent stances in the Polish doctrine, mostly approving [6] but some also critical [7]. This criticism concerns mainly the issue of the lack of security for creditors' claims in connection with the transfer of the company's registered office abroad.

Despite the ruling issued by the CJEU and the application of a pro-EU interpretation of the law by the Polish Supreme Court, the wording of the provision of Article 270 of the C.C. has not changed to date. In the doctrine, it has been proposed to interpret it in such a way that it concerns the transfer of the company outside the borders of the European Union or outside the borders of countries which are parties to the agreement on the creation of the European Economic Area (Skibinska 2018). According to the interpretation presented in the discussed CJEU ruling, the transfer of the registered office of a Polish company abroad does not require liquidation proceedings of that company.

IV. ADVANTAGES OF THE LEGAL FORM OF A LIMITED LIABILITY COMPANY

The basic advantage of a company is the limitation of personal liability of its members which, of course, applies to a limited liability company. As a legal person, the company has its own property, separate from the property of its members, which is the basis for its operation, and the basis for responsibility for liabilities. The risk of a member is, therefore, limited to the contribution made to the company, and his personal assets are not endangered in the event of failure of the company's activity. This feature is common for all companies and, undoubtedly, it is the main reason for the decision to choose the model of company for the business activity undertaken.

The establishment and then the functioning of a limited liability company is definitely cheaper than that of a joint stock company which, undoubtedly, constitutes an important argument for choosing this type of company. Thanks to the possibility of establishing a limited liability company via the Internet system, the costs of its establishment are seriously minimized, and only the fee for entry into the register in the amount of PLN 600 (about EUR 175) needs to be paid. The use of the ICT system significantly accelerates the establishment of the company: if the applications are correctly filled in, it is entered in the register on the second day, i.e. after 24 hours, hence the name of the system: S24. Using this method, it is not possible to establish a joint stock company, but two partnerships can be established - a registered partnership and a limited partnership.

The establishment of a limited liability company is much easier than that of a joint-stock company, where the regulations provide for a formal procedure for establishing the company in the case of making contributions in kind, or acquiring property before entry in the register, or paying remuneration for services provided at the establishment of the company.

The minimum amount of a limited liability company's share capital of PLN 5,000 (approx. EUR 1,250) does not constitute a barrier to starting a business. It is much lower than in the case of a joint-stock company, as for the establishment of which it is necessary to accumulate capital amounting to at least PLN 100,000 (about EUR 25,000).

The choice of the legal form of a limited liability company may also be supported by its simple organisational structure. Only the management board is a mandatory body, as a rule there is no obligation to create a supervisory body, which also reduces the company's operating costs.

The freedom to determine the company's capital structure and the possibility of limiting the freedom to dispose of shares are also features which determine the attractiveness of this form of company, making it a closely held shareholding company. In fact, it is an alternative to partnerships created by two or three partners, with strong elements of personal relationships between the partners. In a limited liability company, it is possible to adopt resolutions without holding a shareholders' meeting, if all shareholders agree in writing to the decision to be made or to a written vote, which significantly improves the decision-making process within the company. The legal form of a limited liability company is often used to run family businesses. This is facilitated by the

possibility of limiting the transferability of shares in the articles of association, as well as the ease of making decisions in the structure of this legal entity, especially with a small number of shareholders.

A number of dispositive provisions included in the regulation concerning a limited liability company makes it possible to adjust the content of the articles of association to the individual requirements of the shareholders and the specificity of their activity [8]. In the articles of association, shareholders can ensure that they can directly influence all the major decisions in the company, e.g. by regulating the catalogue of activities that require the (prior) approval of the shareholders. Depending on the adopted way of achieving a common goal, the interests of the partners, their qualifications and their number, a limited liability company may be shaped either in the way similar to a joint stock company, i.e. with a significant limitation of the partners' influence on the management of the company, or in a direction similar to that of a partnership, where the shareholders are directly involved in the company's activities as members of its bodies and possibly by providing certain kinds of performance to the company (including the provision of work under a separate legal relationship). In practice, the latter model of functioning of a limited liability company is definitely dominant [9].

