

**Baker
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**Doing Business
in Poland**

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2 Poland

Poland

Poland, officially the Republic of Poland, is situated in Central Europe and is bordered by Germany to the west; the Czech Republic and Slovakia to the south; Ukraine, Belarus and Lithuania to the east, and the Baltic Sea and Kaliningrad Oblast, a Russian enclave to the north. It also shares a maritime border with Denmark and Sweden. The total area of Poland is 312,679 sq km, making it the 69th largest country in the world with a population of over 38.4 million people concentrated mainly in large cities, including the historical capital of Poland, Kraków, and the present capital, Warsaw. Besides Warsaw and Kraków, other major cities are Łódź, Wrocław, Poznań, Gdańsk and Szczecin. Poland is a unitary state made up of 16 voivodeships. Poland is a member of the European Union, NATO, the United Nations, the World Trade Organization, the Organization for Economic Co-operation and Development (OECD), the European Economic Area, the International Energy Agency, the Council of Europe, the Organization for Security and Co-operation in Europe, the International Atomic Energy Agency, G6, the Council of the Baltic Sea States, the Visegrád Group, the Weimar Triangle and the Schengen Agreement.

Location of Poland within Europe and the European Union:



Location of Poland (dark green)
– in Europe (green & dark grey)
– in the European Union (green)

Overview	
Area	312,685 km ²
Population (2015 census)	38,451,000
Currency	Złoty (PLN)
Capital	Warsaw
Official language	Polish

The Population and Language

Today, Poland has more than 38 million inhabitants, and 99.8% of the population considers itself Polish, 0.15% considers itself to be of another nationality and 2,000 people do not declare their nationality. Officially there are nine recognized ethnic minority groups, including: Germans, Ukrainians, Belarusians, Lithuanians, and Jews.

The Polish language, a member of the West Slavic branch of the Slavic languages, functions as the official language of Poland.

The vast majority of Poles are Roman Catholics. 92.8% are Catholics, with 70% declaring as practicing Catholics. The rest of the population consists mainly of followers of the Orthodox Church (0.7%), Jehova's Witnesses (0.3%) and others (0.5%).

The Government, Political and Legal Systems

Poland is a democracy, with a president as the head of state, whose current constitution dates from 1997. The government structure centers around the Council of Ministers, led by a prime minister. The president appoints the cabinet according to the proposals of the prime minister, typically from a majority coalition in the Polish parliament. The president is elected by popular vote every five years. The current president is Andrzej Duda. Duda replaced President Bronisław Komorowski after the elections in 2015 and officially assumed the office of President after he was sworn in on 6 August 2015. The current Prime Minister, Beata Szydło, is the third woman to have been appointed to this position in the history of Poland. Former Prime Minister Donald Tusk assumed the office of the President of the European Council on 1 December 2014. There is no doubt that the biggest challenges of the new head of the European Council include the immigration crisis and the Russian-Ukrainian conflict, as well as the referendum in the UK to remain in the European Union.

Polish voters elect a bicameral parliament consisting of a 460-member lower house (*Sejm*) and a 100-member Senate (*Senat*). The *Sejm* is elected via proportional representation according to the d'Hondt method, a method similar to that used in many parliamentary political systems. The *Senat*, on the other hand, is elected using the First-past-the-post voting method, with one senator being returned from each of the 100 constituencies.

With the exception of ethnic minority parties, only candidates of political parties receiving at least 5% of the total national vote can enter the Sejm. When sitting in joint session, members of the *Sejm* and *Senat* form the National Assembly (*Zgromadzenie Narodowe*). The National Assembly is formed on three occasions: when a new President takes the oath of office; when an indictment against the President of the Republic is brought to the State Tribunal (*Trybunał Stanu*); and when the President's permanent incapacity to exercise his/her duties because of the state of his/her health is declared. To date only the first instance has occurred.

The judicial branch plays an important role in decision making. Its major institutions include the Supreme Court of the Republic of Poland (*Sąd Najwyższy*); the Supreme Administrative Court of the Republic of Poland (*Naczelny Sąd Administracyjny*); the Constitutional Tribunal of the Republic of Poland (*Trybunał Konstytucyjny*); and the State Tribunal of the Republic of Poland (*Trybunał Stanu*). On the approval of the *Senat*, the Sejm also appoints the ombudsman or the Commissioner for Civil Rights Protection (*Rzecznik Praw Obywatelskich*) for a five-year term. The ombudsman is responsible for guarding the observance and implementation of the rights and liberties of Polish citizens and residents, the law and principles of community life and social justice.

The Regional and administrative structure

Since 1999, the administrative division of Poland has been based on three levels of subdivision. The territory of Poland is divided into voivodeships (provinces); these are further divided into *powiats* (counties), and these in turn are divided into *gminas* (communes or municipalities). Major cities normally have the status of both *gmina* and *powiat*. Poland currently has 16 voivodeships, 379 *powiats* (including 65 cities with *powiat* status), and 2,478 *gminas*.

The current system was introduced pursuant to a series of acts passed by the Polish parliament in 1998, and came into effect on 1 January 1999. Previously (in the period from 1975 to 1998) there were 49 smaller voivodeships and no *powiats* (see Administrative division of the People's Republic of Poland). The reform created 16 larger voivodeships (largely based on and named after historical regions) and reintroduced *powiats*.

The boundaries of the voivodeships do not always reflect the historical borders of Polish regions. Around half of the Śląskie Voivodeship belongs to the historical province of Lesser Poland. Similarly, the area around Radom, which historically is part of Lesser Poland, is located in the Mazowieckie Voivodeship. Also, the Pomorskie Voivodeship includes only the eastern extreme of historical Pomerania, as well as areas outside it.

Poland is currently divided into 16 provinces known as voivodeships (Polish: *województwa*, singular *województwo*). Administrative authority at voivodeship level is shared between a government-appointed governor, called the voivode (usually a political appointee), an elected assembly called the *sejmik*, and an executive chosen by this assembly. The leader of the executive is called the *marszałek*.

Voivodeship	Capital city (cities)
Dolnośląskie	Wrocław
Kujawsko-Pomorskie	Bydgoszcz and Toruń
Łódzkie	Łódź
Lubelskie	Lublin
Lubuskie	Gorzów Wielkopolski and Zielona Góra
Małopolskie	Kraków
Mazowieckie	Warsaw
Opolskie	Opole
Podkarpackie	Rzeszów
Podlaskie	Białystok
Pomorskie	Gdańsk

Voivodeship	Capital city (cities)
Śląskie	Katowice
Świętokrzyskie	Kielce
Warmińsko-Mazurskie	Olsztyn
Wielkopolskie	Poznań
Zachodniopomorskie	Szczecin



Each voivodeship is divided into a number of smaller entities known as *powiats* (counties). The number of *powiats* per voivodeship ranges from 12 (Opolskie Voivodeship) to 42 (Mazowieckie Voivodeship). This includes both *powiats* proper (known as land counties, Polish *powiaty ziemskie*), and cities with *powiat* status (city counties, Polish *powiaty grodzkie* or more formally *miasta na prawach powiatu*). Land counties have an elected council (*rada powiatu*) which elects an executive and their head. In city counties the functions of these institutions are performed by the city's own council and executive.

The third level of administrative division is the *gmina* (commune or municipality). A *powiat* is typically divided into a number of *gminas* (between three and 19), although the city counties constitute single *gminas*. A *gmina* may be classed as urban (consisting of a town or city), urban-rural (consisting of a town together with its surrounding villages and countryside), or rural (not containing a town). A *gmina* has an elected council as well as a directly elected mayor (known as *prezydent* in large towns, *burmistrz* in most urban and urban-rural *gminas*, and *wójt* in rural *gminas*).

Gminas are generally sub-divided into smaller units, called *osiedle* or *dzielnica* in towns and *sołectwo* in rural areas. However, these units are of lesser importance and are subordinate in status to the *gmina*.

The Constitutional Tribunal

The Constitutional Tribunal is an independent constitutional organ of the State. The Constitutional Tribunal was established to resolve disputes on the constitutionality of the activities of state institutions; its main task being to supervise the compliance of statutory law with the Constitution.

The Constitutional Tribunal adjudicates on the constitutionality of legislation and international agreements (also their ratification), on disputes over the powers of central constitutional bodies, and on the constitutionality of the aims and activities of political parties. It also rules on constitutional complaints.

The Constitutional Tribunal is made up of 15 judges chosen by the *Sejm* (Polish parliament) for nine-year terms. They are fully independent. The Constitutional Tribunal constitutes one of the formal guarantees of a state grounded on the rule of law.

The Supreme Administrative Court

The Supreme Administrative Court (*Naczelny Sąd Administracyjny*) is the court of last resort in administrative cases, e.g. those between private citizens (or corporations) and administrative bodies. This court deals with appeals from lower administrative courts called Voivodeship Administrative Courts. The Supreme Administrative Court is divided into three chambers: the Financial Chamber, Economic Chamber and General Administrative Chamber.

The Economy

Poland's high-income economy is considered to be one of the healthiest of the CEE countries and is currently one of the fastest growing within the EU. With a strong domestic market, moderate level of private debt, flexible currency, and the fact that it is not dependent on a single export sector, Poland is the only European economy to have avoided the late-2000s recession. It is the seventh-largest economy in the EU and the largest market in Central Europe in terms of population and total GDP. The economy has increased over 40% in the last 10 years and further strong growth is expected.

In 2015 the pace of growth of the Polish economy was fairly quick, given the unfavorable external conditions. GDP growth was at the level of 3.6%, higher than in 2014 (3.3%), which is still more attractive than in the rest of the European Union.

In 2015, economic growth in Poland was triggered by consumption and investments and, to a lesser extent, by external demand. There occurred a rise in the number of people active in the labor market, and the unemployment rate reached a single-digit level that was at 9.8% in 2015. The Polish economy witnessed an increase in deflation from 2014, caused to a large extent by decreasing energy prices around the world.

