BIAŁYSTOK LAW BOOKS

BLB

10

Maciej Etel

UNDERTAKING, CONDUCTING AND TERMINATING ECONOMIC ACTIVITY IN POLAND



Editor in Chief of Publishing House Temida 2: Cezary Kosikowski

Chief: Emil W. Pływaczewski

Scientific Board:

Members from University of Bialystok: Stanisław Bożyk, Adam Czarnota, Leonard Etel, Ewa M. Guzik-Makaruk, Adam Jamróz, Dariusz Kijowski, Cezary Kulesza, Agnieszka Malarewicz-Jakubów, Maciej Perkowski, Stanisław Prutis, Eugeniusz Ruśkowski, Walerian Sanetra, Joanna Sieńczyło-Chlabicz, Ryszard Skarzyński, Halina Święczkowska, Mieczysława Zdanowicz National Members: Marian Filar (Nicolaus Copernicus University in Toruń), Edward Gniewek (University of Wrocław), Lech Paprzycki (Supreme Court)

Foreign Members: Lidia Abramczyk (Yanka Kupala State University of Grodno, Belarus), Vladimir Babčak (University in Kosice, Slovakia), Renata Almeida da Costa (La Salle University, Brasil), Chris Eskridge (University of Nebrasca, USA), Jose Luis Iriarte Angél (University of Navarra, Spain), Marina Karasjewa (Voronezh State University, Russia), Aleksiej S. Kartsov (Federal Constitutional Tribunal in Sankt Petersburg, Russia), Bernhard Kitous (University of Rennes, France), Jolanta Kren Kostkiewicz (University of Bern, Switzerland), Martin Krygier (University of New South Wales, Australia), Anthony Minnaar (University of South Africa, Republic of South Africa), Antonello Miranda (University in Palermo, Italy), Petr Mrkyvka (Masaryk University, Czech), Marcel Alexander Niggli (University of Fribourg, Switzerland) Andrei A. Novikov (Saint Petersburg State University, Sweden), Bernd Schünemann (University of Munich, Germany), Kevin Saunders (Michigan State University, USA), Sebastiano Tafaro (University of Bari, Italy), Wiktor Trinczuk (Kyiv University of Tourism, Economics and Law, Ukraine), Keiichi Yamanaka (Kansai University, Japan).

Editor-in-Chief: Jerzy Banasiuk

Cover design: Jerzy Banasiuk

Publisher: Temida 2, Faculty of Law, University of Białystok

Series Editor: Izabela Kraśnicka

Reviewer: Cezary Kosikowski

Copyright © 2014 by Temida 2, Poland. All rights reserved. Printed in Poland. This publication is protected by Copyright and permission should be obtained from the publisher prior to any reproduction, sortage in a retrieval system, or transmission in any form or by any means, electronic, mechanical, photocopying, recording, or likewise.

Publication financed within the project – fund of Research of Young Scientists BMN No. 535 (2012)

ISBN: 978-83-62813-62-9 ISSN: 2083-9790

Temida 2, Mickiewicza 1, 15–213 Białystok, POLAND Tel.: (+48) 85 7457168 • Fax: (+48) 85 7406089 temida2@uwb.edu.pl www.temida2.pl

Table of contents

List of abbreviations	11
Introduction	13

Part 1

Act of 2 July 2004 on Freedom of Economic activity as a foundation of entrepreneurs' rights in Poland (17)

Part 2 Entrepreneur in Polish law

1. Introductory remarks: categories of entrepreneurs (businesspeople)	21
2. Definition of the term entrepreneur (according to AFEA)	22
2.1. General remarks: definitions of the terms entrepreneur and business in the system of Polish law	22
2.2. Activity of an entrepreneur: a business run on one's own behalf	25
2.3. Natural persons, legal person and non-corporate organisational units as entrepreneurs	33
2.4. Problems connected with classification of certain categories of entities (or types of activity)	
as entrepreneurs (or business)	37
3. Micro, small and medium entrepreneur (businessperson)	41

