

FILING OF THE FINANCIAL STATEMENT INDEPENDENT FROM THE DATE OF COMMENCEMENT OF ECONOMIC ACTIVITY

On 24 April 2014 the Polish Supreme Court passed a resolution (case number: III CZP 15/14) in which it resolved the issue relating to the duty of filing annual financial statements by Companies which have been functioning for less than 12 months of the calendar year and the period for which it should be filed. In practice, these issues concern companies which have started their business activity before the end of June of the previous year and which financial year has ended on 31 December.

The doubts arise from the wording of two provisions: art. 40 clause 2 of the National Court Register Act of 20 August 1997 (Journal of Laws of 2007 No. 168, item. 1186, as amended) (hereinafter: "NCR Act") and art. 3 clause point 9 of the Accounting Act of 29 September 1994 (Journal of Laws of 2009 No. 152, item. 1223, as amended) (hereinafter: "Accounting Act") and their mutual correlation.

The first of the above provisions indicates, among others, that in section 3 of the National Court Register (hereinafter: "NCR") shall be mentioned the filing of annual financial statements and the annual consolidated financial statements of a group of companies, indicating the dates of the filing. The second one contains the legal definition of the financial year stating that it is: *"a calendar year or another period which lasts 12 full consecutive calendar months, used also for taxation purposes. The financial year or its changes shall be specified in the articles of association of a partnership or company on the basis of which the entity was set up. If any entity commenced its operations in the second half of the adopted financial year, its accounts and financial statements for that period may be combined with the accounts and financial statements for the following year. If the financial year is changed, the first financial year after the change should cover a period longer than 12 consecutive months."*

Therefore, the provisions of the Accounting Act provide only for a statement for a full year and the statement for a period longer than 1 year in case the first financial year commenced in the second half of the adopted financial year.

Accordingly, literal interpretation of the above definition and its application to art. 40 clause 2 of the NCR Act would exclude the possibility of mentioning the filing of financial statements created for a period shorter than a year, when the unit started operations in the first half of the adopted financial year, even if this would be consistent with the term of the first financial year defined in the articles of association, due to the lack of the appropriate legal basis for such actions.

Given the above, it was a matter of time for these issues to be directed to the Polish Supreme Court for the purpose of their resolution. This took place in December 2013, when the Regional Court in Szczecin presented a certified question of law to the Polish Supreme Court, which issued a resolution on the matter on 24 April this year. The Supreme Court, opting for the functional and systemic interpretation of law indicated that: *"if in the articles of association it was decided that the financial year is the calendar year, and the company started its business activity in the first half of the year, its first annual financial statement subject to registration pursuant to art. 40 clause 2 of the NCR Act is a statement covering the period from the commencement of its operations to the end of the calendar year"*.

The above resolution of the Supreme Court confirmed the correctness of the solution often applied by the companies and Commercial Departments of the National Court Register, which, however, is not directly reflected in the provisions of law.

On this occasion, we would like to remind everyone interested that the deadline for the approval of the annual financial statements of a company for year 2013 for companies which have a financial year ending on 31 December has passed with the end of June 2014. The approved statement should have been sent subsequently with related documents within 15 days to the Commercial Department of the National Court Register in the proper District Court. This obligation also applies to the companies established before the end of June 2013.

Bearing in mind the lapse of the statutory deadlines, we would also like to note that failure to submit the report within deadline does not exempt the persons managing affairs of companies or other obliged entity from their duty to fulfil it as soon as possible. If the financial statement was not approved within 6 months from the date of the balance sheet date, it should be submitted twice:

- as not yet approved - within 15 days after the deadline for approval, and
- as approved - within 15 days after its approval, together with the required documents (art. 69 clause 1 and 2 of the Accounting Act).

Nilsson & Partners

22 July 2014 r.

NILSSON & PARTNERS –
Adwokaci i Radcowie Prawni Sp.p.,
PL-00-377 Warsaw,
ul. Czerwonego Krzyża 6/1,
NIP 525-255-58-69,
KRS 0000463338,
District Court for the capital city of Warsaw,
XII Commercial Department of the National Court Register

