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# The Impact of the Economic Crisis on the Choice of the Form of Conducting an Economic Activity in Poland in the Years 2008–2012

Wpływ kryzysu gospodarczego na wybór formy prowadzenia działalności gospodarczej w Polsce w latach 2008–2012

## 1. Introduction

On starting up his business activity, an entrepreneur must make some arrangements. First of all, he must determine the object of activity. He usually does it on the basis of market research and consumer needs. Some conduct their research in a professional way, some by making enquiries among their friends and neighbours, others start threads on local fora. It is a decision which should be based on the opinions of others, particularly on potential clients. The second decision is the choice of the form of business activity. This decision depends almost entirely on us. Several forms of business activity available in the Polish legal system are hedged by various requirements. We have several options to choose from:

- An entry to the registry of a business activity (a sole trader)
- A civil law partnership
- A registered partnership
- A limited partnership
- A limited joint-stock partnership
- A professional partnership
- A limited liability company
- A joint-stock company.

**Table 1. Forms of conducting business activity. Part 1**

	An entry to the registry of a business activity	A civil law partnership	A registered partnership
<b>Purpose</b>	To conduct personal activity on a small scale	To conduct business activity on a smaller scale	To conduct business activity on a larger scale
<b>Founders</b>	One sole trader	At least two natural or legal persons or organisational units having no legal personality which is given legal capacity by the act of law.	At least two natural or legal persons or organisational units having no legal personality which is given legal capacity by the act of law.
<b>Capital requirements</b>	No minimum	No minimum	No minimum
<b>Legal personality</b>	No legal personality	No legal personality, it is a civil law partnership and the entrepreneur is not a partnership but the partners.	No legal personality. A registered partnership has legal capacity and can acquire the rights and obligations on its own behalf, can be a party to legal proceedings.
<b>Financial liability</b>	Personal liability, with personal assets	Each partner is jointly liable for the obligations of the partnership without limitation with his personal assets	Each partner is liable for the obligations of the partnership without limitations with his entire assets jointly with Rother partners and with the partnership (subsidiarily).
<b>Taxation</b>	Personal income tax	PIT – Personal Income Tax or CIT – Corporate Income Tax, depending on who the partner is. Each of the partners is taxed separately.	Individual partners are taxed. PIT – Personal Income Tax or Cit – Corporate Income Tax, depending on who the partner is.
<b>How to set up</b>	Entry into the registry of sole traders held by local authorities ( head of a commune, mayor or a president of a city)	Partners should register in the registry of sole traders (each one separately) and then the deed of partnership should be made in writing.	Sign a partnership agreement which must be in writing, then the partnership should be registered in the National Court Register.
<b>Right of representation/ company organs</b>		Each partner has the right of representation.	Each partner has the right of representation. The partnership can also be represented by a proxy.

Source: prepared by the author on the basis of [www.paiz.gov.pl](http://www.paiz.gov.pl)

The access to the professional partnership is the most limited as it can be executed only by freelance individual professionals, including doctors, nurses,

independent bookkeepers, certified auditors, attorneys, notaries, legal advisors<sup>1</sup>. Whereas a limited joint-stock partnership, a limited liability company or joint-stock company may be established only by people who hold a certain initial capital<sup>2</sup>.

