

## CHANGES TO THE COMMERCIAL COMPANIES CODE

The amendment of the Polish Commercial Companies Code which entered into force on 8 January 2008 has brought many significant changes facilitating the operations of a company. We present below the most significant changes.

### **No obligation to transform a civil-law partnership into a registered partnership**

Transformation of a civil-law partnership into a registered partnership is now voluntary and remains at the sole discretion of the partners. Pursuant to the previous provisions, if a civil-law partnership within two consecutive financial years generated revenues in an amount that required it to maintain full accounting, its partners were obliged to register in the registry court the transformation into a registered partnership. The amendment has annulled this obligation.

### **Professional corporation charter in simple written form**

Persons wishing to establish a professional corporation no longer need to bear the costs of preparing a notary deed containing the partnership charter. Now it is sufficient to draw up the professional corporation's charter in simple written form.

### **Lower amount of the minimum share capital**

The minimum amount of the share capital of a limited liability company, which previously was PLN 50,000, will now be only PLN 5,000. The minimum share capital in joint stock companies has also been decreased, from PLN 500,000 to PLN 100,000.

### **Simplification of transactions between a one-person limited liability company or a joint-stock company and its shareholder**

From the date the amendment entered into force, only simple written form is required for statements made by the sole shareholder to the limited liability company or the joint-stock company, unless another specific provision stipulates more stringent requirements (as for example in the case of real estate acquisition). Previously, in matters outside the ordinary course of business, statements by the sole shareholder to the company required written form with the signature certified by a notary. Failure to observe such form resulted in the invalidity of the action performed on the basis of the statement. In practice, it was extremely difficult to determine whether a given matter was outside the ordinary course of business, and thus whether it was required to observe written form with the signature certified by a notary. Thus companies wishing to avoid the risk of invalidity of their actions, when they were uncertain, often chose written form with the signature certified by a notary. The amendment removes such doubts and considerably facilitates transactions between a one-person limited liability or joint-stock company and its shareholder.

Should you wish to receive more information on this topic, please contact Piotr Majer ([piotr.majer@laszczuk.pl](mailto:piotr.majer@laszczuk.pl)).

## DO NOT COUNTERFEIT

On 18 December 2008 the amendment to the Act on Commercial Quality of Agricultural and Food Products came into force. This amendment introduced into the Act the notion of a 'counterfeit agricultural-food product'. Such

product is understood as *'a product whose composition is inconsistent with provisions on the commercial quality of particular agricultural-food products, or a product to which changes have been made, including changes in packaging, aimed at concealment of the true composition of the product or of other features, if such inconsistencies or changes materially infringe the consumer interest, in particular if:*

- a) attempts have been made to change or conceal the true composition of the product, or have given the product the appearance of a product that complies with provisions on commercial quality,*
- b) a name has been used in the labelling that is inconsistent with the provisions on commercial quality of particular agricultural-food products, or a name which is untrue,*
- c) information is provided in the labelling concerning the composition, origin, use-by and/or best-before date, net weight or commercial quality class, which is untrue.'*

At the same time, regulations have been introduced into the Act making it possible to impose financial penalties for marketing of counterfeit agricultural-food products. Such penalties cannot be lower than PLN 1,000 and cannot exceed 10% of the revenue generated in the financial year preceding the year when the penalty is imposed. The right to impose penalties is vested in inspectors of the Agricultural and Food Quality Inspection and the Trading Standards Inspection. When setting the amount of the penalty, the Inspections take into consideration the level of harmfulness of the action, the level of fault, the scope of infringement, as well as the previous activity of the entity operating on the agricultural-food products market and the volume of its activity.

Moreover, the Act on Commercial Quality of Agricultural and Food Products now includes references to the Act on Food and Nutrition

Safety with respect to labelling, advertising and presentation of agricultural-food products.

As a result of the amendment the scope of provisions which need to be complied with by food producers has increased. Moreover, the rules for labelling of agricultural food products have become more complex.

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## **TAX-FREE SHAREHOLDER LOANS**

An amendment to the Act on the Tax on Civil Law Transactions came into force on 1 January 2009. Among other items, the changes affect assessment of the tax on civil law transactions on loans granted by shareholders to companies (i.e. a limited liability company, joint stock company or European company).

During the period from 1 January 2007 through 31 December 2008, a loan from a shareholder to the company was treated as an amendment to the company's charter and was subject to the tax on civil law transactions at a rate of 0.5% of the loan principal.

Now a loan to a company by its shareholder is no longer treated as an amendment to the company's charter and has been exempted from the tax on civil law transactions.

There have been no changes in the rules for taxation of loans by partners to their partnerships. They are still subject to the tax on civil law transactions.

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