

THE ISSUE OF CHOOSING AN APPROPRIATE LEGAL AND ORGANIZATIONAL FORM FOR COMPANIES EMERGING IN THE POLISH ECONOMY

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Abstract

Absolutely any economic operator wishing to undertake and consequently operate on Polish territory, must first meet a number of requirements both formal and legal as well. Then two types of requirements occur, namely on one hand, the requirements to obtain a trader's legal status and on the other hand, the requirement to fulfill the fiscal responsibilities closely connected with the fact of running the business. The subject of the article, however, concerns only organizational and legal forms chosen by entrepreneurs for emerging operators. Businessman at the time of registration may choose between the national forms (provided for in the legislation of the country), and the pan-European forms (applicable in all European Union Member States). However, the scope of the article is limited to a detailed discussion about legal forms of enterprises existing in Poland. It is important to bear in mind that it is not possible to identify one, the best and at the same time also the universal legal and organizational form. Therefore, the general aim of this work is to present and discuss in details the alternatives of organizational and legal forms of enterprises in Poland, with particular emphasis on the difficulty in choice of the proper form for the economic operator.

Key words: legal forms of enterprises, operators, the Polish economy

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Introduction

Choosing the right legal form for the business, without a doubt, is not simple, because each of the possible solutions would not be suitable for all types of businesses. Therefore, this form should be selected individually with the special care. For this purpose, a detailed statement of advantages and disadvantages of selected organizational and legal forms is made in this work.

On the basis of existing legislation, the sector of small and medium enterprises includes both natural persons and companies (legal persons and unincorporated - commercial companies) (Majumdar, 2012, p. 659). Organizational form of the company outlines the

responsibilities, fiscal requirements and law rules of ownership. An entrepreneur opening a business in most cases has the freedom to choose the right organizational form to their business.

A private individual is an adult not limited in their ability to legal actions. This is undeniably the simplest form of running a business in which the owner manages the company independently and is responsible for liabilities with all property, including the personal and company's property (Lewandowski, 2006, p. 179).

A legal person is an organizational unit, ie. a permanent fusion and the separation of people and material resources to carry out specific tasks. A legal person is endowed by law with legal personality - an independent and separate from the people who create the legal capacity and the capacity to legal actions (Śliwa, 2014, p. 66).

In contrast, the concept of **an organizational unit that is not a legal person**, determines the fusion and separation of people and material resources to carry out specific tasks, without legal personality, however, provided by law in legal capacity and capacity to legal actions.

It is worth to look at the number of enterprises according to legal forms and sizes in Poland in 2012. Approximately, 1 795 thousand of non-financial corporations functioned during this period¹, in comparison with the previous year, there was an increase of 0.6% of companies as their number in 2011 was 1 785 thousand. There was a similar trend as in previous years, because all companies were dominated by small units, making 98.9% of the whole population, while only the micro-entities gained 95.8%. The share of medium and large units made adequately 0.9% and 0.2% of all enterprises. The table 1 shows the number of enterprises according to the legal form and the size of the entities.

Tab. 1: Number of enterprises by legal forms and sizes in Poland in 2012

Number of enterprises	all together	private individuals	legal persons
all together	1 794 943	1 643 288	151 655
small	1 776 258	1 640 896	135 362
including micro	1 719 187	1 612 900	106 287
medium	15 484	2 290	13 194
large	3 201	102	3 099

Source: CSO, 2014, p. 23

¹ The data presented in this publication do not include units classified, according to the Polish Classification of Activities (PKD) 2007, to section A (Agriculture, forestry, hunting and fishing), K (Financial and insurance activities), O (Public administration and defense, compulsory social security).

Due to the basic legal form of tested units, 91.6% of the entities belonged to the natural persons, and legal persons and entities without legal personality accounted for 8.4%. The group of individuals are almost entirely (99.9%) small units, the vast majority are micro-enterprises (98.2%). Among legal persons the small businesses accounted for 89.3% and the medium units - 8.7%.

In 2012 there were 1 792 thousand of non-financial enterprises employing up to 249 people, ie. belonging to the sector of small and medium-sized enterprises (SMEs), and they accounted for 99.8% of the total non-financial corporations. Due to the basic legal form, 91.7% units of SMEs belonged to individuals. Legal persons and entities without legal personality accounted for 8.3% of the SME sector (business activity of non-financial enterprises, 2014, p. 40).