Part 3

Obligations at undertaking, conducting and terminating an economic activity

1. Introductory remarks: the essence of limits on the freedom	L
of an economic activity	

Gen	eral conditions of starting and running an economic activity	54
2.1.	Obligation of legalising an economic activity	54
2.2.	Obligation of obtaining a concession, licence/permit or entry into the register of regulated business	56
2.3.	Obligation of possessing and using a NIP (Tax identification number)	50
2.4.	Model of accurate functioning of an entrepreneur	51
2.5.	Obligation of possessing proper professional qualifications	52
2.6.	Obligation of proper entrepreneur's designation	53
2.7.	Obligation of proper trade designation	55
2.8.	Obligation of using a bank account	57
		59
3.1.		
	and on the basis of law	59
3.2.	Prescript of respecting equality and competition	59
3.3.	Prescript of supporting enterprise development	71
3.4.	Prescript of respecting legitimate interests of the entrepreneur	72
3.5.	Prescript of recognition of qualifications as well as professional insurances and guarantees	73
3.6.	Prescript of issuing interpretations of regulations on public tributes	74
3.7.	Prescript of handling entrepreneurs' matters without undue delay	78
3.8.	·	
	 2.1. 2.2. 2.3. 2.4. 2.5. 2.6. 2.7. 2.8. Gen and 3.1. 3.2. 3.3. 3.4. 3.5. 3.6. 3.7. 3.8. 	 2.3. Obligation of possessing and using a NIP (Tax identification number)

Part 4 Legalisation of an economic activity

1. Introductory remarks: functions and objectives of legalisation of an economic activity	83
2. Evolution of the system of the legalisation of economic activity in Poland	85
3. Central Records and Information on Economic Activity	91
4. Register of entrepreneurs of the National Court Register	98
5. Other registers of entrepreneurs and their functions	. 107
6. Acquisition and loss of the status of entrepreneur	.112

Part 5 Regulated economic activity

1. Essence of the regulated economic activity	118
2. Types of the regulated economic activity and register authorities	118
3. Procedure for obtaining an entry in the register of regulated activities	
4. Accountability of an entrepreneur running a regulated economic activity	

Part 6

Licensed economic activity

1. Types of licensed economic activity and concession	
authorities	
2. Characteristics of concessions and granting thereof	130
3. Tender in concession procedure	132
4. Examination in concession procedure	135
5. Business secret protection	137

6. Decisions on concessions	138
7. Promise of concession	141

Part 7

Economic activity run on the basis of a permit (licence/approval)

1. Types of economic	activity under the obligation of obtaining	ng
a permit, licence and	d approval and concession authorities	

2. Differences between a permit and a concession155

Part 8

Control of the entrepreneur's economic activity

1.	Importance of AFEA and the range of regulations	.158
2.	Subjective scope of control	.160
3.	Objective scope of control and control authorities	.161
4.	Rules of inspection/audit of economic activity of an entrepreneur according to AFEA	.164
	4.1. Rule of primacy of AFEA	.164
	4.2. Rule of compensation	.165
	4.3. Rule of evidence exclusion	.165
	4.4. Rule of reporting to inspection authorities	.166
	4.5. Rule of notifying on the intention to start an inspection	.167
	4.6. Rule of professional launching and conducting an inspection	. 169
	4.7. Rule of conducting an inspection on the premises	
	and in the presence of the person concerned	.172
	4.8. Rule of the inspection book	.173
	4.9. Rule of the limited number of inspections	.174
	4.10. Rule of the limited duration of an inspection	.176
	4.11. Objection of the entrepreneur	.179

5. Excluding the application of the rules of inspection of the entrepreneur's economic activity	181
Part 9 Economic activity of foreign entities on the territor of the Republic of Poland	y
1. Foreign person vs. foreign entrepreneur	184
2. Rules of undertaking and conducting economic activity by foreign persons	185
3. Rules of undertaking and conducting economic activity by foreign entrepreneurs	189
4. Objective limits in undertaking and conducting economic activity by foreign entities	197

Part 10 Termination of economic activity

1. Introductory observations	200
2. Suspension and resumption of economic activity	201
3. Termination of economic activity and its legal forms	207
3.1. Termination of economic activity: optional premises	207
3.2. Termination of economic activity: obligatory premises	208