

**Extracts from the proposal of the Polish Act on European Companies
as proposed by Civil Law Codification Commission**

“Art. 1

1. The Act applies to:

- 1) formation, organisation and operation of the European Company described in **Statute for a European company (SE)** regulation dated on the 8th of October, 2001,
- 2) registration and some aspects of organisation of European Economic Interest Grouping described in **European Economic Interest Grouping – EEIG** dated on the 25th of July, 1985,

2. The Act also includes provisions on involvement of employees in a European company.

Art. 2

Definitions:

11) manager - physical or legal person, managing the affairs of the grouping,

Art. 3

1. The grouping is subject to entry into the registry according to the rules applicable to registered partnerships, unless the Act provides otherwise.

Art. 5

Central Information of the National Registry Court transfers the information subject to publication in the European Communities Official Journal in accordance with art. 11 of the regulation 2137/85 or art. 14 of the regulation 2157/2001 to the European Union Official Publications Office within a month from the publication of those information in the “Monitor Sądowy i Gospodarczy” (Polish Journal dedicated to publication of the information on companies).

Title II

European Economic Interest Grouping

Art. 6

Unless otherwise stated in the regulation 2137/85 or in this Act, the provisions on the registered partnerships are adequately applicable to the grouping.

Art. 7

Information described in art. 5 and art. 7 of the regulation 2137/85 are subject to the entry to the registry.

Art. 8

1. Application of the grouping to the register as well as filing the information subject to the entry is made by managers of the grouping or its liquidators, in accordance with the rules of representation of the grouping described in the contract of the grouping.
2. Withdrawal of a member of the grouping and dissolution of the grouping by the decision of its members may also be filed to the registry by each of the members of the grouping.
3. The clause exempting the responsibility of a member accessing the grouping from the payment of debts and other liabilities which originated before his admission may also be filed to the registry by such an accessing member.
4. Statement of each of managers of the grouping on the fact that the circumstances which according to art. 19 sec. 1 of the regulation 2137/85 exempt the person from acting as manager of the grouping do not occur shall be appended to the grouping's application to the registry. Such a statement shall be also appended to application of every new manager to the registry.
5. When documents or information to be filed to the registry are made in a foreign language, their certified translation into Polish shall be appended.

Art. 9

1. Publications required by law related to the grouping are subject to the publication in "Monitor Sądowy i Gospodarczy". The contract of the grouping may also provide for other publication obligations.
2. The notice on filing to the registry of documents and particulars described in art. 7 subsec. b) – j) of the regulation 2137/85 is also subject to the publication.

Art. 10

1. Art. 201 – 211 and art. 293 – 300 of the Commercial Companies Code apply to the managers of the grouping.
2. Legal person can act as a manager of the grouping, but only if it appoints: at least one physical person whose personal data are subject to the entry into the registry in accordance with art. 7 subsec.d of the regulation 2137/85 as its representative. The said representative is liable according to the rules described in art. 293 – 300 of the Commercial Companies Code. The provisions of art. 8 sec. 4 of this Act apply to the representative.

Art. 11

Apart from the circumstances described in art. 28 sec. 1 of the regulation 2137/85 the membership in the grouping ceases also at time of declaring the member insolvent. Art. 65 of the Commercial Companies Code applies to settlements between such a former member and the grouping.

Art. 12

1. Creditor of the grouping's member may terminate by notice the contract of the grouping in accordance with the provisions of art. 62 § 2 i § 3 of the Commercial Companies Code.
2. Consequence of termination by notice of contract of the grouping is a cessation of the membership of the member concerned by the termination.

Art. 13

Unless the contract of the grouping or the decision of its members provides otherwise, the grouping's managers are its liquidators. The members decision in this field requires unanimity unless the contract of the grouping provides otherwise."

Provisions of internal law adequately applicable to the EEIG seated in Poland according to the proposal of the Polish Act on European Companies

Provisions on the registered partnership (art. 22 – 85 of the Commercial Companies Code, with exception for the provisions on partnership’s representation)

Registered partnership conducts enterprise under its own business name and is not any other commercial partnership or company.

Every partner is liable for obligations of the partnership, without limits, with all his assets jointly and severally with the remaining partners and the partnership.

The partner’s liability has a **subsidiary character** what means that a creditor of a partnership may carry out an execution from partner’s assets only when execution from partnership’s assets proves ineffective, however the lawsuit against a partner may be brought even before the execution against the partnership is performed.

The creditor can freely choose the partner to which he directs his claims. After the execution against the partnership proves ineffective the partner chosen by the creditor is obliged to pay the debt in totality. Having paid the debt the partner may claim the recovery from other partners in proportion equal to their shares in the partnership’s capital.

Provisions on appointment, removal of management board’s members and organisation of the management board in the limited liability company (art. 201 – 211 of the Commercial Companies Code)

Management board’s organisation:

- (a) the management board may be composed of 1 or more persons appointed among the shareholders or the third parties,
- (b) it is the shareholders’ meeting who appoints the management board members, unless the company deed states otherwise,
- (c) appointment as a member of the management board is equal with being granted a **mandate** which expires on the day on which the ordinary shareholders’ meeting is convened to approve the financial statement for the first financial year in which the person acted as the board’s member, or in case if appointment for a term longer than a year on the day on which the ordinary shareholders’ meeting is convened to approve the financial statement for the last financial year in which the person acted as the board’s member, unless the company deed provides otherwise.

The mandate always expires in the event of death, resignation or removal from the board of its member.

- (d) where the company deed provides that the management board’s members are appointed for the common **term of office**, the mandate of this member of the

board who was appointed before the given term of office was over by the elapse of time expires at the end of the management board term of office;

- (e) removal from the management board and suspension – by a resolution of the shareholders' meeting adopted at any time, the company deed may provide that the supervisory board may suspend each and every member of the management board for valid reasons,

The company deed or the articles may restrict the possibility to remove the members of the management board to the occurrence of the valid reasons.

Removal from the management board which is equal to loss of the mandate does not deprive the removed member of his rights and claims arising out of the employment contract or any other one (commission, manager's contract) when such a contract was concluded between the said person and the company in pertinence with his functions at the management board.

Removed member of the board is obliged and entitled to furnish explanations and participate in preparation of the board's report for the period he was its member as well as to participate in the ordinary meeting of shareholders or the ordinary general meeting approving the prepared report.

- (f) the management board adopts its resolutions by an absolute majority of voices if all the management board members have been duly notified about the management board meeting, the company deed may provide that in the event of the equal number of votes cast the president of the management board has a decisive voice; the management board proceeds in accordance with **its rules** (self-adopted in the limited liability company), the board's resolutions are recorded in **minutes**.

Provisions on civil liability of the members of the management board in the limited liability company (art. 293 – 300 of the Commercial Companies Code)

The members of the management board as well as liquidators if the company is undergoing the liquidation process bear civil responsibility (liability with their private assets) towards the company and, in some cases the company creditors, for their actions or inactions which caused the damage to the company or its creditors. Main examples of such a liability:

- a) the management board members file to the registration court their statement that contributions were paid or in case of contributions in kind were brought to the company to cover the shares. Such a statement is made on the company incorporation as well as on registering the increase of capital. When the false information was given to the court either deliberately or through negligence, the management board members are liable jointly and severally with the company for any damage suffered by the company creditors in relation to the false statement. The claim is barred on limitation of elapse of 3 years from the company's registration or the registration of the capital increase;
- b) all and every person (so even the third parties), while on creation of a company, has contrary to the law provisions or by his own fault caused any damage to the company is liable for compensation of the damage caused;

- c) management board members as well as liquidators are liable to the company for the damage caused through negligence or an action which is contrary to law, the company deed or the articles provisions, unless he is not at fault.

In the described situations as well as in the other ones indicated in the Code the company or the company creditors (if they are entitled to it under a law provision) may bring a civil action in order to have a damaged suffered compensated. When a company has failed to bring such an action within 1 year from the disclosure of the injurious act, every shareholder may bring the action for compensation to the benefit of the company.

- d) if the execution proceedings against the company proves ineffective, every company creditor may bring a civil action against the members of the management board who are jointly and severally liable for the company's obligations. Each and every member of the management board may avoid the liability described if:

- a petition for declaration of the company's bankruptcy was filed or arrangement proceedings were instituted in due time, or
- a failure to file a petition for bankruptcy or for arrangement proceedings was failed not due to his fault, or
- the creditor suffered no damage even through no petition for declaration of bankruptcy was filed or no arrangements proceedings instituted.

The civil claims described are barred on limitation of elapse of 3 years from which the company become aware on the damage and the person responsible for it, no later than, no later than in 10 years from the incidence of injurious event.

Katarzyna Michno, Michal Adamiak's Law Office, Warsaw, Poland
kmichno@adamiak.pl
www.adamiak.pl