

## EXPERT Corporate regulations

# PESEL FOR EVERYONE

## Polish personal identification number will be the basis for identifying foreign company executives and foreign employees

Changes made to corporate regulations in recent months may be found as pesky by foreigners, particularly those

who are members of partnerships and corporate boards in Poland. Since mid-March 2018 at least one member of the management board of a company, or one partner in a partnership, has had to enter a Polish personal identity number (PESEL) in the National Court Register (KRS) in order to effectively sign and file the firm's financial documents. Moreover, foreigners who work in Poland but do not operate any business have to use a PESEL number in their dealings with the tax office.

From March 15, 2018, businesses entered in the National Court Register (KRS) must submit financial reports exclusively via the IT system. Such reports must bear the electronic signature or signature confirmed by a trusted profile on the ePUAP system, for at least one of the persons entitled to represent the entity, known as an "e-representative".

### NO MORE PAPER

Currently, entities entered in the KRS are required to prepare financial reports in electronic form, using a structure and format issued by the Minister of Finance. With this, traditional financial reporting in paper form will no longer suffice to meet the obligations of financial reporting.

Many KRS-listed firms do not have any management board members or partners who have been assigned a PESEL number. Such individuals

must first obtain a PESEL number to effectively file their firm's financial reports, as they need to input their PESEL in the filing form.

Another issue is that shareholder resolutions approving financial report on the division of profit or coverage of loss, and approving the unit's business report, must be enclosed with the financial report.

Often it is also necessary to submit an auditor's opinion. These documents are filed in electronic form. For a submission to the Repository of Financial Documents it is proper to transmit scans of documents signed by the authorized persons. In the case of the auditor's opinion and report, the document bearing the auditor's qualified signature must be obtained.

Obtaining a PESEL number should not be a big issue for foreigners as every foreigner living and working in Poland has a right to obtain a PESEL. It is issued by the town or commune office of the foreigner's place of residence, with which the foreigner has registered his or her temporary or permanent stay. But foreigners who do not reside in Poland can also obtain a PESEL number. The basis for applying for the number is that the person is under an obligation to serve as a firm's e-representative.

### MAKING THINGS BETTER

Lawmakers are planning to mitigate to some extent the chaos that has arisen since the amendment of the National Court Register Act to make life easier for businesses people. During parliamentary work provi-

sions were added to the National Register of Debtors Act amending the rules for filing financial reports by entities registered in the KRS. In light of the version adopted by the parliament and submitted to the President of Poland for ratification, advocates and attorneys at law, including those from other countries, will be permitted to file financial reports for their clients with the Repository of Financial Documents. Although most of the provisions of the National Register of Debtors Act will not enter into force until December 2020, the provisions concerning the KRS and the additional method for filing documents concerning companies and partnerships will enter into force a day after publication of the act.

The amendment closes a loophole that prevented lawyers from acting for their clients in matters involving financial documents. But to effectively file financial documents for a client, advocates and attorneys must have a PESEL entered in the relevant system. This means that the e-revolution revolution is not over yet, and firms' legal advisers must be identified in the system.

### DEALING WITH FOREIGN EMPLOYEES

Foreigners hired for work in Poland are under no obligation to have a PESEL, nor are they required to have a PESEL to legally stay in Poland. Nonetheless, it is currently necessary for a foreigner employee to hold a PESEL number in order for the employer to comply with its obligations to the tax office and the Social Insurance Institution (ZUS). Until now, employers used the passport numbers of their foreign employees to enter them into the ZUS system, while for dealing with the tax office employees had to obtain a Polish tax identification number (NIP).

In 2018, the PESEL number became the essential identifier in tax settlements of foreigners, who do not

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conduct any business activities in Poland. With this, NIP is not enough for foreigners dealing with the revenue administration. Significantly, the change in regulations will apply to employers from the end of January 2019, when employers will be required to issue PIT-11 forms to their employees. In order to do this, the employer will have to indicate the foreigner's PESEL number.

The employer will file the PIT-11 report electronically, and the absence of the proper identifier for the employee may result in a rejection of the report. In turn, the employer's failure to file PIT-11 on time may lead to sanctions under the Fiscal Penal Code.

### SUMMARY

The aim of the changes to the preparation and filing of annual financial reports as well as possession of a single identification number for foreigners—the PESEL—is generally positive and should contribute to economic security and improve the functioning of the registry courts. Nonetheless, the speed of the legislative work and the pace of the changes to the law raise concerns that Polish businesses may not manage to comply in time. The employers of foreigners should pay particular attention to instructing these employees on the need to register their residence and at the same time obtain a PESEL number.