

Do Polish Companies and Corporate Law Enter the Digital Era? – Electronic Facilitations in Polish Companies’ Operations and Companies’ Registration

Article By:

Marcin S. Wnukowski

Karolina Źasowska

On September 3, 2019, an amendment to the Commercial Companies Code came into effect (Amendment), introducing a major change in how shareholders can hold their annual shareholders’ meetings.

Rather than holding shareholders’ meetings at the company’s registered office or any other location specified in the articles of association (within Poland), the shareholders of limited liability companies may now hold meetings electronically.

Additionally, the lawmaker digitalized the Polish National Court Register and the rules of making entries into the register. On March 1, 2020, further changes will come into force, adopted on the basis of the act dated January 26, 2018, on amendment of the Act on the National Court Register (Amendment 2).

New Rules for Holding Shareholders’ Meetings

Limited liability companies are the most common form of operating business activity in Poland. Under Polish law, companies were obliged to call an annual shareholders’ meeting at the company’s registered office or any other location in Poland, as specified in the articles of association. This caused numerous technical and organizational problems for those companies whose shareholders, or at least one of the shareholders, permanently reside abroad. In such a case, all shareholders were obliged to come to Poland or appoint an attorney-in-fact in Poland, because Polish law prohibited holding the meetings outside of Poland or adopting resolutions of annual shareholders’ meetings by circulation.

To simplify the procedure of holding shareholders’ meetings and adopting resolutions, the Amendment provides that the articles of association may allow shareholders to participate in the meetings using electronic means of communication, in particular (i) transmission of the shareholders’ meeting; (ii) two-way online communication where shareholders may speak during the shareholders’ meeting, while being in a different location than that of the shareholders’ meeting; or (iii) voting in

person or by proxy before or during the shareholders' meeting.

The new provisions do not clearly regulate whether a shareholder using electronic means of communication may participate in the shareholders' meeting, when form of notarial deed is required.

Pursuant to the Amendment, the shareholders may attend the shareholders' meeting using electronic means of communication, specifically online transmission or teleconference. For online transmission, the shareholders' meeting is held at the location specified in the articles of association and transmitted to the locations where the other shareholders reside; however, these locations must be determined in the articles of association. Unlike online transmission, using teleconference means that a shareholder may attend the meeting from any location where there is access to electronic means of communication. As the provision specifies two-way online communication, it is unclear whether it concerns communication between two different locations or more. Regardless of the method that the company chooses, holding the meeting electronically is acceptable only if the articles of association allow and regulate it comprehensively.

As the list of electronic methods to hold the meeting is not exhaustive, it shall be considered whether the shareholders' meeting may also be held by using commonly used applications such as Skype, WhatsApp, etc.

Minutes of the Shareholders' Meeting

Choosing an electronic form of communication between the shareholders at the meeting will not release them from the obligation to record the shareholders' meeting in the minutes book. Pursuant to Polish law, the minutes must acknowledge that the meeting has been correctly convened and that it could adopt resolutions, as well as specify the adopted resolutions, the number of votes cast in favor of each resolution and the objections raised. However, because the meeting is held using electronic means of communication, a relevant transcript from the audio/video communication must be prepared and attached to the minutes book, together with evidence of conveying the meeting and the list of shareholders using electronic means of communication. The only difference is that the legislator does not require the shareholders who attend the meeting electronically to sign the attendance list.

As the Amendment refers only to the electronic form of attending shareholders' meetings, all of the terms and conditions of conveying the meeting, i.e., notifying the shareholders, must be fulfilled.

Further Digitalization of the National Court Register

From March 1, 2020, all motions filed with the National Court Register, together with all attached documents constituting the basis for entries in the register, will solely require the electronic form. Consequently, rather than filing applications on paper, applicants will be obliged to submit the documents online using a qualified electronic signature or signature confirmed in ePuap. If documents are not filed in this manner, they will be deemed ineffective.

Another breakthrough change, following Amendment 2, is the opportunity to communicate electronically with the registry court, allowing information on the status of registry proceedings to be obtained online. In addition, any error in an application, with regard to missing documents, may be removed through electronic means of communication, significantly simplifying contact with the registry court, as well as accelerating registry proceedings.

Additionally, Amendment 2 established the Central Repository of Electronic Excerpts of the Notarial Deeds, maintained by the Polish National Council of Notaries. The repository will collect all excerpts and extracts from notarial deeds received from the notary after their execution. All documents in the form of a notarial deed, which have to be filed with the National Court Register, will be available online with no requirement to attach them on paper as a schedule to the submitted motion. The applicant will only be obliged to specify the number of electronic excerpts in its motion.

Since all motions will be submitted electronically, the register files of the entities entered in the registers of the National Court Register will also be available electronically. Pursuant to Amendment 2, register files of the entities entered in the registers of the National Court Register will be available online without any charges on a designated website. Currently, any individual interested in reviewing the files must order them several days in advance and visit the registry court afterwards.

The proposed amendments, in particular Amendment 2, will make operating companies and the entire registration proceedings much easier. Knowing the history of previous steps towards digitalization, we may expect certain “teething problems” at the beginning.

© Copyright 2024 Squire Patton Boggs (US) LLP

National Law Review, Volumess IX, Number 294

Source URL: <https://www.natlawreview.com/article/do-polish-companies-and-corporate-law-enter-digital-era-electronic-facilitations>