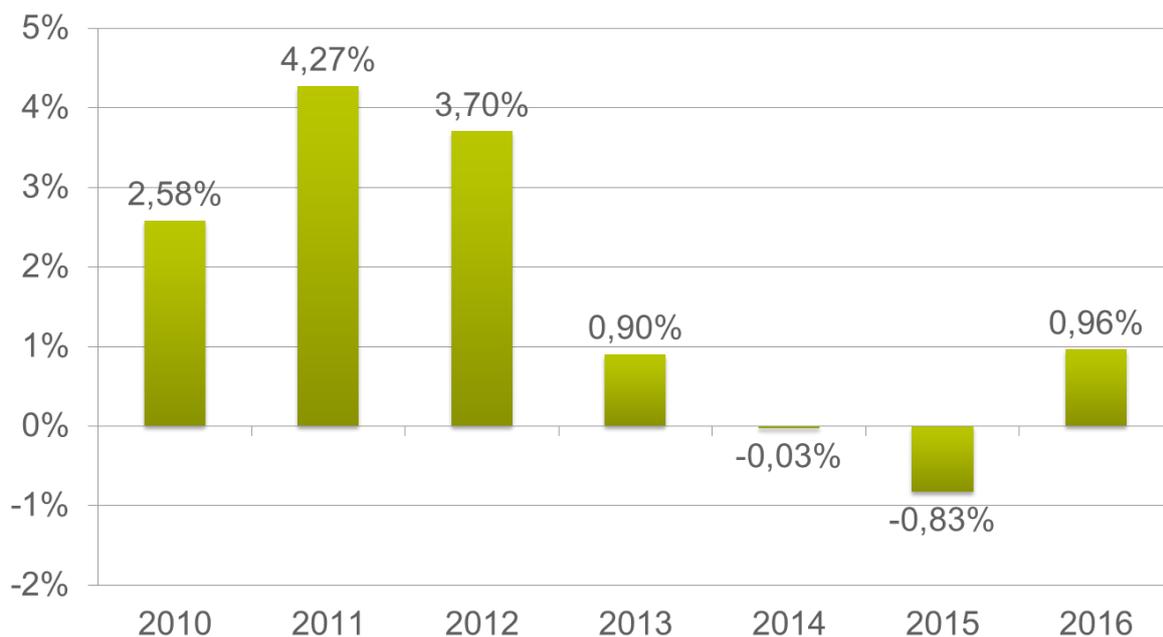
The Polish banking sector is the largest in Central and Eastern Europe and is also the largest and most highly developed sector of the country's financial markets. It is regulated by the Polish Financial Supervision Authority. During the transformation to a market-oriented economy, the government privatized some banks, recapitalized the rest and introduced legal reforms that made the sector competitive. This has attracted a significant number of strategic foreign investors. Poland's banking sector has approximately 5 domestic banks, a network of nearly 600 cooperative banks and 18 branches of foreign-owned banks. In addition, foreign investors have controlling stakes in nearly 40 commercial banks, which makes up 68% of the banking capital. Due to capital requirements, a new local tax regime and technological improvements, the banking sector has been consolidated in recent years.

Inflation

Poland faced inflation throughout the period after the political changes in 1989. However, since mid-2014, the trend has been one of deflation.

In 2015, the average annual price drop was 0.9% and was lower than that provided for in the Budget Act by 2.1 percentage points. This was mostly the result of falling transport costs (by 0.8%), and falling prices for clothing and footwear (by 1%), which caused the index to be lowered by 0.07 percentage points and 0.05 percentage points respectively.

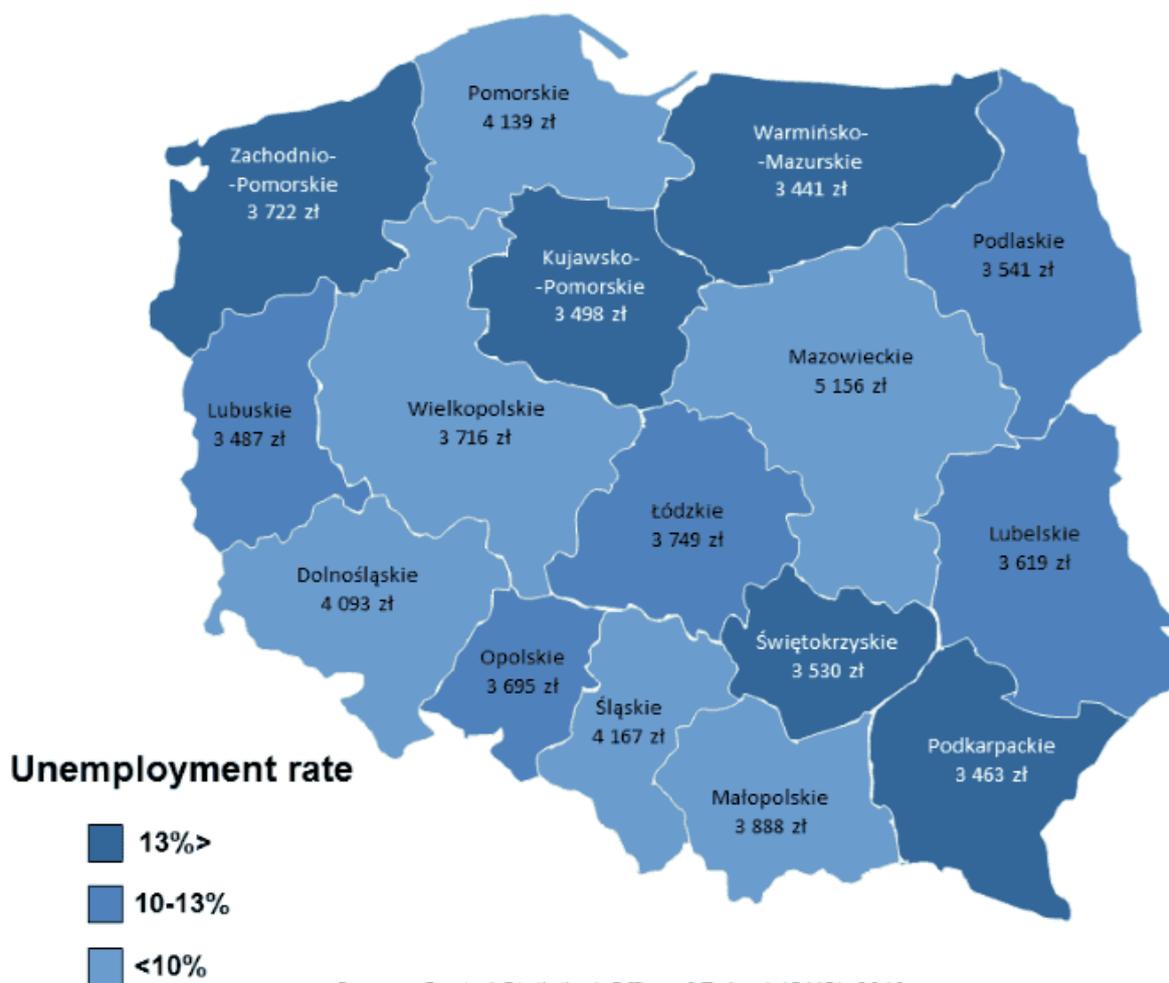
Poland: Inflation rate from 2010 to 2016 (compared to the previous year)



Source: IMF

Unemployment

By the end of January 2016, the registered unemployment rate in Poland amounted to 10.3%. In general, there were 1.6 million people unemployed. The highest unemployment rate was registered in the warmińsko-mazurskie voivodeship (17%) and the lowest rate was registered in the wielkopolskie voivodeship (6.5%). The average monthly remuneration in the private sector in February 2016 amounted to PLN 4,138 (around EUR 961). According to the Central Statistical Office, (GUS) the average gross monthly remuneration in the national economy amounted to PLN 4,067 in 4Q 2015. In the budgetary sphere (i.e. in the public and self-government spheres combined) the average remuneration amounted to PLN 3,900. According to the same source, the labor productivity in the industry (measured by the value of products sold per employee) increased by 3.3% throughout 2015, and employment increased by 1.5% in 2015, while the average gross monthly remuneration increased by 2.6%.



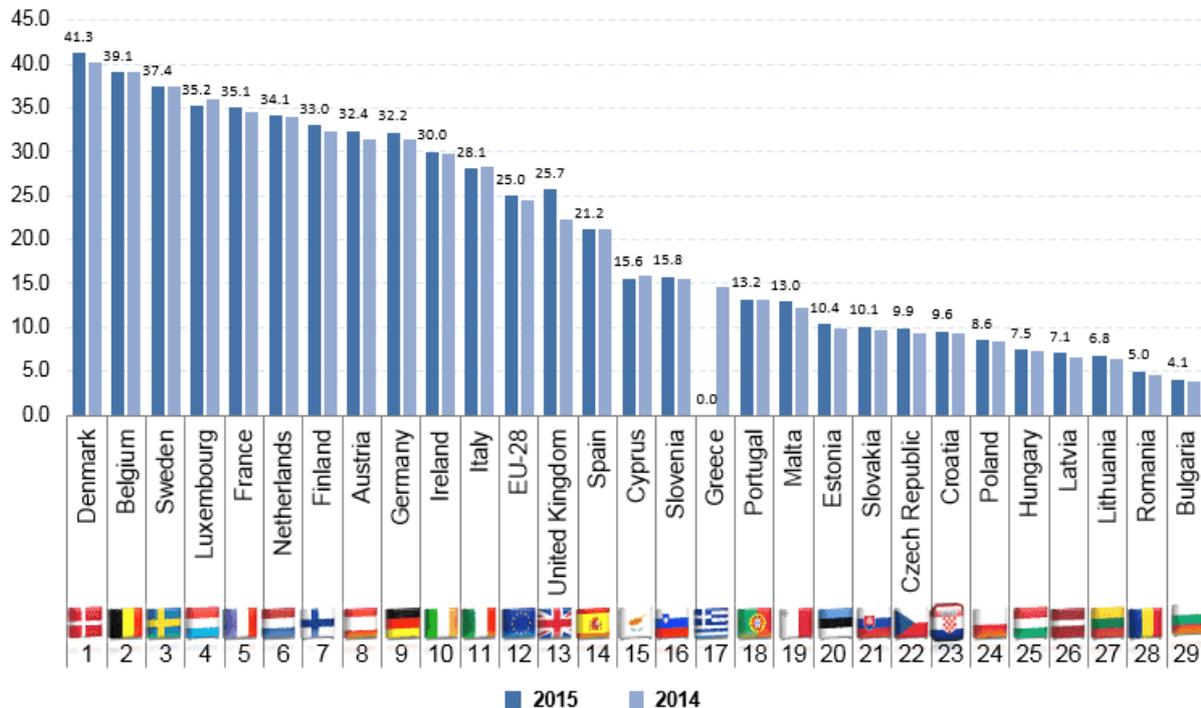
Source: Central Statistical Office of Poland (GUS), 2016.

Budget

According to the official forecast of the Ministry of Finance, the budget deficit in 2016 will not exceed 2.8%, which is PLN 54.7 billion. Revenues are expected to reach PLN 313.7 billion, and expenditures PLN 368.5 billion.

Labor costs

According to PAIiZ (Polish Information and Foreign Investment Agency), in 2014 the average hourly labor costs were estimated at EUR 24.6 in the EU-28. However, this average data has the purpose of masking significant gaps between EU member states, with the hourly labor cost ranging between EUR 3.8 (Bulgaria) and EUR 40.3 (Denmark). In Poland, it amounted to EUR 8.4. In 2015, the minimum wage increased in Poland by 3.5%. Among all CEE countries Poland recorded the highest nominal value of the minimum wage - EUR 409.53.



Źródło: Eurostat, 2016.

Corporations

Poland is recognized as a regional economic power within Central Europe, with nearly 40% of the 500 biggest companies in the region (by revenues). The country's most competitive firms are members of the WIG30 and are listed on the Warsaw Stock Exchange.

