

# What's new at a limited liability company upon the amendment of the Code of Commercial Companies,

which comes into force as of 13 October 2022?

Katowice, 16.09.2022

On 13 October 2022, amendments to the Code of Commercial Companies (hereinafter referred to as the Code) applicable to capital companies will come into force. The amendments will apply in particular to a supervisory board, but the modifications will also influence other authorities of a limited liability company and a joint stock company. In this article, we will discuss amendments to the regulations concerning **a limited liability company**.

## I. BOARD OF DIRECTORS (amendments to Art. 208<sup>1</sup>- Art. 209<sup>1</sup> of the Code of Commercial Companies)

### 1. Changes in the calculation of a term

Starting from 13.10.2022, the **term of a Director** will be calculated, as a rule, in **full financial years**, unless the articles of incorporation of a company provide otherwise.

### 2. Obligation to take the minutes of resolutions passed by the Board of Directors

## **Resolutions of the Board of Directors**

will also have to be recorded in the minutes, similarly to resolutions passed by the Meeting of Shareholders. What requirements are set out by the new regulations in relation to the minutes of the meeting of the Board of Directors?

The minutes should include:

- an agenda of the meeting;
- first and last names of Directors present at the meeting;
- the number of votes cast for particular resolutions.

The minutes should also include separate opinions presented by a Director, including a rationale.

Based on the amendment, the minutes **must be signed by at least a Director chairing the meeting or ordering the vote**, unless the articles of incorporation or the rules of the board of directors provide otherwise.

### 3. Loyalty obligation

The amendment also introduces **an obligation of the Director's loyalty to the company**.

This means that a Director should fulfil their obligations with due diligence stemming from the professional character of their activity and be loyal to the company. In addition, a Director must not disclose the company's secrets even after the expiry of their term.

## II. SUPERVISORY BOARD (amendments to Art. 214<sup>1</sup>, Art. 219 - 219<sup>2</sup>, Art. 221<sup>1</sup>- Art. 222 of the Code of Commercial Companies)

What changes are enforced by the amendment in relation to supervisory board and audit committees?

### 1. Loyalty obligations.

Loyalty obligations: identical to the obligation applicable to Directors.

### 2. Written report on the activities of the supervisory board.

The obligatory preparation and submission of a **written report on the activities of the supervisory board** for a previous financial year (the supervisory board's report) was added to special obligations of the supervisory board.

### 3. Request for documentation and explanation.

The amendment **extends a group of entities that are obliged to provide information to the supervisory board.**

To fulfil their obligations, the supervisory board was able to examine all of the company's documents, inspect the company's assets and request reports and explanations from the board of directors and employees.

**As of 13 October 2022**, the supervisory board will be able to request:

- the board of directors;
- proxies;
- people employed by the company on the basis of employment contracts;
- people performing defined regular activities for the company on the basis of a specific work contract, a freelancer agreement or another similar agreement **to prepare or submit any information, documents, reports or explanations relating to the company, including in particular the company's activities or assets.**

The request can also include information, reports of explanations concerning subsidiaries or related parties, as being in the possession of a given authority or person. The Directors, proxies and other of the above persons must not refuse or prevent supervisory board members from performing their supervisory activities. The above rights must not be limited in the company's articles of incorporation.

The above information, documents, reports or explanations must be delivered at the latest within two weeks from the request date to the obliged authority or person, unless the request provides for a longer deadline. The **Directors must not limit the above access** for supervisory board members.

4. Attendance of a key auditor at the meeting of the supervisory board.

In addition, if the financial statements of the company are subject to an obligatory audit, the supervisory board **must**, at least two days in advance, **notify a key auditor** that audited the financial statements of the date of the meeting of the supervisory board where:

- the compliance of the report on the company's activities and the financial

statements for a previous financial year with books, documents and facts will be verified;

- the Director's requests concerning profit distribution or loss coverage will be decided upon;
- written annual reports on the outcome of the assessment of the above reports and requests, as well as the supervisory board's report will be reviewed.

