

# PNP LAW'S LEGAL NEWSLETTER



**Peter Nielsen & Partners Law Office sp. k.**

Al. Jana Pawła II 27  
00-867 Warszawa  
tel. +48 22 59 29 000  
[office@pnplaw.pl](mailto:office@pnplaw.pl)  
[www.pnplaw.pl](http://www.pnplaw.pl)

*Lawyers' team at PNP LAW would like to introduce you to selected legal issues as part of this Newsletter.*

*Legal Status as at 7 June 2021*

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### **NEW TYPE OF COMPANY AS OF 1 JULY?**

As of 1 July (the deadline was postponed), we will have a new third type of a company in Poland, i.e. a “simple joint stock company” (“PSA”). The PSA is to facilitate the development of start-ups, in particular in the scope of new technologies and innovations.

The PSA will be a form which combines features of a partnership and a company. Its common feature with partnerships will be, in particular, the possibility to make contribution in a form of work or services. The PSA is to be linked to companies, and especially a joint stock company, by an extended mechanism of raising capital through issuance of shares.

The PSA will be an exception from the rule currently binding in companies (limited liability company and joint stock company) which consists in common (collegial) conduct of affairs by its management board. This is to consist in e.g. dividing certain spheres of company activity between management board members.

The possibility to appoint “the board of directors” in the PSA will also be a novelty in the Polish law. The functions of conducting company affairs and its representation as well as supervision will be concentrated in one body. The board of directors is known in other legal systems, as e.g., Great Britain or Denmark.

Mirosław Stefanik, ms@pnplaw.pl

### **AS OF 1 JULY APPLICATIONS TO NATIONAL COURT REGISTER IN ELECTRONIC FORM ONLY**

As of 1 July, applications concerning an entity subject to an entry to the Register of Entrepreneurs will have to be submitted electronically, via the information and communication system. A „paper” application will be returned, without requesting to remove formal deficiencies.

In order to enclose attachments in a form of notarial deeds, one should use the Central Repository of Electronic Extracts of Notarial Deeds. A party’s proxy being an advocate or attorney-at-law who appears in the case will generate an electronic attestation of a document extract by entering the document to the information and communication system.

A fee will also constitute an attachment to the application to the National Court Register. The system is to enforce its payment – it will not be possible to submit the application without paying the fee.

Marta Nowak, mn@pnplaw.pl

### **BAD DEBT RELIEF UNDER SLIM VAT 2 PACKAGE**

The Court of Justice of the European Union in the judgment of 15 October 2020 concerning case no. C-335/19 decided that part of provisions of the VAT Act concerning bad debt relief is inconsistent with the European Union Directive. As of 1 October 2021, most of the regulations under the SLIM VAT 2 package, which i.a. will partially correct the defective provisions, will come into force.

The possibility to benefit from the “bad debt relief” will also appear when debtors are represented by natural persons – consumers and VAT taxpayers exempt from the tax. Obviously, with reference to those entities, additional securing conditions will be introduced in order to prevent possible VAT frauds. Such condition which may serve as an example is the necessity to confirm a receivable with a legally binding court decision and to institute enforcement proceedings with regard to the receivable.

Moreover, the deadline to benefit from the above mechanism shall be extended from 2 to 3 years as of the day the invoice documenting a receivable has been issued, counting from the end of the year in which it was issued.

Marta Nowak, mn@pnplaw.pl

### **ELECTRONIC DELIVERY OF CORRESPONDENCE BY COURTS AND OFFICES**

As of 1 July 2021, the Act on Electronic Delivery was to enter into force. However, suggestions have appeared to postpone the entry into force of that Act, possibly even by a year. The electronic delivery of correspondence will become the rule in communication between public entities and non-public entities (e.g. between a court, public authority and a commercial law company).

The operation of the registered electronic delivery service consists in handing over the sent documents from the sender to the recipient as well as obtaining a confirmation that the documents have been sent and received. The service in question ensures that the shipment remains confidential on the way between the sender and the recipient and that the correspondence is not altered in an unauthorised manner nor lost or stolen in any other way.

