

## LIMITED JOINT-STOCK PARTNERSHIP – THE FORGOTTEN PARTNERSHIP

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### ABSTRACT

*The article will focus on the limited joint-stock partnership, which is one of the least common types of partnerships in existence. The objective is to demonstrate, based on statistical data, that its conditions vary across different countries, and subsequently to show that one of the reasons for those differences may be the dissimilar way this type of partnership is regulated. On the one hand, this type of partnership is virtually non-existent in Switzerland (9 partnerships in existence according to current data) and Italy (60 partnerships according to current data); on the other hand, there are over 200 such partnerships in Germany (222 to be precise according to 2018 data), 4,147 in Poland (data from the end of 2022) and 1,210 in France (data from October 2024). These countries differ, among other things, in their approach to regulating this type of partnership. In the Swiss-Italian model, this type of partnership is perceived to be a subtype of a joint stock-company. In the French-German model (on which Poland's model is largely based), it is a typical hybrid partnership that combines, almost coequally, the characteristics of a limited partnership and a joint-stock company. In addition to the foregoing, for a full presentation of the possible variants of regulating the limited joint-stock partnership, a historical-legal analysis will be discussed and a third model will be presented, that is the approach to and regulation of a limited joint-stock partnership as a subtype of a limited partnership (the French Code de Commerce of 1807).*

**Key words:** limited joint-stock partnership, hybrid partnership.

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### 1. INTRODUCTION

The recent trend in the EU countries is to introduce legislative changes in the field of company law with the aim to boost the development of entrepreneurship. This set of solutions may include, *inter alia*, the introduction of a new

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type of company in the legal framework of companies and partnerships which - despite certain differences across various jurisdictions - may be collectively referred to as a *simple joint-stock company* (*Société par Actions Simplifiée* in the French law or *prosta spółka akcyjna* in the Polish law).

Two questions emerge from this observation. Is company law really a good tool to advance entrepreneurial development or are norms and practices of tax law and, more broadly, administrative law rather dominant from this perspective? Is sufficient use made of the already existing commercial law institutions and can entrepreneurial development actually be stimulated through legislative changes?

The latter question inspired the author to write this article and to embark on a comparative legal analysis of how the *limited joint-stock partnership* (*Kommanditgesellschaft auf Aktien*, *société en commandite par actions*, *società in accomandita per azioni*, *spółka komandytowo-akcyjna*) is regulated. The choice to examine this type of partnership was guided by two factors. Firstly, there are significant disparities in the number of limited joint-stock partnerships existing in various countries. Secondly, there is a clear difference between at least two models of regulating this type of partnership. This leads to the question of whether the prevalence of this type of partnership can be correlated with the regulatory framework of these partnerships. Five different jurisdictions have been selected for the purpose of this analysis, i.e., the Polish, German, French, Italian and Swiss. This choice was determined by certain criteria, namely that four of these jurisdictions (German, French, Italian, and Swiss) are considered to be exemplary. Furthermore, significant differences exist between these jurisdictions and, last but not least, there are huge proportions in the number of limited joint-stock partnerships existing in these countries. The largest number of limited joint-stock partnerships operate in Poland. According to the data from 31 December 2022, the number of limited joint-stock partnerships in Poland totalled 4,147,<sup>1</sup> with an upward trend (in terms of prevalence of this type of partnership in the economy) apparent again after several years of decline. Indeed, previously limited joint-stock partnerships reached a peak of interest in the year 2013 (5,709 partnerships)<sup>2</sup>, just to go down to 3,355 at the end of 2021.<sup>3</sup>

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<sup>1</sup> Główny Urząd Statystyczny: *Mały Rocznik Statystyczny Polski 2023* (eng. The Concise Statistical Yearbook of Poland 2023), Warszawa: Główny Urząd Statystyczny, 2023, p. 421.

<sup>2</sup> Główny Urząd Statystyczny: *Mały Rocznik Statystyczny Polski 2014* (eng. The Concise Statistical Yearbook of Poland 2014), Warszawa: Główny Urząd Statystyczny, 2014, p. 490.

<sup>3</sup> Główny Urząd Statystyczny: *Mały Rocznik Statystyczny Polski 2022* (eng. The Concise Statistical Yearbook of Poland 2022), Warszawa: Główny Urząd Statystyczny, 2022, p. 418.

The decrease in the number of limited joint-stock partnerships after 2013 can be associated with the changes in tax legislation, that came into force on 1 January 2014, and thereafter the limited joint-stock partnership became recognised as a taxpayer of the corporate income tax<sup>4</sup> (previously the partners of the partnership were taxed). This has undermined the popularity of this type of partnership from a tax perspective. Therefore, the halt in the downward trend in the number of limited joint-stock partnerships in existence and, more recently, even the growth in their number should all the more so be linked to their private-law advantages. In Germany, which is the base model for the Polish limited joint-stock partnership, according to 2018 statistics<sup>5</sup>, there existed 222 limited joint-stock partnerships. Then again, France is a country with a significant number of limited joint-stock partnerships (like Poland). According to the data from October 2024, the number of limited joint-stock partnerships operating in France equalled 1,210.<sup>6</sup>

On the other hand, limited joint-stock partnerships in Italy and Switzerland are a trace phenomenon. In Switzerland there are only 9 such partnerships,<sup>7</sup> in Italy – merely 57.<sup>8</sup>

At the same time, there is a recognized distinction between two regulatory models of limited joint-stock partnerships, i.e., the so-called French-German and the Swiss-Italian models<sup>9</sup>

Accordingly, the purpose of this study is to compare the regulatory frameworks of limited joint-stock partnerships in the five abovementioned jurisdic-

<sup>4</sup> Article 1(1)(b) of the Act of 8 November 2013 amending the Corporate Income Tax Act, the Personal Income Tax Act and the Tonnage Tax Act (official journal “Dz.U.” of 2013, item 1387).

<sup>5</sup> DESTATIS Statistisches Bundesamt: <<https://www.destatis.de/DE/Themen/Staat/Steuern/Umsatzsteuer/Tabellen/veranlagungen-rechtsformen.html>>, last accessed on 13/10/2024.

<sup>6</sup> INPI France: Liste de résultats dans la base Entreprises.

<sup>7</sup> Schweizerische Eidgenossenschaft, <<https://www.zefix.admin.ch/it/search/entity/list?legalForms=12>>, last accessed on 13/10/2024.

<sup>8</sup> Registroimprese.it, <[https://www.registroimprese.it/ricerca-libera-e-acquisto?p\\_p\\_id=ricercaportlet\\_WAR\\_ricercaRiportlet&p\\_p\\_lifecycle=0&p\\_p\\_state=normal&\\_ricercaportlet\\_WAR\\_ricercaRiportlet\\_cur=1&\\_ricercaportlet\\_WAR\\_ricercaRiportlet\\_pageToken=eyJhbGciOiJIUzI1NiIsInR5cCI6IkpXVCJ9.eyJleHAiOiJlMjE3MDA3NjksImNvdW50IjoyNTB9.zVPWR9HncETln9IRweRa-29tvi-mY2-YKDKFUmOt3NI](https://www.registroimprese.it/ricerca-libera-e-acquisto?p_p_id=ricercaportlet_WAR_ricercaRiportlet&p_p_lifecycle=0&p_p_state=normal&_ricercaportlet_WAR_ricercaRiportlet_cur=1&_ricercaportlet_WAR_ricercaRiportlet_pageToken=eyJhbGciOiJIUzI1NiIsInR5cCI6IkpXVCJ9.eyJleHAiOiJlMjE3MDA3NjksImNvdW50IjoyNTB9.zVPWR9HncETln9IRweRa-29tvi-mY2-YKDKFUmOt3NI)>, last accessed on 13/10/2024.

<sup>9</sup> Moszyńska, A., Sikorska-Lewandowska, A., Kłoda, M. T.: The Polish Model of a Limited Joint-Stock Partnership in Comparison with Other European Legal Systems, *European Company and Financial Law Review*, 20(5-6) 2023, p. 878; Szumański, A.: Spółka komandytowo-akcyjna, in Szajkowski, A. (ed.): *System Prawa Prywatnego, Prawo spółek osobowych* (pp. 973-1080), Warszawa: Wydawnictwo C.H. Beck, 2008, p. 979.

tions with a view to verify similarities and differences, particularly between the Swiss-Italian and the French-German models.

