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## NEW TECHNOLOGIES IN IMPLEMENTING THE OBLIGATION FROM ARTICLE 69 OF THE ACCOUNTANCY ACT<sup>3</sup>

This paper discusses the impact of new technologies on the annual obligation of business to compile and submit to the registry court the corporate financial statements and other records detailed out by law. The aim of the article is not only to present relevant new legal solutions, but also to highlight the importance of applying new technologies in this area, both in the context of registration proceedings and business operations.

### INTRODUCTION

Civil proceedings show increased use of new technologies. The introduction of the so-called electronic procedure (Article 505<sup>28</sup> of the Civil Procedure Code) on 1 January 2010 marked a breakthrough in this respect. At the early stages of applying new technologies in civil proceedings related to company law the Act of 1 April 2011 amending the Act - Commercial Companies Code and certain other acts<sup>4</sup> has paved the way for establishing a limited liability company via a template available in an ICT system, while under the then binding Article 157<sup>1</sup> § 2 of the Civil Procedure Code, this deed could be appended with an electronic signature. Such a material and legal solution considerably impacted civil proceedings related to the registration of such an entity.

Over the following period new technologies has consolidated their presence in civil proceedings, and what is more, many provisions are still awaiting their entry into force. The

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<sup>4</sup> Dz. U. - Journal of Laws Issue 92, item 531.

provisions in this area are too many to list all in this paper. Nevertheless, the Act of 26 January 2018 amending the Act on the National Court Register and certain other acts<sup>5</sup>, which introduces new technologies in the scope of registration proceedings<sup>6</sup>. Pursuant to the amended Article 19(2) of the Act of 20 August 1997 on the National Court Register<sup>7</sup> (Journal of Laws of 2019, item 1500, consolidated text). applications concerning an entity subject to entry into the register of businesses shall be submitted exclusively through the ICT system. Accordingly, registration proceedings with respect to entities entered in the register of businesses will be pending exclusively via new technologies, that is by submitting documents in electronic form, and so will the registration court issue judicial decisions<sup>8</sup>. The above rule is to come into force on 1.3.2020. The same act, however, added Article 19e to the National Court Register, which addresses issues directly related to the subject of this article, namely submission of the documents referred to in Article 69 of the Accountancy Act of 29 September 1994 to the registry court<sup>9</sup>. This provision came into force on 15.3.2018 and already now, within its scope, it broadly opens registration proceedings to the use of new technologies<sup>10</sup>.

## STATUS QUO

Pursuant to Article 69 (1) of the Accountancy Act, in force both in the past and nowadays, the entity's manager shall file, with a relevant court register, the entity's annual financial statement, a statutory auditor's opinion - if the financial statements were required to be audited, a copy of the resolution or decision of the approving authority on the approval of the annual financial statement and the profit appropriation or loss offset, and in the case of the entities referred to in Article 49 (1) - also an annual report - within 15 days from the date of approval of the annual financial statement. In the legal status in force until 15.3.2018, to execute the above obligation, the businessman had to file a written application for having the records enumerated in this provision accepted to the entity's registry files. For large entities, the documents generated in this way could count even hundreds of pages. At the same time, the court application fee and

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<sup>5</sup> Dz. U. - Journal of Laws item 398 as amended

<sup>6</sup> See T. Szczurowski, Nowa regulacja postępowania rejestrowego, PPH 2018, Issue 10, p. 48 *et seq.*

<sup>7</sup> Dz. U. - Journal of Laws 2019, item 1500 consolidated text, hereinafter referred to as: NCRA.

<sup>8</sup> Further information see: T. Szczurowski, in: K. Osajda (ed.), Ustawa o Krajowym Rejestrze Sądowym. Komentarz, Warszawa 2019, Legalis, komentarz do art. 19.

<sup>9</sup> Dz. U. - Journal of Laws consolidated text 2019, item 351 as amended, hereinafter referred to as: Accountancy Act.

<sup>10</sup> Further information see: T. Szczurowski, Nowy tryb składania dokumentów finansowych do Krajowego Rejestru Sądowego, PUG 2018, Issue 5, p. 28 *et seq.*

the fee for the relevant notice in Monitor Sądowy i Gospodarczy, which in the late effective period totalled PLN 140. Where the balance sheet period tends to coincide with the calendar year, the period referred to in Article 69(1) of the Accountancy Act for most registrants expired on 15 July. Hence the application was technically complicated to file. Personal entrance of an application short before the deadline involved long queueing. Suffice it to say that the Warsaw registry court was reached with approx. several thousand registration cases daily around 15 July each year.

