

# E-financial statements are first stage of digital revolution in Polish corporate law

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On 1 October 2018 the legislature introduced a regulation on e-financial statements. As a result, all financial reports submitted by Polish companies must be drawn up electronically using files with an '.xml' extension (with the exception of entities preparing financial statements in compliance with the international accounting standards) as defined by the Ministry of Finance.

## **Deadline for fulfilling obligation**

Elements of financial statements such as balance sheets, profit and loss accounts and additional information to financial statements must be prepared and signed by all members of a company's management board using an e-signature by the end of March annually at the latest. In principle, a company's financial statements must be signed using the e-signature of:

- the person to whom the company's bookkeeping is entrusted; and
- all management board members, irrespective of the manner of representation specified in the company's articles of association.

The deadline for submitting e-financial statements to the Repository of Financial Documents (accompanied by a copy of the shareholders' meeting resolution approving the annual e-financial reports and the resolution on the distribution of profit or loss coverage) is 10 days from the date of the approval of the annual e-financial statements, which, in turn, should be approved no later than six months from the balance sheet date, so by 10 July annually at the latest.

## **Severe consequences for failing to meet deadline**

Failure to fulfil the above obligations could have significant consequences. Essentially, not fulfilling the requirement to prepare and file e-financial statements with the National Court Register and the Tax Office (ie, uploading the appropriate files to the Repository of Financial Documents' website) on the dates stipulated by the relevant provisions may result in the imposition of various penalties on a company and its management board, including criminal liability. Two types of negligence relating to e-financial statements are punishable:

- failure to draw up the e-financial statements within the prescribed period (namely, by 31 March annually); and
- failure to submit the e-financial statements to the registration files despite their preparation.

Criminal liability is regulated by Articles 77.2 and 79.4 of the Accounting Act. Under Article 77.2, failure to prepare e-financial statements may result in a fine or two years' imprisonment or both. The members of a company's management board are responsible for the preparation of e-financial statements within the period prescribed, bear personal responsibility in that regard and are liable with their entire assets.

Regardless of the above criminal penalties, the registry court may impose fines on members of a company's management board and use so-called 'coercive proceedings' to enforce the e-financial statement obligations. Pursuant to Article 24.1 of the National Court Register Act, if the registry court discovers that no e-financial reports have been submitted by a company despite the expiration of the relevant deadline, it will call on its management board members to submit the appropriate documents within seven days. Failure to fulfil this obligation will result in a fine which may be repeated by the court. However, the total amount of fines in the same case cannot exceed Zł11

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million. Importantly, if no annual e-financial statements are submitted for two subsequent financial years despite the court's request, it will initiate proceedings for the dissolution of the company from the National Court Register without conducting liquidation proceedings (Article 25a.1(4) of the National Court Register Act).

### **E-signatures and e-financial statements**

In order to sign e-financial statements, all management board members must obtain an e-signature. There are two possibilities for creating e-signatures under Polish regulations:

- a free-of-charge trusted signature, obtained via a government-trusted Electronic Platform of Public Administration Services (ePUAP) profile; and
- a qualified e-signature, which is explained in detail below.

#### **ePUAP**

The authenticity and integrity of ePUAP is ensured by the electronic seal of the minister of digital affairs. It contains data identifying the signatory (eg, first name, surname and personal identification number (PESEL)). A PESEL is required to obtain an ePUAP. Foreign nationals can apply for a PESEL. This is usually done via an attorney at law and the process takes seven to 14 days on average. Then users must create an account on the [ePUAP platform](#) and apply for confirmation of the trusted signature. Subsequently, any e-financial statements contained in an .xml file prepared and signed by the company's accountant can be signed using the ePUAP on the government's [website](#). In practice, the procedure can be performed only using a Windows or Linux operating system as the government's website is not compatible with the Mac operating system.

Signing an e-financial report does not mean that it has been submitted to the Repository of Financial Documents. It is crucial to upload the correctly prepared (and signed) file to the Financial Document Repository's [website](#). As of April 2019, it is also possible to take this step through a professional attorney at law.

#### **Qualified e-signature**

Generally speaking, a qualified e-signature is a signature issued in Poland or another EU member state in accordance with the EU Regulation on Electronic Identification (910/2014), repealing the EU Electronic Signatures Directive (1999/93/EC). Thus, theoretically, it is also possible for members of a company's management board to sign e-financial statements using a qualified e-signature from another EU country, as long as it was produced according to the XML Advanced Electronic Signatures Basic Electronic algorithm as an .xml file compatible with the World Wide Web Consortium schema from its [website](#) – in short, the XML Advanced Electronic Signatures Basic Electronic algorithm in the enveloped version (with the signature as an additional element ds:Signature in the original .xml file). However, experience shows that it is better to get a Polish signature due to the risk of incompatibility in the case of e-signature providers from other countries. In Poland, qualified e-signatures are offered by several suppliers (eg, Eurocert, Certum, Szafir, Sigillum and Cencert) registered in accordance with the requirements of the Act on Trust Services and Electronic Identification and the EU Regulation on Electronic Identification.

#### **Comment**

The Polish legal environment for business is changing rapidly and seems to be moving online. This was inevitable, especially in light of Poland's aspiration to become a leader of innovation. More and more matters, especially those regarding contact between citizens and the authorities, can be carried out online. Compulsory submission of the e-financial statements through the Financial Document Repository's website is the first case in which the electronic form is not only possible (optional) but mandatory. When it comes to a choice between the qualified e-signature and the trusted e-signature (ePUAP), arguably signing e-financial reports with the latter is easier, especially for management board members from abroad. However, bearing in mind the emerging technical problems and severe penalties for failure to meet the above requirements, all Polish companies should take appropriate steps to mitigate the potential risks and comply with this revolutionary regulation as soon as possible.

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