

Simplifying corporate registration proceedings

The coming of the New Year has seen the introduction of several changes to the procedure to be followed with regard to Poland's corporate registry courts¹. In particular, the flow of information between the registry court and other relevant authorities takes now place electronically replacing the "one counter rule" which did not work so well in practice. Some other formalities such as those related to recording new members of the management board and commercial proxies have been simplified or abolished. The changes have also introduced an easier procedure for deleting entities² from the register in certain specified circumstances.

Key issues

- Less forms to be filed – electronic flow of information
- Restriction on the number of revealed areas of business activity. Information on the last day of business year
- Deletion from the register without liquidation proceedings
- Simplified formalities regarding appointment of a member of the management board, a liquidator or a commercial proxy
- Simplified electronic procedures

¹ Poland's system of corporate record keeping is carried out by registry courts, presided over by judges. Certain corporate action only become effective when registered (e.g. amendments to the articles of association) and registration only happens when the judge concerned is happy the relevant documentation complies with applicable law and is not automatic. Therefore, the functioning of the registry courts is important in terms of day to day corporate administration.

² The registry courts apply to limited liability companies and joint stock companies and also registered and limited partnerships and certain other types of entity. A reference to "entity" in this briefing is a reference to all those entities subject to the registration courts' jurisdiction.

Less forms to be filed – electronic flow of information

In addition to its corporate registration number (KRS number), each Polish entity conducting business activity must also obtain a tax registration number used also for VAT purposes (NIP), statistical registration number (REGON) and, if intends to employ employees, also register with the social security office (ZUS). Under the old procedure, when applying to register an entity or to change its data in the register kept by the registry court (KRS), the applicant also had to fill out the relevant forms for each of these additional registrations and attach them to the motion filed with the registry court. The registry court would then pass these forms to the other relevant authorities. However, in practice, there had been serious delays in the transfer of these forms. It is therefore intended to make the process more efficient. Therefore, we think this change is a movement in the right direction in terms of speeding up the process of starting a business and amending its registration details.

Under the new system the relevant information is transferred electronically from the registry court to the other authorities.

The practical implications of the changes are the following:

- Separate forms regarding NIP and REGON numbers as well as ZUS applications no longer have to be filed as attachments to motions with the registry court.
- When the first application is submitted for registration of an entity, the registry court transfers the information to the relevant authorities' electronic data bases. On this basis, NIP and REGON numbers are allocated and then automatically registered by the registry court when this information is received from those other offices.
- The registry court transfers, on its own initiative, information on any changes to data registered with the registry court to the relevant authorities' electronic data bases. Therefore, changes do not require separate notification to these authorities.
- The registration and change of any data that is held by a particular authority but is not notified to the registry court requires a separate motion to be filed with the relevant authority only. For example, any information on the entity's bank accounts needs to be notified to the tax office and ZUS, whilst it is not subject to filing with the registry court.

- Separate submission to the tax office of the articles of association or any amendments to them following their registration by the registry court is no longer required.

Restriction on the number of revealed areas of business activity. Information on the last day of business year

The new legislation has also introduced the obligation to specify no more than 10 areas of business activity of an entity including one core area, to be disclosed in the National Commercial Register. These have to be selected from various types of activity to which specific statistical numbers are allocated. Before that, an entity could apply for disclosure of as many areas of activity as it wanted. The amendment is aimed at limiting them to those most relevant to the activity actually carried on. These 10 chosen areas of business activity have to be registered together with the first application filed with the registry court after this regulation came into force (i.e. 1 December 2014). Other areas of activity specified in the articles of association will no longer be revealed in the register. However, the articles of association do not need to be amended for this purpose, i.e. may still provide the full list of areas of business activity.

Also, the motion to register the entity should now state its accounting reference date (i.e. when its financial year ends). In case of entities already registered, this information should be provided upon filing their annual accounts for the first time after the amendment comes into effect (i.e. after 15 January 2015).

Deletion from the register without liquidation proceedings

Another amendment requires the registry court to initiate proceedings to dissolve an entity entered in the register without conducting liquidation proceedings in certain cases, including:

- when a petition for bankruptcy is rejected or bankruptcy proceedings are discontinued because the entity's assets are insufficient to cover the costs of bankruptcy proceedings or where the bankruptcy court decides that dissolution without liquidation proceedings is justified; or

- a decision has been taken to withdraw from enforcement proceedings against an entity or to discontinue them³; or
- an entity failed to file annual accounts for two consecutive years despite being required to do so through a formal summons issued by the registry court; or
- an entity failed to comply with other filing duties despite being required to do so through two formal summons issued by the registry court.

The two last criteria also apply to those requests made in the period before the amendment to the law if the failure continues up until 30 June 2015.

In the course of dissolution proceedings the registry court examines whether the entity concerned has any disposable assets and/or conducts commercial activity. If it does not, the court should decide to dissolve the entity without conducting liquidation proceedings and orders it to be deregistered. If, however, one of these criteria is fulfilled (the entity has disposable assets or conducts business activity) or there are other essential circumstances including these justified by the interests of any creditor, this shortened procedure will not apply.

The dissolution may take place even if not all the entity's liabilities have been discharged.

The amendment also provides that the State Treasury takes over the assets of any entity deleted from the register which have not been disposed of before the deletion. However, the shareholders or other entities entitled to liquidation assets of an entity deleted from the register may pursue their rights to these assets if they represent 2/3 or more of votes and prove that all the creditors of that entity have been paid or secured.

The purpose of these amendments is to try and remove from the corporate register those entities sitting in "legal limbo".

Simplified formalities regarding appointment of a member of the management board, a liquidator or a commercial proxy

Further simplifications were introduced, according to which notarized specimen signatures of members of the management board, commercial proxies and any liquidators of an entity no longer have to be submitted to the registry court together with motions to enter these persons in the register. The motion should, however, contain the consents of those persons to their appointment, unless such consent is expressed in other documentation which has been filed.

Simplified electronic procedures

In addition, the possibility has been introduced to register registered and limited liability partnerships using a simplified electronic procedure. This procedure had already been available for some time for limited liability companies. The amendment also further simplifies certain procedures for limited liability companies registered in this simplified way so that appointment of a commercial proxy and transfer of shares in the company can be done in electronic form.

³ These proceedings are instigated to enforce obligatory filing and are withdrawn or discontinued if it stems from circumstances that they will not be effective, i.e. the entity is regarded as unresponsive e.g. due to the lack of a representative

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