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NEW RULES FOR THE FILING OF FINANCIAL STATEMENTS FOR 2018

The Act amending the Polish Accounting Act and the National Court Register Act ("**Act**") has introduced changes that significantly affect the obligations of entrepreneurs, particularly with regard to the filing of financial statements. In this edition of Wolf Theiss' newsletter, we highlight the most important of these changes and provide you with a practical guide for implementing the new rules in your company.

FORMAT OF THE FINANCIAL STATEMENTS

Starting on September 30, 2018, it became unacceptable to submit financial statements to the National Court Register ("**NCR**") in an electronic version as scans of hard copy documents. Please note, however, that if the document was prepared before September 30, 2018, it is still possible to file such outstanding financial statements in an electronic version as scans of hard copy documents. Financial statements prepared after October 1, 2018 may only be submitted in a digital xml format. Although the Ministry of Finance has provided an application to generate financial statements in the prescribed xml format, the application was created only for individual tax payers. Entities entered in the NCR will have to either use their own software or outsource the preparation of their financial statements to an accounting firm.

Moreover, financial statements must be signed with a qualified electronic signature which follows the XAdES format or with an ePUAP trusted profile. It is not required for the e-signature to be issued in Poland. According to the Ministry of Finance, if the qualified e-signature meets the abovementioned requirements (i.e., the XAdES format), it may be issued anywhere within and outside the EU. However, please note that we were informed by the NCR helpdesk that there could be some technical problems with accepting e-signatures issued in some of countries, e.g. in the UK, Denmark, Portugal or the United States. If your e-signature has been issued outside Poland, we would recommend inquiring on a case-by-case basis whether such e-signature is accepted by the online system. A list of providers in Poland recommended by the Ministry of Justice is available at <http://www.nccert.pl>.

FORMAT OF OTHER FINANCIAL DOCUMENTS

Pursuant to the revised Accounting Act, starting from October 1, 2018, reports of a management board on a company's activities and any reports by auditors, must, similarly to financial

statements, be prepared in an electronic form. However, no particular format (e.g., an xml file) is required. At the same time, the only documents that can still be submitted to the NCR as scans of hard copy documents are the resolutions of shareholders approving financial statements. Although there is some uncertainty as to how and in what format the reports of the management board on the company's activities and the reports of the auditors should be submitted, we were informed by the NCR helpdesk that such reports will be accepted in an electronic version as scans of hard copy documents.

SUBMISSION PROCESS

Pursuant to the Act, there are two methods to file financial documents:

- 1) to the electronic repository of financial documents (free of charge), or
- 2) through the S24 online system (chargeable).

A motion on the submission of financial documents may be filed through both platforms, either by: (i) at least one person authorized to represent the company, whose national identification number (PESEL number) is disclosed in the NCR, i.e. a management board member, liquidator, commercial proxy or receiver in the debt restructuring proceedings, or (ii) starting from April 1, 2019, attorneys-in-law, i.e. legal advisors and advocates, whose PESEL number will be provided and disclosed in the system by the Polish Bars. If it is not possible to file the motion through the electronic repository of financial documents, the motion may be still filed through the paid s24 system, e.g. by a management board member whose PESEL number is not disclosed in the NCR.

Since October 1, 2018, companies registered with the NCR are not obliged to submit financial statements to the tax office separately, as the system has been automated in this regard. The tax offices may force a company to file its financial statements by imposing a fine.

DOES A MANAGEMENT BOARD MEMBER NEED TO HAVE A PESEL NUMBER?

It is widely believed that all, or at least one member of, a company's management board should have a PESEL number in Poland to subsequently obtain a qualified e-signature or set up a trusted ePUAP profile which would enable that individual to sign financial statements of the company in an electronic form. Although a PESEL number is necessary to set up a trusted ePUAP profile, not all e-signatures require obtaining a PESEL number; as long as the qualified e-signature follows the XAdES format, it may also be issued without a PESEL number, either by a Polish provider (there are providers in Poland which do not require a PESEL for issuing an e-signature), an EU or a non-EU provider. There is no need for a company's management board to obtain a PESEL number strictly for the purpose of executing financial statements. The following should be noted however: firstly, if the e-signature was issued outside Poland, the document signed with such e-signature may not be, due to technical issues, filed through the electronic system (please see our comment above). Secondly, if none of the management board members of the company have a PESEL number disclosed in the NCR at the moment of filing financial documents, the documents must be filed to the NCR either by another entitled person(s) whose PESEL number is disclosed in the NCR, e.g. commercial proxy, or by attorneys-in-law, on the basis of a power of attorney.

WHAT ARE THE PRACTICAL CONSEQUENCES OF THE ABOVEMENTIONED CHANGES?

Management boards of companies obliged to submit annual financial statements for 2018 need to immediately start considering how to be compliant with the new rules. In our experience, many entities' boards consist solely of individuals who do not have a PESEL number, and as a result, the relevant item in the NCR online database is empty. It is critical for management board members to decide as soon as possible whether they want to apply for a PESEL number. Also, submission of financial statements for 2018 should not be put off until the last moment as the IT system (both the repository and S24) can be somewhat unreliable.

About WOLF THEISS

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