P.S.A. - a new type of company as an alternative solution for start-ups

The Ministry of Development is currently working on a draft of an act amending the Commercial Companies Code to implement a brand-new type of a limited company – so-called simplified joint-stock company (hereinafter referred to as the “P.S.A.” [Pol. prosta spółka akcyjna]).

The Commercial Companies Code currently includes four types of partnership, i.e. a registered partnership, a professional partnership, a limited partnership, and a limited joint-stock partnership, as well as two types of capital companies, i.e. a limited liability company, and a joint-stock company. Supplementing the catalogue of commercial law companies with the P.S.A. is a part of the so-called Marowiecki’s Plan, aiming at implementing facilitations for entrepreneurs, strengthening the competitiveness of domestic economic ventures and increasing the rate of commercialisation of the R&D work results.

In accordance with the concept, the P.S.A. is supposed to be an intermediate form between a limited liability company and a joint-stock company, combining advantages of both types. Therefore, registration procedure of a simplified joint-stock company is expected to be relatively quick and not expensive (similarly to a limited liability company, there will be a possibility of an on-line registration), and regulations on stock trading and exercising the rights attached to the shares will be comparable to those applying to a joint-stock company. Some part of the proposed regulations regarding a simplified joint-stock company is based on solutions implemented in legal systems of the French Republic, where the Société par Actions Simplifiée (French simplified joint-stock company) was introduced in 1994, and the Slovak Republic, where on 1 January 2017 the Jednoduchá Spoločnosť na Akcie (Slovak simplified joint-stock company) will be implemented.

What are the basic assumptions regarding the new type of trading company?

In line with the preliminary proposal of the Ministry of Development, the new type of company will be characterised by:

1. possibility of an on-line registration in the S-24 mode;
2. minimal capital requirements during the incorporation stage. The proposed regulations assume:
   2.1. establishing a minimal value of initial capital of PLN 1.00 and minimal per value of shares of PLN 0.01,
   2.2. flexible capital structure of the P.S.A. based on possibility of creating new, specific category of the capital of the company. This capital would be completely separate from the initial capital and supplementary and reserve capitals, and its action would not be included in the initial capital and could be subscribed e.g. by contribution in kind or labour services. Funds accumulated on this capital could be released without the initial capital decrease;
3. implementing specific mechanisms regarding protecting the rights of the creditors;
4. possibility of making an in-kind contribution in the form of know-how and labour, without the need to conduct complicated and expensive valuations in a start-up phase;
5. simplified procedures of dematerialisation of share documents:
   5.1. pursuant to the intention of the legislator, stock trading would be simplified by possibility of dematerialisation within the meaning of the Act on Trading in Financial Instruments of 29 July 2005 (Journal of Laws No. 183 Item 1538 as amended),
   5.2. The P.S.A. would not be treated as a public company (no public company status means less
responsibilities), and its stocks would not be admitted to trading on a regulated market;
6. possibility of introducing into the statutes provisions limiting and giving privileges to transferability of shares in packages;
7. legally regulated basic institutions regarding financing the company (in particular, sources of financing and investor relations) - these regulations would be of a dispositive nature and could be modified by virtue of statutes provisions;
8. various categories of stocks, i.e.
   8.1. founders’ stocks:
       - subscribed only at the incorporation stage,
       - the stocks may be connected with an obligation to work for the company or an in-kind contribution of manufactured or acquired commercial property rights or copyrights,
   8.2. investment stocks:
       - acquired by contribution in cash or in kind,
       - that may be preference shares regarding the apportionment of post-liquidation assets,
   8.3. employee stocks:
       - acquired gratuitously or on favourable conditions by employees, as one of the forms of motivation,
       - as regarding to this type of stocks, there are plans for implementing specific solutions enabling the company to acquire its own stocks to transfer them to the employees, under conditions less stringent than those laid down in the Article 362 § 1 section 2 of the Commercial Companies Code (no requirement for a minimum period of employment),
   8.4. stocks for counsels and persons cooperating with the founders:
       - involving an obligation to perform services for the company,
       - as a form of compensation for services performed for the company or motivation for the associates;
9. relatively high level of freedom regarding appointment and operating bodies of the company,
   - Optionality of establishing the supervisory board and possibility of establishing one “administrative” body - so called Board of Directors, composed of both executive directors and independent non-executive directors, are also postulated.
10. rapid liquidation procedure, in the event of business failure.

For whom will it be an optimum structure of running a business activity?

According to the initial intention of the legislator, a simplified joint-stock company shall be an optimum structure of running a business activity mostly for new entrepreneurs launching innovative enterprises, especially in the field of new technologies. An analysis of the legal environment for start-ups became the impetus for a discussion on introducing a new type of commercial law company into the Polish legal system. The analysis has revealed that one of the most frequent legal problems are considerable initial capital requirements related to conducting a business activity which takes the form of a joint-stock company, and inflexibility regarding capital turnover and possibility of simple change in the structure of the ownership in the case of limited liability company.

Interestingly, the regulations proposed by the ministry do not impose (in their current form) specific restrictions regarding the purpose of activity conducted under the P.S.A., which means that a simplified joint-stock company is a solution available not only for start-ups, but for all entrepreneurs (both natural and legal persons).

Relatively low costs related to launching an activity, as well as favourable solutions as to raising capital to finance an investment are undoubtedly advantages of the P.S.A. for those entrepreneurs who plan to launch an activity in the form of capital company.

Details of the proposed legal measures should be revealed in the nearest future, once consultations with experts and representatives of the business environment conducted by the ministry are finished.

If you have any queries or concerns regarding the proposed regulations, we cordially invite you to contact us.
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