The company must enable the attendance of a key auditor or another representative of the audit company at the meeting of the supervisory board. During the meeting, the key auditor or another representative of the audit company presents the supervisory board with their audit report, including the assessment of the basis of the statement concerning the company's going concern, and responds to questions asked by supervisory board members.

The regulations concerning the notification addressed to a key auditor will also apply to the audit committee.

5. An ad-hoc or permanent committee of the supervisory board.

The supervisory board will be able to establish an ad-hoc or permanent committee. It will be made of supervisory board members appointed to perform

specific supervisory activities. However, the above new authorisation **is without prejudice to the supervisory board members' liability for supervision activities**. The committee will examine all documents of the company, inspect the condition of the company's assets and request the preparation or submission of any and all information, documents, reports and explanations concerning the company.

6. Advisor to the supervisory board

The articles of incorporation can stipulate that the supervisory board has the right to pass a resolution on having a specific issue concerning the company's activities or assets examined **by a selected advisor** at the company's cost. The advisor to the supervisory board can be also appointed during the preparation of specific analyses or opinions. In the agreement between the company and the advisory to the supervisory board, the company will be represented by the **supervisory board**. The advisor to the supervisory board and a natural person acting on behalf or for the advisor must, without time limitation, keep confidential any and all non-public information and documents received from the company.

7. Meetings of the supervisory board

The work of the supervisory board is managed by the **chairman** of the supervisory board. The chairman must duly organise the work of the supervisory board and, in particular, call the meetings of the supervisory board. Rights of other members related to the organisation of the supervisory board and the method of performance of the supervisory board's activities can be defined in the company's articles of incorporation.

Pursuant to the new regulations, the meetings of the supervisory board are called through invitation. The invitation, similarly to the meeting of shareholders, must specify:

- the date,
- the time,
- the place of the meeting;
- a suggested agenda;
- a way remote communication means will be used during the meeting.

During the meeting, the supervisory board can also pass resolutions on **issued not included in the agenda, provided that none of supervisory board members attending the meeting objects**, unless the company's articles of incorporation provide otherwise.

The meeting of the supervisory board can be also requested by the Directors or a member of the supervisory board, provided that a suggested agenda is presented. The chairman of the supervisory board calls the meeting whose agenda must comply with the request. The meeting **must be held at the latest within two weeks of the request receipt date.** If the chairman of the supervisory board does not call the meeting, the requesting party can call the meeting on their own.

Apart from the formal notification of the meeting, the supervisory board can meet without formal notice, provided that all members agree and do not object to the incorporation of specific issues in the agenda of the meeting.

The meeting of the supervisory board should be called at least **once in each quarter of a financial year.**

Resolutions passed at the meeting of the supervisory board will be recorded in the minutes and the minutes of the supervisory board will be subject to rules applicable to the minutes of the board of directors.

### **III. AUDIT COMMITTEE (amendments to Art. 221 of the Code of Commercial Companies)**

The meeting of the audit committee is governed by regulations concerning the meetings of the supervisory board, excluding the frequency of the meetings.

### **IV. MEETING OF SHAREHOLDERS (amendments to Art. 228, Art. 231 of the Code of Commercial Companies)**

In accordance with the amended Art. 231 § 4<sup>1</sup> of the Code of Commercial Companies, a shareholder **has the right to request** documents corresponding to the content of the directors' report on the company's activities, financial statements, a report of the supervisory board or an audit report. The request must be made to the board of directors (*a fragment of the sentence seems to be missing*) from the date the annual meeting of the shareholders has been called. The documents must be provided at the latest within two **business days** from the request date.

### **V. CIVIL LIABILITY (amendments to Art. 293 § 3).**

As the loyalty obligation has been added, the new regulations stipulate that if a director, a

supervisory board member, an audit committee member or a liquidator is loyal to the company and acts within the limits of reasonable economic risks, as well as on the basis of information, analyses and opinions that, given specific circumstances, should be taken into account in careful examination, **they are deemed not to violate the obligation of due diligence stemming from the professional character of their activity.**

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