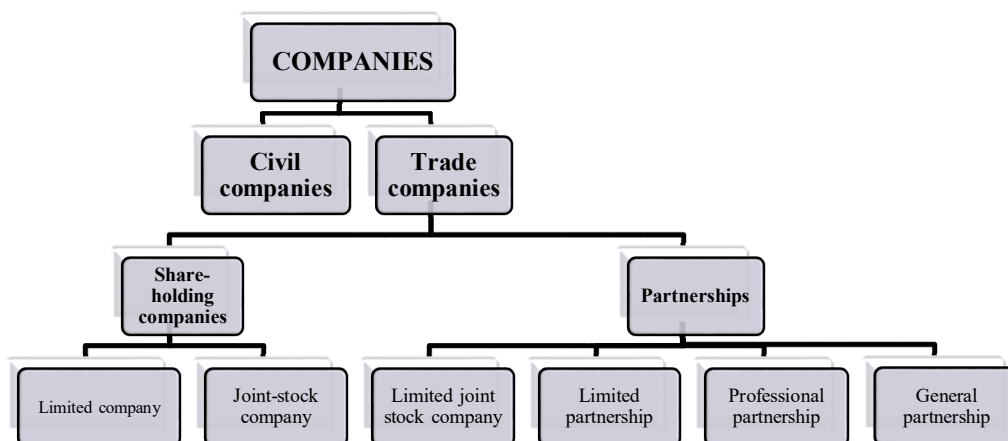
1 Legal and organizational forms of companies in Poland

Really important is the fact that the organizational and legal form of the company is established at the time of its foundation, which may, however, be changed in the course of the functioning of the entity. The constraint to change this form may occur even in the case of substantial expansion of the size of the company. Then it is worth considering also the problem of risk that is, to a greater or lesser extent, assigned to each organizational form (Bholat, 2013, p. 1). However, if it comes to choose the appropriate form for the particular economic activity, it must be carefully matched to the certain company, and so to its size, the capital held, or the number of owners and employees. However, it is worth noting that in certain activities, regulations simply require specific legal forms of business entities. As examples of those institutions we should include: insurance companies, mutual funds and pension funds, banks, which all enforce mandatory legal form which is a joint stock company. The choice or subsequent change of the legal form is extremely important and very serious, because it affects primarily (Sudol, 2011, p. 56): procedure and conditions for establishment of business entity; potential increase in the capital of an undertaking; the responsibility of the owner or owners for the obligations of the company; possible opportunity to participate in the capital market; staff participation in the management of the organization; obligation (or lack thereof) to provide information of balance; appropriate form of accounting; type of business entity governing authorities; sharing conditions of saved profit; liquidation mode of the company, and generally speaking the investment rules (Fama, 1985, p. 101).

The company can operate on the market in the form of a civil partnership (regulated by civil law, as well as in the case of the company belonging to the individual) or commercial

one (regulated by commercial law). The trade company, in turn, is divided into partnerships (general partnership, partnership, limited partnership, limited joint stock company), and companies with share capital (limited company and joint-stock company). In order to facilitate clarity of described matter, figure 1 shows the basic classification of companies.

Fig. 1: Classification of companies



Source: Wolak-Tuzimek, 2010, p. 34

As the first in the analysis of various types of companies, **the partnership** should be discussed, because it is the oldest of the companies. It is created on the basis of an agreement among relatively small number of partners (individuals, sometimes also legal persons or organizational units without legal personality). Partners bring to the company a specific contribution of capital in the form of cash or factual reports. Moreover, partners run a business under their names, trying to reach economic goals intended before. It should be added that the shareholders divide the profit, whereby, however, they have unlimited liability (personal and common property of the spouses) for commitments. It is worth noting that the described company has no legal personality and is not listed in the National Court Register (further NCR). The company operates at constant composition of the shareholders, and stops working when one of the partners dies or retires from the company.

Commercial companies - commercial law companies (without legal personality) which professionally on their own account undertake and run a business. They are also entered in the Register of Entrepreneurs in the NCR (information included in the NCR - available for those interested, provides the valuable data on the legal basis and the economic condition of the company, and moreover, it is also possible to find out if bankruptcy proceedings have not been initiated).

