Legal Newsletter

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Suspending management board member in the performance of duties – consequences vital for the company and the board member

Suspension mode and reasons
A member of the management board of a limited liability company may be suspended in the performance of their duties by the meeting of shareholders. Moreover, under articles of association of a limited liability company, the supervisory board may be authorised to suspend, for vital reasons, a certain member or all members of the management board in the performance of their duties. A management board’s member suspension is subject to disclosure in the National Business Register (a notice under Art. 39 section 5 of the National Business Register Act).

Among vital reasons, the occurrence whereof offers the grounds for a management board member suspension in the performance of duties, quoted may be: incapability of serving in the board due to prolonged illness, improper performance of duties, lack of loyalty towards the company, involvement in competitive activity, etc. It is at the same time worth mentioning that if an obstacle is of permanent nature, a correct solution would be recalling a member of the management board from the position held, as suspension is of temporary nature and should be applied only in impermanent circumstances.

Status of a management board member suspended in the performance of duties
Passing a resolution on a management board member suspension in the performance of their duties results in suspension of such member’s right to represent the company and manage its business. However, the above does not affect a suspended member’s actions towards third parties. The above results from Art. 204 § 2 of the Commercial Companies Code, in accordance wherewith a management board member’s right to represent the company may not be limited with effect against third parties.

The above means that actions on the part of the management board member suspended in the performance of duties, although undertaken contrary to the prohibition, will be valid and effective towards third parties. However, a failure to observe the prohibition of conducting the company’s business or representing it may result in the management board member’s liability under civil law, and if due to the actions undertaken in violation of the prohibition, the management board member causes damage to the company, under Art. 293 of the Commercial Companies Code, such a person may be liable to the company for damage inflicted through an action or omission contrary to the law or provisions of the company’s articles of association.

In accordance with a view expressed in the theory of law (e.g. S. Sołtysiński, in: System prawa prywatnego, vol. 17B, p. 506, Nb 117), a suspended member of the management board does not participate in the management board works, yet – as a rule – is authorised to receive remuneration, unless otherwise provided for in an agreement constituting the grounds for rendering management services. In addition, the
supervisory board may decide whether a suspended member may use its office, secretarial services and other entitlements that do not require amendment of an employment contract (services agreement). Such a member is still bound by statutory and contractual competition bans. Although the above description of a member status refers to a joint-stock company, it is also applicable to a limited liability company.

**Effect of suspension on the term of office**
Suspension does not result in expiry of the term of office of a member of the management board as the above event is not mentioned among premises for the term of office expiry determined in Art. 202 of the Commercial Companies Code. In accordance with the above-mentioned provision, the term of office of a management board member expires due to the lapse of time (depending on whether a member of the management board was appointed for one year or for a longer period), or due to a member’s death, withdrawal or recall from the management board.

**Liability for the company’s debts**
Due to the fact that the term of office of a suspended member of the management board does not expire, and simultaneously suspension of the right to represent the company is not effective towards third parties, a question arises whether a member suspended in the performance of duties will be liable for the company debts incurred in the period of suspension, i.e. when such a person was not authorised to undertake actions and manage the company’s affairs.

Legal theory and judicial decisions provide no clear answer to the above question. On one hand it may seem that a suspended member of the management board should not be liable for the company debts incurred in the period of such suspension. As transpires from Art. 299 of the Commercial Companies Code, a member of the management board may release himself from liability for the company obligations also in a situation where he proves that a failure to file a petition in bankruptcy and to institute arrangement proceedings was not due to his fault. The fact of depriving a suspended management board member of the right to manage the company’s affairs may justify a failure to institute arrangement proceedings for reasons not attributable to the fault of a management board member, who in fact was not authorised to file a relevant petition. Vital here is the provision of Art. 21 sec. 2 of the Bankruptcy and Rehabilitation Act, in accordance wherewith an obligation to file for bankruptcy rests with any person authorised to individually or jointly represent a company, while suspension of the management board member results in the loss of authorisation to manage the company’s affairs and represent it.