## 2. HISTORY OF A LIMITED JOINT-STOCK COMPANY IN THE 19TH AND 20TH CENTURIES

In the original wording of the 1807 French Commercial Code,<sup>10</sup> the provisions regulating the limited joint-stock partnership were basically limited to an indication that the capital of a limited joint-stock partnership may be divided into shares (Article 38 of the CduC). It was thus a subtype of a limited partnership, virtually lacking its own separate regulation. Therefore, in addition to the abovementioned regulatory frameworks of limited joint-stock partnerships, we may distinguish yet another, historically the first model that viewed this type of partnership as a subtype of a limited partnership. At this point, however, it should also be emphasised that all the provisions of the French Commercial Code of 1807 on companies and partnerships were indeed very laconic.

Nonetheless, the original wording of the Code played a huge role in popularising this type of partnership in the French business environment.<sup>11</sup> This was because, quite contrary to the anonymous company, the establishment of a limited joint-stock partnership required no authorization from any of the administrative authorities (Article 37).

In the Italian Commercial Code of 1865<sup>12</sup> the limited joint-stock partnership was already more extensively regulated than in the French Code, and so were other partnerships and companies. Nonetheless, it needs to be highlighted that the provisions devoted to this type of partnership (Articles 126 to 128) still lacked any reference to the provisions on the anonymous company (the then equivalent of a joint-stock company). At the same time, however, the Code included an extensive joint section on an anonymous company and limited joint-stock partnership (Articles 132 to 154). Thus, the limited joint-stock partnership already took on a hybrid character, bringing its regulation closer to contemporary legal framework. The Code also contained a particularly innovative provision, namely the power vested in the general meeting of partners to recall the partnership's administrator (Article 127).

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<sup>10</sup> Le Code de commerce [*The French Commercial Code*] of 15 September 1807, Art. 37, 38, L.226-1, L.226-2 (hereinafter, the "CduC").

<sup>11</sup> Costi, R.: *Della società in accomandita per azioni. Art. 2462-2471*, Bologna-Roma: Nicola Zanichelli Editore – Soc. Ed. Del Foro Italiano, 1973, p. 7.

<sup>12</sup> Codice di Commercio [*The Italian Commercial Code*], Regio Decreto [*Royal Decree*] of 25 June 1865, No. 2364, Art. 126-128, 132-154.

The Italian Commercial Code of 1882<sup>13</sup> was in fact a midway model between the original wording of the CduC and the Italian Commercial Code of 1865. The Code failed to distinguish the limited joint-stock partnership as a separate type of partnership, as indicated in Article 76 thereof, although separate sub-charters of the Code were devoted to a general partnership (*società in nome collettivo*; Articles 105 to 113), limited partnership (*società in accomandita*; Articles 114 to 120), and the anonymous company (*società anonima*; Articles 121 to 125). Thus, the limited joint-stock partnership again became a subtype of the limited partnership, distinguished primarily by the admissibility of selling shares that represented the rights of a limited partner.<sup>14</sup> At the same time, however, the lawmakers did to some extent connect the limited partnership and the limited joint-stock partnership to the anonymous company by introducing a section with norms common to all these three entities (Articles 126 to 185), thus giving them a somewhat hybrid nature.

As regards the German law, the limited joint-stock partnership was present in the German Commercial Code of 1897<sup>15</sup> from the very beginning. Initially, § 320 to 334 of the HGB were devoted to this partnership and, therefore, it was more extensively regulated at that time than in the original wording of the CduC. At the same time, reference was made to both provisions on the limited partnership as well as the joint-stock company (§ 320 of the HGB), thus giving it a distinctly hybrid character and creating a model framework that generally continues to exist in the German law until today.

As far as the Polish law is concerned, it should be accentuated that Poland regained its independence in 1918, after 123 years of being partitioned. The legacy that remained after the period of foreign control was five legal systems that had been operative in the territory of Poland. The German law remained in force in the territory of the former German partition, the Austrian law remained in the lands of the former Austrian partition, the Hungarian law operated on a small territory, while the former Russian partition was subject to a twofold system, namely the Russian law operated in part of that territory and private law based on the former French legislation of the Napoleonic period prevailed in the territory of the former Duchy of Warsaw. As a result, until the Polish commercial law became codified (the Code eventually came into force

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<sup>13</sup> Codice di Commercio [*The Italian Commercial Code*], Regio Decreto [*Royal Decree*] of 31 October 1882, No. 1062

<sup>14</sup> Costi, R.: *Della società in accomandita per azioni. Art. 2462-2471*, Bologna-Roma: Nicola Zanichelli Editore – Soc. Ed. Del Foro Italiano, 1973, pp. 14-15.