A single-member company [10] chosen as an alternative to conducting business activity on one’s own account is an attractive form of conducting business activity in the form of a limited liability company. It permits the separation of the private property of a shareholder from the company's assets, at the same time ensuring the full influence of the sole shareholder on the company's affairs. It is permissible to appoint the sole shareholder to the management board of a limited liability company, i.e. a situation in which the functions of the shareholders' meeting and the member of the management board are combined. At the same time, there is no need to appoint a supervisory body, so in principle the sole shareholder has full authority in the company. The possibility of establishing a company by one shareholder is sometimes perceived by many people as a desirable form of conducting business activity, ensuring protection of the private property of that person and at the same time making it possible to maintain decision-making exclusivity within this legal form.

A single-member limited liability company may be established as a legal successor of a natural person conducting business activity). In 2011, a chapter regulating the transformation of an entrepreneur who is a natural person into a single-member company was added to the Companies Code. In such a case, after the transformation, the newly established company and this natural person are jointly and severally liable for the obligations of this entrepreneur - the natural person from before the transformation.

The special purpose vehicle (SPV) is a frequently used formula for a limited liability company is. In the case of entrepreneurs conducting large scale operations, for example in the development industry, it is popular to create special purpose vehicles in the form of limited liability companies, whose range of activity is limited to the implementation of a specific project. In such a case, it is easier to obtain a loan from a bank for this purpose, as the financial risk of both the entrepreneur and the lending bank is reduced. From the point of view of banks granting a loan, the possibility of establishing collaterals on property rights and corporate rights in special purpose vehicles (e.g. pledge on shares) is also important. In the absence of a special purpose vehicle, such collaterals would have to be established on the property of the main entrepreneur, which could paralyse its activity. The form of a special purpose vehicle is widely used by developers, owing to the fact that it is easier to obtain financing for a specific construction project [11], and claims under warranties and guarantees can only be directed against the special purpose vehicle, so the remaining companies of the group are not liable for these claims.

The regulations concerning projects implemented within the framework of public-private partnership provide that in order to implement a public-private partnership agreement, a public entity and a private partner may establish one of two permissible special purpose vehicles: a limited liability company or a joint stock company [12].

The legal form of a limited liability company as a special purpose vehicle is sometimes used by the Polish legislator for the establishment of companies wholly owned by the Treasury, which are dedicated to the performance of specific tasks, such as the implementation of a project called Centralny Port Komunikacyjny (Central Transportation Port), or for the carrying out of IT projects of public application within the range of matters covered by government administration departments.

A limited liability company is very often established in order to become a general partner in a limited partnership. Such a purpose of the functioning of this kind company is legally permissible, a limited liability company may be established in order to manage other entities. A limited liability company becomes a party to a limited partnership deed, as a general partner, usually in addition to natural persons who were founders of the limited liability company, and in the limited partnership they assume the position of a limited partner. Such a structure is beneficial for natural persons who obtain the effect of a consistent separation of liability with their own assets for the company's obligations. In this configuration, natural persons, as limited partners, bear personal responsibility for the obligations of a limited partnership in a limited way (Article 111 of the C.C.) or

do not bear personal responsibility at all (Article 112 of the C.C.), and, at the same time, as partners of a limited liability company, do not bear responsibility for its obligations as a general partner of a limited partnership.

A limited liability company can be used as a dominant entity in a holding structure, and thus act as a parent company, a founder of subsidiaries, which can also have the legal form of limited liability companies. Thus, a capital group is formed in which one limited liability company has a dominant position.

The legislator does not impose a goal on shareholding companies, they can be created for any legally permissible purpose. The freedom of purpose for which a limited liability company may be established makes it possible for it to function as a non-profit sector entity, obtaining the status of a public benefit organisation [13] [14]. According to the provisions of the Act on Public Benefit Activity and Volunteerism, a public benefit activity may also be carried out by joint stock companies and limited liability companies, which do not operate for profit, and if they meet two conditions - they allocate their entire income for the implementation of statutory objectives and do not allocate profit for distribution among their shareholders and employees.

