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Filing financial statements with e-KRS (“e-NCR”) with the participation of foreign management board members

Accounting & Audit Alert 1/2018

Dear Readers,

As of 15 March 2018, a new Article 19e of the National Court Register Act (“NCR”) has been in force, under which the financial statements of companies should be filed with the NCR with the use of an online system provided by the Minister of Justice. For such filing to be effective, they must be signed with a qualified electronic signature or a signature confirmed by an ePUAP trusted profile.

In this alert, we will inform you about the steps needed to file financial statements with the e-NCR, especially in a situation in which members of the management board are foreigners*.

The status from 15 March to 30 September 2018

Financial reports including the annual financial statements, an auditor’s report, a copy of resolutions on the approval of the annual financial statements and a management board report can still be prepared and signed in the paper format as before. However, to be filed with the NCR online, they must be signed with a qualified electronic signature or an ePUAP trusted profile (“electronic signature”).

The status as of 1 October 2018

Under the new Art. 45.1f of the Accounting Act, as of 1 October 2018, all financial statements will be prepared in electronic format only using the logical structure and the format provided in the Public Service Bulletin on the website of the Ministry of Finance and, naturally, signed with an electronic signature.

Electronic signature

There are two ways in which an electronic signature to be effective in Poland can be obtained:

1. obtaining a qualified electronic signature from a certification company;
2. obtaining an ePUAP trusted profile which is set up online (using an online bank account) or at authorisation centres such as various public offices and banks in Poland.

To obtain an ePUAP trusted profile, one must possess a PESEL number and be present in Poland in order to confirm their identity. Therefore, we will not describe this procedure in detail here. Instead, we will focus on the qualified electronic signature provided by the certification companies.

Who should obtain it

Under the laws which will be in force until 30 September 2018, such a signature should be held by at least one individual whose PESEL number is disclosed in the NCR and who is recorded there as a member of a governing body that is authorised to represent the company, or as a partner authorised to represent a partnership, a receiver or a liquidator. Therefore, this cannot be a signature of commercial proxy [prokurent] of a company since NCR filings are not included in the scope of activities to be performed by commercial proxies (such activities involve running a business). What can a business do where it has no such individual on the management board? When all members of the management board are foreign nationals, an electronic signature can be obtained for them which is, instead of a PESEL number, linked to a different identification number resulting from their identity document.

How can this be obtained

There are now several companies in Poland which are certified as trust service providers. Based on such a certificate, they are allowed to provide trust services of issuing qualified certificates (electronic signatures). To obtain an electronic signature, a number of data items identifying the applicant (e.g. management board member) need to be provided by filling in a questionnaire from a certification company. Then, after the signature has been generated, the signatory has to confirm his or her identity and collect the software to be used for submitting an electronic signature.

Although meeting with an employee of a certification provider in person (each board member to obtain the signature would need to come to Poland), is more commonly preferred, using a courier service is also possible. The identity of a given person then needs to be certified at a notary office abroad, and an apostille on a signed contract for an electronic signature or another form of document legalisation is required – depending on the place where the notarial deed is executed. Additionally, where documents are submitted in foreign languages, they need to be translated into Polish by a sworn translator.

How can I file a report online (in the e-NCR)

There are also two options here:

1. filing a financial statement to the Repository of Financial Documents;
2. filing an application for entering financial statements through the S24 Portal.

In both cases, a personal account must be opened in the system by providing the data of the person who will be filing the statements and such an account must be authorised by an electronic signature of the account's holder. However, the differences are as follows.

Filing financial statements with the Repository of Financial Documents is free of charge and accessible only to persons who have electronic signatures linked to their PESEL numbers. Consequently, such a preferential way of filing statements online is not available to foreign nationals who do not possess a PESEL number. It will be added here that the case is not examined by the court on its merits and financial statements are added to the Repository as if automatically (the system only verifies the electronic signature and the statement that the documents included in the filing meet the requirements of the Accounting Act).