<sup>15</sup> Federal Office of Justice: *Handelsgesetzbuch* [*The German Commercial Code*] of 10 May 1897 (hereinafter, the “HGB”).

on 1 July 1934),<sup>16</sup> limited joint-stock partnerships operated under post-partition regulations. With the entry into force of the Commercial Code, these legal grounds ceased to exist, while the Commercial Code no longer provided for the establishment of limited joint-stock partnerships.

### 3. THE LIMITED JOINT-STOCK PARTNERSHIP IN THE CONTEMPORARY GERMAN AND POLISH LAW

In the contemporary German law, the limited joint-stock partnership is regulated in the German Joint-Stock Companies Act,<sup>17</sup> while in Poland, the limited joint-stock partnership has been introduced by virtue of the Code of Commercial Companies and Partnerships of 15 September 2000.<sup>18</sup> The two models are similar, albeit not identical, and the Polish law manifests significant differences as compared to the German law<sup>19</sup> despite the Polish model being essentially inspired by the German legal framework.<sup>20</sup>

Given the great prevalence of the limited joint-stock partnership in the Polish business environment, at this point it is desirable to discuss the similarities, but also the differences, between these two legal systems. As a matter of fact, the French-German model does not function across the various countries as uniformly as the Swiss-Italian model of the limited joint-stock partnership.

To begin with the similarities, in the case of this limited joint-stock partnership model, its hybrid nature can already be deduced from the system of references to provisions on other types of partnerships and companies. While under the Swiss-Italian model, limited joint-stock partnerships are governed by the provisions on joint-stock companies, and only exceptionally by specific

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<sup>16</sup> Rozporządzenie Prezydenta Rzeczypospolitej Polskiej z dnia 27 czerwca 1934 – Kodeks handlowy [*Regulation of the President of the Republic of Poland of 27 June 1934 – The Commercial Code*] (official journal “Dz.U.” of 1934, No. 57, item 502).

<sup>17</sup> Federal Office of Justice: Aktiengesetz [*eng. The German Joint-Stock Companies Act*] of 6 September 1965 (BGBl. I S. 1089, with amendments), (hereinafter, the “AktG”).

<sup>18</sup> Ustawa z dnia 15 września 2000 r. – Kodeks spółek handlowych [*The Act of 15 September 2000 – The Code of Commercial Companies and Partnerships*] (official journal “Dz.U.” of 2000, No. 94, item 1037), (hereinafter, the “KSH”).

<sup>19</sup> Kidyba, A.: Spółka komandytowo-akcyjna w Niemczech i w projekcie prawa spółek handlowych, *Przegląd Prawa Handlowego*, 79(3) 2000, p. 8; Walkowiak, H.: Zarządzanie spółką komandytowo-akcyjną w Polsce i w Niemczech, *Przegląd Ustawodawstwa Gospodarczego*, 795(9) 2014, p. 23.

<sup>20</sup> Lewandowski, R.: *Polska koncepcja legislacyjna spółki komandytowo-akcyjnej*, Warszawa: Wolters Kluwer Polska, 2007, p. 476; Uzasadnienie projektu ustawy – Kodeks spółek handlowych, Sejm Paper No. 1687 of 4 February 2000, p. 33.

provisions on limited partnerships, under the German model and the referential Polish model, references to the provisions on limited partnerships are significantly broader. Under the German law, they apply to relations between general partners and limited partners and between general partners and third parties (§ 278(2) of the AktG). The Polish law deploys a similar principle, the difference being that such reference is made to the provisions on general partnerships (Article 126 § 1(1) of the KSH), which is basically due to the systematics of the Polish Code. To the extent not regulated in the provisions on the limited joint-stock partnership and not covered by the reference to the limited partnership, provisions on joint-stock companies are applied accordingly under both the jurisdictions. Thus, although the application of provisions on joint-stock companies is still broader than that on limited partnerships (or general partnerships under the Polish law), however, the application of provisions on the limited partnership (the general partnership) is much broader than in the Swiss and Italian laws. This lends the limited joint-stock partnership a more hybrid nature and, at the same time, greater singularity as compared to the other types of partnerships.