Well-known Polish brands include: KGHM (silver and copper producer), PKN Orlen (oil), E. Wedel (food), PKO Bank (the largest Polish bank), PKP (railway), PZU (insurance) and LOT Polish Airlines. It is interesting to note that there is a large development of companies active in the private sector, and this is increasingly noticeable in the world. These companies are, among others: InPost (innovator in postal services), Inglot (color cosmetics), PESA and Solaris (rail transport and public transport), LiveChat (designing computer systems - communication solutions), Comarch (producer of computer software), and CD Projekt (producer of computer games, best known for "The Witcher").

Poland is recognized as having an economy with significant development potential. The economy of our country grew faster than the economy of those who were ahead of us in the previous year, namely Sweden and Belgium, which allowed us to move up to seventh place, just behind the Netherlands. Foreign Direct Investment in Poland has remained strong ever since the country's re-democratization following the Round Table Agreement in 1989. Having said this, problems do exist, and further progress in achieving success depends largely on the establishment of an appropriate economic environment for both domestic and foreign investors.

3 Foreign Investment

Foreign Investment

Over the last two decades, the law governing business activity has undergone significant changes. On 1 January 2001, the new Companies Code of 2000 came into force, and on 21 August 2004 the new Act on the Freedom of Business Activity came into force. Also, certain new developments are approaching, as amendments have been prepared to the commercial companies code (implementation of a new form of simple joint-stock company) and a Constitution for Business has been prepared to replace the Act on the Freedom of Business Activity. The final form of those acts is still unknown.

Business activity in Poland may take one of the following forms:

- joint-stock company (*spółka akcyjna - S.A.*);
- limited liability company (*spółka z ograniczoną odpowiedzialnością - sp. z o.o.*);
- registered partnership (*spółka jawna - sp. j.*);
- limited partnership (*spółka komandytowa - sp.k.*);
- professional partnership (*spółka partnerska - sp. p.*);
- limited partnership by shares (*spółka komandytowo-akcyjna - S.K.A.*);
- general partnership (*spółka cywilna*);
- branch (*oddział*);
- representative office (*przedstawicielstwo*);
- sole proprietorship (*indywidualna działalność gospodarcza*).

Foreign persons from EU Member States, Member States of the European Free Trade Agreement (EFTA) – parties to the Agreement on the European Economic Area, and foreign persons from countries which are not contracting parties to the Agreement on the European Economic Area who may enjoy freedom of establishment under agreements concluded by these countries with the European Community and its Member States may undertake and carry out economic activity on the same terms as Polish citizens.

Moreover, the following persons, who are citizens of states other than those mentioned above, may undertake and pursue economic activity on the territory of the Republic of Poland on the same terms as Polish citizens:

- Persons residing in the Republic of Poland who: a) hold a permit to settle; b) hold a long-term resident of the European Communities stay permit; c) hold a permit to reside for a specified period of time granted as a result of a circumstance referred to in the relevant provisions of the Act on Foreigners; d) hold a permit to reside for a specified period of time granted to a family member of the persons referred to in letters a), b), e) and f), said family member arriving in the territory of the Republic of Poland or staying in the said territory in order to reunite with their family; e) hold refugee status; f) enjoy supplementary protection; g) hold consent for a tolerated stay; h) hold a permit to reside for a specified period of time and are married to a Polish citizen residing in the territory of the Republic of Poland;
- persons who enjoy temporary protection on the territory of the Republic of Poland;
- persons who hold a valid Polish ID document;

- persons who are family members (as defined in the Act on Entry into, Stay in, and Exit from the Territory of the Republic of Poland of Citizens of the European Union Member States and their Family Members) joining the citizens of the states referred to in the first paragraph above or staying with them.

Moreover, citizens of states other than those mentioned above, who are staying in the territory of the Republic of Poland on the basis of the Act on Foreigners, and who, directly before filling in the application for (i) the granting of a permit to reside for a specified period of time, or (ii) a permit to settle or (iii) for the status of a long-term resident of the European Communities, were entitled to undertake and pursue economic activity on the basis of a permit to reside for a specified period of time granted under the Act on Foreigners, may undertake and pursue economic activity on the territory of the Republic of Poland on the same terms as Polish citizens.

Foreigners other than those listed above may operate businesses in Poland only in the form of joint-stock or limited liability companies, limited partnerships, and partnerships limited by shares, and may only invest in such companies and partnerships, unless otherwise provided for in international agreements.

A family member (within the meaning of the provisions of the Act on Foreigners) of foreign persons to whom the above mentioned international agreements refer, and who holds a permit to settle for a specified period of time, may undertake and pursue economic activity on the same terms as these foreigners.

A family member (within the meaning of the provisions of the Act on Foreigners) of foreigners who holds a permit to settle for a specified period of time and pursue economic activity on the basis of an entry in the records of economic activity which was made on the basis of reciprocity, may undertake and pursue economic activity within the same scope as these foreigners, as long as they too hold a permit to settle for a specific period of time on the territory of the Republic of Poland or are staying in Poland in order to reunite with their family.

The above mentioned regulations are the result of the harmonization of Polish law with European Union legal standards, and especially with respect to the principle of national treatment and free movement of services.

Forms of operations in Poland

Companies

The fundamental aspects of the formation and operation of companies are governed by the Commercial Companies Code of 2000 (the “Companies Code”), which replaced the preceding Commercial Code of 1934. Provisions regulating entrepreneurs (*przedsiębiorcy*), business names (*firma*) and commercial representation (*prokura*) have been incorporated into the Civil Code.

The limited liability company (*spółka z ograniczoną odpowiedzialnością - sp. z o.o.*) and the joint-stock company (*spółka akcyjna - S.A.*) are the two main corporate forms in Poland, and are substantially based on German models. Both have legal personality and the economic liability of shareholders is limited to the amount of their equity contribution. Shares in these kinds of companies are freely transferable, unless their statutory documents provide otherwise.

Of the principal legal differences between the two types of companies, two are fundamental. Firstly, the share capital in joint-stock companies may be raised by public subscription, whereas limited liability companies may not engage in public share issues. Secondly, shares in joint-stock companies are issued in the form of share certificates, while the issue of share certificates by limited liability companies is forbidden.

The minimum amount of share capital required in a limited liability company amounts to PLN 5,000. In joint-stock companies the level amounts to PLN 100,000. Therefore, the share capital of all newly established companies cannot be lower than PLN 5,000 and PLN 100,000 respectively.

A foreign investor may make a contribution to the company's share capital either in the form of a cash contribution, or as a non-cash contribution. Debt to equity swaps and dividend reinvestment are also available as forms of equity contributions.

The structure of Polish companies will be familiar to any businessperson. Every company is managed on a day-by-day basis by a management board. Some actions must also be approved by shareholders through resolutions. In addition, a supervisory board which is selected by the shareholders of the company and which performs a non-executive role must oversee the management of a joint-stock company. The establishment of a supervisory board in a limited liability company is generally optional, and mandatory only if the company has more than 25 shareholders and share capital in excess of PLN 500,000. Generally, a limited liability company has fewer formalities and external controls than a joint-stock company; for example, a limited liability company must only have an external audit of its balance sheet and annual accounts performed in certain cases, whereas in a joint-stock company this audit is required annually. A company is incorporated in two stages. First, the articles of association (in the case of a limited liability company) or statute (in the case of a joint-stock company) are signed by the shareholders before a notary in the form of a notarial deed. As of that moment a so-called company "under organization" is created. The articles of association or the statute, together with additional documentation, which includes proof of the establishment of the governing bodies of the company, a declaration that the share capital has been either fully contributed in cash or in kind, and consents to the appointment of the persons authorized to represent the company are then submitted to the National Court Registry. The court reviews the documentation and issues its decision regarding registration. If the decision is positive, the company is incorporated and registered by the court in the registry of business entities of the National Court Registry.

Liability for the obligations of a company in organization is borne jointly and severally by the company and the persons that acted on its behalf. In addition, shareholders in a company "under organization" are liable jointly and severally for the company's obligations up to the value of the shares they agreed to take up but have not yet paid for. However, after registration, a company may release the shareholders from the liability which arose while the company was "under organization".

After registration, the liability for the obligations of a company is borne solely by the company and in some instances also by the members of the management board. The shareholders of a company are generally not liable for any liabilities or debts, which means there is no pure concept of the "piercing of the corporate veil" liability.

After registration, each company is obliged to notify the court of any modification to the documents filed with the court or evidenced in the excerpt from the register. This is because third parties are deemed to have constructive knowledge of the information registered with the National Court Register. The court has to be notified, for example, of any amendments to the company's articles of association or statute, or changes in the composition of the governing bodies, the company's shareholders, or the address of the company. In addition, companies must publish certain announcements in the official Court and Economic Journal (*Monitor Sądowy i Gospodarczy*).

As of 1 January 2012, the Commercial Companies Code provides for the possibility of establishing a limited liability company via the Internet in 24 hours. This procedure is available upon creating an account, providing some personal data and obtaining an electronic signature consisting of a login and a password, or a safe electronic signature verified with a valid qualified certificate.

According to this procedure, a limited liability company may be formed without the obligation to execute the Articles of Association in the form of a notarial deed, based on an electronic template established and made available by the Ministry of Justice. Please note however, that the wording of

the Articles of Association in this form is rather basic and any future amendments to it must be made in the form of a notarial deed.

The incorporation formalities have been simplified with respect to making cash contributions towards the initial share capital of the company as well. Under the fast track procedure, the initial share capital of the company does not have to be contributed before the registration of the company in the National Court Register, but can be done after the registration.

Moreover, a company will not be in “a process of organization” anymore, because once the application is submitted to the National Court Register and the court fee is paid, the form is transferred to the National Court Register, where the registration takes place.

Most of the data required in accordance with a standard procedure should be introduced via the Internet. Nevertheless, some documents (e.g. confirmation of a cash contribution to the company’s initial capital, consents for appointment of the Management Board members) must be submitted to the National Court Register in paper form within seven days of the registration date.

Introduction of this procedure has made it easier to set up business activities via limited liability companies. What is more, establishing a limited liability company via the Internet reduces costs, since the court fee and fee of announcement in the official Court and Economic Journal are lower, and there are no notary costs.

Partnerships

The following forms of partnerships exist in Poland:

- registered partnership (*spółka jawna - sp. j.*);
- limited partnership (*spółka komandytowa - sp.k.*);
- professional partnership (*spółka partnerska - sp. p.*); and
- partnership limited by shares (*spółka komandytowo-akcyjna - S.K.A.*).

The last two on the list are new investment vehicles introduced by the Companies Code. None of these partnerships has a legal personality and the liability of every general partner is, with certain exceptions, personal and unlimited. Shares in a partnership are transferable only if the articles of association provide for this. Some of the partnerships (e.g. registered partnerships and limited partnerships) can be established online on terms similar to the online establishment of joint-stock companies and limited liability companies.

A REGISTERED PARTNERSHIP (*spółka jawna - sp. j.*) is the simplest form of partnership. A registered partnership is established by the articles of association, which are signed by the partners in ordinary written form. The form of a notarial deed is not required. The articles of association, together with additional documentation, which includes the partners’ names and surnames or business names, the names and surnames of the persons authorized to represent the partnership and their consents for appointment, and the address of the partnership are then submitted to the National Court Registry. The Court reviews the documentation and issues its decision regarding registration. A general partnership may apply for entry into the National Court Registry as a registered partnership. The partnership is established upon registration.

A registered partnership is managed by all, several, or one partner, as provided for in the articles of association. A registered partnership may also be managed by third parties. However, third parties cannot be entrusted with the management of a registered partnership to the entire exclusion of the partners. Each partner has the right to represent the partnership individually, unless the articles of association provide otherwise. Each partner shall be liable for the obligations of the partnership

without limitation for all its assets jointly and severally with the remaining partners and the partnership. However, a creditor of the partnership may conduct enforcement proceedings from the partner's assets only if enforcement proceedings from the assets of the partnership prove ineffective. The registered partnership is incorporated upon registration.

A LIMITED PARTNERSHIP (*spółka komandytowa - sp.k.*) is a hybrid of a registered partnership and a limited liability company. A limited partnership has two types of partners: at least one of the partners has unlimited liability for the partnership's obligations (general partner) and at least one partner has limited liability (limited partner). The limited partner's liability is limited to a specific sum ("*suma komandytowa*") as indicated in the articles of association.

As far as the management and representation of a partnership is concerned, a partner's powers can vary. The status of general partners is similar to the position of partners in a registered partnership. Limited partners can represent a partnership as proxies only.

The incorporation procedure is similar to the one applicable to a registered partnership. However, the articles of association require the form of a notarial deed. Then, the articles of association of the limited partnership together with additional documentation, which includes the names and surnames or business names of all partners, the names and surnames of persons authorized to represent a limited partnership and their consents for appointment, information regarding the *suma komandytowa*, and the address of the partnership, are submitted to the National Court Registry. The partnership is incorporated upon registration.

A PROFESSIONAL PARTNERSHIP (*spółka partnerska - sp. p.*) is a new concept in Polish corporate law and it is based on the American-Delaware model. Two main characteristics distinguish a professional partnership from a registered partnership: (i) the fact that only private practitioners (such as lawyers, doctors, architects, auditors, etc.) may form such a partnership, and (ii) the scope of the partners' liability.

Each partner has the right to manage the partnership, unless the articles of association provide otherwise. The articles of association may, however, create a management board modeled on a limited liability company management board, which then manages and represents the partnership to the exclusion of the partners. All partners bear personal and unlimited liability for the partnership's liabilities and the liabilities related to their work as a private practitioner. It should be stressed that a partner shall not be liable for the obligations of the partnership which arise in connection with the practice of a liberal profession by another partner and their subordinates' actions, unless the articles of association provide otherwise.

A professional partnership is formed in two stages. Firstly, the articles of association are signed in written form. Then the articles of association, together with additional documentation, which includes the partners' names and surnames, the names and surnames of the partners authorized to represent the partnership or management board members' names and surnames (if established), their consents for appointment, the names and surnames of the general partners, documents confirming all the partners' professional qualifications, and the address of the partnership, are submitted to the National Court Registry. The Court reviews the documentation and issues its decision regarding registration. The partnership is incorporated upon registration.

A LIMITED PARTNERSHIP BY SHARES (*spółka komandytowo-akcyjna - S.K.A.*), is a new type of partnership in Polish corporate law that has features of both a limited partnership and a joint-stock company. This is the only form of partnership that is obliged to meet minimum share capital requirements (i.e. PLN 50,000, which may also be raised by public subscription). Shares in this type of partnership are issued in the form of share certificates. In a partnership limited by shares there are two types of partners: at least one of the partners has unlimited liability (general partner) and at least one is a shareholder with limited liability.

The formation and operation of a partnership limited by shares is regulated partly by provisions regarding a limited partnership and partly by provisions regarding a joint-stock company.

A limited partnership by shares has no management board: all partners with unlimited liability manage and represent the partnership, unless the statute provides otherwise. A shareholder may represent this partnership only as a proxy. Certain actions may require the consent of the partners and the shareholders' meeting ("General Meeting"). In addition, a supervisory board, which is selected by the partners and shareholders through the General Meeting and performs a non-executive role, may oversee the management of a limited partnership by shares. The establishment of a supervisory board is generally optional, although it is mandatory if a partnership has more than 25 shareholders.

A partnership limited by shares is incorporated in two stages: Firstly, the statute is signed by all the partners with unlimited liability before a notary in the form of a notarial deed. The statute, together with additional documentation, which includes proof of the establishment of a supervisory board (if applicable), a declaration that the share capital has been either fully contributed in cash or that the contribution of the capital has been secured as a contribution in kind, the names and surnames or business names of the general partners and the names and surnames of persons authorized to represent a limited partnership by shares, the types of shares, and the address of the partnership, are then submitted to the National Court Registry. The court reviews the documentation and issues its decision regarding registration. The partnership is incorporated upon registration.

Other filing, notification and official publication requirements for all types of partnerships are the same as those regarding limited liability companies and joint-stock companies.

Branch

The Act on the Freedom of Business Activity and the Act on the National Court Register govern the procedures and requirements for the establishment of a branch.

With respect to foreigners who may act freely on the basis of freedom of economic activity, a branch may be established on the basis of the rule of reciprocity. The principle of reciprocity means that Polish business entities are treated in the same manner as business entities in the foreign country either in fact or pursuant to an international agreement. This rule may be provided for in bilateral treaties signed between Poland and other countries regarding the support and mutual protection of investments.

The rule of reciprocity does not apply to foreigners from EU Member States, European Economic Area States not belonging to the EU, and countries which are not contracting parties to the Agreement on the European Economic Area that may enjoy freedom of establishment under agreements concluded by these countries with the European Community and its Member States. Before establishment of a branch of such foreign company, it is necessary to verify if the country of origin is covered by the reciprocity rule or not.

Foreign companies intending to set up a branch in Poland are treated in the same manner as Polish companies. The only formal requirement is that the branch be registered in the National Court Registry. Branches do not have a separate legal personality distinguishing them from their foreign parent company. A branch may not conduct any economic activity beyond the scope of its parent company.

The parent company must file an application with the National Court Registry to register the branch and appoint a relevant person authorized to represent the parent company in Poland.

The application must include the following information and documents:

- the full name of the person who will represent the parent company in Poland, and the address of this person in Poland;

- specimen signatures, certified by a notary, of the persons authorized to represent the parent company in Poland;
- a certified copy in Polish of the articles of association or certificate of incorporation of the parent company and an excerpt from the foreign commercial register (if any), as well as information on the type and name of that register and the number under which the parent company is entered into the commercial register and the authority that keeps the register and records files;
- the business name, address of the registered office and legal form of the parent company (e.g. limited liability company, joint-stock company);
- the name and the address of the branch in Poland (address at which the branch office will pursue its activity);
- if the parent company is not incorporated under the law of one of the member states of the European Union, then an indication of the law under which it is incorporated should be supplied.

On 31 March 2009, a so-called “one window registration” scheme was implemented. It means that when submitting an application with the National Court Registry,, the parent company must also enclose the documents required to register the branch with the tax office, the social security office and the statistical office.

Branches are required:

- to use the name of the branch consisting of: the name of the parent company, including the legal form of the parent company (translated into Polish) and supplemented with “*Oddział w Polsce*” (“Branch in Poland”);
- to keep the branch’s financial records in Polish, in accordance with Polish accounting regulations;
- to inform the Ministry of Economy within 14 days if any of the following events should occur: the liquidation of the parent company, or the loss of the right to conduct business activity by the parent company;
- to notify the National Court Registry of all changes with respect to the information included in the application for registration.

Representative office

The procedures and requirements for the establishment of a representative office are regulated by the Act on the Freedom of Business Activity. A representative office may be established without a permit from the Ministry of Economy even if there is no reciprocity between Poland and the country of the foreign company. The only formal requirement is registration in the records of the representative offices maintained by the Ministry of Economy. This requirement does not apply to the representative offices of banks and credit institutions.

Representative offices, like branches, do not have a separate legal personality distinguishing them from their foreign parent company. However, once established, a representative office is only entitled to conduct advertising and promotional activities in relation to its parent company.

A representative office may also be established by foreign persons authorized by the relevant body of their country of origin to promote the economy of the country in which they have their seat. The scope

of activity of such a representative office may only include the promotion and advertising of the economy of that country.

The parent company must file an application to register a representative office that includes the following information and documents:

- the business name, address of the registered office and the legal form of the parent company (e.g. limited liability company, joint-stock company);
- the scope of the business activity of the parent company;
- the full name of the person who will represent the parent company in Poland, and the address of this person in Poland;
- the address of the representative office in Poland where all the original documents related to its business activity are being held;
- a certified copy of the document confirming the registration of the parent company on the basis of which it conducts its business activity;
- a certified copy of the document determining the address of the registered seat of the parent company, the rules of its representations and the persons authorized to represent the parent company should the above mentioned documents not provide the necessary information in this regard;
- a certified copy of the document confirming the legal title of the parent company to use the occupied premises for the principle seat of the representative office.

Certified translations into Polish of all documents drawn up in a foreign language have to be submitted to the Ministry.

Representative offices are also required:

- to use the name of the representative office consisting of: the name of the parent company, including the legal form of the parent company translated into Polish and supplemented with “Representative Office in Poland” (“*Przedstawicielstwo w Polsce*”);
- to notify the Ministry of Economy about any changes to the information in the registration application;
- to inform the Ministry of Economy if the parent company enters into liquidation proceedings or loses its right to pursue the activity, within 14 days of the date on which such an event occurs;
- to keep all financial records in Polish in accordance with Polish mandatory accounting regulations.

Sole proprietorship

Individual business activity is regulated by the Act on the Freedom of Business Activity.

Foreign persons from EU Member States, Member States of the European Free Trade Agreement (EFTA), parties to the Agreement on the European Economic Area and foreign persons from countries which are not contracting parties to the Agreement on the European Economic Area who may enjoy freedom of establishment under agreements concluded by these countries with the

European Community and its Member States, may undertake and carry out economic activity on the same terms as Polish citizens.

Moreover, the following persons, who are citizens of states other than those mentioned above, may undertake and pursue economic activity on the territory of the Republic of Poland on the same terms as Polish citizens:

- persons residing in the Republic of Poland who: a) hold a permit to settle; b) hold a long-term resident of the European Communities' stay permit; c) hold a permit to reside for a specified period of time granted as a result of a circumstance referred to in the relevant provisions of the Act on Foreigners; d) hold a permit to reside for a specified period of time granted to a family member of the persons referred to in letters a), b), e) and f), said family member arriving in the territory of the Republic of Poland or staying in the said territory in order to reunite with the family; e) hold refugee status; f) enjoy supplementary protection; g) hold consent for a tolerated stay; h) hold a permit to reside for a specified period and are married to a Polish citizen residing in the territory of the Republic of Poland;
- persons who enjoy temporary protection on the territory of the Republic of Poland;
- persons who hold a valid Polish ID document;
- persons who are family members (as defined in the Act on Entry into, Stay in, and Exit from the Territory of the Republic of Poland of Citizens of the European Union Member States and their Family Members) joining the citizens of the states referred to in the first paragraph above or staying with them.

