

LATEST AMENDMENT TO THE NATIONAL COURT REGISTER ACT

The latest amendment to the National Court Register Act ("**Act**") introduces many changes that will significantly affect its functioning and obligations of entrepreneurs. It is a part of the package of bills known as the "Constitution of Business", which aims to reform and simplify the regulations on conducting business activity and to prepare the National Court Register ("**NCR**") for integration with EU commercial registers¹. As a result, the Act emphasizes improvements to the functioning of the NCR, including complete digitalization of proceedings. The solutions contained in the Act will be introduced in stages. The Act itself came into force on March 15, 2018, however some regulations, primarily those requiring major changes to the electronic system, will come into effect from April 9, 2018 to March 1, 2020. In this edition of Wolf Theiss' newsletter, we highlight the most important of these changes.

THE NEW RULES FOR THE PREPARATION AND SUBMISSION OF FINANCIAL STATEMENTS

First and foremost, it is no longer acceptable to submit financial statements in a traditional paper form and through proxy. From March 15 to September 30, 2018, i.e., during the transition period, it is acceptable to prepare financial statements in a traditional form (executed with a handwritten signature of the person entitled to represent the entity), and submit a scan with a qualified electronic signature or signature confirmed by a trusted ePUAP profile (a method of confirming one's identity with the Polish administration electronically) of at least one person entitled to represent the entity, whose national identification number (PESEL number) is disclosed in the NCR. Documents prepared in this way should be attached to the electronic application for entry and submitted to the NCR via an electronic platform (<https://ekrs.ms.gov.pl/rd/rd/>). Moreover, starting on October 1, 2018, financial statements will be transferred only by an electronic form, called a single control file (Polish: **Jednolity Plik Kontrolny**), and executed with a qualified electronic signature or signature confirmed by a trusted ePUAP profile. This means that the financial statements for financial year 2018 will be prepared entirely in an electronic form, the detailed structure of which is to be determined by the Minister of Finance in the coming months.

WHAT ARE THE PRACTICAL CONSEQUENCES OF THE ABOVEMENTIONED CHANGES?

The Act requires submission of financial statements only with an electronic signature or a trusted ePUAP profile, necessitating a PESEL number. In our experience many entities' boards consist solely of individuals who do not have a PESEL number and, as a result,

¹ The Act implements the Directive of the European Parliament and of the EU Council of 14 June 2017 (2017/1132) relating to certain aspects of company law.

the relevant item in the NCR online database is empty. Thus, the Act introduces a need for companies to have at least one board member whose PESEL number is disclosed in the NCR in the year 2018. This can be accomplished by either enlarging the board with a new member who has a PESEL number or by obtaining a PESEL number for at least one of the existing board members. In the years following 2018 all board members will need to obtain a PESEL number because all board members will have to sign the financial statement via an electronic signature or trusted ePUAP profile. The procedure for obtaining a PESEL number is rather straightforward.

ADDITIONAL OBLIGATIONS REGARDING ADDRESSES OF COMPANIES' REPRESENTATIVES AND SHAREHOLDERS

In addition to the new rules on submission of financial statements, the Act significantly extends the obligations of company representatives and shareholders to indicate addresses for correspondence. It is now necessary to submit data (including addresses) to the NCR of:

- persons representing a company (representing partners or members of the board), liquidators and proxies, and,
- in capital companies (i.e., in joint stock companies and limited liability companies), persons entitled to appoint members of the management board of an entity, and if such person is a legal person, the names and addresses of the persons authorized to represent it.

If any of the abovementioned persons do not have a correspondence address within the EU then it is necessary to indicate a representative for service in Poland. Existing companies are required to provide a correspondence address with the first application submitted to the NCR after implementation of the Act, but no later than 18 months from that date. Any change in the identity or details of the abovementioned persons must also be submitted to the registry court, otherwise deliveries to the previously indicated addresses will be deemed validly served. Please note that the overall aim of this change is to secure a continuous and uninterrupted collection of correspondence. Thus, although it is not regulated specifically in the Act, indication of a business correspondence address (rather than a home address) should also be allowed.

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In practice, this obligation may prove to be problematic for capital companies in which the management board is elected by a general meeting of shareholders. In such a case, it is necessary to present the full list of shareholders, as those persons are entitled to appoint members of the management board, and to update such list in the event of any change (e.g., in the case of sale of shares).

CHANGES FOR BETTER?

The advantage of the new regulations is that financial statements submitted in electronic form will be accessible online free of charge. Furthermore, there will no longer be a need to submit these documents separately to the tax office. However, the obligation for foreigners to obtain a PESEL number and an electronic signature or a trusted ePUAP profile is a burden.

About WOLF THEISS

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