Another common feature and at the same time the distinguishing factor from the Swiss-Italian model is the possibility of becoming a general partner without having to contribute to the share capital (§ 278(1) of the AktG; Articles 125 and 126 § 1(1) of the KSH).<sup>21</sup> Therefore, not all the partners need to hold shares. The contribution of a general partner is the same as that of a general partner of a limited partnership or a partner of a general partnership. Consequently, this creates a leeway to establishment of a partnership in which the contribution of the general partner will have a significantly lower value than contributions of the other partners (limited partners – the shareholders), while at the same time the general partner will not run the risk of losing control over the partnership.

At the same time, nothing in German or Polish law precludes a general partner from acquiring shares. However, it does not in any way limit the general partner's liability for the partnership's obligations.<sup>22</sup> In both the analysed legal frameworks, the structure of owner and supervisory bodies is similar, namely there exists a general meeting and a supervisory board (§§ 285 and 287 of the AktG; Articles 143 and 145).

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<sup>21</sup> Nagel, S., Witkowski, A.: *Die Kommanditgesellschaft auf Aktien (KGaA). Rechtsform für Mittelstand und Familienunternehmen*, Wiesbaden: Springer Gabler, 2012, p. 47.

<sup>22</sup> Kidyba, A.: Spółka komandytowo-akcyjna w Niemczech i w projekcie prawa spółek handlowych, *Przegląd Prawa Handlowego*, 79(3) 2000, p. 3; Schütz, C., Reger, G.: Die Binnenverfassung der KGaA, in Schütz, C., Bürgers, T., Riotte, M. (eds.): *Die Kommanditgesellschaft auf Aktien*, München: Verlag C.H. Beck, 2004, p. 89.



Despite the overall similarities, the German and Polish models reveal certain differences causing the limited joint-stock partnership under the Polish law to be more hybrid and contain more component elements of a limited partnership than under the German law. The Polish regulatory framework of the limited joint-stock partnership is more comprehensive than that under the German law and it makes it more distinct from both a limited partnership and a joint-stock company. The limited joint-stock partnership is also positioned differently within the structure of the Polish Code of Commercial Partnerships and Companies. It is a partnership. Under the German law, on the other hand, a joint-stock partnership [*Kommanditgesellschaft auf Aktien (KGaA)*] is actually a company.

The perception of the joint-stock partnership as a company (prevalent in most of the legal systems analyzed in this article) is also prevalent in European law, where limited partnerships are usually treated on a par with limited liability companies and joint-stock companies. This also applies to Polish limited joint-stock partnerships.<sup>23</sup>

As regards the operations of the limited joint-stock partnership, the fundamental difference lies in its governance model. Under the German law, general partners of a limited joint-stock partnership are to a large extent governed by provisions on management of a joint-stock company (§ 283 of the AktG), therefore, the general partners are recognised as the partnership's governing body.<sup>24</sup> On the other hand, under the Polish law, management and representation of the limited joint-stock partnership by the general partners is organised along the lines of a limited partnership.<sup>25</sup> According to the prevailing view, this means that a general partner represents the partnership acting only as a statutory representative and not as a governing body.<sup>26</sup>

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<sup>23</sup> European Parliament: *Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law*, Official Journal of the European Union 2017, L 169/46, 30.06.2017; European Parliament: *Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC*, Official Journal of the European Union 2013, L 182/19, 29.06.2013.

<sup>24</sup> Kidyba, A.: *Spółka komandytowo-akcyjna w Niemczech i w projekcie prawa spółek handlowych*, *Przegląd Prawa Handlowego*, 79(3) 2000, p. 5.

<sup>25</sup> Kidyba, A.: *Spółka komandytowo-akcyjna w Niemczech i w projekcie prawa spółek handlowych*, *Przegląd Prawa Handlowego*, 79(3) 2000, p. 5.