Moreover, citizens of states other than those mentioned above, who are staying in the territory of the Republic of Poland on the basis of certain provisions of the Act on Foreigners, and who, directly before filling in the application for (i) the granting of a permit to reside for a specified period of time, or (ii) a permit to settle or (iii) for the status of a long-term resident of the European Communities were entitled to undertake and pursue economic activity on the basis of a permit to reside for a specified period of time granted as under the Act on Foreigners, may undertake and pursue economic activity on the territory of the Republic of Poland on the same terms as Polish citizens.

Foreigners other than those listed above may operate businesses in Poland only in the form of joint-stock or limited liability companies, limited partnerships, and partnerships limited by shares, and may only invest in such companies and partnerships, unless otherwise provided for in international agreements.

A family member, within the meaning of the provisions of the Act on Foreigners, of foreign persons to whom the international agreements, above mentioned, refer, holding a permit to settle for a specified period of time, may undertake and pursue economic activity on the same terms as these foreign persons.

A family member, (within the meaning of the provisions of the Act on Foreigners) who holds a permit to settle for a specified period of time and pursue economic activity on the basis of an entry in the records of economic activity which was made on the basis of reciprocity, may undertake and pursue economic activity within the same scope as these foreigners, as long as they too hold a permit to settle for a specific period of time on the territory of the Republic of Poland or are staying in Poland in order to reunite with their family.

Registration of business entities in Poland

Organization of the National Court Registry

The National Court Register Act (“NCR Act”) is based on First Council Directive 68/151/EEC of 9 March 1968. The NCR Act, which introduced substantial changes to the system and procedures for the registration of entities conducting business activity in Poland, came into force on 1 January 2001. The NCR Act created the National Court Registry to take over the functions of the majority of registers, including commercial registers, in operation up to 1 January 2001. This is a central nationwide electronic database consisting of three separate registries:

- registry of business entities;
- registry of associations, other social and professional organizations, foundations and public social assistance agencies;
- registry of insolvent debtors.

The National Court Registry contains important information not previously included in former registers, such as information regarding customs, tax and social security arrears, a list of creditors, and amounts of unpaid debt.

Registration procedure for registration of new business entities with the National Court Registry

Entries into the National Court Registry are made on the basis of an official application form with attachments.

The court fee for registering a business entity for the first time is PLN 500 and the fee for registering a registered partnership, limited partnership and limited liability company via the Internet based on an electronic template available in the electronic system is PLN 250. The fee for the obligatory announcement in the Monitor Sądowy i Gospodarczy is PLN 100. The fee for subsequent changes to the data in the register is PLN 250 and the fee for subsequent changes to the data regarding registered partnerships, limited partnerships and limited liability companies via the Internet based on an electronic template available in the electronic system is PLN 200. The costs for publishing subsequent changes amount to PLN 100.

The required documents are:

- an official application form and attachments;
- the articles of association or statute;
- consents for appointment of the persons authorized to represent the business entity;
- other documents required by applicable law, such as the Companies Code, the Act on the Freedom of Business Activity, etc.

Certified translations into Polish and originals of all documents drawn up in a foreign language have to be submitted to the Court. There is an obligation to submit all documents in their originals or at least submit copies certified by a public notary.

The procedures before the National Court Registry involved complex registration forms and were highly formal. On 31 March 2009 a so-called “one window registration” scheme was implemented. It means that when submitting an application with the National Court Registry for an entry into its register (for registering a business entity for the first time or for registering some changes in the

company such as a new name or a new address), the company must also enclose the documents required to register it (first registration or the aforementioned changes) with the tax office, the social security office and the statistical office. Once the registration in the National Court Registry is completed, the court forwards the company's applications directly to the tax office, the social security office and the statistical office with the information that the company (first registration) or the company's changes have already been entered into the National Court Registry.

Restrictions on foreign investments

Restrictions on foreign ownership have generally been lifted except for certain types of telecommunications and broadcasting activity.

Under the Act on Broadcasting of 29 December 1992, a license for broadcasting activities may only be granted to a company with its seat in Poland. Foreign investors cannot own more than 49% of the company's share capital and their voting rights cannot exceed 49%. The majority of management board and supervisory board members should be Polish citizens permanently domiciled in Poland. The above mentioned restrictions do not apply to a foreign business entity or the subsidiary of a foreign business entity whose registered seat is in an EEA country.

System of permits

In principle, any person is allowed, on equal terms, to freely undertake and conduct business activity subject to the fulfillment of the conditions defined by the provisions of law. The undertaking of economic activity by legal entities is not subject to notification, although the entities themselves must be registered in the relevant registers. In order for a natural person to undertake business activity, they must be entered in the relevant register of business activity kept by the relevant local government body.

Undertaking and conducting economic activity may additionally involve the duty to obtain a license or to be entered in a register of regulated activity. The conducting of certain activities may require a permit.

Licenses, regulated activity and permits

The Act on the Freedom of Business Activity distinguishes between a license, regulated activity (*działalność regulowana*) and permits. Activities for which a license is required must be listed in the Act on the Freedom of Business Activity, whereas the regulated activities may be listed in any law. The Act on the Freedom of Business Activity also specifies certain activities that require a permit. The definition of a license and permit has generally not changed, whilst regulated activity is defined as economic activity which requires special conditions that are laid down in the provisions of law to be satisfied. An entrepreneur is entered in the register of regulated activity on the basis of his/her declaration stating that he/she satisfies the conditions required to conduct such activity.

The introduction of a new license requirement may be implemented only by a change to the Act on the Freedom of Business Activity and is only possible for fields with special importance for national security or other important matters of public interest.

Any refusal to grant a license is subject to appeal in accordance with the Administrative Procedure Code.

Under the Act on the Freedom of Business Activity, a license is required for the following six fields of business activity:

- certain activities within the mining sector;

- production of and trading in explosives, arms and ammunition, and products and technologies for military or police use;
- production, processing, storage, delivery, distribution of and trading in fuel and energy;
- certain activities connected with the transfer and underground storage of CO₂;
- services for the protection of individuals and their property;
- air transport;
- broadcasting of radio and television programs;
- running a casino.

Licenses are issued for a specified period of time generally of between five and 50 years, unless the entrepreneur applies for a shorter period. The licensing authority may refuse to grant a license in any of the following cases:

- the business entity does not meet the conditions specified in the law or the specific requirements imposed by the competent authority prior to the commencement of the licensing procedure;
- the national safety or security of the state or its citizens is endangered;
- the license has been granted to other entrepreneurs in a public tender;
- special provisions laid down in the law prevent this.

The rules and procedures concerning permits are laid down in the specific provisions of law that regulate them. The Act on the Freedom of Business Activity specifies the areas of business activity that require a permit.

If a provision of law specifies that a certain type of business activity is a regulated activity, then an entrepreneur may conduct this activity if he satisfies the special conditions specified in those provisions and upon being entered into the register of regulated activity. Regulated activities include such activities as the production of tobacco products and detective services. Amendments to the law are currently being prepared, which will limit the list of regulated activities. It is a part of recent deregulatory efforts of the Polish authorities.

Transaction permits

Transaction permits

The Minister of the State Treasury should be notified of certain transactions (in particular transactions regarding strategic companies - however not from an economical point of view, but rather for safety reasons). The Minister can submit an objection to the transaction.

Moreover, real property transactions carried out in Poland may require administrative permits. See Section 7 for additional information. Also, laws are being adopted materially limiting the possibilities to acquire agricultural lands.

Merger

Poland's merger control regulations are contained in the Antimonopoly Act discussed in this document.

Protection against expropriation

The rules of protection against expropriation are the same for both Polish and foreign entities.

Thus, according to the Polish Constitution, the State protects ownership, and expropriation is admissible only for public purposes and in exchange for just compensation.

Expropriation may only take place in relation to public purpose projects such as are provided for by acts of Parliament.

Repatriation of profits and the transfer of proceeds from the sale of shares

A foreign investor may transfer its profits, after paying the taxes due, by purchasing foreign currency from a Polish bank in an amount equal to its profits and then transferring that sum abroad.

A foreign investor is free to sell its shares either to foreign or to domestic investors. The Companies Code introduced the rule that a share transfer agreement must be concluded in written form with the signatures of the parties certified by a public notary. A sale agreement with a foreign purchaser may provide for payment to be made in a foreign currency or in Polish Zloty (PLN). PLN obtained as a result of a sale to a foreign or domestic investor may be converted into other currencies and transferred abroad. A foreign investor may also convert proceeds from the liquidation of a company into foreign currency and transfer them abroad.

A bank will transfer the proceeds from the sale of shares or liquidation upon presentation of the appropriate certificate issued by the Polish tax office confirming that the investor paid applicable Polish income taxes, if any.

Investment Incentives

Poland offers a range of available incentives for Foreign Direct Investments, the core of which are Special Economic Zones, accompanied by governmental grants and project-specific incentives.

Special Economic Zones

In Poland there are fourteen Special Economic Zones (SEZ), which are to exist until 31 December 2026. The zones are separated into administrative parts of Polish territory, designated for running business activity according to preferential conditions – the key benefit being exemption from Corporate Income Tax (CIT).

Form of support and aid intensity:

- Exemption from CIT for income realized within the SEZ (CIT is currently 19% in Poland);
- Exemption capped according to the regional aid map for the period 2014-2020 (aid level – calculated as the amount of unpaid tax – depends on the investment location and the investor's size; in case of a large enterprise, this is up to 50%).

General rules:

- an SEZ permit must be obtained by the company;
- Investment should be located within the territory of the SEZ;
- usage depends on the revenues generated by the end of the zone's existence, i.e. 31 December 2026;

- EC law on regional aid for investments must be complied with.

Requirements:

- minimum value of eligible investment costs: EUR 100,000;
- certain employment level is required – to be negotiated with the Management of the SEZ.

Basis for aid limit:

- investment costs; or
- two-year labor costs of new hires.

Polish Governmental Grants (PGG)

Polish Governmental Grants (PGG) – a system created to foster investments of vital importance for the Polish economy, is available for new investments in certain manufacturing sectors (automotive & aviation, household appliances, electronics, etc.) and the modern services sector. Governmental grants are provided on the basis of the program for supporting investments of major importance to the Polish economy for the years 2011-2020 (further referred to as the Program), adopted by the Council of Ministers on 5 July 2011.