**Table 2. Forms of conducting business activity. Part 2**

	<b>A limited partnership</b>	<b>A limited joint-stock partnership</b>
<b>Purpose</b>	To conduct business under one's own company name	To conduct business under one's own company name (generally on a larger scale, e.g., large family companies).
<b>Founders</b>	At least two natural or legal persons or organisational units persons having no legal personality which is given legal capacity by law (e.g., partnerships).	At least two natural or legal persons or organisational units, having no legal personality, which is given legal capacity by law (e.g., partnerships).
<b>Capital requirements</b>	No minimum	50 000 PLN
<b>Legal personality</b>	No legal capacity; a partnership may, on its own behalf, acquire the rights, including the ownership of a real estate, and other property rights, can contract liabilities, and be a party to legal proceedings.	No legal capacity; a partnership may, on its own behalf, acquire the rights, including the ownership of real estate or other property rights, May contract liabilities, and be a party to legal proceedings.
<b>Financial liability</b>	At least one partner is liable for the liabilities of the partnership towards creditors without limitations (a general partner), while the liability of at least one partner (a limited partner) is limited. When the surname or the company of the limited partner is placed in the registered partnership, the limited partner is liable for the liabilities of the partnership without limitations. Similarly, the limited partner who acts as the partnership agent is liable towards the third parties if he takes legal action on behalf of the partnership, failing to disclose his agency or when he acts without power or if he exceeds its scope.	At least one partner is liable for the liabilities of the partnership towards its creditors without limitations (a general partner), while at least one partner is a shareholder who is not liable for the liabilities of the partnership. However, when the surname of the company of a shareholder is placed in the limited joint-stock partnership, the shareholder is liable for the liabilities of the partnership without limitations. Similarly, the limited partner who acts as the partnership agent is liable towards the third parties if he takes legal action on behalf of the partnership, failing to disclose his agency or, when he acts without power or if he exceeds its scope.

<sup>1</sup> The definition of a freelance profession and the catalogue of professions differs in the principles of commercial law and tax law, however for limited liability partnerships the list which is binding is presented In Art. 88 of the Act of 15 September 2000 Code of Commercial partnerships (uniform text of 2013, item 433 with later amendments, further as Code of Commercial Partnerships.

<sup>2</sup> Art. 126 § 2, art. 154 §1, art. 308 §1 Code of Commercial Partnerships

<b>Taxation</b>	PIT – Personal Income Tax or CIT – Corporate Income Tax from legal persons; each of the partners is taxed separately.	PIT – Personal Income Tax or CIT – Corporate Income Tax from legal persons; each of the partners is taxed separately.
<b>How to set up</b>	Sign the partnership agreement in the form of a notarial deed, then register the partnership in the National Court Register.	All general partners sign the articles which must be executed in the form of a notarial deed, then the partnership should be registered in the National Court Register.
<b>Right of representation/company organs</b>	The partnership is represented by general partners who were not deprived of the right of representation by the partnership agreement or by the legally binding decision of the court. A limited partner may represent the partnership only as an agent. The partnership may also be represented by the proxy.	The partnership is represented by its general partners who were not deprived of the right of representation by the articles or the legally binding decision of the Court. A shareholder may represent the partnership only as an agent. The partnership may also be represented by the proxy. A supervisory board may be established in a limited joint-stock partnership. If the number of shareholders exceeds 25 people, the establishment of a supervisory board is mandatory.

Source: prepared by the author on the basis of [www.paiz.gov.pl](http://www.paiz.gov.pl)

**Table 3. Forms of conducting business activity. Part 3**

	Professional Partnership	Limited Liability Company
<b>Purpose</b>	To practise a freelance profession by partners in a partnership conducting business under their own company name.	With any legally acceptable aim (including business activity) unless the act provides otherwise.
<b>Founders</b>	At least 2 natural persons who must have qualifications to practise a freelance profession.	One or more natural, legal persons or organisational units having no legal personality who are given legal capacity by the act (e.g., personal partnerships) A limited liability company cannot be founded only by another single-person limited liability company.
<b>Capital requirements</b>	No minimum	5 000 PLN
<b>Legal personality</b>	No legal personality. A professional partnership has legal capacity, may acquire the rights and obligations on its own behalf and be a party to legal proceedings.	A limited liability company is a legal person.