Another circumstance that constitutes a premise for excluding liability of a suspended member of the management board may be the lack of knowledge on the company’s current financial standing. The above may stem from the fact that a suspended member of the management board was entirely excluded from managing the company’s affairs and simultaneously renders for the company no work on grounds other than appointment to the management board (employment contract, contract for management, etc.). In practice, it is advisable to distinguish a situation where a member of the management board is entirely excluded from conducting the company’s affairs and even rendering work for the company (when it is actually impossible for a management board member to possess any current knowledge on the company standing, which may last several months) from a situation where a suspended member of the management board is still employed with the company and thus has or should have knowledge on its current standing.

Nevertheless, with reference to both above-described situations it should be mentioned that the deprivation of the right to represent the company is not effective towards third parties, which means that if a suspended member of the management board filed a petition in bankruptcy, such a petition would be effective, and an action on the part of
a management board member – valid (though such a member becomes liable towards the company). Therefore, it is vital to answer the question to what extent a statutory obligation of filing for bankruptcy has priority over a corporate prohibition to act for the company, where such a prohibition is imposed by a supervisory or shareholder body. It is also important that, when fulfilling his statutory obligation, a management board member may be liable for damage (however, if a management board member fails to file a relevant petition, exposes himself to liability towards the creditors).

**Influence on the management board activity**

It is vital to take care and avoid a situation where suspension of one management board member in the performance of the duties would paralyse the company operation, e.g. in a situation where the management board consists of two persons, and the company representation formula requires them to act jointly. In such a situation, suspension of one member of the board in fact blocks a decision-making process of an entire governing body.

**Summary**

Summing up the above, a management board member’s suspension in the performance of duties gives rise to the following consequences:

1. A management board member is suspended in his right to represent the company and conduct its affairs.
2. A mention on suspension is entered to the National Business Register.
3. Depriving a suspended management board member of the right to represent the company is not effective towards third parties.
4. Actions undertaken by a suspended management board member in breach of a ban remain valid.
5. Actions undertaken by a suspended management board member in breach of a ban may expose him to liability under civil law.
6. The term of office of a suspended management board member does not expire.
7. A management board member seems not to be liable for company debts incurred in the period of his suspension.

**Formal matters**

Formal question that should not be overlooked in the event of suspension of a management board member is notification of that fact to a registry court of jurisdiction within 7 days of passing a resolution on suspension, on KRS-Z3 form appended with KRS-ZK form and a resolution on suspension along with a confirmation of payment of stamp duty in respect of an application for entering amendments and announcement in Monitor Sądowy i Gospodarczy (since 30 May 2014, PLN 250 and PLN 100 respectively), as well as a power of attorney (if applicable) and a confirmation of payment of stamp duty.

If the reason for a management board member suspension in the performance of his duties ceases to exist, the supervisory board passes a resolution on cessation of suspension in the mode identical with that applicable to passing a resolution on suspension.

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In February 2014, members’ bills to amend the Banking Law and the Code of Civil Procedure were brought before the Sejm. The draft legislation is aimed at enhancing protection of rights of the banks’ customers against consequences of making written declarations on submission to enforcement in the situation where they have not been duly informed on legal effects of making such a declaration. Among the amendments mentioned should be imposition on banks of notification obligations with reference to effects of issuing a bank enforcement order and extension of the scope of analysis carried out by the court as part of proceedings for appending a bank enforcement order with a writ of execution. In particular, the bill proposes the following provisions:

1. **bank notification obligations**
   - the contents of the debtor’s declaration on submission to enforcement is to include an instruction on effects of issuing a bank enforcement order
   - the bank will be required to inform the debtor of its intention to file with the court a motion for appending a bank enforcement order with a writ of execution.

2. **court proceedings for appending a bank enforcement order with a writ of execution and the enforcement proceedings**
   - the scope of analysis carried out by the court as part of proceedings for appending a bank enforcement order with a writ of execution is to be extended with finding whether the bank has informed the debtor of effects of issuing a bank enforcement order
   - the period for filing by the debtor a complaint against a decision on appending a bank enforcement order with a writ of execution is to run from the date of serving upon a debtor a decision on appending a bank enforcement order with a writ of execution
   - a court enforcement officer is to suspend *ex officio* enforcement proceedings in a situation where in the course of enforcement a debtor effectively filed a petition for termination of enforceability of entire writ of enforcement or a part thereof.

On 21 August 2014, the Council of Ministers presented its standpoint on the members’ bill, wherein it generally approved the proposed amendments on extension of the bank’s notification obligations and verification by the court in the course of proceedings for appending a bank enforcement order with a writ of execution if the debtor was provided with the required information.

