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Liquidation of separate proceedings in commercial cases

On 3 May 2012 come into force material amendments to the Act of 17th November 1964 – the Code of Civil Procedure (Journal of Laws of 1st December 1964) (hereinafter referred to as the “CCP”). The amendments will apply to the actions instituted after the amendments effective date and constitute subsequent exceptionally broad amendments to the CCP.

In terms of the entrepreneurs, the key amendment constitutes the liquidation of the separate proceedings in commercial cases. In spite of facing vast criticism, the law-maker resolved to liquidate in whole the separate proceedings in commercial cases between entrepreneurs, i.e., inter alia, the companies as well as natural persons conducting business. Consequently, the courts will now hear cases according to the general regulations of proceedings under the civil law.

Hitherto, disputes between entrepreneurs under the civil law regarding their business activity (commercial cases) were resolved in the separate proceedings, which were governed by special rules, in particular the non-admission of evidence rule. The provisions imposed on the entrepreneurs being parties to a dispute additional requirements typical for professional representatives (attorney-at-law and legal advisors) due to the fact that in the opinion of the law-maker, the entrepreneur is a professional entity, which should abide by higher standards of due care when running its business. Abandonment of these additional restrictions seems a case in point, since not every entrepreneur has legal knowledge comparable to the knowledge of the professional representatives such as the attorney-at-law or legal advisor.

It should be underlined here that as a result of introducing the amendment the subject-matter jurisdiction of the regional courts changes. This means that the threshold from which the regional courts have jurisdiction over a given cases has been reduced to PLN 75,000, which will result in bigger influx of cases to the regional courts. On the other hand, the business divisions of the courts have been preserved in order to allow the judges to obtain specialization.

Concurrently with liquidation of the separate proceedings in commercial cases, there have been abolished the non-admission of evidence rule, which limited the right of the parties to a dispute to adduce new evidence in a case. Pursuant to the non-admission of evidence rule, the provisions set specific term or moment until which the evidence might have been adduced. In case of the lapse of such term, the evidence could no longer be adduced in the case. As a result, in case of failure to submit facts or evidence within the set term, a party lost its right to base thereon during further course of the proceedings. Pursuant to the hitherto wording of Article 47914 of the CCP, the entrepreneur was obliged to file a statement of defence and already at this stage of the proceedings submit all claims, accusations

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and evidence. The party could invoke new claims or evidence solely when it proved that submission of such claims or evidence at the first stage of the proceedings was impossible or the necessity to present those claims or evidence arose later. The amended Articles 207 and 217 of the CCP replace the non-admission of evidence rule with the system of discretionary power of a judge. Pursuant to the new wording of Article 207 of the CCP, a president of the adjudicating panel will be entitled to order a party to file the statement of defence within a set term not shorter than two weeks. Furthermore, prior to the first session the president of the adjudicating panel will be entitled to oblige the parties to file pre-trial documents, set the order and term of filling the documents and the circumstance that are to be clarified. Whereas, filing the pre-trial documents during the course of the proceedings will be possible solely upon consent of the court, unless the document contains only a motion for examination of evidence. Such new regulation will certainly be more flexible than the previously binding non-admission of evidence rule and allows the court to consider circumstances of each case. According to the statement of reasons for the amendment, its purpose is also to limit abuse of the pleadings by the representatives, what distorts the rule of oral course of the proceedings.

Some other changes introduced by the amendments that are worth considering include Article 61 of the CCP, which after the

amendment comes into force will replace the term 'social organizations' with the 'non-governmental organization'. After introduction of the amendment, the non-governmental organization will be able, within the statutory obligations, to lodge in favour of natural persons the suits for child support or alimony, environment protection, consumer protection, industrial property rights protection, as well as protection of equality and non-discrimination. The natural person to whom the case pertains must grant consent to lodge such suit.

The amendment also introduces a significant change regarding filling an appeal against a ruling of the court of first instance. Pursuant to the hitherto binding provisions, in case the appeal was by mistake lodged with the court of second instance instead with the court of first instance which passed the appealed ruling, the appeal was deemed to be filled with a court of no jurisdiction, while transfer of documents between the courts usually resulted in the lapse of the term set for filling the appeal and consequently in its dismissal. Pursuant to §3 added to Article 369 of the CCP, the term set for filling the appeal is deemed to be met when prior to its lapse, a party lodged an appeal to the court of second instance. The new provision has practical material meaning, since as a result thereof, the appeals lodged by mistake to the court of second instance, for instance, due to putting incorrect address on an envelope, will no longer be dismissed.