<b>Financial liability</b>	A partner is not liable for the liabilities of the partnership incurred by the pursuit of the profession by other freelanced partners. In the partnership, as well as for the liabilities of the partnership resulting from actions or omissions of people employed by the partnership on the basis of an employment agreement or any other legal relationship who were answerable to another partner while providing a service related to the company's business. The partnership agreement may provide that one or more partners agree to be responsible like a partner of a general partnership. Each partner is liable without limitations with his entire assets jointly with other partners and with the partnership (subsidiarily) for the liabilities of the partnership not directly related to freelance profession pursuit by individual partners.	The company is liable for its liabilities with its entire assets. Partners are not liable for the company liabilities. They bear the risk up to the value of their contribution to the company assets.
<b>Taxation</b>	Partners of a partnership are taxed individually. PIT – Personal Income Tax.	CIT – Corporate Income Tax from legal persons
<b>How to set up</b>	It is required to sign the partnership agreement which must be in the form of a notarial deed, then registered in the National Court Register.	It is required to <ul style="list-style-type: none"> <li>- execute the articles of association in the form of a notarial deed before its registration</li> <li>- pay the whole initial capital of the company before its registration,</li> <li>- appoint the management board</li> <li>- register in the business register</li> </ul>
<b>Right of representation/company organs</b>	Each partner has the right to represent the partnership, unless the partnership agreement provides otherwise. The partners of the partnership may appoint a management board. The partnership may be also represented by the proxy.	General Meeting of Shareholders is the highest company authority. The company is represented by its management board (consisting of at least one member) in accordance with the principles stipulated in the articles of association. The company may also be represented by the proxy. In a limited liability company it is possible to appoint a supervisory board or an audit committee or both. In companies where the initial capital exceeds 500,000 PLN, and where there are more than 25 shareholders, a supervisory board or an audit committee should be appointed.

Source: prepared by the author on the basis of [www.paiz.gov.pl](http://www.paiz.gov.pl)

**Table 4. Forms of conducting business activity. Part 4**

	Joint-Stock Company
Purpose	
Founders	At least one person, except that a joint-stock company should not be established only by a single-person limited liability company.
Capital requirements	100 000 PLN
Legal personality	A joint-stock company is a legal person
Financial liability	The company is liable for its liabilities with all its assets without limitations. Shareholders are not liable for the company liabilities, they bear the risk up to the value of their company shares.
Taxation	CIT – Corporate Income Tax from legal persons
How to set up	Steps to be taken to establish a joint-stock company are similar to the ones of the limited liability company, however, due to its complicated character, it is recommended to use the services of a legal office.
Right of representation/ company organs	General Meeting of Shareholders is the highest company authority. The company is represented by its management board (consisting of at least one member) in accordance with the principles stipulated in the articles of association. The company may also be represented by the proxy. A supervisory board must also be established in a joint-stock company.

Source: prepared by the author on the basis of [www.paiz.gov.pl](http://www.paiz.gov.pl)

The years 2008-2012 were the time when economic activity was burdened with additional difficulties as the crisis on the financial markets, which translated into a deterioration of enterprise conditions. Economists are to say that crisis is an impulse to reorganise the business<sup>3</sup>

The article is to present the most popular forms of business activity in 2008-2012. The main question is: “Is the financial crisis influenced the decision of entrepreneurs with a form of business?” The secondary question is : “Which form of business in 2008-2012 was the most frequently chosen and what was the purpose of its popularity?” The research method was the statistical data analysis the number of registered business entities in various legal forms.

## 2. Companies in Poland in 2008-2012

In Poland the most frequently chosen form of conducting business, beside a neutral person conducting business activity, until the year 2011 was a civil

<sup>3</sup> R. Solow, *A contribution to the theory of economic growth*, The Quarterly Journal of Economics, 70 (1) 1956, s. 65-94, J. A. Schumpeter, *Teoria rozwoju gospodarczego*, PWN, Warszawa 1960.

law partnership. The most frequently selected was the entry to the registry of a business activity. It was most often preferred as no initial capital is required and we can start our business activity independently. The fact that there are no partners is valued as we are responsible only for our own decisions, as well as we can decide on the direction of the development of the economic unit. Founding a partnership requires an entrepreneur to start cooperation with at least one person and future decisions must also be jointly taken. The distribution of costs, including the initial capital, and the burden of conducting the activity is also an advantage.