Support is provided in the form of a grant on the basis of an agreement concluded between the Minister of Economy and the investor. The agreement lays down the conditions for the payment of the grant, which is paid in proportion to the degree of fulfilling the investor's commitments. The Scheme provides support for initial investments under the following two categories: costs of creation of new jobs and new investments costs. The application procedure is typically open throughout the year.

Currently, the program is suspended due to exhaustion of the budget; however, there are plans to resume it under similar or slightly amended conditions.

Other available incentives

Other incentives include:

- exemptions from Real Estate Tax, offered at local level under municipal aid schemes;
- support for employment of the unemployed, disbursed by local Labor Offices;
- project-specific funding, primarily for R&D projects, financed from EU funds and the state budget.

4 Privatization

Privatization

Privatization in Poland is governed by the Act on Commercialization and Privatization 1996 (the “Privatization Act”). The privatization process may be effected directly or indirectly. The latter must be preceded by an initial stage called commercialization. During that stage, a given state legal entity is transformed into a commercial company.

Privatization may be done directly or indirectly. Direct privatization consists of the acquisition of all the assets of a state-owned enterprise by a non-state investor. Indirect privatization may be effected either through an acquisition from the State Treasury of shares in any commercial company, or through the acquisition of shares in the increased share capital of an initially wholly state-owned company that was created as a result of the commercialization process. In the latter case, the increase of share capital follows a contribution (in cash or in kind) effected by a non-state entity.

The minister responsible for the State Treasury performs the **COMMERCIALIZATION** of a state-owned enterprise at the request of its founding body, on its own initiative or on the initiative of the organs of the enterprise. Some enterprises, e.g. those in the process of liquidation, in bankruptcy or undergoing a restructuring procedure, may not be commercialized.

The act of commercialization of an enterprise replaces all the acts necessary for the incorporation of a company. The closing balance sheet of an enterprise constitutes its opening balance sheet as a company.

The **INDIRECT PRIVATIZATION** of an enterprise takes place through the sale of State owned shares or allotment of shares in initially State owned company. The minister responsible for the State Treasury sells the shares in the name of the State Treasury. The shares may be sold in one of the following ways:

- public offer;
- public tender;
- negotiation following public invitation;
- by accepting an offer in response to an invitation announced by virtue of the provisions of the Act on Public Offerings and the Conditions Governing the Introduction of Financial Instruments to the Organized Trading System and on Public Companies;
- a publicly announced auction, if the selling price is not lower than the book value of the shares;
- sale of shares on a regulated market within the meaning of the Act on Trading in Financial Instruments;
- sale based on the public offering of the shares covered by the prospectus or information memorandum, within the meaning of the Act on Public Offering, Conditions Governing the Introduction of Financial Instruments to Organized Trading and Public Companies, prepared in connection with the offer or the admission of those shares to trading on a regulated market;
- auxiliary stabilization under the conditions specified in the provisions of Commission Regulation (EC) No 2273/2003 of 22 December 2003, implementing Directive 2003/6 / EC of the European Parliament and of the Council as regards exemptions for buy-back programs and stabilization of financial instruments and by lending shares in order to implement auxiliary stabilization;

- sale of shares outside the regulated market within the meaning of the Act on Trading in Financial Instruments, using a system connecting purchase and sale offers, organized and conducted by a company operating on the regulated market.

In each case the employees of the enterprise are entitled to obtain up to 15% of the shares in the company at no cost.

The **DIRECT PRIVATIZATION** of a State-owned enterprise takes place through the disposal of all its assets and does not entail the liquidation of the enterprise. Therefore, the entity which takes over the enterprise will be responsible for its debts and other obligations. The disposal of assets may be accomplished by selling them, contributing them to the capital of a company or letting them for use against consideration. Direct privatization by letting the enterprise for use against consideration may be done only if the value of the sales of the enterprise in the year preceding the year of issue of the ordinance on direct privatization is higher than the PLN equivalent of EUR 6 million, and the amount of the enterprise's own funds is higher than the PLN equivalent of EUR 2 million.

The sale of an enterprise may take place through public tender or negotiations following public invitation. The purchase price may be paid in installments over a period of not more than five years if the unpaid sum is properly secured. The first installment must be for at least 20% of the purchase price. The contribution of the enterprise to the capital of a company should take place through negotiations following public invitation. Shareholders of the company other than the State Treasury should subscribe for at least 25% of the share capital. The employees have the right to obtain 15% of the shares at no cost.

The release of an enterprise for use (for consideration) takes place through an agreement between the minister responsible for the State Treasury and the entity taking over the enterprise for the use of the assets for a maximum period of 15 years. The parties may agree to a purchase option after the expiration of the agreement. The transfer of ownership may take place after the payment of at least a third of the purchase price.

The amendments to the Privatization Act (effective as of July 2006) introduced two significant changes to privatization law: First, local governments obtained the right to initiate commercialization and acquire ownership of the shares of state-owned enterprises. However, they may do so only with respect to enterprises operating on their territories and for the benefit of local communities. Second, the minister responsible for the State Treasury obtained the right to transfer, under certain conditions, the assets of state-owned enterprises to corporations wholly owned by the state.

5 Securities and Finance

Securities and Finance

Poland boasts probably the most developed, liquid and well regulated capital market in Central and Eastern Europe, which has been recognized by both Polish and foreign issuers. Polish corporate entities may issue shares, bonds, commercial papers and other securities recognized by the Polish legal system. The issue, sale, and purchase of bonds is generally regulated by the Bonds Act of 15 January 2015. The issue of shares is regulated by the Code of Commercial Companies of 2000. The public offering and trading of securities is regulated by the Act of 29 July 2005 on Public Offerings and the Conditions Governing the Introduction of Financial Instruments into the Organized Trading System and on Public Companies (the “Act on Public Offering”); the Act of 29 July 2005 on Trading in Financial Instruments; the Act of 29 July 2005 on Supervision of the Capital Market and the Act of 21 July 2006 on Supervision of the Financial Market.

Polish capital market regulations follow the EU directives, including in particular the Prospectus Directive, the Takeover Directive, the Transparency Directive and the MiFID Directive.

Currently in Poland there is a stock exchange operated by the Warsaw Stock Exchange (WSE), an official regulated market, and two alternative trading systems – New Connect for equity securities and Catalyst for debt securities. In order to conduct a public offering of securities or admit securities to trading on the regulated market, the issuer has to have its prospectus approved by the Financial Supervision Authority (FSA), the Polish capital markets regulatory authority or by the relevant authority in the issuer’s home member state. The prospectus must be made available to the public. In addition, the Board of the WSE must approve the securities for listing.

All securities admitted to listing on a regulated market are in book-entry form and are registered in the National Depository of Securities, the central clearinghouse of securities in Poland. This is an independent joint-stock company whose shares are presently held by the State Treasury (as represented by the Minister of the State Treasury), the WSE and the National Bank of Poland. Holders of listed securities need to have securities accounts at brokerage houses or banks at which their securities are registered. The National Depository of Securities also runs the mandatory compensation system for the purpose of protecting investors from financial losses in the event of the bankruptcy of a brokerage house. Brokerage houses make compulsory payments annually, in amounts specified by law.

The FSA is also responsible for the supervision of brokers, investment advisers and investment funds. It also monitors takeovers of listed companies. The FSA has full supervisory and investigative powers.

Offering requirements

The regulation of public offerings follows the EU Prospectus Directive very closely. The Act on Public Offerings regulates the public issue of securities and the admission of securities to trading on a regulated market. A public offering is a communication, in any form and by any means, which is addressed to at least 150 persons or to an unspecified number of addressees and that contains sufficient information on the securities to be offered and the terms and conditions of their acquisition, so as to enable an investor to take the decision to purchase these securities.

As a rule, an issuer may offer securities by way of a public offering once it has had its prospectus approved by the FSA and has been published. The trading of securities on a regulated market may be conducted only through investment firms.

The contents of a prospectus are regulated by EU Regulation No 809/2004. Polish law does not impose any additional requirements as to the contents of a prospectus. It must include information about the issuer, the securities to be issued as well as other information required by the investor which will enable it to take the investment decision. The contents of a prospectus depends on the kind of

offering, the issuer, and the securities being offered to the investors. A prospectus may also be published on the Internet.

The FSA has 20 business days from the date of filing in which to approve a prospectus regarding the offering of securities issued by an entity whose securities have not yet been subject to a public offering or have not been admitted to trading on a regulated market. For seasoned issuers, the prospectus should be approved within 10 business days.

In a similar way to the EU Prospectus Directive, the Act on Public Offering provides for a number of exemptions from the requirement to prepare, approve and publish a prospectus in connection with a public offering. The most important exemptions are:

- a public offering addressed exclusively to qualified investors;
- a public offering addressed exclusively to investors, each of whom acquires securities of a value – calculated on the basis of the issue price or selling price – of at least EUR 100,000 or the PLN equivalent thereof;
- a public offering of securities whose par value per unit is not less than EUR 100,000 or the PLN equivalent thereof;
- a public offering of securities whose total value, calculated on the basis of the issue price or selling price, does not exceed – over a period of 12 consecutive months – EUR 100,000 or the PLN equivalent thereof.

Several types of public offerings are exempt from the requirement to prepare and approve a prospectus, but the issuer must instead prepare an abbreviated version of the offering circular (an information memorandum). Information memorandums must be prepared in connection with:

- a public offering of securities, where the total value of the issue, over a period of 12 consecutive months, calculated on the basis of the issue price, is less than EUR 2.5 million or the PLN equivalent thereof;
- admission to trading on a regulated market of securities issued in connection with an exchange offer;
- admission to trading on a regulated market of securities issued in connection with a merger.

Foreign companies from EU member states whose prospectuses have been approved by the supervisory authority in any member state may conduct a public offering or seek admission to trading on a regulated market of securities in Poland under the single EU passport. Similarly, Polish companies whose prospectuses have been approved by the FSA may conduct public offerings or be listed in other EU member states.

There is generally a time span of a few weeks between a public offering of shares and their listing on the WSE. In particular, a new issue of shares in Polish companies must be registered with Krajowy Rejestr Sądowy (the National Court Register). Until such registration has been made, the rights to shares (called PDAs), which are a form of conditionally pre-released shares, may be traded on the WSE.

Issuers of publicly traded securities are subject to ongoing reporting requirements, which include current, quarterly, semi-annual and annual reports.

Large shareholding requirements

The Act on Public Offerings extensively regulates the acquisition of large shareholdings in listed companies, including disclosure obligations, consent requirements and conducting tender offers.

