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German Tax and Legal News

“Drop-in registered letter” of Deutsche Post AG fulfills the formal requirements of the delivery per registered letter according to § 21 GmbHG

BGH ruling dated September 27, 2016 (case no. II ZR 299/15)

Redemption of shares in a German GmbH: drop-in registered letter fulfills the formal requirements of a registered letter according to sec. 21 GmbHG

With its ruling the BGH decided on controversial questions in connection with the exclusion of a shareholder of a German GmbH and indirectly on questions pertaining to registered mail. This ruling also has an impact on other cases where sending by registered letter is required by law.

Facts of the case

The parties argued whether the compulsory exclusion from the German GmbH by way of a redemption of shares according to sec. 21 GmbHG (German Limited Liability Companies Act – GmbHG) was invalid because the demand for payment of contributions still due was declared by way of “drop-in registered mail” (Einwurf-Einschreiben) of Deutsche Post AG instead of hand-over registered mail (Übergabe-Einschreiben).

Reasons

The Federal High Court of Justice (BGH) has ruled that the drop-in registered letter complies with the formal requirements of a delivery per “registered letter” according to sec. 21 GmbHG in the context of the demand for payment of outstanding contributions on shares. The BGH bases its decision on the one hand on the fact that according to the current general terms and conditions of Deutsche Post AG drop-in registered mail as well as handover registered mail both fall under the generic term of registered post. On the other hand the BGH comes to the conclusion that both ways of sending are equivalent considering the spirit and purpose of the legal provision, in particular with regard to ensure the receipt and evidence of the receipt. The drop-in registered letter fulfills the purpose of evidencing receipt, as presenting the mailing receipt together with a reproduction of the record of delivery at the recipient’s address leads to a prima facie evidence that the demand for payment has been placed in the post box and received by the addressee. By this the evidentiary value of drop-in registered mail was clarified. The burden of proof for the receipt by the shareholder still lies with the company.

Practical advise

The current ruling of the BGH on drop-in registered mail is not only relevant for the compulsory redemption of shares, but also applies to other cases where sending with registered letter is required by law. The ruling confirms the prevailing opinion that also for the summoning of shareholders’ or general meetings such form of registered mail is sufficient. It may also become important in connection with the delivery of termination notices in employment law.

However, basis of the court ruling was a drop-in registered letter of Deutsche Post AG. Therefore it is still open to clarification by the court whether sending via private courier service would also be sufficient. According to the prevailing opinion on this issue, this is only the case if the selected form of sending is equivalent to the registered mail of Deutsche Post AG.

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