In 2012 for 630,849 registered partnerships, 279,732 were civil law partnerships and 290,291 were limited liability partnerships, while a year earlier for 600,956 companies in total, 276,380 were civil law partnership and 268,550 were limited liability companies. In 2008, i.e., in the first year of the crisis, this disparity was even larger. There were 547,017 companies registered in total, including 276,112 civil law partnerships and 224,345 limited liability companies. Thus, in 2008 there were more civil law companies registered than commercial companies altogether. The years 2009-2012 change this proportion. The period of the economic crisis reflected itself in the number of civil law partnerships, causing its decrease in the first year of the crisis, and hampering its increase in the following years. As a form of conducting their business activity, traders prefer both a civil law partnership and a limited liability company. Commerce is the industry in which most economic entities are registered in Poland.

On the basis of Table 5, it can be observed that civil law partnerships were the only form of partnership whose number decreased in 2009 in comparison with the previous year. The total number of partnerships did not show any decline in the crisis years, as well as in the following years, which could be expected as the echo of the crisis. Year 2009 was also the one since which the number of startup civil law partnerships gradually started to decrease, which is illustrated in Table 6. Year 2009 was the year of caution and stagnation, which is illustrated by the total number of newly registered partnerships. Although there were more limited liability companies registered than in the previous years, the decline in other forms of conducting a business activity contributed to the decline in the total number of startup partnerships. While in the next years the trend remained steady in the number of startup civil law partnerships, the growth in the numbers of other forms of conducting business activity not only levelled off this "loss", but also caused that in 2010 there were 11% more startup partnerships than in 2008. It can be concluded that entrepreneurs began to appreciate commercial law partnerships more than civil law partnerships. Table 5 shows that limited

partnerships and limited joint-stock partnerships are becoming more and more popular. The number of limited partnerships almost tripled while the number of limited joint-stock partnerships increased over five times. The percentage of these forms of conducting business activity is still limited. In the market, yet, analysing these two types of partnerships, the growth is impressive. The increase in the popularity of limited liability companies and limited joint-stock partnerships, as well as joint-stock companies themselves, may result from the desire to limit financial liability of entrepreneurs in those difficult years after 2008. By giving as contribution only a part of assets possessed to those partnerships and companies, it is possible to hedge effectively from investment failure.

**Table 5. Partnerships and companies according to the legal form of a business activity**

Type of business	2008	2009	2010	2011	2012	Preferred activity – data of 2011
Civil Law Partnership	276,112	267,615	271,869	276,380	279,732	Trade (115,202)
<b>Limited Liability Company</b>	224,345	236,355	252,411	268,550	290,291	Trade (80,806), construction (32,737), professional, academic and technical activity (28,807)
<b>Registered Partnership</b>	30,298	31,353	32,390	32,711	33,388	Trade (14,899)
<b>Joint-Stock Company</b>	8,842	8,969	9,322	9,797	10,182	Industry (2,611)
<b>Limited Partnership</b>	3,737	5,004	6,439	8,282	10,500	Trade (1,770), professional, academic and technical activity (1602)
<b>Professional Partnership</b>	1,203	1,317	1,428	1,621	1,775	Health care (786)
<b>Limited Joint-Stock Partnership</b>	517	714	1,050	1,513	2,816	Real estate (398)
Other	1,963	1,990	2,016	2,102	2,165	
Total	547,017	553,317	576,925	600,956	630,849	

Source: prepared by the author on the basis of Central Statistical Office of Poland [www.stat.gov.pl](http://www.stat.gov.pl)