Any person who has reached or exceeded 5%, 10%, 15%, 20%, 25%, 33%, 33.3%, 50%, 75% or 90% of total voting rights in a listed company must notify the FSA and the listed company within four business days of the date of the transaction. The obligation also applies if an investor disposes of such shares and its shareholding falls below the above specified percentages. Moreover, an investor who has more than 10% of the total voting rights must notify the FSA of any purchases or sales which change the number of votes by at least 2% up or down. Furthermore, any investor who has more than 33% of total voting rights must notify the FSA of any purchases or sales which change the number of votes by at least 1% up or down. The disclosure requirement applies also to indirect acquisitions, acquisitions by affiliates and parties acting in concert, voting agreements or acquisitions of instruments convertible into shares. The following are tender offer requirements in the Act on Public Offerings:

- acquisition by an investor who holds at least 33% of votes, within a period of 60 days, of shares in a listed company giving 10% or more of votes at the general meeting of shareholders of that company;
- acquisition by an investor who holds at least 33% of votes, within a period of 12 months, of shares in a listed company giving more than 5% of votes at the general meeting of shareholders of that company;
- exceeding 33% or 66% of votes at the general meeting of shareholders of a public company;
- delisting of a public company.

A shareholder who wishes to cross the 33% voting rights threshold is obliged to launch a tender offer for shares that will entitle them to hold 66% of votes, whereas a shareholder who wishes to cross the 66% voting rights threshold is obliged to launch a tender offer for all remaining shares in a publicly traded company.

An entity intending to announce a tender offer is required to deliver collateral of a value equal to at least 100% of the value of the shares which are subject to the tender offer. Generally, the tender offer price cannot be lower than the last 6-month or 3-month (depending on the type of tender offer) market average and cannot be lower than the price which the entity launching the tender offer or its affiliates paid for the shares in the last 12 months. However, in some cases the FSA may approve a tender offer price that is lower than the price determined in accordance with the aforementioned rules.

Percentages of voting rights held by associated entities are aggregated for the purposes of a tender offer or large shareholding notification requirements. For example, holdings of affiliates are aggregated. The same applies to entities bound by written or verbal agreements regarding common acquisitions of shares of a public company or unanimous voting at a general meeting of shareholders. Analogous obligations have been imposed on investment funds in the case of an acquisition of shares by another investment fund under common management. Similarly, an entity is obligated to comply with these requirements if shares are acquired by a third party acting on their behalf, but on the mandate of or to the benefit of such entity (the “concerned parties”).

The Act on Public Offerings has implemented a minority right and permits shareholders holding 5% of shares to propose a resolution at the shareholders’ meeting to appoint an expert to investigate how the company’s affairs are conducted. The expert may be a chartered accountant or another entity with the appropriate qualifications. The resolution must specify the subject and scope of the review, the documents that the company must make available to the expert and the position taken by the

management as to the requested review. If the shareholders' meeting fails to adopt the motion, the shareholders filing the motion have 14 days to file a motion with the court, requesting the appointment of the expert.

Civil, administrative and criminal liability

Practices which violate the standards applicable in capital markets are subject to civil liability, administrative sanctions and criminal investigations.

Entities responsible for the veracity, reliability and completeness of information in a prospectus (e.g. issuers, selling shareholders, underwriters, and persons who prepare a prospectus or participate in preparing a prospectus) who provide false, misleading or incomplete information, or fail to provide material information in a prospectus, are subject to civil liability. The liability is joint and several and cannot be contractually excluded.

The FSA may impose sanctions for failure to comply with the disclosure obligations, large shareholding requirements or for trading in securities during restricted periods. The FSA may impose fines or suspend trading in securities on the regulated market, depending on the type of violation.

In addition, certain actions are criminal offences, including:

- making a public offering of securities without a prospectus approved by the FSA;
- providing false information or failing to provide material information in a prospectus;
- insider dealing;
- market manipulation;
- non-compliance with the disclosure requirements.

Bonds

The Bonds Act regulates various types of debt instruments, including interest bearing bonds, zero coupon bonds, convertible bonds, bonds that give the holder the right to participate in the issuer's profits, subordinated bonds, perpetual bonds and bonds that give the bondholder the pre-emptive right to acquire any newly issued shares. It is possible to issue bonds in certificated and book-entry form. Bonds may be issued by any legal person running a business either created in Poland or outside Poland solely for issuing bonds, partnerships limited by shares, local authorities, and other selected entities.

As a rule, the issuer is liable with all its assets for the liabilities resulting from a bond. Issuers of income bonds may limit their liability to a portion of or all of the proceeds obtained from activities that were financed from funds acquired from the issue of bonds. Only local authorities and public utility companies may issue income bonds.

Issuers of bonds must provide investors with the minimum information required to evaluate the financial situation of the issuer and the risks that may be connected with the investment. Public offerings of bonds are governed by the Act on Public Offerings. At the option of the issuer, bonds may be secured in any form allowed by law, including pledge or mortgage, bank guarantee, or suretyship.

The interests of bondholders may also be protected through the use of a representative bank which acts as a statutory representative of the bondholders in their relations with the issuer. It is optional to appoint a representative bank, except in cases where the bonds are guaranteed by the State Treasury and at the same time there are more than 15 bondholders. The issuer must supply the representative

bank with specific documents and information, providing a basis for the evaluation of the issuer's financial situation. The representative bank should assess the issuer's ability to service the bonds and must inform the bondholders of any threats to their interests or of any breach by the issuer. If an event of default occurs, the representative bank must take legal action against the issuer on behalf of the bondholders.

Banks

Banking activity is regulated by the Banking Act of 1997, which implements all relevant EU banking directives. Banks may provide loans both in PLN and foreign currencies. A number of well-known foreign banks have established subsidiaries or branch offices in Poland.

Secured transactions

There are several types of security interest available under Polish law, including, in particular, mortgages on real estate and pledges on movables and rights. These are effective not only between the parties to the transaction, but also in relation to third parties. Mortgages and pledges are heavily regulated, thus limiting the freedom of the parties to structure these types of transactions. Under the general principle of freedom of contract, other types of securities are possible. However, their effectiveness as against third parties is limited.

Leasing

Leasing contracts are defined and regulated by the Polish Civil Code (Articles 709(1) – 709(18)). Under the Code, leasing is an agreement between a “financing party”, acting within its scope of business activity, and a “user”. The financing party acquires an asset from the seller and leases the asset to the lessee for a specified period of time. The lessee is obliged to pay installments, at least equal in total to the acquisition price of the asset, throughout the period of the lease agreement. The Civil Code provides in detail the specific obligations of the parties, e.g. the conditions on which the agreement may be terminated.

6 Tax System

Tax System

Corporate income tax

Corporate income tax is currently levied at the rate of 19% on net profit. As a rule, net profit is calculated as the difference between revenues and tax-deductible costs.

Polish tax residents (e.g. companies, including limited liability companies, companies in organization and joint-stock limited partnerships) are subject to corporate income tax on their worldwide income. Non-tax residents are subject to taxation in Poland on the revenues earned on the territory of Poland (tax is either settled by such non-residents – in the case of permanent establishments in Poland – or withheld at source by a Polish withholding agent (For example, in the case of dividends, interest, royalties).

Companies with legal personality and their shareholders are treated separately for taxation purposes. Dividends are subject to a withholding tax at the 19% rate or are tax exempt (where the conditions described below are met). The amount of withholding tax is often reduced to the 5% rate under bilateral agreements for the avoidance of double taxation. Poland has implemented the regulations of the Council Directive on the common system of taxation which is applicable in the case of parent companies and subsidiaries of different Member States. Therefore, income from dividends is exempt from withholding tax if the following conditions are fulfilled:

- the entity paying the dividend is a company that pays income tax with its seat or management in Poland;
- the entire income of the company receiving the dividend, regardless of where it is earned, is subject to taxation in one of the EU states or European Economic Area member countries;
- the company receiving dividends is directly entitled to at least 10% of the Polish company's shares during an uninterrupted period of at least two years;
- the company receiving dividends does not benefit from exemption from taxation of all its income, regardless of where it is earned.

There is an anti-abuse clause with respect to dividends and other profit-sharing payments paid between related companies.

Some tax incentives are provided by tax law. For example, exemption of income earned due to business activity being carried out in special economic zones or partial double deduction of expenses borne for research and development.

Polish tax law provides for transfer pricing regulations in accordance with the general OECD provisions. It is possible to conclude an advanced pricing agreement with the tax administration in order to secure the correctness of the transfer pricing method being applied. There are also thin capitalization restrictions applying to intra-group financing. Polish tax residents can form tax capital groups.

Personal income tax

Residents of Poland are subject to personal income tax with respect to their worldwide income. Non-residents of Poland are subject to tax on income earned from work done in Poland and any other income earned in Poland.

Personal income tax law provides for several categories of revenue source. As a rule, income from employment, personal services, business activities and from other sources is subject to progressive tax

rates of 18% and 32%. The 32% rate applies to income over PLN 85,528 per annum (i.e. approximately USD 28,900). Income from business activities may, however, be taxed at the flat 19% rate. The flat 19% rate also applies to capital gains, dividends and interest.

Persons who are not tax residents in Poland are generally taxed in the same way as Polish tax residents. However, in the case of revenues from certain kinds of personal services (also revenues for membership on a board of directors or supervisory board) the flat tax rate of 20% of revenues applies.

VAT

Currently, the following activities are subject to Value Added Tax (VAT):

- supply of goods;
- supply of services;
- intra-Community supply of goods;
- intra-Community acquisition of goods;
- export of goods;
- import of goods.

The VAT rate is currently 23%, with reduced rates of 0%, 5% or 8% for certain types of goods and services. As a rule, Polish VAT law is based on the EU Directive on the common system of value added tax 2006/112 and other EU regulations. Until the end of 2017, the VAT rates may vary between 22% (reduced – 7%) and 25% (reduced – 10%), depending on the condition of certain macroeconomic factors set out in the Act on VAT.

Social security

Social security contributions are paid to the Social Insurance Institution (ZUS). Contributions are compulsory in employment contracts and most personal services contracts. The contributions consist of:

- retirement pension insurance 19.52% (paid 50/50 by employer and employee);
- disability pension insurance 8% (6.5% paid by employer and 1.5% paid by employee);
- sickness insurance 2.45% (paid by employee);
- insurance against accidents at work (withheld by employer).

The premium for accident insurance is generally set between 0.67% and 3.86%, depending on the classification of the employer's activities in the PKD (Polish Classification of Activities), as listed in the REGON register (National Register of Polish Business Entities). There is also a health care insurance payment amounting to 9% of the base (as a rule, taxable revenue less social security contributions). However, 7.75% of the base is deducted from personal income tax advances.

Other taxes

Tax on civil law transactions is levied in case of several kinds of civil law actions, e.g. raising share capital (0.5%), sale of goods and property rights (1% or 2%), and loans (2%). As a rule, tax is not levied where VAT applies. Several exemptions are applicable to loans.

There is also real estate tax and some other minor local taxes.

There is also a tax on certain financial institutions, including domestic and foreign banks, insurers, reinsurers, and credit consumer institutions.

7

Competition Law

Competition Law

Introduction

Competition law in Poland is regulated by the Competition and Consumers Protection Act of 16 February 2007 (the “Antimonopoly Act”), the Combating Unfair Competition Act of 16 April 1993 (the “Unfair Competition Act”) and the Combating Unfair Commercial Practices Act (the “Unfair Commercial Practices Act”) of 23 August 2007.

