

# EVOLUTION OF LEGAL FORMS OF ECONOMIC ACTIVITY IN POLAND

CZU: 340.11:346(438)

<https://doi.org/10.5281/zenodo.7869814>

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**ABSTRACT.** *The paper discusses the evolution of legal forms of economic activity in Poland since 1990-ties. During this period one could witness the transition from use of legal forms typical for centrally planned economy like state enterprises and cooperatives to forms typical for market economy with the dominance of companies and individual entrepreneurs. The paper also discusses the most recent novelty, which is a simple joint stock company.*

**Keywords:** *legal forms, economic activity, companies, partnerships*

Proper organisation of economic activity is central for the wealth of the society and thus an important enabler for human rights, whether economic or other. I hope that this brief review of legal forms of economic activity in Poland in their historic evolution will prove useful to the Moldovan reader, given also certain similarities between Poland and Moldova in their move from a centrally planned to market economy.<sup>2</sup>

At present the most popular legal forms of economic activity in Poland are as follows: a) natural persons conducting economic activity in their own name (approx. 2,5 mln),<sup>3</sup> b) partnerships (approx. 80 thousand), c) companies (approx. 410 thousand)<sup>4</sup>. Other legal forms are much less popular and therefore will be mentioned in this review only briefly. These other legal forms are primarily: cooperatives,<sup>5</sup> European companies (societates Europaeae),<sup>6</sup> European cooperatives,<sup>7</sup> European economic interest groupings,<sup>8</sup> state enterprises,<sup>9</sup> founda-

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<sup>2</sup> Other introductory literature: Bilewska K., Chłopecki A., Prawo handlowe, Warsaw: C.H. Beck, 2022; Modrzejewska M. (ed.), Okolski J. (ed.), Prawo handlowe dla studentów i praktyków, Warsaw: Wolterskluwer, 2022; Nowacki A., Podstawy prawa handlowego, in: Turłukowski J. (ed.), Sadłowski M.P. (ed.), Chowaniec J. (ed.), Kalinowski P. (ed.), Wprowadzenie do prawa polskiego. Skrypt dla słuchaczy szkół prawa polskiego, Warsaw: WPiA, 2021.

<sup>3</sup> Law on the entrepreneurs of 6 March 2018 (Law Journal of 2021, item 162).

<sup>4</sup> Partnerships and Companies Code of 15 September 2000 (Law Journal of 2022, item 1467).

<sup>5</sup> Law on the cooperatives of 16 September 1982 (Law Journal of 2021, item 648).

<sup>6</sup> Law on the European interest groupings and the European company of 4 March 2005 (Law Journal of 2022, item 259); Council regulation of 8 October 2001 on the statute for the European company (European Law Journal L 294/1).

<sup>7</sup> Law on the European cooperative of 22 July 2006 (Law Journal of 2018, item 2043); Council regulation no 2157/2001/EU of 22 July 2003 on the statute for the European cooperative (European Law Journal L 207/1).

<sup>8</sup> Council regulation no 2137/85/EEC of 25 July 1985 on the European Economic Interest Grouping (European Law Journal L 199/1). There are in total just 7 such groupings in Poland.

<sup>9</sup> Law on the state enterprises of 25 September 1981 (Law Journal of 2021, item 1317).

tions<sup>1</sup> or associations<sup>2</sup> conducting economic activity. From among those forms, as of 1989, ie. at the beginning of the market oriented economic and legal reforms in Poland, a major role was played by state enterprises and cooperatives. The role of cooperatives was since then significantly diminished by a continually outdated regulation of cooperatives in Poland preventing interest in that legal form from any new market participants and the economic difficulties of most of the cooperatives existing in 1989. Now this form of economic activity is still present to an extent mainly in the agricultural sector and in retail trade.

As to state enterprises there are currently only around 30 such enterprises in Poland and these remnants of what once was the most important form of economic activity in Poland, play no role whatsoever in the economy of the present Poland. The state enterprises existing in 1989 were in their vast majority transformed into companies (mostly into joint stock companies) and continue to exist in that legal form, on many occasions keeping their importance for the Polish economy. The main drivers for the transformation of state enterprise into companies were: a) an attempt to reduce workers' influence on the management, which was very extensive under the legal regulation of state enterprises in the 1980-ties (while there are still some remnants of this influence in the regulation of companies that were created as a result of transformation from a state enterprise, it is in no way similar as to the scope of those employee rights), often paving the way for difficult restructuring decisions in the 1990-ties, b) paving the way for privatisation of the assets by way of sale of shares in the companies (what was impossible with the form of a state enterprise, in particular as there was no alienable right of the state to a state enterprise), c) desire to abandon a legal form that was indeed duplicative for companies and at the same time less known in other European countries being important trade partners of Poland.