Nevertheless, the Council of Ministers was critical of other proposed solutions, which it regarded inconsistent with the basic rules and the nature of enforcement proceedings.

The Council of Ministers indicated that imposing on the bank an obligation to immediately notify the debtor of an intended submission to the court of a motion for appending a bank enforcement order with a writ of execution should be analysed in the light of its influence on effectiveness of the pending enforcement proceedings (and possible debtor’s actions aimed at disposal of property). Thus, the Government turned its attention to the necessity of amending the draft regulation in such a way as to make it protect the customers’ interest on one hand and to ensure quick and full satisfaction of the creditor.
Another proposed amendment disapproved by the Government was that concerning provisions on determining the time limit for submitting by the debtor a complaint against the court’s decision on appending a bank enforcement order with a writ of execution. The Council of Ministers stated that ratio legis of currently binding provisions was to surprise the debtor with commencement of enforcement and quickly seize its property that the debtor might dispose of. The Government emphasises the fact that if the bill is passed in its current wording (at present the provisions do not provide for serving upon a debtor the court decision on appending a bank enforcement order with a writ of execution) it would in fact generate an exception to the currently binding system of appealing decisions of that type.

The Government was clearly critical of the proposed ex officio suspension by a court enforcement officer of enforcement proceedings if in the course of enforcement a debtor effectively filed a petition for termination of enforceability of entire writ of enforcement or a part thereof. The Government maintained that the bill failed to determine in detail the notion of “effective filing a petition” and indicated that such a solution might be used by debtors to obstruct or prolong the enforcement proceedings, irrespective of legitimacy of a petition submitted by the debtor. In the Government’s opinion, the bill introduces automatic suspension of enforcement proceedings based on formal prerequisite of instituting an anti-enforcement petition, a procedure currently absent from the legal system.

It should be noted that in accordance with the draft regulations, banks would be required to amend debtors’ declarations on submission to enforcement made before the act’s entry into force as regards an instruction on effects of issuance of a bank enforcement order. Nevertheless, such retroactive force of the act gives rise to serious doubts. It is emphasised that the planned obligation might be fulfilled only in full cooperation between the bank and the debtor. Otherwise, the above solution will, in fact, make it impossible to append writs of execution to bank enforcement orders resulting from banking activities carried out before the new provisions’ entry into force.

It is worth noticing that although the draft regulations are aimed at protecting the banks’ clients, such regulations may prove economically detrimental to them. If the banks are limited in their ability to quickly enforce claims with the use of a bank enforcement order, banks may try to compensate for deterioration of their position in relation to the client for example by establishing additional collaterals. Next, establishing of additional collaterals will necessitate incurring their costs by banks’ customers. It is also worth mentioning that if banks seek claims against debtors under a petition and not under a bank enforcement order (where obtaining of an enforcement order is much more time-consuming than award of a writ of execution to a bank enforcement order) will substantially increase such debtor’s indebtedness, as interest on indebtedness will be calculated during the entire court proceedings. Therefore, when introducing amendments in the regulations, the legislator should be careful and give regard to economic aspects and market conditions.

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 Authorities for protection of intellectual property in the European Union, in particular the Office for Harmonization in the Internal Market ("OHIM") and national patent offices have been for a long time striving for standardizing practices concerning trademarks and industrial designs protection. The need of such harmonisation results from various practices applied by various offices at a national level.

With a view to the above, in 2011, there was introduced the so-called Convergence Programme aimed at harmonisation of trademark-related practices in the European Union.

One of the initiatives implemented as part of the Convergence Programme is working out principles for determining similarity and sameness of black and white trademarks as, clearly, there are numerous differences in trademark interpretation among domestic offices. Some offices, in particular the Polish Patent Office, when registering a black and white trademark, simultaneously extended protection over all colour versions of a trademark, while intellectual property protection authorities in other countries and the OHIM granted protection only to the registered form of a trademark.

As an example of a dispute related to the above, the Medinet case (file no. T-378/11) may be referred to. The case was concluded with the judgment of the General Court of 20 February 2013 found that “MEDINET” wordmarks, identical graphically, fail to meet the premise of sameness as one of the marks compared did not designate any specific colour, while the other one was gold.

