

Annex to the resolution of the National Board of the Chamber of Architects No. O – 10 – II - 2009 of 1<sup>st</sup> April 2009 on introducing instructions concerning proceedings relating to cross-border provision of services provided by citizens of EU member states, citizens of the Swiss Confederation and member states of the European Free Trade Agreement (EFTA) – i.e. parties to the agreement on the European Economic Area, who hold professional architectural qualifications in member states other than the Republic of Poland

## **INSTRUCTIONS CONCERNING PROCEEDINGS RELATING TO CROSS-BORDER PROVISION OF SERVICES**

### **Amendments:**

- Resolution No. O - 12 - II - 2009 of the National Board of the Chamber of Polish Architects of 3 June 2009
- Resolution No. O - 06 - III - 2011 of the National Board of the Chamber of Polish Architects of 16 February 2011

### § 1

These instructions define the simplified registration of temporary members based on regulations on the proceedings relating to cross-border provision of services provided by the citizens of member states, who are legally established in member states other than the Republic of Poland and are entitled to a temporary and occasional exercise of this profession in the territory of the Republic of Poland.

### § 2

Whenever these instructions mention:

- 1) regional board – should be understood as the Regional Board of the Chamber of Polish Architects appropriate to the intended place where cross-border services are to be provided;
- 2) member state – should be understood as member state of the EU, Swiss Confederation and member state of the European Free Trade Association (EFTA) - parties to the Agreement on the European Economic Area;
- 3) member state citizens – should be understood as citizens of member states as defined in § 2 item 2) of these instructions, as well as members of their families as defined in the Act of 14th July 2006 on the entry into, residence in and exit from the Republic of Poland of nationals of the European Union member states and members of their family (Journal of Laws No. 144, item 1043 as amended) as well as third-country nationals holding a residence permit for long-term resident of the European Communities – as defined in the act of 13th June 2003 on foreigners (Journal of Laws of 2006 No. 234, item 1694, as amended);
- 4) proceedings relating to cross-border provision of services - should be understood as principles of reporting and documenting the intention to provide cross-border services and granting temporary membership in the chamber of architects, the citizens of

member states within the meaning of § 2 item 3) of these instructions who conduct legally registered architectural business activity in member states other than the Republic of Poland, and are entitled to a temporary and occasional work in this profession in the territory of the Republic of Poland;

- 5) cross-border provision of services – should be understood as temporary and occasional exercise of architectural profession in the Republic of Poland by a citizen of a member state as defined in § 2 item 3) of the instructions, who is entitled to exercise this profession in a member state other than the Republic of Poland;
- 6) temporary and occasional exercise of the architectural profession – should be understood as pursuing the architectural profession in the Republic of Poland for as long as it is necessary to complete a single project and supervise its implementation;
- 7) service providers – should be understood as citizens of members states in the meaning defined in §2 item 3) of these instructions, who conduct legally registered architectural business activity in members states other than the Republic of Poland, are entitled to temporarily and occasionally exercise of that profession in the Republic of Poland and intend to provide or already provide cross-border services;
- 8) the act on vocational self-governments – should be understood as the act of 15 December 2000 on vocational self-governments of architects, construction engineers and urban planners of the amended act of 7 November 2008 amending the act on vocational self-governments of architects, construction engineers and urban planners and the act - Construction Law.

### § 3

1. Proceedings relating to cross-border provision of services shall be held on the basis of the following acts of law:
  - 1) the act of 15 December 2000 on vocational self-governments of architects, construction engineers and urban planners (Journal of Laws of 2001 No. 5, item 42, as amended) of the amended act of 7 November 2008 amending the act on vocational self-governments of architects, construction engineers and urban planners and the act- Construction Law.
  - 2) the act of 18 March 2008 on the principles of recognition of professional qualifications acquired in EU members states (Journal of Laws of 2008, No. 63, item 394),
  - 3) the act of 14 June 1960 – the Code of Administrative Procedure (consolidated text: Journal of Laws of 2000 r. No. 98, item 1071, as amended),
  - 4) the act of 7 July 1994 – Construction Law (uniform text: Journal of Laws of 2006 No. 156, item 1118 as amended),

- 5) the regulation of the Minister for Transport and Construction of 28 April 2006 on the independent technical functions in the construction industry (Journal of Laws of 2006 No. 83, item 578, as amended),
- 6) the regulation of the Council of Ministers of 17 October 2008 on the scope and deadlines for submission of information on changes in the requirements for regulated professions and activities and decisions on recognition of professional qualifications (Journal of Laws of 2008 r. No. 185, item 1147).

#### § 4

1. Proceedings relating to cross-border provision of services shall be conducted by the regional board appropriate to the intended place where cross-border services are to be provided. The regional board shall appoint 3-member auxiliary verification groups.
2. Proceedings relating to cross-border provision of services shall be subject to the provisions of the act on vocational self-governments and the provisions of the act of 18 March 2008 on the principles of recognition of professional qualifications acquired in EU members states - the provisions of the Act of 14 June 1960 – the Code of Administrative Procedure.
3. Proceedings relating to cross-border provision of services shall be initiated by the regional board upon written request of a service provider stating that he/she intends to provide a cross-border service – a model of statement form is attached as annex no. 1 to these instructions.
4. Proceedings relating to cross-border provision of services are free of charge.
5. Proceedings relating to cross-border provision of services should result in regional board adopting a resolution on granting temporary membership in the chamber of architects or refusal thereof – under the terms and conditions specified in article 19 clause 2 – of the act on vocational self-governments; however resolution on granting membership should take place immediately, and in any case no later than by the deadline specified in article 35 § 3 of the Code of Administrative Procedure.