Filing financial statements through the S24 Portal effectively means filing an application for entry in the NCR using the KRS-Z30 form which is available online. A total fee of PLN 140 (same amount as before) is to be paid for such an application (for the receipt of documents and an announcement in the Monitor Sądowy i Gospodarczy [Court and Commercial Gazette]). Furthermore, the case is examined on the merits by a judicial officer (referendarz) and ends with a legally valid entry in the Register of Entrepreneurs of the National Court Register. According to the information we have today, this procedure is available to foreigners without a PESEL number, whose electronic signature will be linked to another identification number resulting from an identity document.

Time limits and uncertainty

It is worth noting that the activities described above apply to all the entrepreneurs registered in the National Court Register. It is therefore necessary to obtain an electronic signature in good time to comply with the statutory obligations and to file financial statements within 15 days of their approval. For many companies, such a deadline is 15 July 2018. Until the first electronic signatures that are not linked to a PESEL number are submitted to the e-NCR, no one can guarantee that the system will work properly. The service of filing an online application alone may take several business days, due to login problems observed so far, the system being available only in Polish, or surprises where, for example, someone who is a member of the management board disclosed in the NCR, does not appear on the list of authorised signatories. Therefore, it is better not to leave the filing of financial statements to the very last minute this year.

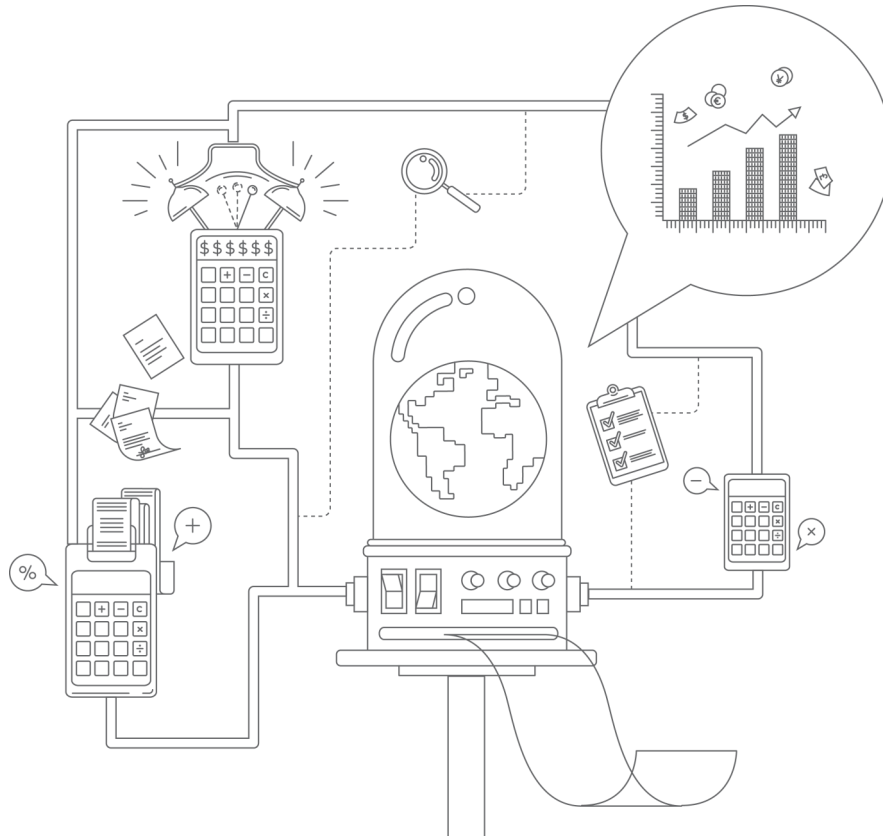
* The status as of 19 April 2018

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Should you wish to discuss the above mentioned amendments in detail, feel free to contact us:

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