<sup>26</sup> Błaszczak, Ł.: *Pozycja handlowej spółki osobowej w procesie cywilnym*, Toruń: Towarzystwo Naukowe Organizacji i Kierownictwa Stowarzyszenie Wyższej Użyteczności „Dom Organizatora”, 2006, p. 264; Kappes, A.: *Odpowiedzialność komandytariusza za zobowiązania*.



#### 4. THE LIMITED JOINT-STOCK PARTNERSHIP IN THE CONTEMPORARY ITALIAN AND SWISS LAW

Both these legal frameworks remain very similar, both from the point of view of their systematics as well as detailed solutions. These similarities are much greater than between the three legal frameworks analysed here, which operate based on the French-German model. In the Italian Civil Code of 1942,<sup>27</sup> provisions governing the limited joint-stock partnership (Articles 2452 to 2461) were placed between those governing the joint-stock company and those on the limited liability company. The limited joint-stock partnership was similarly positioned in the systematics of the Swiss Code of Obligations,<sup>28</sup> namely between the provisions on the anonymous company and the limited liability company.

The very systematics of the two Codes thus indicate a recognition of the limited joint-stock partnership as being more of a “joint-stock” than a “limited” partnership, which is quite different from the original wording of the French Commercial Code of 1807 and from the Italian Commercial Code of 1882. This is clearly highlighted in the Italian legal scholars’ writings, where the limited joint-stock partnership is directly viewed as a subtype of a joint-stock company.<sup>29</sup>

This nature of the limited joint-stock partnership becomes even more evident once we delve deeper into specific regulations. Above all, in both the cases, we will find a general reference to the provisions on the joint-stock company in the Italian law (Article 2454 of the CC) and on the anonymous company in the Swiss law (Article 764(2) of the CO). References to a limited partnership or a

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nia spółki, Kraków: Kantor Wydawniczy Zakamycze, 1997, p. 125; Kidyba, A.: *Status prawny komandytariusza*, Wydawnictwa Prawnicze PWN, Warszawa, 1998, p. 55; Kidyba, A.: *Prawo handlowe*, Warszawa: Wydawnictwo C.H. Beck, 2008, p. 337; Lewandowski, R.: *Polska koncepcja legislacyjna spółki komandytowo-akcyjnej*, Warszawa: Wolters Kluwer Polska, 2007, p. 278.

<sup>27</sup> Gazzetta Ufficiale: The Civil Code of 16.03.1942, Royal Decree no. 262, no. 79, 04.04.1942, (hereinafter, the “CC”).

<sup>28</sup> Schweizerische Eidgenossenschaft: Legge federale di complemento del Codice Civile svizzero (Libro quinto: Diritto delle obbligazioni) [*The Federal Law supplementing the Swiss Civil Code (Fifth Book: Law of Obligations)*] of 30 March 1911, RU 27 377 (hereinafter, the “CO”).

<sup>29</sup> Ferri, G. (update: Angelici, C., Ferri, G.B.): *Manuale di diritto commerciale*, Torino: UTET, 1996, p. 307; see also: Abriani, N.: La società in accomandita per azioni, in Abriani, N., Calvosa, L., Ferri jr, G., Guerrera, F., Guizzi, G., Motti, C., Notari, M., Paciello, A., Regoli, D., Rescio, G. A., Rosapepe, R., Stella Richter jr, A., Toffoletto, A. (eds.): *Diritto delle società. Manuale breve* (pp. 261-266), Milano: Giuffrè Editore, 2006, p. 261.

general partnership are confined in both these Codes (Article 2461 of the CC and Articles 767(1) and 771(1) of the CO).

Another factor that brings the limited joint-stock partnership closer to the joint-stock company within this model framework is that all the partners must hold shares in the partnership (Articles 764 of the CO, Article 2452 of the CC).<sup>30</sup>

In the case of the Italian Civil Code, moreover, a general partner may be recalled from the position of an administrator (*amministratore*)<sup>31</sup> of the partnership by resolution of the extraordinary general meeting (Article 2456 of the CC). In such an event, the hitherto general partner loses its status. The appointment of a new administrator, on the other hand, immediately makes the administrator a general partner. As a result of the foregoing, Italian legal scholars have even postulated to introduce a distinction between not so much the general and the limited partners, but between *shareholder-administrators* (liable without limitation for the partnership's obligations) and *shareholder-non-administrators* (not liable for the partnership's obligations).<sup>32</sup> In fact, in the Italian model, but also in the Swiss model, the status of the general partner is linked practically exclusively with the power to manage the partnership. Consequently, the unlimited liability for the partnership's obligations stems from the power to manage the partnership, and not the other way around as in the Polish and German laws, where the power to manage and represent the partnership is - in principle - the consequence of the unlimited liability for the partnership's obligations.