All **personal trade companies** do not have legal personality, however, they have legal capacity concerning private law relationships (sometimes referred to as imperfect legal personality). They have the right to acquire rights on their own behalf, eg. the ownership of property, incur obligations, but also to sue and be sued. Establishment of the company takes place at the moment of an entry into the NCR. Generally, each of this type of company must have a contract, and this, in turn, should include: a firm and headquarters of the company, determination of contributions made by each individual shareholder and their value, objects of the company, its duration (in case it is appointed). For the obligations, the company is liable with all its assets. In Poland, since 2001 there are four types of commercial partnerships that can function:

- 1. General partnerships:** are similar to civil partnerships, partners are responsible without restrictions - they have unlimited liability for obligations. It should be noted that with the payment of obligations the principle of subsidiarity is applied. To create this legal form, it is necessary to conclude a written agreement under pain of being declared null and void. All shareholders have the right to represent the company externally. It is worth noting that these companies do not appoint the authorities, because all decisions are made by a vote of shareholders.
- 2. Partnerships:** they are formed by the shareholders / partners and by those who are eligible for free professions. Limited partnership agreement requires the form of notarial deed and must include an indication of the partners who agree to be absolutely responsible for the liabilities - (if any will be), and also indicate those partners who will represent the company (if only selected do so). As a rule, the company is represented before third parties by each of the partners. Registration Notification should include a set of basic documents (typical for partnerships), and also documents of all partners confirming authorization to practice a profession. Keeping this company creates a lot of opportunities for the free professions representatives, however, it is a pity that the entitled group is limited.
- 3. Limited partnerships:** not only natural persons can be their partners but also legal ones. The essence of this form is that at least one partner (a general one) has unlimited liability for obligations of the company, but at least one limited partner's liability is limited only to the amount (sum of the partnership) clearly defined in the partnership agreement. This company is represented only by a general partner / s. It is also subject to entry in the commercial register, but does not obtain legal personality. The articles of association should take the form of a notarial deed.

4. **The limited joint-stock partnerships:** they combine the features of a business partnership and a joint stock company. The owners of these companies have the right to participate in the public, thus placing shares on the Warsaw Stock Exchange (WSE). In this form, there are two categories of partners, namely: general partners and shareholders. This form allows to raise the capital from shareholders (while limiting their liability for the obligations - to the amount of contributed capital). In order to set up this company, it is necessary to draw up a statute of the company in the form of a notarial deed signed at least by all general partners, moreover, the acquisition of shares.

Capital trade companies have legal capacity; large companies usually decide on the legal form like this. The characteristics of these companies will certainly include the following aspects (Sudol, 2011, p. 61): it is necessary to contract in the form of a notarial deed; it must be obligatorily entered into the National Court; to act in accordance with the provisions of the Commercial Companies Code; to have a legal personality; changing the composition of the shareholders; company (as a legal person is liable with all its assets and the liability of shareholders is limited only to the amount of capital contributions); the stability of a company is unquestionable (as in the case of the death of the shareholders or disposal of their rights attached to the shares, it does not jeopardize the continued existence of the company, and moreover, it does not even require the preparation of the new articles of association); there is double taxation of profit saved by the company (as the revenue generated by the company is subject to income tax paid by it - as a legal person, and taxation of shareholder participation in the profit - he pays himself); there is no management of the company's affairs directly by the shareholders, but shareholders have the right to be members of its authorities.

Capital companies can take two forms:

1. **the limited liability companies** are separated from their shareholders. Generally, none of the shareholders may be personally liable for the debts of the company or even its commitments. Its functioning is also not dependent on the presence of its shareholders. Partners establishing the company, make a financial or non-financial contributions, intangible and legal assets, of which the share capital is formed. Then the company can be capitalized by increasing the number of shares, additional payments of partners or payments to increase the share capital. It is worth noting that the shareholders receive personal shares, which is consistent with the acquisition of the rights and obligations of shareholders, which coincidentally are closely related to the number of shares held.
2. **the joint-stock companies (the joint-stock societies)** are the most common capital company in the world. They are created in any legally permitted purpose, not necessarily

an economic one. These companies can be private or public, if the issue of shares were admitted to the public trading. It may be created by one or more persons. This legal form is extremely beneficial for large enterprises, as while creating this company, considerable capital, necessary to create a large company, may be collected in a short time. The first crucial element to create this company is the preparation and signing the statute of the partnership by the founders.

Entrepreneurs in addition to the range of the above-mentioned classification of companies, have a range of diametrically different solutions, and so, as a consequence, they can thus consider the choice of an alternative solution, however, which is not a company. Figure 2 shows the basic entities not classified to a group of partnerships.

