Business Constitution – opening of the Polish administration towards entrepreneurs

As of 30 April 2018, a package of five legal acts adopted on 6 March 2018 aimed at facilitating business activity entered into force in Poland.

The legal acts are:

a) Entrepreneurs Law Act;
b) Act on Ombudsman for Small and Medium-sized Entrepreneurs;
c) Act on the rules for participation of foreign entrepreneurs and other foreign persons in trade on the territory of the Republic of Poland;
d) Act on Central Registration and Information on Business Activity and Entrepreneurs Information Desk;

Since the above-mentioned legal acts amend basic aspects related to performance of business activity as well as obligations of the entrepreneurs and the administration bodies, they are collectively referred to as the “Business Constitution”.

The Business Constitution is announced to be the greatest reform of Polish commercial law since 1989. It is conceived to be counteract the flaws of existing legislature and create stable and transparent conditions of conducting business activity in Poland.

New Entrepreneurs Law

The new Entrepreneurs Law Act includes principles of co-operation between the state’s administration and entrepreneurs.

The most vital of the new rules are:

a) the rule according to which the entrepreneur is entitled to undertake any actions except for those forbidden by the provisions of law, which may be summarized as “what is not prohibited by law, is allowed” (in dubio pro libertate);
b) the authorities’ obligation not to dissent from established practice of resolving issues in the same factual and legal circumstances without justified reason;
c) the authorities’ obligation to settle factual doubts and the doubts with respect to legal provisions in favour of the entrepreneur;
d) the authorities’ obligation to conduct the proceeding in a way to inspire trust of the entrepreneurs, in line with the principles of proportionality, fairness and equal treatment, to act adequately and quickly, using the easiest methods leading to solving a given issue.

Non-registered activity

The Entrepreneurs Law Act implements the category of a minor gainful activity of natural persons which is excluded from the obligation of registration if revenues arising from this activity do not exceed 50% of minimum monthly wage. This privilege may be enjoyed only by persons who did not perform business activity during previous 60 months. Non-registered activity is not an activity requiring a concession, permit or entry to the regulated activity register nor activity conducted based
on civil law partnership agreement. The revenue obtained from such activity is subject to general taxation.

Thanks to this regulation many minor entrepreneurs, e.g. casual traders or university students providing classes, will not be forced to register their activity nor to pay social insurance premiums.

“Start-up package”

Entrepreneurs starting their businesses are exempt from paying social security premiums for the first six months of their activity. After this period, they are entitled to pay decreased social security premiums for another two years.

This relief does not, however, apply to health insurance premium which is obligatory as of the beginning of the business activity.

Ombudsman for Small and Medium-sized Entrepreneurs

Another novelty implemented by the Act on Ombudsman for Small and Medium-sized Entrepreneurs is creation of the authority designated to secure and to represent the rights of micro, small and medium-sized entrepreneurs, i.e. the Ombudsman for Small and Medium-sized Entrepreneurs.

The Ombudsman is entitled to give opinion on legal acts regarding business activity, submit applications for legislative initiative, issue legal explanation to particular provisions of law as well as notify the respective authorities of irregularities, participate in legal proceedings having the rights of prosecutor, and intervene in entrepreneurs’ cases.

It is expected that the Ombudsman will have started its activity by the end of 2018.

New regulations for foreign entrepreneurs

Foreign entrepreneurs trading in Poland should be aware that the Business Constitution gathers the provisions related to their activity in one legal act. The implemented amendments are not major, but thanks to this condensation of regulations, the discrepancies existing between the provisions scattered in the past in various legal acts have been eliminated.

Assessment of the Business Constitution

Admittedly, some of the provisions of the Business Constitution are only formal implementation of the rules already operating in practice, some of them, however, are entirely new solutions. They are supposed to yield less formalized procedures and more friendly attitude of the authorities towards the entrepreneurs.

Overall, the entire package of the legal acts is assessed positively by both the entrepreneurs and the observers who hope that life of the entrepreneurs will become easier. It should be, however, noted, that more in-depth assessment of the new regulations will be possible once they have been in operation for a little longer.

More information about the Business Constitution may be found on the website run by the Ministry of Entrepreneurship and Technology of Poland: