

RESOLUTION NO. 359/2012
OF THE POLISH FINANCIAL SUPERVISION AUTHORITY

of 20 December 2012

on the list of documents relating to business activity of entrepreneurs or foreign entrepreneurs enclosed with requests for authorisation referred to in Article 6a(1)(1)(m) and Article 6d(1) of the Banking Law Act

Pursuant to Article 137(1a) of the Act of 29 August 1997 – The Banking Law (Journal of Laws of 2002, No. 72, item 665 as amended¹), it is resolved as follows:

§ 1. 1. The Resolution defines a list of documents enclosed by the bank with the request for authorisation referred to in:

1) Article 6a(1)(1)(m) of the Act of 29 August 1997 – The Banking Law, hereinafter referred to as the “Banking Law Act”, relating to business activity of entrepreneurs or foreign entrepreneurs having a permanent place of residence or registered office in the territory of a Member State and designated to perform entrusted activities in the Republic of Poland or in a Member State;

2) Article 6d(1) of the Banking Law Act, relating to business activity of a foreign entrepreneur not residing or not established in a Member State or an entrepreneur or a foreign entrepreneur designated to perform the entrusted operations outside the territory of the Republic of Poland or a Member State.

2. Whenever the Resolution refers to a Member State, this shall mean a Member State of the European Union, as well as a State that is not a Member State but belongs to the European Economic Area.

¹ Amendments to the consolidated text of this Act were published in the Journal of Laws of 2002 No. 126, item 1070, No. 141, item 1178, No. 144, item 1208, No. 153, item 1271, No. 169, item 1385 i 1387 i No. 241, item 2074, of 2003 No. 50, item 424, No. 60, item 535, No. 65, item 594, No. 228, item 2260 and No. 229, item 2276, of 2004 No. 64, item 594, No. 68, item 623, No. 91, item 870, No. 96, item 959, No. 121, item 1264, No. 146, item 1546 and No. 173, item 1808, of 2005 No. 83, item 719, No. 85, item 727, No. 167, item 1398 and No. 183, item 1538, of 2006 No. 104, item 708, No. 157, item 1119, No. 190, item 1401 and No. 245, item 1775, of 2007 No. 42, item 272 and No. 112, item 769, of 2008 No. 171, item 1056, No. 192, item 1179, No. 209, item 1315 and No. 231, item 1546, of 2009 No. 18, item 97, No. 42, item 341, No. 65, item 545, No. 71, item 609, No. 127, item 1045, No. 131, item 1075, No. 144, item 1176, No. 165, item 1316, No. 166, item 1317, No. 168, item 1323 and No. 201, item 1540, of 2010 No. 40, item 226, No. 81, item 530, No. 126, item 853, No. 182, item 1228 and No. 257, item 1724, of 2011 No. 72, item 388, No. 126, item 715, No. 131, item 763, No. 134, item 779 and 781, No. 165, item 984, No. 199, item 1175, No. 201, item 1181 and No. 232, item 1378 and of 2012 item 855.

§ 2. The bank shall enclose with the request for authorisation referred to in § 1(1)(1) or § 1(1)(2):

1) a written statement by the entrepreneur or the foreign entrepreneur containing information on:

- a) given name and surname, place of residence and address, or company name, registered office and address of the entrepreneur or the foreign entrepreneur,
- b) the organizational and legal form of carrying on business activity of the entrepreneur or the foreign entrepreneur,
- c) the place where the entrusted activities will be conducted,
- d) the object of business activity of the entrepreneur or the foreign entrepreneur;

2) a written statement by the entrepreneur or the foreign entrepreneur on the fulfilment of tax obligations in the state where it is subject or was subject to such obligations and on the knowledge of the provisions on criminal fiscal liability;

3) a written statement by the entrepreneur or the foreign entrepreneur about whether any proceedings in connection with the threat of insolvency or any bankruptcy or liquidation proceeding has been instituted against it, or whether any petition for the institution of such proceedings has been filed;

4) a written statement by the entrepreneur or the foreign entrepreneur containing:

- a) given names and surnames, place of residence of persons, or
- b) designation of authority, its composition and address

– authorized to represent the entrepreneur or the foreign entrepreneur in the Republic of Poland in the scope of activities related to the performance of the contract;

5) a written statement by the entrepreneur or the foreign entrepreneur whether it rendered or renders services to other banks, credit institutions or financial institutions;

6) an extract issued not earlier than within 3 months before the date of submitting the request for authorisation, by the competent registering authority of the state where the entrepreneur or the foreign entrepreneur is established, provided it is subject to the obligation of entry into such a register, unless relevant information is available through the Central Registration and Information on Business referred to in the Act of 2 July 2004 on Freedom of Economic Activity (Journal of Laws of 2010 No. 220, item 1447 as amended²), hereinafter referred to as the „Act on Freedom of Economic Activity”, or the Central Information of the National Court Register, referred to in

² Amendments to the uniform text of the Act were announced in the Journal of Laws of 2010 No. 239, item 1593 and of 2011 No. 85, item 459, No. 106, item 622, No. 112, item 654, No. 120, item 690, No. 131, item 764, No. 132, item 766, No. 153, item 902, No. 163, item 981, No. 171, item 1016, No. 199, item 1175, No. 204, item 1195 and No. 232, item 1378 and of 2012 item 855

the Act of 20 August 1997 on the National Court Register (Journal of Laws of 2007 No. 168, item 1186, as amended³)).