#### § 5

1. The service provider's statement on his/her intention to provide cross-border services should include the following information:
  - 1) type of professional activities to be performed as well as the place and approximate time of their commencement, if the determination is possible;
  - 2) details of insurance policy held or other means of individual or collective professional indemnity insurance.

2. In case of the intention to provide cross-border services for the first time, the service provider is obliged to attach to the statement referred to in section 1 the following documents:
  - 1) original documents confirming citizenship, and in case of the absence of the original document a certified copy of the original in accordance with the legislation in force in this regard;
  - 2) certificate issued by a competent authority of the member state, certifying that the service provider legally performs registered architectural professional activity in the member state and that, at the time of submitting the statement, he/she is not permanently or even temporarily banned from the profession;
  - 3) original document certifying professional qualifications of the service provider, and in case of the absence of the original document a certified copy of the original in accordance with the legislation in force in this regard;
  - 4) service provider's statement of consent to process by the regional council of his/her personal data for the purposes of proceedings relating to cross-border provision of services and granting temporary membership on a list of the regional chamber – in accordance with the model in Annex 2 to these instructions.
3. The above-mentioned statement, letters and documents in the course of these proceedings shall be submitted in Polish or accompanied by sworn translations into Polish, with the exception of documents confirming the identity and citizenship of the service provider.
4. A service provider who intends to provide cross-border services in the future after he/she has been temporarily granted membership of regional chamber is required to present the statement referred to in section 1 once a year, and in the event of any significant change in the situation confirmed by the documents specified in § 5 section 2 points 1-3) of these instructions, the service provider is required to submit again the documents referred to that provision.

## § 6

1. Upon receipt from a service provider a written statement and documents referred to in § 5 of the instructions, a regional board's verification group shall have 14 days to:
  - 1) assess the documents attached to the statement in terms of their completeness and authenticity;
  - 2) individually assess services that the service provider intends to provide in terms of their duration, frequency and continuity, in order to determine if these services are of temporary and occasional nature;
  - 3) prepare a report of its activities and immediately submit it to the regional board.

2. If the statement or the attached documents are found to be incomplete, the regional board shall summon the service provider to submit the missing documents within 7 days from the date of receipt of the request, and if the missing documents are not provided by the stipulated date, the regional board shall discontinue processing the application. Model of such summons for additional documents is attached to these instructions as annex no. 3.
3. If the service provider fails to submit the missing documents by the deadline specified in the summons referred to in section 2, the regional board shall notify the service provider that processing of his/her application was discontinued. Model of such notification is attached to these instructions as annex no. 4.
4. If the service provider provides the missing documents specified in the summons referred to in section 2, the regional board shall once again carry out the assessment stipulated in section 1 points 1) and 2), and then:
  - 1) upon finding that the documents submitted by the service provider are complete, and their authenticity arises no suspicions, and finding that the services intended to be provided by the service provider are of temporary and occasional nature – the regional board shall grant temporary membership in the regional chamber of Polish architects, and if
  - 2) if it is found that the services to be provided by the service provider are not of temporary and occasional nature – the regional board shall issue a resolution refusing to grant the service provider a temporary membership in the regional chamber of Polish architects. Such a resolution can be appealed to the National Board of the Chamber of Polish Architects within 30 days from the date of receipt of this resolution.
  - 3) the resolution shall be delivered to the service provider. A resolution refusing to grant membership shall be delivered to the service provider together with justification.
5. Granting the service provider temporary membership in the regional chamber of Polish architects shall take place within 3 days from the date of adoption of the resolution. The regional board shall notify the service provider in writing of the granting of membership, indicating that for the duration of the service provision, he/she shall be bound by the law in force in the Republic of Poland, including the provisions of the Construction Law and the act on vocational self-governments. The regional board shall also call upon the service provider to pay the membership fee stipulated in a relevant resolution of the National Convention of the Chamber of Polish Architects.
6. The resolution on granting membership stipulated in § 4 section 5 of the instructions and the temporary registration made on its basis shall include information on when the registration shall become valid and expired. Current and publicly available (Internet) list of members of the chamber should contain information placed next to the service provider's name that the registration is temporary.

7. Upon expiry of the temporary membership in appropriate regional chamber of Polish architects or as a result of failure to submit within the next year the statement stipulated in § 5 section 4 of these instructions, the regional chamber shall cancel the membership.

#### § 7

1. The regional board is entitled to apply to competent authorities of the member states for information confirming that the service provider conducts legally registered professional architectural activity in appropriate manner, and that he/she is not subject to any disciplinary penalties or sanctions related to the exercise of the profession.
2. Upon request of the competent authority of a member state – the regional board shall provide the information stipulated in section 1 as well as information necessary for processing of complaint filed by a customer against an architect.

#### § 8

1. Amendments of laws or regulations referred to in these instructions – in the form applicable on the date of approval of these regulations, shall not require amendments of these instructions, provided that they do not affect the provisions specified therein.
2. Annexes 1 to 4 constitute integral parts of these regulations.