The above considerations demonstrate that, in the Swiss-Italian model, the limited joint-stock partnership is a sub-type (variant) of the joint-stock company. The principal difference between them lies in the existence of a distinct category of partners (general partners) who bear unlimited liability for the partnership's obligations. At the same time, the benefit they derive from bear-

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<sup>30</sup> Costi, R.: *Della società in accomandita per azioni. Art. 2462-2471*, Bologna-Roma: Nicola Zanichelli Editore – Soc. Ed. Del Foro Italiano, 1973, p. 12; Abriani, N.: La società in accomandita per azioni, in Abriani, N., Calvosa, L., Ferri jr, G., Guerrera, F., Guizzi, G., Motti, C., Notari, M., Paciello, A., Regoli, D., Rescio, G. A., Rosapepe, R., Stella Richter jr, A., Toffoletto, A. (eds.): *Diritto delle società. Manuale breve* (pp. 261-266), Milano: Giuffrè Editore, 2006, p. 261.

<sup>31</sup> The author uses the term “administrator” here instead of a member of the management board because under the Italian law (unlike, for example, the Polish law), it is only when more than one administrator is appointed that the management board of a company is formed (Article 2380 bis CC); Guizzi, G.: Gli amministratori di società di capitali, in Alessi, R., Rescigno, P. (eds.): *Diritto delle società* (pp. 516-561), IPSOA, 1998, p. 537.

<sup>32</sup> Costi, R.: *Della società in accomandita per azioni. Art. 2462-2471*, Bologna-Roma: Nicola Zanichelli Editore – Soc. Ed. Del Foro Italiano, 1973, p. 68.

ing unlimited liability for the partnership's obligations is negligible, particularly if we take into account the power, explicitly provided for in the Italian Civil Code, of an extraordinary general meeting to recall the administrator of a limited joint-stock partnership. Thus, the Italian law does not even envisage protection against hostile takeovers, which is an unquestioned advantage of the limited joint-stock partnership under the French-German model.

## **5. THE LIMITED JOINT-STOCK PARTNERSHIP IN THE CONTEMPORARY FRENCH LAW**

As already mentioned earlier, the French-German model of the limited partnership is often the subject of reference. While generally agreeing with this thesis, it needs to be underscored, however, that while the differences between the Swiss and Italian legal frameworks are indeed minimal, the differences between the German, French, and the Polish framework modelled after them are much more substantial. The differences as compared to the Polish framework can be seen already at the level of regulatory systematics. In both the German and French laws, the limited joint-stock partnership is in fact regarded as a company.

Like in Germany and Poland, the provisions on both the limited partnership and joint-stock company apply to the limited joint-stock partnership (L.226-1), although the extent to which reference is made to the provisions on the limited partnership and joint-stock company in the French law is much less precisely defined than in the Polish and German laws. Similarly, the general partner does not have to be a shareholder. However, it is not excluded (as in Germany and Poland) for a general partner to acquire shares. The most fundamental difference, however, lies in the sphere of management. In all the other legislative frameworks analysed in this article, the right and duty to manage the partnership are associated - at least in principle - with an unlimited liability for its obligations.

Under the contemporary French model, on the other hand, there may be a disconnect between the two elements. Under Article L.226-2 of the CduC, the function of an administrator of the partnership may be entrusted to a general partner or to a third party, to the exception of the limited partner.<sup>33</sup> However, the severance of this bond is not complete as the first administrator is appointed in the articles of association and the subsequent administrators are appointed by the annual general meeting, yet upon the consent of all the general partners, leaving them with some indirect influence over the management of the

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<sup>33</sup> Le Cannu, P., Dondero, B.: *Droit des sociétés*, Paris: LGDJ - Lextenso, 2023, p. 771.

partnership. It is worthy of note that such a solution facilitates a greater professionalisation in the management of a limited joint-stock partnership. Sometimes, it may be imperative (especially in the case of large limited joint-stock partnerships) to entrust the management of the partnership to a third party.