In order to eliminate any doubts in that respect, the OHIM and 22 national patent offices of the European Union states, published a communication determining common practice on black and white trademarks protection that entered into force on 15 July 2014.

The above common practice focussed on an attempt to standardize principles of reserving trademark priority, relative grounds for trademark registration refusal and actual use of a trademark.

Origination of the trademark priority is connected with the moment of filing a trademark application. In accordance with Art. 4 letter a section 2) of the Paris Convention and Art. 29 of the Community Trademark Regulation, any filing that is equivalent to a regular national filing under the domestic legislation gives rise to the right of priority. As a consequence, date of the first filing is regarded as the date of filing a Community trademark application. This means that as a result

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1 M. Białasik – Kendzior, Europejska praktyka dotycząca rejestracji czarno-białych znaków towarowych
2 Communication published on 15 April 2014, www.uprp.pl
of filing a trademark application e.g. in Poland, for six months the applicant will enjoy priority right to file an application concerning the same trademark also as a Community trademark. In this context a practical problem arises: when a trademark enjoying priority will be found identical as to colour with the trademark to which the application refers. As part of the common practice it was found that as regards reserving priority, a trademark registered as a black and white one is not identical with the same trademark in a specific colour. Such marks may be regarded identical only where differences as to colour are so little that they may be overlooked by an average customer. Therefore, in practice, it is justified to assume that if a certain priority mark was registered with no information concerning its colour and if it is presented in greyscale, it will be identical with the same mark, whose registered colour is “greyscale”. However, if a priority trademark colour is not registered and such a trademark is presented in black and white, it will be identical with a trademark, whose registered colours are “black and white”. Next, if a registered colour of a certain priority trademark is “black and white”, and an application is filed for any other colour, such marks will not be regarded identical.

Relative grounds for registration refusal pertain to situations where an intellectual property authority refuses grant of protection to a trademark due to e.g. earlier identical marking, in a situation where goods and services for which the registration is sought, are identical with goods or services for which an earlier trademark application was filed. In accordance with principles adopted in the judgment issued in the case C-291/00 “LTJ Diffusion”, it was found that, as a rule, an average consumer is capable of noticing differences between black and white mark and the same mark in colour. The above marks may be regarded identical only if differences between such marks are so little that they may be unnoticed by an average customer (e.g. black and white mark and navy blue and white mark, displaying identical contrast between graphic elements).

As far as a mark use is concerned, the above issue is significant due to a risk of the mark registration revocation if a respective mark is not used (e.g., as provided for in the Regulation, a Community trademark has not been put to genuine use in the Community for continuous period of five years). It should be emphasised here that an actual use means not only use of a trademark identical with the registered one, but also use of a trademark in a form differing in elements that do not change a distinctive nature of a registered form of a mark. Thus, it should be decided whether using a trademark in a colour other than the registered one constitutes changing of the registered form. The OHIM and national intellectual property protection authorities came to the conclusion that a change only in colour does not alter the distinctive nature
of the trademark, as long as the word/figurative elements coincide and are the main distinctive elements, the contrast of shades is respected, colour or combination of colours does not possess distinctive character in itself and colour is not one of the main contributors to the overall distinctiveness of the mark. In the light of the above principles, use of a mark that is a certain colour only (with no graphic elements) in a colour different from the registered one should be regarded a change of a distinctive nature of a mark (and consequently not being an actual use of a mark). Worth mentioning in this context is the General Court judgment in the MAD case (judgment of 25 May 2012, T-152/11, where the Court found that using a mark in changed colours (adding colours different than registered ones) and with non-registered word element, in a situation where the letters forming a mark (in this case letters M, A and D) and the contrast between them reflects the registered form of a mark.

Certainly, the most important advantage of the Communication is removal of doubts related to the trademark registration. In particular, since the common practice’s entry into force, it has been clear that registration of a trademark that does not designate any specific colour (both on a domestic and the Community level) does not guarantee full protection against the mark expiry if such a mark is used in other colours. For example, if company A registers “B” mark without indicating any specific colour(s) and will use it in only one colour (e.g. in red), it is highly probable that the mark registration will be revoked due to the mark non-use (e.g. based on an application from one of competitors).

On the other hand, however, adoption of the common practice may increase costs of maintaining protection of intellectual property rights. This results from the fact that it may prove necessary to register a bigger number of trademarks, e.g. in various (not merely one) colours, as registration of one colour only does not provide full protection of all colour variations of a mark. The above will certainly increase trademark registration costs, to which entrepreneurs may show no understanding.

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Copyright contracts – types and form

The Act of 4 February 1994 on Copyright and Neighbouring Rights (Consolidated text: Dz.U.2006.90.631, as amended) (“Copyright Act”) provides for two types of contracts concerning the author’s economic rights:

• contracts on transfer of the author’s economic rights and
• contracts on use of a work, i.e. licences.

Other types of contracts were admitted under judicial decisions.

Granting a licence does not deprive the currently authorised party of the author’s economic rights. It results in the licensor’s authorisation to use a third party’s work within the scope covered by the licence. A licence is the licensor’s authorisation to use a third party’s work.

Careful attention should be paid to the following information. The Copyright Act introduces a principle, in accordance wherewith if a contract concluded with the author fails to clearly indicate the nature thereof, i.e. it fails to state whether it is a contract transferring the author’s economic rights or a licence contract, the author should be assumed to have granted a licence (art. 65). Therefore, if an agreement concluded by an entrepreneur with the author is to transfer to the acquirer the author’s economic rights, it should explicitly be provided for in the agreement.

JUDICIAL DECISION:

It should be added that in its decision of 26 January 2011, the Supreme Court found that it was possible to conclude agreements other than those provided for in the Copyright Law and it indicated the possibility of lease of the author’s economic rights.

In the above-mentioned judgment, the Supreme Court found, among others that Regulating in the Act of 4 February 1994 on Copyright and Neighbouring Rights (i.e., Dz.U. of 2006, No. 90, item 631, as amended) agreements, the object whereof are the author’s economic rights, does not exclude application of the Civil Code, including its general part. Therefore, it is possible to conclude also agreements other than those provided for in the copyright law, i.e. other than contracts on transfer of the author’s economic rights or contracts on use of a work (licence contracts), if due regard is given to the copyright specificity. Moreover, there are no grounds to exclude – as a rule – permissibility of copyright lease, certainly if the premises referred to in Art 709 of the Civil Code are satisfied. The lease would have to refer to at least one field of exploitation and the related possibility of gaining benefits, e.g., give the lessee the right to stage the work against a fee (judgment of the Supreme Court, Civil Chamber, of 26 January 2011, V CSK 274/2010, LexPolonica no. 2522413).

SPECIMEN PROVISION:

The Transferor hereby transfers to the Acquirer the author’s economic rights the Transferor holds in the work, within the following fields of exploitation...

As a result of conclusion of a contract transferring the author’s economic rights (e.g. agreements of sale, donation or exchange of such rights) is their loss by the transferor and acquisition by the acquirer. Only a contract on transfer of the author’s economic rights entails acquisition of “ownership title” to such rights by their acquirer.

It should be mentioned that the Supreme Court, in its judgment of 15 November 2012, presented a negative opinion on a too strict adherence to the above approach. In the justification of its judgment, the Supreme Court expressed an opinion, in accordance wherewith in a situation where evidence gathered in a case clearly indicates that it was mutual intention of the parties to transfer the author’s economic rights, it should be assumed that such was the nature of the agreement concluded, even if the agreement does not include an explicit provision on transfer of those rights. As indicated by the Supreme Court, too strict an approach to the above-mentioned requirement would be barely acceptable in the light of provisions applicable to copyright contracts, e.g. in the light of general principles of interpretation of statements of will and agreements, and the necessity of giving regard first of all to mutual intention of the parties and the aim of the agreement (Art. 65 Civil Code) (Judgment of the Supreme Court, Civil Chamber, of 15 November 2012, V CSK 545/2011, LexPolonica no. 5046112).

Form of copyright contracts

Another vital issue apart from clear editing of provisions of copyright agreements is their conclusion in the proper form.
A contract for the transfer of the author’s economic rights is valid if concluded in writing. Also an exclusive licence must be given in writing on the pain of nullity. An agreement for granting a non-exclusive licence may be concluded in any form (e.g. in an oral form).