**Table 6. Startups according to their legal form**

Type of a startup	2008	2009	2010	2011	2012
Civil Law Partnership	13,548	11,224	10,569	10,267	8,926
Limited Liability Company	12,364	14,260	18,413	19,660	24,294
Joint-Stock Company	248	231	381	509	410
Other commercial law companies and partnerships	3,147	2,787	3,291	3,835	4,639
Other	56	58	46	92	74
Total	29,363	28,560	32,700	34,363	38,343

Source: prepared by the author on the basis of Central Statistical Office of Poland [www.stat.gov.pl](http://www.stat.gov.pl)

It is an interesting phenomenon that the years of crisis did not cause the decline in the number of registered startups. Observing the situation in the job market and the information from employers, we may suppose that some of these economic units came into being as a result of changing the employment into hiring an external company. Studies conducted in late 2010 by ArchiDoc and Ipsos Institute showed that outsourcing is used by 58% of the respondents<sup>4</sup>. For employers the cost of personnel is a significant burden. It is true that most of this cost decreases taxable income, however, the employer must have financial means to pay salaries and contributions every month, regardless of the amount of orders or products/goods/services sold<sup>5</sup>. In case of an external company, the only thing to pay is the invoice for the job actually done, and the company is called only when we have a specific task to perform. Usually a working hour of an employee, even with contributions, is cheaper than the working hour of an external company, yet, in the downtime period, when there are no orders, it is not necessary to use external services, whereas we an employee has to be paid. Businesses indicate that non-wage labor costs are for them the most important barrier to the development of SMEs<sup>6</sup> (small and medium-sized enterprises). Such arguments often cause that employees are encouraged to set up their own

<sup>4</sup> K. Rochalski, *Trend: outsourcing: wzrost popularności i obaw*, Harvard Business Review Polska, <https://www.hbrp.pl/b/trend-outsourcing-wzrost-popularnosci-i-obaw/aGW8VKjo>, [dostęp: 2016-09-10]

<sup>5</sup> J. Gierczycka, *Konkurencyjność polskich małych i średnich przedsiębiorstw w dobie kryzysu, w: Innowacyjność i przedsiębiorczość w warunkach kryzysu*, red. S. Partycki, Wydawnictwo KUL, Lublin 2013, s. 113.

<sup>6</sup> N. Śliwa, *Bilans outsourcingu – najważniejsze korzyści i straty z wydzielenia działalności*, w: *Współczesne trendy w outsourcingu*, red. S. Wawak, M. Sołtysik, Wydawnictwo Mfiles, Kraków 2015, s. 41.

business which, more often than not, is developing and transforms into a partnership with other people in a similar situation <sup>7</sup>.

The first two years of the crisis had no impact on the number of startup partnerships and companies, however, they are visible in the data referring to de-registered companies. The year 2008 and 2009 show the liquidation of over 20 thousand companies, while in the later years the number is around 10 thousand, similarly to 2007, when 12,484 were de-registered<sup>8</sup>. However, it must be remembered that about 30 thousand new companies came into being at the same time, giving a surplus in the total number of companies. The data of 2007 and 2010-2012 clearly indicate that not all Polish companies dealt with the world economic crisis well. However, it was not the situation at home which posed problems for Polish companies but the lack of orders from abroad and the situation in the currency market which had an impact on the Polish Zloty exchange rate, thus unfavourably influencing the relation of Polish prices and prices in foreign markets.

**Table 7. De-registered partnerships and companies according to legal forms**

Type of company	2008	2009	2010	2011	2012
Civil Law Partnership	17,173	19,432	5,877	5,206	4,906
Limited Liability Company	4,753	2,159	2,229	3,531	2,269
Joint-Stock Company	483	185	171	280	153
Other commercial law companies and partnerships	1,163	814	876	1,700	1,163
Other	33	30	15	4	10
Total	23,605	22,620	9,168	10,721	8,501

Source: prepared by the author on the basis of Central Statistical Office of Poland [www.stat.gov.pl](http://www.stat.gov.pl)

## Conclusion

Concluding, it must be emphasised that commercial law companies dealt with the economic situation in the country and in the world far better than a civil law partnership. It is clearly seen both in the data of registered startups and in the data of de-registered partnerships and companies. Years 2008-2012 had a positive

<sup>7</sup> G. Ziółkowski, *Samozatrudnienie krok po kroku. Poradnik Gazety Prawnej* nr 8(870), Infor PL, Warszawa 2015, s. 5.