The vast popularity of conducting economic activity in the form of a natural person conducting economic activity in its own name (ie. within its legal capacity as a natural person) has a couple of reasons. Please note that this popularity exists despite the fact that under Polish law it is not possible for a natural person conducting economic activity in its own name to restrict its liability for debts stemming from such activity only to the assets dedicated to or used as part of this economic activity. One reason for popularity of this legal form is that this legal form of economic activity is connected with very little formalities. Two, it is very cheap. Three, it enjoys certain tax privileges compared to other legal forms. In many cases, dependent on the revenue flowing from such economic activity, there is no requirement to register that economic activity. If registration is needed, it may be completed fully online and is done not with the court (what could be seen as more formal and somehow constitute a barrier) but with the

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<sup>1</sup> Law on the foundations of 6 April 1984 (Law Journal of 2020, item 2167).

<sup>2</sup> Law on the associations of 7 April 1989 (Law Journal of 2020, item 2261).

administrative authorities (the ministry of economy). All actions pertaining to such registration (first registration, any amendment of data, suspending economic activity, stopping economic activity) are for free, thanks also to lower costs for the state of keeping this registration out-of-court. Also, in principle, depending in particular on the revenue flowing from such economic activity, conducting economic activity in that form will not entail the need to run full accounting. Such entrepreneurs may, at their election, choose a flat rate personal income tax (19%) instead of progressive rate that is in general applicable in Poland for natural persons (12-32%), and enjoy flat contributions for social security (rather than proportionate contributions with a cap that are applicable in general for natural persons in Poland). As a result this form of economic activity is used also by people that would otherwise simply stay in employment, but prefer to establish economic activity and perform their services to a single client of theirs as an independent contractor rather than as an employee of such a single client.

Among the partnerships the detailed popularity looks as follows: general partnerships (approx. 35 thousand), professional partnerships (approx. 2,5 thousand), limited partnerships (approx. 35 thousand), joint stock partnerships (approx. 4 thousand).

The legal form of a professional partnership is available only for natural persons with the occupation that requires a special knowledge like lawyers, doctors, nurses, architects etc. The Polish companies law names a closed list of such professions. Liability of partners of a professional partnership for debts of a partnership by law excludes certain debts that they would be liable for in case of being a partner in a general partnership. This primarily applies to debts of a partnership resulting from negligence in the conduct of their professional occupation by other partners in that professional partnership. As mentioned, by law the popularity of that legal form has strict boundaries, but when it comes to natural persons with the relevant occupation, popularity of a professional partnership is mostly driven by tax advantages (compared to taxation of companies), lower costs and lower formalities (again compared to companies), as well as from statutory restrictions disallowing performance of certain professions in the legal form a company (like the profession of legal advisors, advocates, notaries public).

The Polish case of joint stock partnerships is very peculiar as that legal form was for a long time popular in Poland to the extent that was unexpected and not observed in other countries. The reason was related to tax loopholes that could be exploited thanks to this legal form. Now, following changes in the tax legislation closing these loopholes, the popularity of that form of economic activity is dwindling very fast and it will soon be back to its typical niche in Europe: allowing coexistence in one partnership of a general partner representing the partnership, managing its business and being fully personally liable for its debts and a plentitude of small financial, passive investors, having freely transferable shares in

the partnership, limited impact on managing the business of the partnership and not having a personal liability for its debts, with the interest of such financial, passive investors protected by certain defensive powers belonging to the general meeting of such shareholders and sometimes also to a supervisory board, but with no right to recall the general partner. So the joint stock partnership is a kind of development of a limited partnership in Poland, where in both forms there is a general partner, but a limited partner of a limited partnership is replaced by a shareholder or in practise a plentitude of shareholders, whose identities has no importance whatsoever for the creditors of a partnership and who are therefore truly even more passive investors.

Among the companies the detailed popularity looks as follows: limited liability companies (approx. 400 thousand), simple joint stock companies, joint stock companies (10 thousand).

Among the 10 thousand joint stock companies existing in Poland we can see a lot of companies that were created in the 1990-ties by way of transformation of state enterprises, as very few state enterprises were transformed into limited liability companies.

Another group here are companies that are required by legislation to have a legal form of a joint stock company, because of type of their operations (banking, insurance, asset management, pension fund management etc.). This is a consequence of two elements from the regulation of joint stock companies: a) in principle for joint stock companies we have in Poland more stringent requirements pertaining to accumulation and maintenance of capital, so the creditors' protection is more enhanced than in case of limited liability companies (although that tends to change now), b) regulation of joint stock companies is based on binding legal provisions and the role of shareholders in regulating their corporate governance is much more limited than in a limited liability company.