Another, though less significant difference related to the limited joint-stock partnership under the French law is the requirement to have at least three limited partners in the partnership (L.226-1). In the German law, given the current wording of § 280 of the AktG,<sup>34</sup> the formation of a single-member partnership should be considered permissible. In Poland, this issue is contentious, however, a significant number of legal scholars has advocated the admissibility of a single-member limited joint-stock partnership.<sup>35</sup> Furthermore, it must be highlighted that the possibility of having a single-member limited partnership is advantageous from the point of view of business transactions. This is because it allows such a partnership to be established by a single partner who would be interested in obtaining financing from a passive investor only at a later stage of the partnership's development.

## 6. CONCLUSION

The limited joint-stock partnership is one of the rarest types of partnerships across Europe. However, its prevalence varies from country to country. Naturally, there are various factors that influence this, however, a comparative legal analysis reveals that in those countries where the limited joint-stock partnership is more popular, its regulatory frameworks show certain similarities.

The first distinguishing feature is that the limited joint-stock partnership in those countries is more extensively regulated as such than in other countries. This lends it its own characteristics, clearly distinguishing it from its akin entities, i.e., the limited partnership and the joint-stock company. Thus, it gains certain attributes that might be used by its partners to implement certain specific objectives precisely in this model of partnership (such as protection against hostile takeovers with the possibility of raising capital from a passive

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<sup>34</sup> Nagel, S., Witkowski, A.: *Die Kommanditgesellschaft auf Aktien (KGaA). Rechtsform für Mittelstand und Familienunternehmen*, Wiesbaden: Springer Gabler, 2012, p. 26.

<sup>35</sup> Bieniak, M.: Spółka komandytowo-akcyjna w prawie polskim - definicja instytucji, in: Bieniak, J., Bieniak, M. (eds.): *Spółka komandytowo-akcyjna* (pp. 17-35), Warszawa: Difin, 2002, p. 17; Bieniek, T.: *Charakter prawny spółki komandytowo-akcyjnej*, Kraków: Kantor Wydawniczy Zakamycze, 2005, p. 327; Szumański, A.: Commentary to the Art. 125, in: Sołtyński, S., Szumański, A., Szajkowski, A., Szwaja, J. (eds.): *Kodeks spółek handlowych. Komentarz* (pp. 957-979), Warszawa: Wydawnictwo C.H. Beck, 2012, p. 964; inaczej: Włodyka, S.: *Kodeksowe spółki atypowe*, Warszawa: Wydawnictwo C.H. Beck, 2004, p. 34.

investor by issuing shares). A general conclusion can also be drawn that creation of new forms of conducting business has a rationale only if they differ significantly from those already in existence.

Another element closely associated with the first is the emergence, in the French-German model, of the limited joint-stock partnership as a clear hybrid between the limited partnership and the joint-stock company, with the Polish law most clearly illustrating this hybrid nature of the limited joint-stock partnership.

This approach differs from the Swiss-Italian model, where the limited partnership is effectively a subtype of the joint-stock company. This is probably one of the key reasons for its insufficient attractiveness. Given that an entrepreneur can establish a joint-stock company and enjoy the benefit of exclusion of shareholders' liability for the company's obligations, it makes no economic sense to create a limited joint-stock partnership, where the risk of liability for the partnership's obligations is not compensated by any substantial benefits. It is different in the French-German model. Here, the risk of liability is counter-balanced by the possibility of retaining control over the partnership, regardless of the number of shares held, particularly since under the Polish and German law it is clear that a legal person may participate in a limited joint-stock partnership as a general partner,<sup>36</sup> which substantially reduces the risk of liability for individuals, the actual beneficiaries of the partnership.

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<sup>36</sup> Nagel, S., Witkowski, A.: *Die Kommanditgesellschaft auf Aktien (KGaA). Rechtsform für Mittelstand und Familienunternehmen*, Wiesbaden: Springer Gabler, 2012, p. 27; art. 127 § 3 of the KSH.

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