

A close-up, slightly blurred photograph of a black metal paperclip holding several sheets of paper together. The papers have some text and a blue header, but they are out of focus. The background is a soft, out-of-focus blue and white.

# LEGAL ALERT

## FINANCIAL STATEMENTS AFTER 1 OCTOBER 2018

Dear Sirs/Madams,

We kindly inform you that in accordance with Article 45(1f) of the Act of 29 September 1994 on Accountancy, the financial statements are prepared in electronic form and bear a qualified electronic signature or a signature confirmed by the ePUAP trusted profile. This requirement applies to financial statements and other documents (as detailed below) drawn up after 1 October 2018, which should follow the logical structure and format provided in the Public Information Bulletin on the website of the Ministry of Finance: <https://www.mf.gov.pl/krajowa-administracja-skarbowa/dzialalnosc/struktury-e-sprawozdan> .

Summing up, on 1 October 2018, each of the documents listed below is to be in electronic form (these documents must be in xml format):

- (a) annual financial statement;
- (b) report on entity's activities;
- (c) report on payments to public administration;
- d) independent auditor's opinion/audit report on the annual financial statements;
- (e) consolidated annual financial statement;
- (f) report on the group's activities,
- (g) report on the parent undertaking's activities,
- (h) consolidated statement of payments to public administration.

It should be remembered that there is no obligation to prepare in electronic form: (i) a resolution or decision on the approval of the annual financial statement or consolidated annual financial statement and (ii) a resolution on the distribution of profit or coverage of loss.

## **FINANCIAL DOCUMENTS PREPARED BEFORE 1 OCTOBER 2018**

Financial documents prepared before 1 October 2018 shall be submitted in accordance with the former rules. This means that they require a written form and should then be scanned, signed by one of the board members with a qualified signature or a signature confirmed by the ePUAP trusted profile, and made available by one of the board members through the free portal of the Ministry of Justice "Free submission of financial documents". These activities may be performed by a legal adviser or an attorney under an appropriate power of attorney, provided that in such a case the application requires a fee of PLN 140.00.

## **NEW REGULATIONS AFTER 1 OCTOBER 2018**

The system of financial reporting after 1 October 2018 requires the members of the management board to have a qualified electronic signature or a signature confirmed by the ePUAP trusted profile. In this respect, we would like to point out, however, that in order to obtain a signature confirmed by the ePUAP trusted profile, the PESEL number is absolutely necessary, while a qualified electronic signature may be obtained by a foreigner who does not have such a number. At the same time, a qualified electronic signature can be obtained by correspondence in the document flow mode, without the need to appear before the Polish service provider of a given type.

We would like to point out that in practice a situation may occur in which some of the members of a multi-member board will have a qualified signature and some of them will have a signature confirmed by the ePUAP trusted profile. Then, according to the information provided by the Ministry of Finance, it will be possible to put different types of signatures on financial documents (a part by means of a qualified signature, a part by means of a signature confirmed by the ePUAP trusted profile), with the reservation that in such a configuration it is necessary for the first signatures to be signed by the holders of a signature confirmed by the ePUAP trusted profile, and only then by the owners of a qualified signature.

Referring to the issue of having a PESEL number and its role in financial reporting, we would like to point out that in a multi-member management board at least one member must have a PESEL number. This number is not required to be used by the entire management, especially since it is not required to obtain the electronic signature. For example, if the board of a capital company consists of four members, and one of them is a Polish citizen, then in order to sign financial documents it is sufficient for the remaining members to obtain qualified signatures without the need to apply for a PESEL number.

However, having a PESEL number in the new financial reporting procedure is connected with one important right, namely a member of the management board having a PESEL number is

entitled to submit financial statements and other documents to the Register of Entrepreneurs of the National Court Register. Therefore, it is essential that each management board of the company should have at least one person with a PESEL number.

## **IS IT ALLOWED TO SUBMIT THE FINANCIAL DOCUMENTATION BY ATTORNEY, PROXY, LIQUIDATOR?**

We would also like to inform you that from 1 April 2019, signed financial documents may be submitted to the Register of Entrepreneurs of the National Court Register by an attorney who is a legal advisor or attorney, if his data were made available to the Minister of Justice via the IT system by the Polish Bar Council or the Polish Council of Legal Advisors.

At the same time, we would also like to indicate that we are waiting for an answer from the Ministry of Finance as to whether and to what extent foreign qualified electronic signatures issued on the territory of another EU Member State will be honoured. According to unofficial information the financial documents will be allowed to be signed with such a signature if it meets the SHA-1 format (this information will be confirmed by us to you).

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In case you have any additional questions related to the procedure of preparing and submitting financial documents under the new rules, we invite you to contact us directly.

## **KONTAKT**

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We also invite you to visit our blog „Spółka i prawo”: [www.spolkaiprawo.pl](http://www.spolkaiprawo.pl)