Among a number of characteristics of a limited liability company, the main ones seem to be those concerning the ease of its establishment, the relatively low costs of its establishment and maintenance, and freedom in shaping the purpose and content of the deed.

V. DISADVANTAGES OF THE LEGAL FORM OF A LIMITED LIABILITY COMPANY

Defects of a limited liability company can be seen from the perspective of shareholders and third parties, and these points of view lead to varied conclusions.

As shareholding companies, limited liability companies are legal persons, i.e. sovereign entities under tax regulations, whose income is subject to separate taxation. This is a kind of a disadvantage, because from the point of view of the shareholder, the income is taxed twice - once as the company's income and the second time as the shareholder's income when paying out the dividend. Shareholding companies, including sole proprietorships, are obliged to keep full accounting records, which is much more complicated than in the case of natural persons, who can keep simplified accounting. This requirement applies to all shareholding companies and increases the costs of conducting business in this legal form.

In a sole proprietorship, the sole shareholder, being a natural person, is treated as a person conducting business on his own behalf, which means that he is obliged to pay social security contributions on this account. This is a practical disadvantage of running a sole proprietorship, such an obligation does not exist if there are two or more shareholders in the company.

The doctrine has expressed criticism of the model of a limited liability company functioning in the Polish legal regime,. First of all, the fictitious nature of guarantees for the company's creditors, which are related to the amount of share capital, is emphasized. In fact, the share capital is not an indicator of the company's financial standing, regardless of its amount, it does not guarantee the success of enforcement from the company's assets.

The rigidity of the share capital is also subject to criticism: changes in share capital are subject to the necessity to carry out the procedure of increasing or decreasing the share capital, specified by law. It sometimes takes a long time to meet the conditions in the form of passing a resolution by the shareholders' meeting and obtaining an entry in the register. Admittedly, it is possible to replace this procedure with the method of increasing the share capital on the basis of the existing provisions of the articles of association, by means of a resolution of the management or of the supervisory board. There is also a lack of a flexible method of quick capitalisation of the company, the Companies Code provides for the possibility of adopting additional payments, which, however, must be provided for in the articles of association, and then requires a resolution of shareholders, which can be appealed against. The regulations also do not provide for an instrument allowing for quick reduction of the share capital. A simple payment from the share capital is not possible, as Polish law applies the principle of designation and stability of the company's share capital.

The provisions on a limited liability company do not ensure sufficient identification of shares, as they are not marked individually. This may raise doubts, especially in the case of preference shares, or may lead to abuse when selling shares. There is no regulation protecting the good faith of the purchaser of shares in case the basis of acquisition proves to be defective. The transfer or encumbrance of a shareholding requires a written form with notarised signatures, which is also seen as an unnecessary requirement, hindering the rapid trading of the company's shares; on the other hand, however, this form increases the security of trading.

The doctrine also indicates that the range of shareholders' autonomy as to the content of the articles of association should be broader, and that it has been unnecessarily limited by the provisions of the Companies Code. It is stressed that the development of a new legal act dedicated to companies could have been an opportunity to reform the regulation of a limited liability company, but the form of a limited liability company became excessively similar to a joint stock company, among other things, as a result of the creation of the general part of the C.C. and the location of common provisions for shareholding companies there. As a result of this solution, the current structure of the regulation of a limited liability company is conducive to filling any

possible gaps and clarifying doubts by - not always justified - appropriate application of the rules relating to a joint stock company. In particular, a method of interpretation is imposed which is appropriate for the provisions on a joint stock company, determined by the so-called "severity" principle of the articles of association, assuming, in a great simplification, the requirement of a separate authorization to construct deviations from the statutory model, and thus a "qualified" presumption of the imperative character of the code regulation.