The initial assumptions indicated that the obligation to have an address for electronic delivery will be imposed on:

- a notary, attorney at law, advocate, tax advisor, restructuring advisor, patent attorney as well as new entrepreneurs registering in the National Court Register – **as of 1 October 2021**;
- entrepreneurs registered in the National Court Register and new entrepreneurs registering in CEIDG [Central Registration and Information on Business] – **as of 1 October 2022**;
- entrepreneurs changing the entry in CEIDG – **as of 1 October 2025**.

Marta Nowak, mn@pnplaw.pl

### **ELECTRONIC DOCUMENTS SHOULD BE TIME-STAMPED**

Electronic signatures become a common tool, and additionally, in the case of some companies, the coronavirus pandemic accelerated making a decision as to a change of a form of signing contracts from paper form into electronic one. Signing documents in electronic form is usually performed using qualified electronic signatures. However, not everyone realises that the e-signature itself does not protect against the risk of manipulation of the time of signing a document (e.g. predating or postdating of a contract), as in the case of a contract concluded in an ordinary written form. In order to avoid the risk of manipulation of the time of signing a document, an electronic signature should be complemented with a function of time-stamping.

An electronic time stamp is an electronic attestation attached to the signed document in a permanent manner, with the use of which it is possible to specify in a precise and reliable manner the date of signing the document. We usually distinguish two types of time stamps: qualified and non-qualified. The Qualified Time Stamp (QTS) is an equivalent of a certain date in paper documents, which is tantamount to official authentication of the date e.g. performed by a notary in paper documents. Although the Non-Qualified Time Stamp does not provide us with a certified date in a document within the meaning of the Civil Code, it may constitute a reliable evidence of the fact on what date / at what time the document was signed electronically at the latest. If a time stamp was attached at the time of putting an electronic signature, we receive a reliable evidence as to the moment of signing the document with the use of an electronic signature.

The information in this Newsletter is of general information nature and is not legal assistance. Due to the possibility of changes in the law, an analysis of the current legal situation as at the time of making a decision is recommended. We suggest contacting our advisers before taking appropriate action.

Affixing an electronic signature with the QTS has also an additional advantage. Sometimes, the electronic signature in an electronic document is verified only at the time when our electronic signature (certificate) has expired. In such a situation, if the electronic signature is not affixed with the QTS, the verification may result only in a conditional authentication. If the electronic signature is not affixed with the QTS, an entity verifying the signature does not have an absolute evidence but it only an assumption that the electronic signature was put in the period of its validity.

Paweł Tomasik, pt@pnplaw.pl

#### **PREMISE FOR LAND – INVESTMENT OPPORTUNITY FROM REAL ESTATE SECTOR**

On 1 April, came into force the Act on settlement of premises or buildings at the price of real properties disposed from real estate resources of the commune. Its purpose is to increase the number of apartments in Poland, the prices of which have continued to grow for several years and the demand does not keep up the supply. The new Act allows for the sale of land real properties belonging to real estate resources of the commune (i.e. to communes) for the benefit of private investors who will undertake to conduct a housing investment on such land, in exchange for the price payable partially in the money and partially in the ownership title to the erected premises and buildings. Approximately 28 thousand pieces of land are estimated to be in communes' resources (the majority of them is additionally developed with technical infrastructure), which are suitable for conducting investments. The new Act may prove to be an investment opportunity from the real estate sector.

Mateusz Dyśko, md@pnplaw.pl

#### **INTRA-COMMUNITY SALE AT DISTANCE WITHOUT VAT REGISTRATION IN POLAND**

On 1 July, tax obligations of sellers sending goods to consumers in the EU will be changed. The changes in law are triggered by Poland's obligation to implement solutions adopted in EU Directives nos. 2017/2455 and 2019/1995 and they relate to the so-called e-commerce package which aims at increasing competitiveness of European sellers in relation to third country entities. The VAT exemption for import of goods in shipments of a value not exceeding EUR 22 will be removed.

So far, sellers not having their seat or permanent place of conducting business activity in Poland, who sell their goods by mail order to consumers in Poland, have been obliged to register themselves as VAT taxpayers in Poland, after the value of the goods sold by them exceeded PLN 160,000 (the threshold determined by Poland). After the changes are introduced, the sellers will be able to settle the VAT tax in a country of their seat (in accordance with the One Stop Shop rule). The obligation of VAT registration in Poland will arise only in the situation where sellers commence the sale from the territory of Poland to other country.

Mateusz Dyśko, md@pnplaw.pl



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