



LAW OFFICE

**KRUK, PASIERBIAK, WASILEWSKI
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Newsletter - October 2009

Recent news from the legal system in Poland

Act of June 26, 2009 amending the act on land and mortgage register as well as some other acts (Dz.U. /Polish Journal of Acts/ No. 131, entry 1075)

- entries into force on February 20, 2011

The amendment to the act on land and mortgage register resigns from a traditional division into (1) ordinary mortgage, which secures existing receivables and (2) mortgage, which secures future receivables as well as receivables of non-fixed value. According to new provisions, only one kind of a mortgage will exist and will secure

existing receivables as well as future and conditional ones.

Pursuant to the act, one mortgage will secure several receivables of the same creditor as well as many receivables of various entities, which participate in financing the same undertaking. This change will surely have a positive effect on economic relations.

Moreover, the amended provisions enable securing claims for interests and granted costs of proceedings by a mortgage, but only if they did not prescribe. Claims for interests will be covered by security only if amount of interests was revealed at mortgage register.

Regulation of the Council of Ministers of August 4, 2009 amending the regulation on aid granting in privatisation processes (Dz.U. /Polish Journal of Acts/ No. 134, entry 1104)

– entered into a force on August 8, 2009

The amended regulation made existing rules on granting entrepreneurs non-cash regional aid on development of new investments more precise. According to the new regulation, state aid in privatisation processes can be granted in a form

of spreading the State Treasury's receivables into instalments with an interest rate more favourable than the one on the market. In case of transferring an enterprise into a paid use (so called personnel leasing), the aid may involve an exemption from payment of some additional fees amounts up to 2/3 of those fees which have to be paid in the first eight quarters of contract validity. These two types of aid constitute regional aid intended for completion of new investment if:

- entrepreneur's own share in investment outlays amounts to at least 25 % of costs which can be covered by the aid and at the same time which come from own funds or from external financing but not from public funds,
- an entrepreneur will undertake to carry out its business activity in a region for at least 5 years, in case of small and medium enterprises for at least 3 years, after finishing an investment.

The provisions of the amended regulation precisely specify what costs can be covered by the aid in case of realisation of a new investment (*inter alia* investment cost related to tangible fixed assets as well as intangible and legal assets connected with an extension of an enterprise, a diversification of production or a change in technological process; costs of an acquisition of fixed assets directly related to an enterprise, which is liquidated). It has to be indicated that an acquisition of shares of an enterprise is not considered as an investment.

Act of August 27, 2009 amending the Construction Law and the act on Real Estate Management (Dz.U. /Polish Journal of Acts/ No. 161 entry 1279)

– entered into force on October 15, 2009 (some provisions entry into force on January 1, 2010)

The amendment to the Construction Law and the act on Real Estate Management was imposed by the Directive 2002/91/WE of the European Parliament and of the Council on the energy performance of buildings.

The amendment introduced the obligation to issue energy certificates on the secondary property market. Therefore, in case of selling or transferring ownership or other right of a building or its parts or premises a seller is

obliged to deliver an energy certificate to a buyer. In case of leasing a building, premises or a part of a building a lessor is obliged to present an energy certificate to a lessee. The aforementioned changes will cause a possibility for buyers and lessees to objectively compare cost related to the operation of similar premises.

This amendment extends also a catalogue of persons entitled to issue energy certificates. It has to be mentioned that many experts negatively assess a provision which imposes a ban on issuing certificates only by owners of buildings, its parts or premises. Upon this provision, the energy certificates would be issued *inter alia* by developers. This is against Article 10 of the directive 2002/91/WE, according to which buildings should be certified only by independent experts.

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