Finally, the technical problems related to the performance of the above obligation stemmed not only from the submission of the application but also from it being examined by the registry court. Again, referring to the background of the major registry court in Poland, it should be pointed out that during the summer holidays, even several thousand cases could hit individual adjudicators. Accordingly, applications could not be examined within the statutory seven-day period. Most often, the examination of applications lasted until October. While the absence of an entry of submitting a financial statement is not a major problem in everyday business, applications had to be considered according to the dates of their receipt, and hence the registration applications were pending even if concerned such important issues as changes in the composition of the management board or the corporate address. The lagging delay of the latter in particular triggered otherwise reasonable impatience of businesses. Nevertheless, there were no legal grounds for examining the application contrary to the order of their receipt, but according to their importance for the trade. For many years the above problem came unnoticed by the Minister of Justice, who until 2016 failed to provide more significant personnel support.

The above issues were only noticed by the promotor of draft Act of 26 January 2018, who in the Explanatory Statement emphasised that whereas most entities file financial statements to the register court between May to September of each consecutive year, in those months register courts are "flooded" with applications to have a report entry disclosed in the register. As a result, the number of cases is soaring and registry courts are unable to manage the inflow. In effect, there are around 50-100 such cases per day for each case adjudicator and secretariat staff during the period in question. This number of cases cannot be considered and technically 'handled' on an ongoing basis. Obviously, the waiting time will have to be extended to consider applications other than the request to mark that the financial statement have been filed<sup>11</sup>.

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<sup>11</sup> Explanatory Statement to the draft of 26 January 2018 druk sejmowy Issue 2067, p. 64.

Last but not least, the paper-based form of financial statements and other records filed to the register court materially limited access to them by third parties. Although like other parts of the register files, these records are generally accessible and can be inspected by anyone, no legal interest necessary, one has also had to enter a personal appearance at a register court, order register files and next copy them, take their photograph or examine them on the premises. The above did not ensure comfortable work, especially since the data contained in the above documents are highly specialised and often required detailed analysis.

All the above circumstances forced the legislator to amend the existing legal regulations and promptly open up for new technologies the procedure for filing the documents referred to in Article 69 (1) of the Polish Accountancy Act to the registry court.

## **APPLICATION OF NEW TECHNOLOGIES**

Article 19e(1) of the Accountancy Act is of fundamental importance for the submission of the documents referred to in Article 69 of the Accountancy Act to the register files. Whereby the submission of these documents takes place by notification through an ICT system made available for this purpose by the Minister of Justice.

The above legal standard underpin two basic conclusions. Firstly, as of 15 March 2018, the documents referred to in Article of the Accountancy Act may be submitted to the registry court solely in electronic form through the system made available by the Minister of Justice. The legislator has departed in this respect from the submission of these documents in a paper-based form. Interestingly, the above procedure applies not only to reports for periods following 15.3.2018, but also to all documents enumerated in Article 69 of the Accountancy Act, which will be submitted after that date, regardless of the period they cover. Notification only requires access an account in the ICT system, referred to in Article 126 § 6 of the Civil Procedure Code for filing pleadings in register proceedings. The legislation providing for full electronicisation as regards filing the documents specified in Article 69 (1) of the Accountancy Act is consistent with the relevant amendment to the Accountancy Act. One should mention here, for example, Article 45 (1f) of the Accountancy Act whereunder the financial statement shall be drawn up in electronic form and appended with a qualified electronic signature or a signature confirmed by a trusted ePUAP profile, while the financial statements of entities entered into the register of businesses of the National Court Register shall be drawn up in a logical structure and format

made available in Biuletyn Informacji Publicznej [Public Information Bulletin] on the website of the office servicing the Minister in charge of Public Finance (Article 45 (1g) of the Account). An analogous regulation is contained in Article 49 (7) of the Accountancy Act with respect to annual reports, and in Article 63(k) of the Accountancy Act with respect to payment reports.

