

WARSAW, DECEMBER 2009

THE LATEST CHANGES IN POLISH LAW
NEWSLETTER

EUROPEAN UNION LAW

On 1 December 2009 the Treaty of Lisbon, amending the Treaty on European Union and the Treaty establishing the European Community, which was signed in Lisbon on 13 December 2007 (Official Journal of the European Union, C series, No. 306 dated 17 December 2007), came into force. The Treaty of Lisbon introduces the following changes:

- the importance of the European Parliament and national parliaments has been increased, as well as the possibility of EU citizens of participation in the decision-making process; the distribution of tasks among the European and national authorities has been made clearer;
- the working methods and the voting rules of EU institutions have been simplified; their functioning has been improved and modernized;
- the Charter of Fundamental Rights has been included in the primary legislation of the European Union; new mechanisms of solidarity and better protection of EU citizens have been introduced.

PUBLIC PROCUREMENT LAW

On 22 December 2009 the Act of 5 November 2009 changing the Public Procurement Law and the Act on the legal costs involved in civil procedure, came into force. The Act introduces the following changes:

- the rules pertaining to contractors being able to contest for the public contract have been changed. In particular, a clause stating that contractors must employ a required number of disabled persons in order to be able to compete has been allowed. The matters involving drawing up and publication of a description of assessment of the above requirement have been regulated;
- the provisions containing a catalogue of reasons for disqualifying contractors from the proceedings have been changed;
- the provisions imposing on contractors an obligation to prove that they fulfill the requirements for participating in the proceedings and that they are not subject to disqualification from the proceedings have been introduced;
- the circumstances of a contracting authority returning a bid bond to a contractor have been changed;
- the rule has been introduced, according to which, in case of prolongation of a binding force of offers further to the choice of the most favourable offer, the obligation of providing a new bid bond or prolonging the already provided bid bond, relates only to the contractor, whose offer is deemed the most favourable;

- the new possibility has been introduced concerning stipulating in the procurement notice or in the specification of the important terms and conditions of the procurement, the conditions on the change of the public contract in relation to the contents of the offer, on the basis of which the contract is concluded;
- the provisions, concerning the obligation of contracting authorities to require appropriate security from contractors, have been abolished; from now on, contracting authorities will be able to require security optionally;
- the possibility of contracting authorities making advance payments, relating to the public contract, has been introduced.

THE SUPREME COURT'S RULING

On 7 October 2009 the Supreme Court ruled that a creditor is not liable on the basis of Article 415 of the Act of 23 April 1964 – the Civil Code (Journal of Laws No. 16, item 93, as amended, hereinafter referred to as the „CC”), for any damage caused by executing a non-final court order for payment, to which an execution clause had been attached, if this court order was later annulled, unless applying for execution and supporting such an application was a faulty action of such a creditor (files No. III CZP 68/09).

The Supreme Court stated that action consisting in a creditor applying for execution and supporting such an application, on the basis of a final and binding court judgment or a non-final judgment, which is subject to instant execution, cannot be subject to tortuous liability as provided for Article 415 of the CC.

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On 22 October 2009 the Supreme Court ruled that a management board of a limited liability company may not act for the company in a dispute for repealing a resolution of the company's meeting of shareholders, which was started by one of the company's shareholders and a management board member at the same time (files No. III CZP 63/09).

The Supreme Court emphasised that in order to protect the company's interest properly, the competence of the management board to represent the company needs to be excluded both in case the entire management board questions such a resolution, as well as if some individual management board members do so. The latter case also includes situations, in which the remaining management board members are able to represent the company on the basis of internal rules of representation in force in the company.

If you have any questions or doubts, please do not hesitate to contact me.

Yours sincerely,

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