A negative aspect related to the functioning of limited liability companies in Poland is the ease of using this legal form for risky undertakings, or even for unfair transactions. Business trading should examine contractors operating as limited liability companies with particular care, especially those with low share capital. Particularly dangerous are cases in which an individual, alone or in agreement with another person, creates numerous limited liability companies without equipping them with appropriate assets. Thus entities are created whose credibility is low from the very beginning and their founders do not intend to inject capital into them. Such companies enter into contracts with contractors but are unable to meet the terms and conditions of these contracts, so they become insolvent debtors. According to the statistical data, in 2019, 586 entrepreneurs were declared bankrupt in Poland, including 328 limited liability companies, which accounts for 55.97% of the total number of bankruptcies. This high percentage of bankruptcy of limited liability companies in general reflects, of course, the high percentage of limited liability companies as the most frequently chosen form of a company. However, economic practice takes notice of the procedure of establishing companies in order to use this legal form to purchase goods that actually go to other entities and the company is in debt. In the jurisprudence there appears a thread of limited liability companies, in which a natural person called "straw man" i.e. someone who gives his or her name to the company's business, sits on the board, while actual decisions are made by shareholders. Pursuant to Article 299 C.C., only a member of the management board of a company may be liable for the liabilities of an insolvent company, but never the shareholders. Thus, this construction leads to the avoiding of the function of a board member, hence the construction of the so-called "straw men", in the case of companies which are created in order to use them for unfair transactions.

VI. THE PERSPECTIVE FOR LIMITED LIABILITY COMPANIES IN CONNECTION WITH THE CHANGE IN COMPANY LAW IN POLAND

On 1 July, 2021, a significant amendment to the provisions of the Companies Code enters into force, introducing a new type of company - Simple Joint Stock Company. It is to be an alternative to a limited liability company and a response to the need for a modern type of company, free of restrictions related to the rigid amount of share capital and offering the parties to the articles of association considerable autonomy in shaping its provisions. This feature is to constitute a new type of a shareholding company in which the rights and obligations of the shareholders may, to a large extent, be adjusted by its founders to suit their own expectations.

The new model of the company is to be modern, i.e. use processes of digitization of economic turnover. In a simple joint-stock company, dematerialized shares will function and its characteristic feature will be the lack of share capital. It will be replaced by a variable amount of share capital, which will be a flexible instrument to provide the company with financing. This capital may be used to make payments to shareholders. A guarantee for creditors is to be provided by provisions limiting these disbursements, and a requirement for the management body to carry out a "solvency test" each time shareholders are paid out. The test is to carry out a forecast and an analysis of the company's financial standing to determine whether the transaction will not contribute to the company's inability to meet its current obligations within the next 6 months after the payment. In a simple joint-stock company, it will be possible to choose how to manage the company, which is a novelty in the regulation of a shareholding company, consisting in the establishment of either a management board or a board of directors - a body not yet present in the Polish Companies Code. Such a management model has been allowed only in relation to a European company which is not popular in Poland.

The new type of a shareholding company will operate in the Polish legal system from March 2021, while the limited liability company has been present in it for over a hundred years, and for many years has had the status of an unquestionable leader among companies. The model of a company without capital, with guarantees for creditors in the form of a "solvency test", which is an institution originating from *common law*, unknown to Polish legal practitioners and entrepreneurs in general, may be adopted mistrustfully. Negative acceptance may involve dematerialisation of shares in a simple joint-stock company, and the requirement of the keeping of the register of shareholders by an authorised entity (bank, brokerage house or notary), which will constitute a cost for the company, while in a limited liability company the register of shares is kept by the management board itself.

Despite the undoubted formal attractiveness of the new type of company, it is to be expected that many people will remain with the "old, proven" form of a limited liability company, fearing new solutions. Based on the statistics, it can be assumed that for many years to come the limited liability company will not lose its leading position among Polish entrepreneurs.

VII. CONCLUSION

The construction of a limited liability company provided for in the Polish legal system makes it possible to use of this model of company to many applications, which is its undoubted advantage. The regulation gives a large scope of freedom in the shaping of the provisions of the articles of association, which also perfectly explains the reason why it is the most willingly chosen company.

Compared to a joint stock company, from the perspective of a shareholder, a limited liability company is a simpler and definitely cheaper formula for conducting business activity. Compared to partnerships, on the other hand, it ensures, like partnerships, that the partner has a significant influence on the company's fate and enables close personal links between the members, but excludes the element of personal responsibility for the company's obligations, which seems to speak for the popularity of a limited liability company.

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