

Growth - also in our own business



Henning von Zanthier, LL.M., Attorney

Contact us

According to different estimations, Poland's gross domestic product will increase up to between 4,5 and 5,5 % in 2006 - as a law firm we grow as well: Already since July 2006, we offer Polish tax consultancy with Mrs. Magdalena Teclaw, also directly in our office in Poznan and no more only through our co-operation with an office in Warsaw. As of January 1, 2007, our teams in Poznan and Berlin will be reinforced by one lawyer each. Finally, on January 1, 2007 the Berlin office will move to Kurfürstendamm

(corner Fasanenstraße) which is one of the top addresses in Berlin. You will be provided with more detailed information at a later date.

We have been glad to see that notwithstanding an increase in the law firm's turnover, our clients still assess our work so well. Our questionnaires have been filled out in 25% by our clients. In the following categories we have achieved only "very good" or "good" scores:

- clients satisfaction
- quality of work as regards content
- swift and smooth handling of cases
- friendliness of people who handle cases

We want to continue work on it in order to achieve such results also in future and we still have an open mind to and are grateful for your criticism and suggestions.

I hope you will enjoy reading this month's iusletter that once more confirms the liberal and Europe-friendly approach of Poland's Highest Jurisdiction.

Yours faithfully,
Henning von Zanthier, LL.M.

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The law firm

The Chambers of *von Zanthier & Schulz und von Zanthier Kancelaria prawnicza* provides services within the area of legal advice and tax consultancy as well as audit. Our purpose is to extensively attend to clients judicial and fiscal with their investment plans and exercise of economic activities in Germany and Poland.
www.zanthier.com

Authorisation of the members in the management board of a limited liability company



**Wojciech
Łakomiecki,**
prawnik
Kontakt

The Supreme Court decided in its decision of August 23, 2006 (reference number III CZP 68/06) that in a limited liability company with the management board made up of two members one member may be authorised, e.g. to conclude a contract of purchase made in the form of a notarial deed. This resolution considerably facilitates the handling of situations where both members of the management board cannot participate in a legal transaction. This particularly benefits companies with (one) foreign member of the management board who is not always in Poland and who does not have to travel to Poland e.g. to conclude a contract of purchase in the form of a notarial deed. Before this court decision the two board members had to sign either the contract jointly or sign the power of attorney jointly. As of now, it shall be sufficient if the foreign member of the management board authorises the other member in an appropriate form.

Art. 205 k.s.h (the Polish Commercial Companies Code) enables a limited liability company whose management board comprises several members to freely determine the rules of representation in the articles of association. If the articles of association do not include any provisions in this respect, a joint representation shall be assumed. Consequently, representations in the name of the company may be made by two members of the management board acting jointly or by one member of the management board acting together with a holder of the commercial power of attorney. The purpose of this provision is to subject these people's actions to mutual control.

A consequence of the Supreme Court's resolution is that a member of the management board acting jointly with another member can authorise himself to be a proxy. This situation occurs when joint representation is provided for in the articles of association or in default of such a provision in the articles of association is provided for by law. In some of the literature on

law this proxy solution is criticised, because it involves an evasion of legal provisions on joint representation of a company. However, the Supreme Court has rejected this counter-opinion and brought forward the argument that if the legislator had not wanted to allow for overlapping of functions of a management board member and a proxy, he would have explicitly provided for it, as it has been the case e.g. in comparable situations of art. 214 §1 or 243 § 3 ksh. As long as the management board is authorised to appoint a third party as a proxy for specific actions, no reasons whatsoever can be seen for putting a member of the management board at a disadvantage in this respect.

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Admission of delayed evidence in judicial proceedings



**Wojciech
Łakomecki,**
prawnik
Kontakt

In commercial cases, the Polish Code of Civil Procedure (KPC) provides for a more formalistic procedure than in other cases. Art 47912 KPC can be brought up as an example of this distinct formalism. Pursuant to this regulation, the plaintiff is obliged to present in the statement of claim all statements and evidence supporting them. As a result of failing to do this, he may not be allowed to present this evidence and these statements in the course of proceedings and thus will be deprived of them.

In the sentence of February 22, 2006 (ref. no.: II CK 341/05), the Supreme Court decided that the court adjudicating on a particular case can ex officio admit evidence which the plaintiff is no more allowed to adduce due to the failure of having presented it in the statement of claim. The Court decided that the consequences of the preclusion have no absolute nature and only relate to specific parties and specific evidence. The evidence precluded for one party can be still submitted by the adverse party in the case. All the more, a court can admit evidence on its own initiative i.e. ex officio.

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Changes to the labour law



**Radca prawny
Karolina
Barańkiewicz**
Kontakt

As a member of the European Union, the Republic of Poland is obliged to achieve objectives set forth by the EU. The main objective set forth by the EU is to create a uniform domestic market, which involves the approximation of law. A result of this objective is coming into force of the Law on changes to legal regulations in connection with Poland's access to the European Community of June 23, 2006 (Journal of Laws 06.133.935).