§ 3. If the entrepreneur or the foreign entrepreneur referred to in § 1(1)(1) or § 1(1)(2), is a natural person, the bank shall enclose with the request for authorization referred to in § 1(1)(1) or § 1(1)(2), except for the documents, including statements, listed in § 2:

1) a written statement by the entrepreneur or the foreign entrepreneur about any criminal proceedings, criminal fiscal proceedings, disciplinary or execution proceedings that may negatively affect its financial position, pending or instituted against it in the period of three years before submission of the request for authorisation;

2) a certificate of clean criminal record issued not earlier than 3 months before the date of submitting the request for authorisation, by the competent authority of the state of the entrepreneur's or the foreign entrepreneur's citizenship and by the competent authority of the state where they carry on business activity, if different than the state of the entrepreneur's citizenship, provided that those states issue such certificates;

3) a copy of the annual tax statement or return for the tax year preceding the submission of the request for authorisation, certified by a notary or in an equivalent manner as defined by the law of the entrepreneur's or the foreign entrepreneur's place of residence or registered office, drawn up in accordance with the laws in force in the state where they are subject to tax obligations, or a statement that there is no possibility to submit the required documents, along with a suitable justification.

§ 4. If the foreign entrepreneur referred to in § 1(1)(2) is a natural person without a permanent place of residence or without a registered office in the territory of a Member State, the bank shall enclose with the request for authorisation referred to in § 1(1)(2), except for the documents, including statements, listed in § 2 and § 3, a copy of the document confirming the identity and citizenship of the foreign entrepreneur, certified by a notary or in an equivalent manner as defined by the law of the place of residence or the registered office of the foreign entrepreneur.

§ 5. If the entrepreneur or the foreign entrepreneur referred to in § 1(1)(1) or § 1(1)(2) is a legal entity, organizational unit without legal personality but provided with legal capacity pursuant to separate provisions of law, or an organizational unit referred to in Article 5(2)(c) of the Act of 2 July 2004 on Freedom of Business Activity, the bank shall enclose with the request

³ Amendments to the uniform text of the Act were announced in the Journal of Laws of 2008 No. 141, item 888, of 2009 No. 18, item 97, No. 42, item 341, No. 53, item 434 and No. 157, item 1241, of 2010 No. 28, item 146 and No. 96, item 620 and of 2011 No. 92, item 531, No. 112, item 654, No. 142, item 828, No. 144, item 851 and No. 232, item 1378

for authorisation referred to in § 1(1)(1) or § 1(1)(2), except for the documents, including statements, referred to in § 2:

1) a written statement by the entrepreneur or the foreign entrepreneur about any criminal proceedings, criminal fiscal or execution proceedings that may negatively affect its financial position, pending or instituted against it in the period of three years before submission of the request for authorisation;

2) a written statement by the entrepreneur or the foreign entrepreneur on the initiation of the proceedings leading to the division, merger or transformation;

3) a description of the applied internal control system in the scope of activities entrusted under the contract;

4) the financial statements for the last year along with the opinion of a certified auditor, provided such opinion is issued, prepared in accordance with the standards in force in the state of the entrepreneur's or the foreign entrepreneur's registered office, and if the entrepreneur or the foreign entrepreneur is not obliged to prepare financial statements, a document shall be submitted that clearly indicates whether in the last financial year the entrepreneur or the foreign entrepreneur generated gains or losses, excluding a situation when the entrepreneur or the foreign entrepreneur was not carrying on business activity for the period that is sufficient to present the required documents.