Amendments were also made to the Act of 11 May 2017 on Statutory Auditors, Audit Firms and Public Supervision<sup>12</sup> Article 86(1) of which states that the statutory auditor should sign the auditor's opinion. For entities subject to entry into the register of businesses of the National Court Register, the auditor's opinion is made in electronic form and appended with a qualified electronic signature of the statutory auditor. Nonetheless, with regard to the documents referred to in Article 69 (1), Article 69 (1b), Article 69 (1f), Article 69 (1g) and Article 69 (3) of the Accountancy Act developed by 30.9.2018, they may be appended with copies signed in the manner specified in Article 19e (2) of the NCRA. The above, to be expanded below, is of fundamental importance for businesses and the activity of the registry court alike, and also to the availability of these documents for third parties.

Second, Article 19e(1) of the NCRA communicates another important message, solely due to the application of new technologies while filing the records referred to in Article 69(1) of the National Court Register to the registration court. This provision states unequivocally that these records are only submitted to the registration court. The person making a notification enters: the KRS number of the entity whose financial records are submitted; the period for which they are submitted or the period in which the entity needed not develop and file an annual financial statements; the person or persons signing the submission referred to in Article 19e(2) of the NCRA; the category of and language of submitted financial records. Each financial record should be appended separately upon submission. Such a notification does not constitute an application to institute registration proceedings, being of a purely evidential nature. Consequently, the registry court pursues no transactions in civil proceedings with reference to the notification, which by definitional does not launch such proceedings, still as it is filed, the ICT system sends an electronic confirmation to the notifying person's account, with the explicit evidence of the financial records filed, the user who reported them, and the date of notification. This principle is directly reflected in Article 19e(7) of the NCRA, whereby the notification is automatically verified via the ICT system. If accepted, the submission of documents is automatically recorded in the National Court Register (Article 20(1f) of the NCRA). As soon

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<sup>12</sup> Dz. U. - Journal of Laws consolidated text 2019, item 1421 as amended

as the information about the submission of financial records automatically enters the register of businesses of the National Court Register, the ICT system sends an electronic notification about the disclosure of the information to the notifying person's account. So does it upon placing the submitted financial records in the repository.

The application of new technology in the above scope directly bears not only on the business of traders, but also on the image of the judiciary and on the costs of this transaction. On the one hand, the notifier needs not appear at the registry court, and the records may be notified as convenient. Moreover, since the application, as mentioned above, does not launch registration proceedings, no court fee is necessary, nor the fee for the notice in *Monitor Sądowy i Gospodarczy*, which is also an absolute advantage of the new legal solution. Pursuant to Article 20(1)(i) of the NCRA, entries concerning the submission of records specified in Article 69 of the Accountancy Act do not carry a fee for a notice in *Monitor Sądowy i Gospodarczy*. Finally, a businessman does not wait for an entry to be made, but if the submitted records are accepted, the entry is made forthwith. If no action of the registration court is required in this respect, the remaining registration cases should be considered more expediently. Moreover, under Article 20(1g) of the NCRA, after the financial statements or auditor opinions have been placed in the repository, they are sent via the ICT system to the Central Register of Fiscal Data. The latter also limits official acts performed by a businessman.

## **NEW TECHNOLOGIES AND TRANSACTIONS SAFETY**

While introducing new technologies in the submission of records specified in Article 69 of the Accountancy Act to the National Court Register, the legislator aptly anticipated mechanisms aimed at protecting the safety of trading, in particular in the area of submitting documents to the National Court Register by substitutes, and in the context of the records meeting the formal requirements from the Accountancy Act.

For the safe transactions, the legislator first of all provided that the notification must be appended with a qualified electronic signature, a trusted signature or a personal signature to the notification by at least one natural person whose PESEL number is disclosed in the Register, entered as authorized to represent the entity individually or jointly with others, commercial