JUDICIAL DECISION:

In the justification of its judgement of 24 March 2011, case file no. I CSK 450/00, LEX no. 798235 reflecting the status as at 20 September 2013, the Supreme Court indicated the possibility of concluding an agreement for a non-exclusive licence impliedly, or even by commencing its performance.

For reasons related to evidence and in order to avoid any doubts, also licence agreements should be concluded in writing. Failure to observe an adequate form of a copyright contract may result in an entrepreneur’s failure to acquire rights it intended to acquire.

EXAMPLE:
An entrepreneur signed an agreement for an exclusive licence for the period of three years. After the lapse of three years the parties agreed on extension of the agreement (within the same scope) for the period of subsequent three years. A relevant arrangement was made orally. The licensee's rights to use the work should be regarded extended. Thus, the work's use will not be unauthorised. However, the licensee's right is no more an exclusive one – the licensor may give identical licences to other entrepreneurs.

Which option is better?
From the perspective of a person interested in using a work created by another person, a better option is to conclude an agreement transferring the author’s economic rights. Under the above-mentioned agreement, such a person is authorised to freely use the work and to dispose of it, for example sell it, if such a right is not excluded or limited under the agreement.

Simultaneously, it should be emphasised that the above-mentioned freedom extends also to use of the work and disposal thereof only within the fields of exploitation covered by the agreement. If the agreement fails to transfer entirety of the author’s economic rights to the work, the transferor of such rights remains the only “owner of the work” on fields of exploitation not covered by the agreement concluded.

Hence, it is so important to specify in the agreement the scope, within which the acquirer will be authorised to use the work.

Also the licensee may use the work only within the scope covered by the licence.

EXAMPLE:

In the justification of its judgement of 24 March 2011, case file no. I CSK 450/10, the Supreme Court submitted, among others, that a licence agreement authorising the licensee to place a picture of a well-known actress on a cover page of a magazine did not authorise the licensee to use such a picture for the purposes of the magazine advertising – the above-mentioned modes of use of a picture constituted two different fields of exploitation thereof.

Types of copyright licences will be discussed in a subsequent article.

Legal grounds: the Act of 4 February 1994 on Copyright and Neighbouring Rights (Consolidated text: Dz.U.2006.90.631, as amended)

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Amendments to the law

Reverse mortgage loan
On 14 November 2014 there was published the Reverse Mortgage Loan Act of 23 October 2014 that will enter into force on 15 December 2014 (Dz.U.2014.1585). The Act specifies principles and mode of concluding a reverse mortgage loan agreement, rights and duties of the parties thereto and terms of settlement of liabilities stemming therefrom.

The above-mentioned new institution of reverse mortgage loan is a specific type of a credit facility agreement, whereunder the bank makes available to the borrower, for a non-specified period, certain amount of money to be repaid after the borrower’s death, in exchange for establishing by the borrower a security for repayment of that amount with interest and other costs, on the real estate owned by the borrower. Apart from a mortgage, the bank will be entitled to claim being transferred the title to the real estate vested in the borrower, which claim will be disclosed in the land and mortgage register.

The amount made available under the reverse mortgage loan agreement will be determined on the basis of the real estate market value. The funds granted under the agreement will be made available to the creditor for an unspecified period, but their payment will be effected for a period specified in the agreement. This means that the funds will not necessarily be made available till the borrower’s death.

The borrower will at any time be able to repay the reverse mortgage loan in full or in part, and to terminate the agreement with a 30-day notice. Also the bank will be able to terminate the agreement, as specified in the Act.

Under the Act, the entire amount will be payable upon the day of termination of the reverse mortgage loan agreement or within one year from the day of the borrower’s death. If the borrower’s heirs repay the entire amount within 12 months from the borrower’s death, the bank’s claim for being transferred the ownership title to the real estate or the right, constituting the loan security, will expire. If the heirs decide not to make repayment, the bank will be transferred the ownership title to the real estate or the cooperative ownership title to the real estate, or the right of perpetual usufruct constituting the mortgage security, however, the claim to transfer those rights will be demandable on the day on which the entire amount will become payable, i.e. after the lapse of one year from the borrower’s death.