Of particular importance are changes to the labour law affecting entrepreneurs who take on employees in Poland and thus every day come in contact with the labour law. In the following, we would like to briefly present some of the changes:

1. Pursuant to the amended art. 29 § 2 kp (the Polish Labour Code), if the employment contract is not concluded in writing, it is required that upon its conclusion, i.e. not later than on the day of the commencement of work, the employee receives a confirmation in writing regarding not only the type of the employment contract (e.g. contract for a specified or unspecified period of time), its terms and conditions, but also specifying the contracting parties.
2. Another change was made to art. 29 § 3 kp where §§ 31 - 33 were added providing among other things for the possibility of the employees to obtain information by referring to adequate provisions of the Labour Code determining important data on the employment relationship (e.g. place of work and type of job) - in order for this information being provided by the employer it is enough to refer to applicable provisions of the Labour Code.
3. Pursuant to art. 29 § 32, an employee shall be immediately notified by the employer about the changes to the conditions of employment as stipulated in art. 29 § 3 no. 1-4 regarding the membership of the employee in the collective labour agreement or changes to the collective labour agreement, not

later than within one month from this change becoming effective.

We shall keep you up to date on further changes connected with the implementation of the Community law.

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Interruption of the period of limitation by the request for amicable settlement



**Radca prawny
Karolina
Barańkiewicz**
Kontakt

For claims asserted in connection with conducting business activities, a three years period of limitation is basically applicable. For claims under a contract of sale, this period is even shorter and amounts to 2 years from the presentation of the case. According to art. 123 of the Polish Civil Code, the period of limitation is interrupted by any immediate action taken in order to assert, state or secure a claim at a court of law or another authority competent for decisions in cases or the execution of claims of a given type or at a court of arbitration.

Pursuant to the decision of the Supreme Court of October 10, 2006 ref. no.: V CSK 238/06, the request for an attempt at a settlement in a judicial settlement proceedings is also an action in terms of the above mentioned provision and leads to the interruption of the period of limitation. However, the request has to explicitly specify the claims to be covered by the settlement.

Thus it is easier to settle disputes at a court of arbitration and not to run the risk of one's own claims to become time-barred.

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Decisions of Polish courts

Among others, in its latest judgement in business law the Supreme Court ruled as follows:

1. Resolution of the Supreme Court of August 23, 2006, III CZP 60/06

Waiver of the right of perpetual usufruct by the beneficiary results in its expiration.

2. Sentence of the Supreme Court of March 16, 2006, III CSK 8/06

A third party can exempt himself from the obligation to satisfy a creditor's claim for declaring a legal transaction - that has been made to the detriment of the creditor - invalid (Art. 533 kc) also by providing evidence of debtor's claim, provided that he has no doubt about this claim being able to satisfy the creditor.

3. Resolution of the Supreme Court of April 20, 2006, IV CSK 2/06

In the case when the ordering party has rectified the defects of work, the ordering party's claims for reimbursement of the rectification costs prescribe within two years upon the acceptance of work.

4. Resolution of the Supreme Court of July 21, 2006, III CZP 45/06

Upon the institution of bankruptcy proceedings, commercial powers of attorney expire and a new power of attorney may not be conferred. (art. 109 7 § 2 of the Polish Civil Code).

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Events at our office

1. On September 28, 2006 starting at 6:30 p.m. Dipl.-Kfm. Rüdiger Schulz (auditor and tax adviser) - a lecture on "Our Neighbour Poland" on the premises of the Association of Tax Advisers Berlin-Brandenburg (Steuerberaterverband Berlin-Brandenburg). More information is available on the web site www.stbverband-berlin-bb.de

2. On September 29, 2006 radca prawny Joanna Gwiazdowska-Genker, doradca podatkowy Magdalena Teclaw and Rechtsanwalt Thomas Urbanczyk, LL.M.- lectures on legal and tax conditions of business activity in Germany at the seminar on "Establishing and Conducting Business in the EU Countries within the European Domestic Market - Germany" organised by Wielkopolska Izba Przemyslowo-Handlowa (Chamber of Industry and Commerce of Greater Poland). Information is available on www.wip-h.poznan.pl or under the e-mail berlin@zanthier.com.

3. On October 17, 2006 Dipl.-Kfm. Rüdiger Schulz (auditor and tax adviser) - a lecture in Vetschau (Germany) on "Taxation of Foreign Enterprises in Germany, etc". More

details are available on www.stbverband-berlin-bb.de

4. **On November 22, 2006** Dipl.-Kfm. **Rüdiger Schulz** (auditor and tax advisor) will give a lecture on "Polish Tax Law and Tax Comparison to Germany" in Vetschau. More information are available on www.stbverband-berlin-bb.de

5. **On November 22, 2006** Rechtsanwalt **Henning von Zanthier**, LL.M. will give a lecture on the status quo of the trade in certificates in the area of the renewable energies in Poland at the Poleko Fair in Poznan. More details are available under berlin@zanthier.com.

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Poland - current economic information

1. Minimum monthly salary under the employment contract equals from 01.01.2006 - **899,10 PLN Brut** (Journal of Laws Gbl.2005.177.1469)
2. Average salary in Q2 2006 amounted to **2.427,27 PLN Brut** (M.P.06.55.588)
3. Average remuneration in enterprises in August 2006 amounted to **2.611,93 PLN** (Official Journal GUS 06.9.59)
4. Euro exchange rate on 22.09.2006 amounts to: 1 Euro = 3,9840 PLN
5. The value of insurance premiums in social security
 - old-age pension insurance - **19,52 %**
 - disability insurance - **13 %**
 - sickness insurance - **2,45 %** borne by an employee in whole
 - accident insurance from **0,40 to 8,12 %** an employer bears the entire costs of this insurance.
6. Statutory interest for tax arrears amounts to **11% per annum** (as of 01.03.2006)
7. Statutory interest amounts to **11,5 % per annum** (as of 15.10.2005)
8. Monthly inflation rate for August 2006 - **1,4 %**

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