

NEW PROVISIONS CONCERNING BRANCHES AND REPRESENTATIVE OFFICES OF FOREIGN BUSINESSES

Amendments to the Business Freedom Act of 2 July 2004 concerning branches and representative offices of foreign businesses will go into effect on 1 January 2012. The changes were introduced by the Act on Reduction of Certain Obligations of Citizens and Businesses dated 16 September 2011.

Rules for voluntary liquidation of a branch

The prevailing view (for example as stated by the Polish Supreme Court in its order dated 9 May 2007, Case No. II CSK 25/07) is that liquidation of a branch of a foreign business with its registered office in the European Union or the European Economic Area as a result of a decision by the business (i.e. a voluntary liquidation) may be carried out freely, without following the relevant provisions of the Commercial Companies Code on liquidation of a limited-liability company. Now, under the new wording of Business Freedom Act Art. 92, the provisions of the Commercial Companies Code on liquidation of a limited-liability company will apply to the voluntary liquidation of a branch foreign business—regardless of where the foreign business is registered.

No registration requirement for representative offices of foreign banks and credit institutions

From 1 January 2012, pursuant to the new Art. 96(1a) of the Business Freedom Act,

establishment of a representative office of a foreign bank or credit institution (as defined by the Banking Law of 29 August 1997) will not require an entry in the Register of Representative Offices maintained by the minister for economic affairs. In order to establish a representative office in Poland, a foreign bank or credit institution will only need to obtain the relevant permit from the Polish Financial Supervision Authority and meet the other requirements specified in the Banking Law.

More specific information in motion for entry in the Register of Representative Offices

Business Freedom Act Art. 97(1)(3) and (4) has been clarified to require that if the person at a representative office of a foreign business who is authorized to represent the foreign business has a Polish address, it is necessary to indicate the address where the person is living. In addition, the “address of the representative office” will now be understood to mean the address of the headquarters of the representative office in Poland, where the original documents connected with the activity of the representative office will be maintained.

Enclosures to motion for entry in the Register of Representative Offices

The documents that must be filed with a motion for entry in the Register of Representative Offices have now been reduced, under the new wording of Business Freedom Act Art. 97(2). From 1 January 2012 it will not be necessary to enclose a state-

ment by the business on establishment of a foreign representative office, or a copy of the articles of association (or equivalent) of the foreign business. The following enclosures will now be required:

1) an official copy of the registration document of the foreign business, under which it operates

2) an official copy of a document indicating the address of the registered office of the foreign business, its rules of representation, and the persons authorized to represent it, if the registration document does not contain this information

3) a certified copy of a document authorizing the foreign business to use office premises or other real estate for operating the headquarters of the representative office.

Requirements of the Business Freedom Act concerning translation, certification and legalization of the enclosures to the motion have also been revised.

Reduction of fee for registration of representative office

The fee for registering a representative office has been cut, effective 1 January 2012, from PLN 6,713 to PLN 1,000.

For more information on this topic, please contact Konrad Raszkievicz (konrad.raszkievicz@laszczuk.pl).

NEW RULES FOR ISSUANCE OF EMPLOYMENT CERTIFICATES

March 2011 brought changes to the Polish Labour Code concerning the obligation to

issue employment certificates to employees who continue to work for the same employer. We discussed this matter in more detail in the March issue of our bulletin.

The March amendment included a new provision enabling an employee continuing to work for the same employer under a new employment contract for a definite period to request at any time that the employer issue employment certificates covering periods of employment under prior employment contracts for a definite period. However, the regulation of the Minister of Labour and Social Policy of 15 May 1996 on employment certificates was not amended at that time. Until December 2011 the regulation still provided that an employee continuing to work for the same employer under a new employment contract for a definite period had to request an employment certificate for the previous contract no later than the day before termination or expiration of the old contract. This rule was inconsistent with the amended Labour Code.

On 7 December 2011 a new regulation of the Minister of Labour and Social Policy, dated 9 November 2011, went into force. It eliminates the deadline for an employee continuing to work for the same employer under a subsequent contract for a definite period to request an employment certificate for the previous contract. The regulation is now consistent with the Labour Code as amended in March 2011.

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