§ 6. If the entrepreneur or the foreign entrepreneur referred to in § 1(1)(1) or § 1(1)(2) is a legal entity, organizational unit without legal personality but provided with legal capacity pursuant to separate provisions of law, or an organizational unit referred to in Article 5(2)(c) of the Act of 2 July 2004 on Freedom of Business Activity, the bank shall enclose with the request for authorisation referred to in § 1(1)(2), except for the documents, including statements, referred to in § 2 and § 5:

1) information on members of the management board and the supervisory board or the entrepreneur's or foreign entrepreneur's corresponding body;

2) if the entrepreneur or the foreign entrepreneur is a capital company, and the extract referred to in § 2(6) does not contain information on the amount of the company's initial (share) capital, a written statement by the entrepreneur or the foreign entrepreneur on the amount of this capital;

3) if an entrepreneur or the foreign entrepreneur is a capital company, a written statement by the entrepreneur or the foreign entrepreneur indicating what portion of the initial (share) capital is paid up, the type and number of shares held by the entrepreneur or the foreign entrepreneur and the designation of the partners or shareholders having – individually or jointly with other partners or shareholders who are associated with them by equity or organizational relationships – at least 10% of initial or share capital and the number of shares held by those partners or shareholders.

§ 7. If the entrepreneur or the foreign entrepreneur referred to in § 1(1)(2) is an organizational unit provided with legal capacity pursuant to separate provisions of law or an organizational unit without legal personality, referred to in Article 5(2)(c) of the Act of 2 July 2004 on Freedom of Business Activity, the bank shall enclose, instead of the statement referred to in § 5(1), a written statement by the entrepreneur's or the foreign entrepreneur's partners about criminal proceedings, criminal fiscal proceedings, disciplinary or execution proceedings that may negatively affect their financial position, pending or instituted against them in the period of three years before submission of the request.

§ 8. If the entrepreneur or the foreign entrepreneur is to provide IT services, including data processing services, under the contract, the bank shall enclose with the request additionally the result of a specialized information system security audit of the entrepreneur or the foreign entrepreneur within the scope of those services or a certificate of information system security within the scope of those services, held by the entrepreneur or the foreign entrepreneur.

§ 9. If the entrepreneur referred to in § 1(1)(2) being a foreign entrepreneur carries on or carried on business activity in the territory of the Republic of Poland in the period of five years before submitting the request, the bank shall enclose with the request additionally:

1) a written statement by the foreign entrepreneur about the period and place of business activity carried on in Poland and the organizational and legal form of business;

2) a copy of the certificate of an entry into the Register of Representative Offices of Foreign Companies referred to in Article 96(1) of the Act on Freedom of Business Activity, if the foreign entrepreneur was or is subject of such registration;

3) a written statement by the foreign entrepreneur on the absence of prohibition to carry on activities by a branch or a representative office of the foreign entrepreneur;

4) a written statement by the foreign entrepreneur being a natural person on depriving him, on the basis of Article 373 of the Act of 28 February 2003. - The Bankruptcy and Reorganisation Law (Journal of Laws of 2012 item 1112) of the right to carry on business activity for own account and to function as a member of a supervisory board or a corresponding body, as a representative or attorney in a commercial company, state enterprise, cooperative, foundation or association, or on the absence of such decision.

§ 10. 1. A certified translation into Polish shall be enclosed with the documents referred to in § 2 to 9, including statements, that are drawn up in a foreign language.

2. The documents referred to in § 2 Item 6, § 3 Item 2 shall also be certified by a Polish diplomatic post, unless international agreements provide otherwise.

§ 11. If during the request for authorisation referred to in § 1(1)(1) or § 1(1)(2), the actual state of affairs, legal status or state of knowledge certified in the submitted documents, including statements, referred to in § 2 to 9 changed, the bank shall submit new documents, including statements, in accordance with the amended actual state of affairs, legal status or state of knowledge.

§ 12. If the documents, other than statements, required under this Resolution contain the same information as the statements that are simultaneously required, the bank shall not enclose such statements with the request.

§ 13. If the foreign entrepreneur entrusted by the bank with the performance of the activities specified in Article 6a(1) of the Banking Law Act is:

1) a credit institution, or

2) an entity operating in the same holding referred to in Article 4(1)(10) to Article 4(1)(11a), Article 4(1)(11b)(a) and Article 4(1)11c of the Banking Law Act as the bank, or

3) an entity regulated by the competent regulatory authority of a Member State within the meaning of Article 4(1)(13) of the Banking Law Act

– § 2(1)(d), § 2(2), § 2(3), § 2(5), § 5(1), § 5(2), § 5(4) and § 6 shall not apply, provided that the bank presents a positive opinion of the competent regulatory authority of the state the foreign entrepreneur's registered office.

§ 14. The Resolution shall enter into force on the day of its announcement.⁴⁾

⁴⁾ The Resolution was preceded with Resolution No. 379/2008 of the Polish Financial Supervision Authority of 17 December 2008 on determining the list of documents relating to business activity of the foreign entrepreneur entrusted by the bank to perform the activities specified in Art. 6a(1) of the Banking Act (Official Journal of PFSA No. 8, item 33), which expired on 27 October 2011 on the basis of Article 1(7) of the Act of 19 August 2011 amending the Banking Law Act and the Consumer Credit Act (Journal of Laws No. 201, item 1181).