These are mainly **state-owned enterprises** which are the classical form of an economic activity realized by the state. They can be created by the supreme and the central authorities of state administration or the National Bank of Poland or other state-owned banks; (in a few cases it happens that these companies are created by other entities).

Fig. 2: The classification of entities which are not companies



Source: Kruczalak, 2004, pp. 109-117

It is worth analyzing all of the possible non-corporate entities, however, because of the length of the article, only **cooperatives** are briefly discussed, which are voluntary associations with an unlimited number of members - (natural or legal persons), with variable composition of people engaged in a business in order to meet the needs of their members. Cooperators contribute financial shares, as to the amount of which they are responsible for its obligations. It should be noted that the members regardless of the number of shares held, have equal voting rights.

Discussion

Talks on the most favorable legal organizational forms and difficulties with the appropriate choice of them, are in progress for many years. The views and decisions in this area are diverse and complex. It should be added that in this difficult decision, a detailed analysis of the advantages and disadvantages arising from the various organizational and legal forms will

be helpful, and so in Table 2, the summary of the advantages and disadvantages of a partnership against the corporation was constructed.

Tab. 2: Advantages and disadvantages of the partnership and the corporation

	PARTNERSHIP	CORPORATION
ADVANTAGES	<ul style="list-style-type: none"> ○ greater creditworthiness ○ tax only on income and only as personal partners' income ○ much greater intellectual capabilities ○ better differentiation of talents; more career opportunities for the staff ○ greater resources 	<ul style="list-style-type: none"> ○ the liability of shareholders is limited only to the invested capital ○ the possibility of achieving large sizes through the issue of shares ○ unlimited duration of the company ○ the ease of access to professional management ○ the possibility of action on the capital markets ○ the ease of changing the owners
DISADVANTAGES	<ul style="list-style-type: none"> ○ all the members are fully responsible for obligations ○ a complete lack of access to capital markets ○ the problem with achieving extra-large sizes by the entity ○ the difficult transfer of ownership 	<ul style="list-style-type: none"> ○ after taxation of profits, the dividends are taxed again when shareholders are paid ○ high administrative costs ○ perceptible supervisory from the government ○ complete transparency of a business ○ the high start-up costs

Source: own study based on: Wolak-Tuzimek et. al., 2015, pp.47-48

At the end of the analysis it is also worth looking at the structure of the entities in the private sector according to legal forms in 2013 (Tab. 3). In Poland, in the private sector there were 3,947,500 entities functioning, and there were 2,961,733 individuals engaged in business activity. In the third place, in terms of the number, were trading companies with a score of 377,869, the next place belonged to associations and social organizations, there were 104,237 of them, and in the next place were commercial companies with foreign capital with the result of 78,834. However, at the lowest estimate in 2013 were cooperatives and foundations registered in National Business Registry Number, as their results were 17,422 and 17,098, respectively.

Tab. 3: Number of entities entered in National Business Registry Number in 2013

Year	REGISTERED ENTITIES						
	private sector	individuals engaged in business	trade companies	trade companies with foreign capital	cooperatives	foundations	associations and socials organizations
2013							
Poland	3947500	2961733	377869	78834	17422	17098	104237

Source: LDB, www.stat.gov.pl/bdl, access 25.03.2015

In Poland, dominant influence of the private sector on the development of the economy should be noted. If it comes to the most common organization forms, those are natural persons running a business. However, not the number of companies, but the effects of their activities have the greatest impact on the economic growth.

Conclusion

The choice of the right legal form for a particular business certainly is not simple, because each of the possible solutions would not be suitable for all types of businesses. Therefore, this form should be selected individually with due diligence, having in mind that the choice of the right form is only partially successful, to full success it is necessary to have competent, experienced and communicative staff - human potential is essential for increasing business competitiveness (Popescu, 2013, pp. 312- 317).

To sum up, owners or founders decide on the establishment of a particular form of business, and they absolutely cannot choose the form by chance, and indeed they should take into consideration many different aspects including: the process of starting and liquidation of the company, implementing powers, shaping of external accumulation abilities, opportunities of access to external sources of financing, etc. Moreover, this decision should combine both personal goals and aspirations of entrepreneurs with a realistic assessment of the potential and external conditions. With these premises, the organizational form should include: goals and aspirations, own capabilities of the entrepreneur, range of activity, external factors and the type of economic activity.

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