Liability of the borrower and the heirs was limited to the value of the real estate or the premises constituting mortgage
security. The bank will be authorised to claim satisfaction out of other constituents of the borrower’s assets in exceptional cases only, if there occur circumstances indicated in the Act, and on condition that satisfaction out of the real estate will be impossible or only partially possible, and up to the amount by which the real estate value was diminished or in the amount equal to a difference between the amount obtain from enforcement and the total loan amount with interest and other costs.

Immediately after obtaining information on the borrower’s death, the bank will place on its website information including the borrower’s particulars along with information on the loan and possibility and deadline for its settlement. Such information is also transferred in writing to persons indicated by the borrower in the agreement. If the loan is not repaid to the bank, concluded is an agreement for the transfer of the real estate or the right constituting mortgage security of the loan granted. Within 30 days from the day of conclusion of agreement on transfer of the ownership title to the real estate or the right that constitute a security, the bank will order valuation of the real estate market value to a certified property appraiser, and within 30 days of the property valuation date the bank will repay to persons authorised under the Act the amount constituting a difference between the real estate market value and the total amount payable, or will notify such persons that the value of its receivables exceeds the real estate market value.

**Business Facilitation Act**

In December 2014 there was published the Business Facilitation Act that introduced amendments in 31 acts, such amendments aimed at improving running of business activity, in particular by small and medium-sized companies.

The Act introduces amendments among others to control procedures in Polish sea ports, labour law, customs law, income taxes, tax on goods and services, excise duty, social security, environmental law, personal data administration and provisions on electronic signature. As examples of introduced amendments quoted may be:

- upholding validity of a medical certificate indicating absence of health-related obstacles to work at a certain position, in a situation of an employer change;

- changing the current system of settlement of income tax on use of company car for private purposes with a flat-rate system;

- excluding from income tax the value of performance in the form of transportation to a work establishment by means of collective transport (a bus) arranged by the employer and excluding from income tax the value of performance in the form of gratuitous legal assistance to non-wealthy persons;

- limiting the time of customs control in sea ports to 24 (or 48) hours;

- diminishing the payers obligations towards the Social Security Agency (removing the obligation of verifying correctness of data transferred to the Social Security Agency, removing the obligation of transferring information included in monthly reports to persons that pay only health premiums);

- introducing a “binding excise duty information” that permits obtaining information binding upon the tax authorities within the scope of tariff classification and the excise duty commodity type,

- indicating explicitly in the Act on Access to Public Information that the contents of decisions issued by common courts, the Supreme Court, administrative courts, military courts, the Constitutional Tribunal and the State Tribunal constitute public information.

The Act is to enter into force on 1 January 2015, except for amendments in the Labour Code that will apply from 1 April 2015.

**National Business Register Act – works on amendment**

The Act on Amendment of the National Business Register Act and some other Acts that, after voting in the Senat, returned to the Sejm, is aimed at ensuring a bigger consistence of entries in the register with actual operation of firms and institutions entered thereto. It is also aimed at ordering up entries pertaining to companies that have not been
re-registered and those that do not run any activity. The Act also determines principles of taking over assets of entities deleted from the National Business Register.

Moreover, the control entitlement of the registry court is to be enhanced: its ability to act *ex officio* in order to update entries has been extended. Under the new provisions, it would be possible to demand that company bodies or other entities submit necessary documents. Members of the management board would have seven days to fulfill the above obligation, and if they failed to do so, they would be imposed a fine.

**Agreement for the provision of services – old-age and disability pension premiums**

In accordance with the latest amendment of the Act on Amendment of the Act on Social Security System and some other Acts, from 1 January 2016 old-age and disability pension premiums will be payable in respect of agreements for the provision of services. Such premiums will be payable in respect of an amount equaling at least one minimum wage. From 1 January 2015 also members of supervisory boards will be subject to compulsory old-age and disability pension insurance. So far, only health premiums have been paid in respect of their salaries. Social security premiums will be payable irrespective of whether such supervisory board members are covered with any other insurance, and irrespective of the fact whether they receive old-age or disability pension. Premium amount will be calculated in respect of a revenue gained as a supervisory board member and will be paid by an entity within which the board operates.

The Act will also introduce provisions that ensure social security coverage of farmers, which provisions correspond to social security coverage in the general social security system, in a situation where a farmer acts under an agreement for the provision of services or is a supervisory board member, provided that a revenue deriving therefrom does not exceed half of a minimum salary.

The Act has been sent to the President for signing.

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