

**Resolution No. 379/2008
of the Polish Financial Supervision Authority
of 17 December 2008**

on determining the list of documents referred to business activity of the foreign entrepreneur, who is entrusted by the bank to perform the activities specified in Art. 6a Sec. 1 of the Banking Act

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

§ 1. The Resolution defines a list of documents provided by the bank to the application for issuing permit, referred to in Art. 6d Sec. 1 of the Act referred to in the introductory sentence, concerning the business activity of the foreign entrepreneur whose place of residence or place of business activity is not established on the territory of a Member State, designated to perform entrusted activities, or foreign entrepreneur who has to perform entrusted activities permanently or temporarily abroad.

§ 2. To the application on issuing permit referred to in § 1 the bank shall attach:

- 1) written statement of the foreign entrepreneur including information on:
 - a) name and surname, place of residence and address, or company name, office address of the entrepreneur,
 - b) organizational and legal form of business activity of the entrepreneur,
 - c) place of business activity,
 - d) number of employees and the number of entities for which the entrepreneur provides services,
 - e) the object of business activity of entrepreneur;
- 2) certificate issued by a competent state tax authority in which the foreign entrepreneur within the tax year preceding the application was subject to tax or is subject to tax, stating the fulfilment of this obligation;
- 3) written statement of the foreign entrepreneur about conciliatory proceedings against him in connection with threat of insolvency or bankruptcy or liquidation proceeding, or about an application on initiation of conciliatory proceedings;
- 4) written statement of the foreign entrepreneur including:
 - a) name, surname, place of residence of persons, or
 - b) designation of authority, its composition, location and address, authorized to represent the entrepreneur in the Republic of Poland for activities related to the performance of the Contract referred to in Art. 6a Sec. 1 of the Act referred to in the introductory sentence;
- 5) certified by a notary or in an equivalent manner as defined by the law of the place of residence or place of business activity, specimen signatures of persons or members of the bodies referred to in Item 4.

¹ Amendments to the consolidated text of this Act were published in the Journal of Laws 2002, No.126, item 1030, No. 141, item 1138, No. 144, item 1208, No. 153, item 1231, No. 169, item 1385 and 1383 and No. 241, item 2034 of 2003, No. 50, item 424, No. 60, item 535, No. 65, item 594, No. 228, item 2260 and No 229, item 2236 of 2004, No. 64, item 594, No. 68, item 623, No. 91, item 830, No. 96, item 959, No. 121, item 1264, No. 146, item 1546 and No. 133, item 1808 of 2005, No. 83, item 319, No. 85, item 323, No. 163, item 1398 and No. 183, item 1538 of 2006, No. 104, item 308, No. 153, item 1119, No. 190, item 1401 and No. 245, item 1335 of 2003, No. 42, item 232 and No. 112, item 369 and of 2008, No. 131, item 1056, No. 192, item 1139 and No. 209, item 1315.

- 6) written statement of the foreign entrepreneur, if he has rendered or renders services to other banks, credit or financial institution; in case if the entrepreneur rendered or renders services on behalf of such entities, it is also required that he indicate in a statement their number and the annual value of contracts concluded with them.

§ 3. If the foreign entrepreneur is a single entity, bank to the application for authorization referred to in § 1, in addition to documents and statements mentioned in § 2 shall enclose:

- 1) certified by a notary or in an equivalent manner as defined by the law of the place of residence or place of business activity, a copy of document certifying the identity and nationality of entrepreneur;
- 2) The current extract issued by the competent registering authority in the country of residence or place of business activity of entrepreneur, if he is the subject of registry obligation;
- 3) a written statement of an entrepreneur with a signature certified by notary or in an equivalent manner as defined by the law of the place of residency or place of business activity, about ongoing or completed within five years before placing the application on issuing permit criminal investigations, criminal fiscal proceedings, disciplinary proceedings, execution and other proceedings that may have negative impact on its financial position;
- 4) current certificate of clean criminal record issued by the competent state authority of the entrepreneur's country and by the competent authority of the state where the business activity of the entrepreneur is established, if it is different from the nationality of the entrepreneur;
- 5) certified by a notary or in an equivalent manner as defined by the law of the place of residency or place of business activity a copy of the annual statement or income statement for the tax year preceding the application on issuing permit, made in accordance with the laws in force in the country where the foreign entrepreneur is subject to tax.

§ 4. In case if the foreign entrepreneur is a legal entity or organizational unit without a legal status, referred to in Art. 5 Item 2 Letter c of the Act of 2 July 2004 on freedom of business activity (Journal of Laws, No. 173, item 1807), bank to the application on issuing permit, referred to in § 1, apart from documents and statements referred to in § 2 shall enclose:

- 1) articles of incorporation of the entrepreneur;
- 2) the current extract issued by the competent registering authority in the country of place of business activity of entrepreneur, if he is the subject of registry obligation;
- 3) information on the number and composition of the membership of entrepreneur's bodies
- 4) if an entrepreneur is a limited liability company, and the extract referred to in Item 2 does not contain information on the amount of company (share) capital, a written statement of the amount of this capital;
- 5) if an entrepreneur is a limited liability company, a written statement of the entrepreneur indicating which part of the company (share) capital has been covered, the type and number of entrepreneur shares and the designation of members (shareholders), having individually or jointly with other members (shareholders) associated with them by equity or organizational relationships at least 10% of share capital (capital) and the number of shares (shares) held by those members (shareholders);
- 6) written statement of an entrepreneur with a signature certified by notary or in an equivalent manner as defined by the law of the place of residence or place of business activity, about ongoing or completed within five years before placing the application on issuing permit criminal investigations, criminal fiscal proceedings, execution and other proceedings that may have negative impact on its financial position;

- 7) a written statement of an entrepreneur on start of proceedings leading to the division, merger or transformation;
- 8) A description of the internal control system;
- 9) annual financial statements for the last three years, together with the opinions of the certified auditor made under the rules in force in the country of business activity of entrepreneur.

§ 5. In case if the foreign entrepreneur is a non-legal organization, referred to Art. 5 Item 2 Letter c of the Act of 2 July 2004 on freedom of business activity, bank instead of statement defined in § 4 Item 6 shall enclose written statement of the organizational unit partners with signatures certified by notary or in an equivalent manner as defined by the law of the place of residency or place of business activity, about ongoing or completed within five years before placing the application on issuing permit criminal investigations, criminal fiscal proceedings, disciplinary proceedings, execution and other proceedings that may have negative impact on its financial position.

§ 6. In case of foreign entrepreneur intending to provide IT services for the bank, including data processing services, regardless of other obligations under this Resolution, the bank shall enclose the result of a specialized information system security audit of entrepreneur within the scope of services rendered for the bank or certificate of information system security within the scope of services rendered for the bank.

§ 7. If the foreign entrepreneur carried out or carries out business activity on the territory of the Republic of Poland, the bank shall enclose:

- 1) written statement of the entrepreneur about the period and place of business activity in Poland and the organizational-legal form of business;
- 2) extract from the register of business activity or National Court Register, if the entrepreneur was or is subject to registration;
- 3) notarized copy of the certificate of an entry into the Register of Representative Offices of Foreign Companies referred to in art. 96 Sec. 1 of the Act of 2 July 2004 on freedom of business activity, if the entrepreneur was or is subject of such registration.
- 4) written statement of the entrepreneur about issuing a decision on prohibition against business activities of a branch or entrepreneur representatives or the lack of such decision;
- 5) written statement of the foreign entrepreneur on depriving him, on the basis of Art. 373 of the Act of 28 February 2003. - The Bankruptcy and Reorganisation Law (OJ No. 60, item. 535 and No. 217, item 2125 of 2004. No. 91, item 870 and 871, No. 96, item 959, No. 121, item. 1264, No. 146, item. 1546, No. 173, item. 1808 and No. 210, item. 2135 of 2005. No 94, item 785, No. 183, item 1538 and No. 184, item 1539 of 2006. No. 47, item 347, No. 133, item 935 and No. 157, item 1119 of 2007. No. 123, item 850 and No. 179, item 1279 and of 2008. No. 96, item 606 and No. 116, item 731) of the law on business carried out on one's own account and the function of supervisory board member, representative or plenipotentiary in trading company, state enterprise, cooperative, foundation or association, or about the lack of such decision.

§ 8.1. Documents and statements referred to in § 2 to 7, which are written in a foreign language must be submitted along with a certified translation into Polish.

2. Foreign documents referred to in § 2 Item 2, § 3 Item 2 and 4 and § 4 Item 2 shall be certified by a Polish diplomatic post, unless international agreements provide otherwise.

§ 9. In case if during the application on issuing permit referred to in § 1, the actual state of affairs, legal status or state of knowledge changed, constituting the basis for placed documents and statements, referred to in § 2 to 7, the bank shall submit new documents and statements in accordance with the amended actual state of affairs, legal status or state of knowledge, subject to the data specified in the statement, referred to in § 2 Item 1 Letter d, which shall be updated by the bank every six months.

§ 10. In case if documents and statements provided for in this Resolution contain the same information, the bank is obliged only to attach the documents.

§ 11. In case if foreign entrepreneur, who is entrusted by the bank to perform the activities specified in Art. 6a Sec. 1 of the Act referred to in the introductory sentence is

- 1) a credit institution as defined by Art. 4 Sec. 1 Item 17 of the Act, referred to in the introductory sentence, or
- 2) entity operating in the same holding as a bank as defined in art. 4 Sec.1 Item 10 to 11c of the Act referred to in the introductory sentence, or
- 3) entity supervised by competent supervisory authorities, as defined in art. 4 Sec.1 Item 13 of the Act, referred to in the introductory sentence, a Member State of the European Union or the European Economic Area,

§ 2 Item 1 Letter d to e, § 2 Item 2 to 3 and 6 and § 4 Item 1 and 3-7 and 9 under this Resolution shall not apply, as long as the bank presents a positive opinion of the competent supervisory authorities of the country of business activity of the foreign entrepreneur.

§ 12. The Resolution enters into force on 1 January 2009.

For and on behalf of the Polish Financial Supervision Authority Chairman
of the Polish Financial Supervision Authority
Stanisław Kluza