proxy, trustee, administrator in restructuring proceedings or liquidator<sup>13</sup>. With a view to taking account of the views of practitioners voiced soon after Article 19e and Article 19e(3a) of the NCRA have taken effect, it has been provided that the notification may also be made by an advocate, attorney-at-law or foreign lawyer, whose data the General Bar Council and National Council for Legal Advisers made available to the courts and the Minister of Justice via an ICT system referred to in Article 58a of the Act of 26 May 1982. - The Law on Advocates (Journal of Laws of 2018, items 1184, 1467, 1669 and 2193, and of 2019, item 730) and Article 60<sup>1</sup> of the Act of 6 July 1982 on Legal Advisers (Journal of Laws of 2018, items 2115 and 2193, and of 2019, item 730), provided that their PESEL number is disclosed in the system and they are authorised to file a notification. In such a case the advocate, attorney-at-law or foreign lawyer refers to the power of attorney granted and signs the application with a qualified electronic signature, a trusted signature or a personal hand-written signature<sup>14</sup>. 'Qualified electronic signature' denotes an advanced electronic signature affixed with a qualified electronic signature creator and based on a qualified certificate for electronic signature<sup>15</sup>. On the other hand, under Article 3(14a) of the Act on computerisation of the operations of entities performing public tasks, a trusted signature is construed as an electronic signature with authenticity and integrity ensured with an electronic seal of the competent Minister in charge of Computerisation, containing: a) data identifying a person, established as per a means of electronic identification issued in the system referred to in Article 20aa(1), including: first name(s), surname, PESEL number, identifier of the means of electronic identification used to make the signature, time of the signature<sup>16</sup>. Last but not least, in accordance with Article 2(1)(10) of the Act of 6 August 2010 on identity cards, a personal signature is construed as an advanced electronic signature within the meaning of Article 3(11) of Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC, verified with

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<sup>13</sup> Ibid. K. Borzemska, M. Niedźwiecki, K. Rozum, Notariat w obliczu zmian w zakresie funkcjonowania Krajowego Rejestru Sądowego; wyzwania na przyszłość, Rejent 2018, Issue 9, p. 9 *et seq.*, who rightly point out that Article 19e(2) of the NCRA, within its scope, introduces an exception to the principle that the right of representation arises independently of the entry. In the case under consideration, if the person referenced to in Article 19e(2) of the NCRA, including his or her PESEL number, has not been entered in the National Court Register, a registered entity may not be represented within the scope of this provision.

<sup>14</sup> As for the reservations made in the early period of the said rule, see T. Szczurowski, Nowy tryb składania dokumentów finansowych do Krajowego Rejestru Sądowego, PUG 2018, Issue 5, p. 29 *et seq.* The legislator has already removed most of these doubts.

<sup>15</sup> Article 3 (12) of the Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC, OJ L 257, 28.8.2014, p. 73.

<sup>16</sup> Dz. U. - Journal of Laws 2019, consolidated text, item 700.

a certificate of personal signature<sup>17</sup>. By committing the notifier to have a PESEL number disclosed in the National Court Register, the above rule intends to identify the entity signing the notification in this manner. It can be filed based on an ID card<sup>18</sup>.

Moreover, the compliance of documents submitted to the National Court Register with the basic principles of their development is to be guaranteed by Article 19e(6) of the National Court Register, whereby the submission shall be supplemented with a statement that the documents appended to the submission meet the requirements specified in the Accountancy Act of 29 September 1994.

Finally, the security of trading is also protected by the above Article 19e(7) of the National Court Register, whereunder a notification shall be automatically verified via an ICT system within the scope specified in Article 19e(2) and Article 19e(6) of the NCRA. Such a legal solution means that the notification fails to forthwith feed into a record of the submission of the documents referred to in Article 69 of the Accountancy Act but is subject to limited verification. The above solution is innovative as it provides for verification of the notification not by a court referendary or a judge, but by an ICT system, that is also via the new technology. It must be emphasised that the verification performed in this way covers only the signing of the notification by the entity referred to in Article 19(2) of the NCRA, and also the submission of a statement that the documents have been drawn up in compliance with the Accountancy Act. Importantly, documents submitted in the manner specified in Article 19e(1) of the NCRA are not verified for compliance with the Accountancy Act - both in terms of their form and content. Only the declaration referred to in Article 19e(6) of the NCRA is checked on this occasion. That said, one should add that although the legislator does not provide for prior verification of documents appended to the notification, a follow-up inspection may be administered under Article 12(4) of the NCRA. Article 12(3) of the NCRA applies accordingly to documents submitted to the repository of financial documents. If the entries referred to in Article 40(2) Article 40(5a) are deleted or if documents may not be filed to the repository of financial records, the court shall remove the underpinning records from the repository of financial records. This inspection may be triggered if the registry court deems that the documents submitted to the repository must not be accepted under the applicable legislation. On this last point, it is doubtful whether the above inspection will be launched by the registry court *ex officio*. Given the number

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<sup>17</sup> Dz. U. - Journal of Laws 2019, item 653.

