

Loan agreement from the sole shareholder in a single-member limited liability company - representation of the company and required form of legal action

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Introduction

In single-member limited liability companies, it is common practice for the sole shareholder to lend money to the company. Such transactions are tax advantageous (exemption from PCC), but they are subject to specific rules of representation and legal form arising from the Commercial Companies Code (KSH). Improper execution of the agreement may lead to its nullity. This article explains how to properly conclude a loan agreement from the sole shareholder who is also a member of the management board.

Legal Basis

Key regulations are contained in **Article 210 of the KSH**:

- **§ 1** – concerns situations where the shareholder is a member of a multi-person management board (or when another authority acts on behalf of the company). In such cases, the legal action with that shareholder requires representation of the company by a supervisory board (if it exists) or by a proxy appointed by a resolution of the shareholders.
- **§ 2** – provides a *lex specialis* for a single-member company where the sole shareholder is also the sole member of the management board (or when the management is one-person, performed by that shareholder). In such cases, the legal action between the shareholder and the company requires **the form of a**

notarial deed under the pain of nullity.

This provision aims to ensure control over transactions in which there is a conflict of interest (the same person acts on both sides).

Typical Situation: Sole Shareholder = Sole Management Board Member

In most single-member limited liability companies, the sole shareholder also serves as the president of the management board (single-person management).

In such a case:

- The loan agreement is concluded **in the form of a notarial deed**.
- The sole shareholder signs the agreement **on both sides**:
 - as the lender (in their own name),
 - as a representative of the company (president of the management board).
- **It is neither required nor possible** to appoint a proxy or engage a supervisory board – Article 210 § 2 KSH excludes the mechanism from § 1.
- The notary has the obligation to notify the registry court of the legal action (Article 210 § 3 KSH). This notification does not require an entry in the KRS but only an information.

Note: A simple written form is insufficient – an agreement concluded without a notarial deed is void.

When is it possible to appoint a proxy?

The appointment of a proxy is only permissible in situations that deviate from a classic single-member company:

- The management is **multi-person**, and the lender is one of the management board members (even if they hold 100% of the shares).
- In this case, **Article 210 § 1 KSH** applies – the company is represented by a proxy appointed by a resolution of the shareholders (in a single-member

company, the resolution is made by the shareholder themselves) or by the supervisory board (if it has been established).

- The agreement can then be concluded in a simple written form (a notarial deed is not required).

In a pure single-member company with a one-person management, a proxy is not a solution – the form of a notarial deed is mandatory.

Tax and Practical Aspects

- **Tax on civil law activities (PCC):** A loan provided to the company by a shareholder holding at least 25% of the shares (and in a single-member company – 100%) is **exempt from PCC** based on Article 9 point 10 letter b) of the PCC Act.
- **Notary Fees:** The notarial fee depends on the amount of the loan (the maximum rate is 1/2 of the minimum wage + VAT for each started page of the deed). It is worth comparing the offers of notaries.
- **Documentation:** We recommend attaching a repayment schedule to the agreement and specifying the interest rate (if any). Lack of interest may raise doubts about the remuneration of the loan.

Recommendations for Clients

1. If in doubt about the composition of the management board – check the current KRS extract.
2. Always choose the form of a notarial deed in a typical single-member company – it eliminates the risk of nullity.
3. Consult with an accounting office regarding the settlement of interest (income/tax cost) and possible thin capitalization (interest cost limitation).
4. Document all transactions with the shareholder – this facilitates tax audits and potential transformations of the company.

Summary

A loan agreement from the sole shareholder in a single-member limited liability company is a simple and advantageous form of financing, provided that the requirements of Article 210 KSH are met. In the most common configuration (sole shareholder = sole president), a notarial deed with the signature of the same person on both sides is sufficient. Avoiding this form risks nullity of the agreement. In the case of more complex management structures (multi-person management, supervisory board) – consider appointing a proxy.

Sources:

- Act of September 15, 2000 – Commercial Companies Code (consolidated text Journal of Laws 2024, item 1044, as amended)
- Act of September 9, 2000 on tax on civil law actions

In the event of legislative changes, please contact the office for updates.