

AMENDMENT OF THE BUSINESS FREEDOM ACT

In March, changes were introduced concerning how to start and conduct business activity. The laws amending the Business Freedom Act are part of the "Entrepreneurship Package" which the government promised to enact in order to create optimum conditions for conducting business activity in Poland. The changes focus on issues connected with starting business activity and limitations on inspections of enterprises.

Changes Concerning Inspections of Enterprises. The amendment brings order to provisions governing state inspections of enterprises. It introduces the principle that the provisions of the Business Freedom Act take precedence when it comes to the scope of inspection procedures, and amends in this respect 58 other acts.

The key change concerns how the subject of an inspection is defined – previously, it was the business entity, but now it is the business activity that is subject to inspection. There are significant changes reducing the duration of inspections, and it will no longer be possible to conduct more than one inspection at a time concerning the same business entity. Sanctions have also been introduced which may be imposed on the authorities if they carry out inspections in violation of the law. Extending the duration of an inspection will be possible solely for reasons beyond the control of the authority. The amendment introduces the rule that evidence collected during an inspection conducted beyond the authorized scope, or in violation of the law, will not be admissible as evidence in any administrative, tax, penal or penal fiscal

proceeding. This is designed to add to the legal protection of the inspected business activity. A business entity will now have the opportunity to file an objection against inspection activities undertaken in breach of the rules for performance of the inspection. The objection is filed with the authority instigating and performing the inspection. Failure to consider the objection within 3 working days from the date of receipt of the objection is tantamount to a decision by the authority to abandon the inspection activities. A business entity will also have the right to seek damages if it suffers an injury as a result of unlawful inspection activities.

One Counter. The "one counter" rule, in place since 31 March 2009, stipulates that only one application for registration of business activity is to be filed, with the commune office or the National Court Register. Changes concerning business activity conducted are to be reported in the same manner. "One counter" is a temporary solution on the way toward introduction of a "no counter" rule.

Should you wish to obtain additional information on this topic, please contact Agnieszka Kocon (agnieszka.kocon@laszczuk.pl).

CONSUMER BANKRUPTCY

An amendment to the Bankruptcy and Reorganization Law of 23 February 2003 entered into force on 31 March 2009. The amendment has introduced into the Polish legal system the possibility for consumers – individuals who do not conduct business activity – to declare bankruptcy.

Pursuant to the new provisions, a consumer bankruptcy petition can be filed solely by the debtor. Thus it will be impossible for creditors

to force a consumer into bankruptcy. A consumer bankruptcy is a proceeding that involves liquidation of the debtor's assets. It is not possible to declare a consumer bankruptcy with the possibility of entering into an arrangement with creditors.

A bankruptcy petition can be filed by a debtor who has become insolvent. The bankruptcy court will reject the petition, however, if the debtor's insolvency has not resulted from extraordinary circumstances beyond the debtor's control, in particular if the debtor has assumed an obligation when already insolvent or if the debtor's employment has terminated for reasons attributable to the debtor-employee or upon the debtor-employee's consent. A debtor will be allowed to discharge debts in bankruptcy only once every ten years.

In the course of the bankruptcy proceeding, the debtor is required to indicate all his assets and turn them over to the bankruptcy trustee, forming the bankruptcy estate. The act introduces special regulations concerning a homestead exemption – the debtor's interest in an apartment or single-family house which is the debtor's residence. Pursuant to the act, from the proceeds of sale of the debtor's residence, the debtor is allowed to retain an amount equal to the average residential rent for the period of twelve months.

Liquidation of the debtor's assets is carried out by the bankruptcy trustee, but the court may allow the debtor to carry out the liquidation under the trustee's supervision. Then a plan is prepared, for approval by the court, under which the proceeds obtained from liquidation of the debtor's estate will be distributed to pay the claims of creditors. Under the plan, claims that are not satisfied from distribution of the bankruptcy estate are included in a repayment schedule, setting forth what portions of the claims are to be repaid and within what time (no longer than five years).

When the debtor has performed the repayment plan, claims that remain unsatisfied are then discharged. The court issues an order granting the discharge and concluding the bankruptcy proceeding.

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NEW PROCEDURES FOR OBTAINING WORK PERMITS

An extensive amendment to the Act on Promotion of Employment and on Labour Market Institutions of 20 April 2004 entered into force on 1 February 2009. The amendment has introduced significant changes in the act, particularly concerning the procedure for obtaining permits for foreigners to work in Poland.

A work permit is still generally necessary in order to employ a foreigner from outside the European Union or the European Economic Area. The employer is no longer required, however, to obtain an advance commitment to issue the permit, which used to be an important step in obtaining a work permit.

Periods for which work permits are issued have been introduced into the act. Now a permit is generally issued for a period no longer than three years, with the possibility of an extension. There is a different rule for work permits issued to members of the management board of a legal person that employs more than 25 people as of the date of the application; they could receive permits for a period up to five years.

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