The third group of joint stock companies that exist in Poland are companies whose shares are admitted to trading on a regulated market (primarily on the Warsaw Stock Exchange) or are traded on the OTC (over the counter market like NewConnect) and that forces them to be joint stock companies. At present 374 Polish companies are listed on the Warsaw Stock Exchange (together with 44 foreign companies) and 356 Polish companies are listed on NewConnect OTC market (together with 3 foreign companies). The Warsaw Stock Exchange played an important role in the privatisation processes or for other exist of existing shareholders from their investments or in the process of accumulation of capital

Sometimes there are also other reasons for the selection of the form of a joint stock company by its shareholders, but, having the choice, they principally opt for a limited liability company as documents by the numbers discussed earlier. This is for a number of reasons: a) less regulation by way of binding provisions of law and therefore more space for shareholders' decision that may tailor the

company's corporate governance to their specific needs, b) slightly lower requirements for minimum capital, c) lower costs of running business in a form of a limited liability company compared to a joint stock company. For example in a limited liability in Poland only at times a supervisory board is a compulsory body of a company as well as only at times a shareholders' meeting has to be minuted by the notary public; also in principle there is no requirement for the audit of the financial statements of a limited liability company by the auditor, different than in case of a joint stock company where such audit is required in every case the company is going concert. One may therefore say that at the centre of Polish economy one may see natural persons conducting economic activity in their own name and limited liability companies (with bigger ventures having the form of a joint stock company).

Finally, one needs to mention the most recent novelty in Polish companies law, which is a simple joint stock company.<sup>1</sup> It was a product of long deliberations on how to modernise the Polish companies law. It brought with it two novelties: a) a selection between one tier system of corporate governance (board of directors) and two tier system of corporate governance (management board managing a company and representing it, and a separate supervisory board conducting permanent supervision over the activities of a company), b) new liberalised rules for accumulation and maintenance of capital. A selection between one tier and two tier systems was, until this form was introduced, available in Poland only in case of the legal form of the European company. This legal form is however heavily underutilised in Poland (at present in Poland there exist only 5 European companies). Introduction of the optional one tier system was deemed an interesting experiment as well as a practical tool that might prove interesting for investors coming to Poland from countries where one tier system of corporate governance is known and popular.

As to rules of accumulation and maintenance of capital, a simple joint stock company sees a number of significant changes versus regulation of a limited liability company or a joint stock company. Firstly, the rules for what can constitute a contribution to a company by its shareholder are in a simple joint stock company much more liberal and as a result everything of economic value, including provision of services, may now constitute such contribution. This is a very good

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<sup>1</sup> For a broader perspective on a simple joint stock company: Herbert A., Kapitał akcyjny prostej spółki akcyjnej i jego funkcje, in: Kodeks spółek handlowych po 20 latach, Warsaw: Wolterskluwer, 2022; Janeta J., Kappes A., Katner W.J., Kontrowersyjny projekt reformy struktury majątkowej spółki z ograniczoną odpowiedzialnością, PPH 2011/4; Kappes A., Prosta spółka akcyjna - czy rzeczywiście prosta i czy potrzebna? Uwagi do projektu nowelizacji Kodeksu spółek handlowych, wprowadzającego prostą spółkę akcyjną (projektowane art. 300(1)–300(121) k.s.h.), PPH 2018/5; Kidyba A., Kopaczyńska-Pieczniak K., Spółka kapitałowa bez kapitału zakładowego - głos w dyskusji nad projektem zmiany kodeksu spółek handlowych, PPH 2011/3; Kozieł G., Prosta spółka akcyjna. Komentarz do art. 300(1) - 300(134) KSH, Warsaw: C.H. Beck, 2021; Opalski A., Prosta spółka akcyjna - nowy typ spółki handlowej, PPH 2019/11; Sójka T., Obrót akcjami prostej spółki akcyjnej, PPH 2020/1.

move, allowing a better use of a lot of assets that could not have been contributed to a joint stock company or a limited liability company because of stringent requirements as to in-kind contributions. Secondly, only some of those in-kind contributions (not all of them) increase a share capital, as in order to increase a share capital of a simple joint stock company the contribution needs to fulfill the same requirements that are applicable for an in-kind contribution in a joint stock company or a limited liability company. Thirdly, a share capital of a simple joint stock company is increased only when a contribution is actually made and not already when it is committed (when an obligation to make this contribution is contracted by a shareholder at the time of subscription for the new shares). This is however no problem, because the minimum amount of a share capital of a simple joint stock company at its registration amounts to only 1 PLN. Fourthly, there is a legal requirement to make up for this 1 PLN share capital at the start by way of compulsory write-offs from profit, compulsorily increasing the share capital of a simple joint stock company during its existence. The write-offs amount to 8% of yearly profit of a simple joint stock company and need to be made until the share capital of a simple joint stock company amounts to at least 5% of total liabilities of that company as per its last approved financial statements. Fifthly, when it comes to distributions to shareholders of a simple joint stock company, including dividends, apart from balance sheet calculations typical for a limited liability company and a joint stock company, a solvency test was added as a prerequisite for such distributions in a simple joint stock company. This increases the protection of creditors versus regulation of a limited liability company or a joint stock company. A simple joint stock company is certainly an interesting development in the evolution of legal forms of economic activity in Poland.

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