<sup>18</sup> Further information: Ł. Goździaszek, in: K. Osajda (ed.), Ustawa o Krajowym Rejestrze Sądowym. Komentarz, Warszawa 2019, Legalis, komentarz do art. 19e.



of cases pending under Article 19e of the NCRA prevents in practice documents submitted as per the notification referred to in Article 19e(1) thereof from judicial review at the registration court.

At this point, however, it should be added that the system's negative verification of the notification does not allow for the documents to be filed under this procedure. However, even then, the legislator does not waive the requirement to submit documents to the National Court Register through the ICT system, that is with the use of new technologies. Nonetheless, Article 19e(7)(1) sentence of the NCRA states that in case of a negative verification, the applicant may submit the documents referred to in Article 19e(1) of the NCRA solely via the ICT system, together with an application for entry in the register of businesses of the information referred to in Article 40(2) to (5a), or an application for acceptance of these documents in the repository of financial records. The standard § 7 of the Regulation of the Minister of Justice of 19.3.2018 is compatible with the above provision on the manner of submitting notifications, manner and modes of communication with the person who notified, and manner and mode of verification of documents appended to the notification, whereby the ICT system shall forthwith notify the persons who submitted the notification of the negative verification thereof, and at the same time that the notification may be filed, once obstacles preventing its submission have been removed, or that financial documents may be filed solely via the ICT system, along with the application for entry of information referred to in Article 40(2) to (5a) of the National Court Register, or with the application for entering financial records to the repository<sup>19</sup>.

Negative verification of the notification means that an application for entry in the register of records must be submitted to the registration court, however, this application must also be submitted via the ICT system<sup>20</sup>. The application may be accompanied by copies of a resolution or approvals of the annual financial statements and consolidated annual financial statements of the capital group and the allocation of profit or offset for of loss, and documents referred to in Article 69(1c), Article 69 (1d) and Article 69 (4) of the Accountancy Act of 29 September 1994, and also other documents made by 30 September 2018, referred to in Article 69 (1), Article 69 (1b), Article 69 (1f), Article 69 (1g) and Article 69 (3) thereof signed with a qualified electronic signature, trusted signature or a personal signature by the persons

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<sup>19</sup> Dz. U. - Journal of Laws item 596.

<sup>20</sup> Ibid. Ł. Zamojski, Zmiany w ustawie o Krajowym Rejestrze Sądowym oraz w Kodeksie postępowania cywilnego uchwalone na mocy ustawy z 26.1.2018 r., MoP 2018, Issue 19, p. 1024, which aptly emphasizes the priority of submitting financial statements through free registration.

mentioned in paragraph 2 or an agent in the case being an advocate, attorney-at-law or foreign lawyer. However, filing such an application is less beneficial for the applicant as it initiates of registration proceedings, and hence involves the payment of fees, and then its examination by the judge adjudicating in the registry court.

## **REPOSITORY OF FINANCIAL DOCUMENTS**

The establishment of a new procedure for submitting the documents referred to in Article 69 of the Accountancy Act to the registry court is gives rise to establishment of a repository of financial documents. Pursuant to Article 9a(1) of the NCRA, for each entity required to submit financial documents to the National Court Register, a repository of financial documents shall be maintained in the ICT system, and the documents referred to in Article 69 (Article 9a(2) of the NCRA) shall be submitted to the repository of financial documents. Nevertheless, Article 9a (3) and 9a (4) of the NCRA, which authorises everyone to inspect the repository of financial documents, is of fundamental importance in this matter, while the Central Information Desk makes documents from the repository of financial documents available free of charge via publicly available ICT networks. The repository of financial documents grants citizens permanent access via the Internet to all documents submitted pursuant to Article 19e of the NCRA. This is a particular consequence of the use of new technologies in the scope under consideration. In other words, an entity having access to the Internet may obtain free access to the financial documents referred to in Article 19e of the NCRA and may make copies thereof as convenient. The repository includes solely of financial documents submitted under Article 19e, both as per the notification and the application, and not those submitted to the register files under the existing provisions in the traditional paper-based form. The legislator has not provided for them being digitalised. If the entity seeks to reviewing financial documents submitted to the registry court before 15.3.2018, it still has to go to the registry court to review paper-based registry files.

## **SUMMARY**

In this paper we seek to emphasize the auxiliary role of new technologies in the submission of documents specified in Article 69 of the Accountancy Act to the National Court Register. The new procedures we have referred to are of vital importance both for a business to which the

documents refer and for third parties interested in their content. A further revolution in registration procedures will take place already on 1.3.2020.

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