<sup>8</sup> Structural changes of groups of entities of the national economy in 2007, Central Statistical Office of Poland, Warsaw 2008, p. 68

impact on the number of these companies and partnerships in the market. Civil law partnerships are slowly being replaced by commercial law companies. The number of limited partnerships and limited joint-stock partnerships, so far not very popular among Polish entrepreneurs, is growing. Apparently, it results from caution of the new and the unknown. Commercial law companies, with their legal securities, appeal to more and more people who want to start up a economic activity.

Economists often suggest the crisis as a spur to innovation activity. However, reduced financial resources of their own and limited access to external sources of financing can be a barrier not only to innovative business activity but in general to doing business<sup>9</sup>.

Nevertheless, the years of the world economic crisis did not have a negative impact on the quantitative data of companies and partnerships. Yet, this article does not analyse the data referring to the financial situation of economic entities, i.e., profits, employment figures or investment expenditure. However, we may suppose that the situation of companies in the crisis era is better illustrated by such data as: lower income, profits, layoffs. Employers often suggested that in this difficult time employees should change their employment contract into self-employment and continue to cooperate as invoiced service providers. It could have an impact on the data referring to the number of registered startups. Some companies, instead of ceasing their activity, chose to suspend the business to avoid paying high social insurance contributions, which will certainly make its impact on the basis for calculation the pension but, at this very moment, for some it was the only way out of the deadlock. The profiles of business activity could also be studied as some companies may have chosen another business activity which assured financial stability.

The total number of companies, particularly newly registered startups, show that Poles are more and more willing to take a decision to become self-employed or start their own business activity. We may suppose that this trend will continue in the next years as more and more people see the benefits of conducting their own business activity and freedom to decide with whom and when to cooperate. It may also be interesting to see if the growth trend in the interest in commercial law companies will continue.

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<sup>9</sup> M. A. Weresa, *Systemy innowacyjne we współczesnej gospodarce światowej*, Wydawnictwo Naukowe PWN, Warszawa 2012, s. 277.

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### Summary

The purpose of this article was to analyse the changes in the numbers of companies and partnerships in the years 2008-2012, including the division into a civil law partnership and a commercial law company. The analysis includes the total data, as well as the numbers of registered startups and de-registered companies in the period. It is worth paying attention to the fact that the time of the crisis was beneficial for the numbers of commercial law companies operating in the Polish market, particularly in terms of the raising interest in limited partnerships and limited joint-stock partnerships. In the years 2008 and 2009 the number of commercial law companies and partnerships not only failed to decrease but also increased and this trend still continues.

KEY WORDS: commercial law companies, entrepreneurship, economic crisis

## Streszczenie

Artykuł ma na celu przeanalizowanie zmian ilości spółek w latach 2008-2012 z uwzględnieniem podziału na spółkę cywilną i spółki handlowe. Analiza obejmuje zarówno dane ogółem jak i ilość noworejestrowanych i wyrejestrowywanych spółek w podanych latach. Na uwagę zasługuje fakt, że czas kryzysu był czasem korzystnym dla ilości spółek handlowych działających na polskim rynku, ze szczególnym uwzględnieniem zwiększonego zainteresowania spółkami komandytowymi i komandytowo-akcyjnymi. W roku 2008 i 2009 ilość spółek handlowych nie tylko nie zmalała, ale wzrosła i ta tendencja nadal się utrzymuje.

**SŁOWA KLUCZOWE:** spółki prawa handlowego, przedsiębiorczość, kryzys ekonomiczny

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