The Antimonopoly Act is directed towards three types of market behavior:

- agreements and practices restricting competition;
- abuse of a dominant position;
- excessive concentration on a market.

The President of the Office for Competition and Consumer Protection (the “Antimonopoly Office” or “AMO”) has broad investigatory powers and may issue a decision ordering that illegal practices, i.e. agreements and practices restricting competition or abuse of a dominant position, be ceased. Any agreement concluded in violation of the Antimonopoly Act will be declared null and void by a Civil Court in whole or in part. Decisions of the AMO President may serve as a basis for damage compensation proceedings resulting from claims filed by other competitors and/or consumers.

The AMO President may impose fines on undertakings that enter into agreements restricting competition or abuse a dominant position of up to 10% of their annual turnover. In addition, the AMO President is given the right to fine individuals who intentionally caused, by their action or omission, the infringement of competition law by a company managed by them. The maximum fine is PLN 2 million (approx. EUR 450,000).

Additionally, the Antimonopoly Act provides that the following practices violating consumer interests are also prohibited, in particular:

- proposing financial services to consumers which do not meet their needs, taking into account the available information about the consumers, or proposing services inadequate to their character (*misselling*);
- not complying with the obligation to provide consumers with reliable, truthful and complete information;
- unfair commercial practices and acts of unfair competition.

The AMO President may impose fines on undertakings that violate collective consumer interests of up to 10% of their annual turnover.

Agreements and practices restricting competition

The Antimonopoly Act lists the types of agreements, concerted practices, and decisions of associations of undertakings that are prohibited. These include:

- fixing, directly or indirectly, prices and other trading conditions;
- limiting or controlling the volume of production, sales, technical development or investment;
- market sharing;

- applying dissimilar or onerous conditions to equivalent transactions;
- placing third parties at a competitive disadvantage;
- imposing onerous contract terms that confer undue benefits on the entity imposing them;
- restricting access to a market;
- fixing by competitors of the terms of a tender (bid-rigging).

Statutory and block exemptions

An agreement is not prohibited if it falls under a statutory exemption or under a block exemption.

Statutory exemptions apply to both horizontal and vertical agreements. Horizontal agreements are not prohibited if the undertakings concerned do not have more than 5% of the relevant market. Vertical agreements are permitted if the market share of any of the undertakings concerned does not exceed 10%¹. Statutory exemptions do not apply to agreements on price fixing, limitation of production (or sales or technical development), market sharing and bid-rigging.

Block exemptions cover certain vertical agreements (including distribution agreements), agreements on technology transfers, research and development (R&D) agreements, vertical agreements in the motor vehicle sector, and agreements concluded between undertakings in connection with the performance of insurance activity. These agreements shall be deemed legal provided that the conditions laid down in the respective block exemption regulations have been observed.

Abuse of a dominant position

The Antimonopoly Act defines a dominant position as a position of economic strength enjoyed by an undertaking that enables it to prevent effective competition in the relevant market by giving it the power to behave, to an appreciable extent, independently of its competitors, customers and consumers. A dominant position is presumed to be held if an undertaking's market share exceeds 40%.

The abuse of a dominant position is prohibited and it may take, among others, one of the following forms:

- directly or indirectly imposing unfair prices, including excessively high or low prices, or other unfair terms for sale or purchase;
- limiting production, sales, or technical development to the detriment of consumers or customers;
- applying dissimilar or burdensome conditions to equivalent transactions, thereby placing third parties at a competitive disadvantage;
- making the conclusion of a contract contingent on the acceptance or performance of another service not connected with the performance under the contract, which would not otherwise be accepted or performed if that party had a choice (tie-in contracts);
- hindering the creation and development of competition;
- imposing onerous contract terms that confer undue benefits to the entity imposing them;

¹ A given agreement will also be permissible if the threshold of 5% (10% in case of vertical agreements) was not exceeded by more than two percentage points during the period of two consecutive calendar years within the horizontal (or vertical) agreement's validity period.

- market sharing according to territorial, product or entity-related criteria.

The abuse of a dominant position is illegal *per se*.

Leniency program

The companies have the option of applying to the AMO President for immunity from or reduction of fines (leniency program) for participation in prohibited agreements or practices:

- immunity from fines (full leniency) will be granted to a company that applies to the AMO as a first applicant and, of its own initiative and at the request of the AMO President, provides the AMO President with such information on the prohibited agreement that will be sufficient for the AMO President to initiate antimonopoly proceedings, or such evidence that will be sufficient for the AMO President to issue a decision confirming infringement.

Additionally, the applicant must:

- fully cooperate with the AMO President in the course of the proceedings;
- withdraw from the agreement no later than immediately after submitting the application for leniency;
- not disclose the intention to apply for leniency.

Full leniency shall not apply to companies that induced other business entities to enter into the anticompetitive agreement.

A reduction of fines (partial leniency) is available to those companies which:

- provide the AMO President, through their own initiative and at the request of the AMO President, with evidence which significantly contributes to the issuance of a decision confirming infringement and which was not in possession of the AMO President;
- fully cooperate with the AMO President in the course of the proceedings;
- do not disclose the intention to apply for leniency;
- terminated their participation in the agreement no later than immediately after submitting the application for leniency;

Reduction of fines:

- a fine imposed on the second applicant will be reduced by 30-50% compared to the fine that would have been imposed on the applicant if he/she had not applied for leniency;
- a fine imposed on the third applicant will be reduced by 20-30% compared to the fine that would have been imposed on the applicant if he/she had not applied for leniency;
- a fine imposed on the remaining applicants will be reduced by a maximum of 20% compared to the fine that would have been imposed on the applicants if they had not applied for leniency.

The leniency program will also be available for individuals engaged in the management of a company infringing competition rules. These individuals will generally be covered by the leniency applications filed by companies, but they can also submit their own applications, which may potentially cause

some conflict issues between the company and the manager (e.g. when this manager is no longer with the firm).

“Leniency plus” is available in Poland. This allows a company to obtain an additional 30% reduction for a fine when it informs the AMO President of another cartel in which it participated (and in respect of which it obtains full immunity).

As of 18 January 2015, entrepreneurs who wish to participate in the leniency program have at their disposal a new Ordinance on the leniency program².

Fines

Publicly available rules for the setting of financial sanctions by the AMO President regarding infringements of competition law have been in force since 1 January 2009. This information is particularly important for businesses.

According to the Antimonopoly Act, the AMO President has the power to impose fines on enterprises using competition-restricting practices, including fines for the abuse of a dominant position and for concluding unlawful agreements. According to the Antimonopoly Act, the maximum sanction cannot exceed 10% of the revenue obtained by the enterprise in the year preceding the year when the decision was issued. The AMO President may fine individuals who intentionally allowed an anti-competitive agreement to be concluded. The maximum fine is PLN 2 million (approx. EUR 450,000).

Since 1 January 2016, the AMO has been applying Guidelines on setting fines for competition-restricting practices. The Guidelines is the updated version of the Guidelines issued on 1 January 2009. The aim of the Guidelines is to increase transparency with respect to the methodology of setting antitrust sanctions. In the opinion of the Antimonopoly Office, the explanations will help enterprises understand how the fines which they may face are set if they undertake unlawful activities. Also, the Guidelines indicate the methodology for setting fines imposed on individuals.

The most serious infringements, and at the same time the ones most severely punished, are horizontal competition restrictions, i.e. those that occur at the same level of goods distribution or provision of services; for example, pricing agreements between producers or bid-rigging between tender participants, as well as abuses of a dominant position which aim at or lead to the elimination of competition, i.e. all significant competitors. On the other hand, fines imposed by the AMO in the case of fixing the resale price of goods or services or the abuse of a dominant position which leads to a significant restriction of competition on the market are slightly lower. Apart from the harmfulness of the infringement, when setting the fine, the AMO President takes into account the benefits obtained by the enterprise as a result of the infringement, or the influence which the practice has on the market. The duration of the anti-competitive behavior also has an impact on the amount of the fine.

When establishing the final amount, the AMO President may also take into consideration certain mitigating circumstances, for example, the fact that the practice had ceased by the time the AMO’s proceedings were launched, the fact that the enterprise acted under coercion, or that it voluntarily removed the effects of the infringement. The AMO President may also consider circumstances that have an aggravating effect, such as acting as the leader or initiator of the practice or the fact that the enterprise has infringed the prohibition of competition-restricting practices before.

Following his recent announcement about procedural transparency, the AMO President decided to present the undertakings with a detailed justification of charges in all proceedings initiated after 1 September 2015 with respect to practices violating collective consumer interests, anticompetitive practices and fines.

² Ordinance of the Council of Ministers of 23 December 2014, on the procedure applicable to undertakings seeking immunity from or reduction of fines imposed by the President of the Office for Competition and Consumer Protection.

The AMO President presents justifications of charges once it has finished gathering evidence in a case, setting out the factual and legal grounds for the charges it is bringing and the evidence supporting these charges. In this way, the undertaking concerned will have an opportunity to address the charges before a decision is issued.

To implement this new procedure effectively, in September 2015, the AMO President formulated guidelines and clarifications on the detailed justification of charges.

Merger control

The Antimonopoly Act does not specifically define the notion of concentration. It simply lists transactions that require prior review by the AMO President. The mere intention of entering into these transactions triggers the requirement to file a merger control notification.

This requirement applies to:

- mergers of undertakings;
- taking direct or indirect control of another undertaking or a part of it;
- creation of joint ventures; and
- certain acquisitions of assets.

These transactions may be subject to a pre-closing review by the AMO President if:

- the combined worldwide turnover of the capital groups of the companies participating in the transaction exceeded the equivalent of EUR 1 billion in the financial year preceding the year of the notification;

or

- the combined turnover of the capital groups of the companies participating in the transaction exceeded the equivalent of EUR 50 million in the territory of Poland in the financial year preceding the year of the notification.

Additionally, the acquisition of a part of another undertaking's assets (the entirety or part of the undertaking), shall be subject to AMO review if the turnover achieved by the to-be-acquired property in any of the two financial years preceding the year of notification exceeded EUR 10 million in the territory of Poland.

There is no statutory deadline for making the notification. However, the companies concerned should be aware that the notification has a suspending effect and transactions may not be completed before the AMO President issues clearance (or conditional clearance) or the time limit for issuing a decision has elapsed. The AMO President may issue a decision prohibiting the transaction if it would lead to a significant lessening of competition.

Currently, there are two phases of review. The first phase lasts up to one month. If the case merits extensive market analysis, a second phase will be initiated. That second phase will last no longer than an additional four months. During these phases, the AMO President has the right to request additional information. Such requests for information stop the clock until the AMO President has received the requested information. In case of remedies (conditions), the statutory review period will be extended for an additional 14 days.

A failure to notify a transaction or consummation (closing) of the transaction before the AMO President issues clearance may result in fines of up to 10% of the annual turnover of a company which

is an active participant in that transaction. Moreover, in such a case the AMO President may order that the merged entity be divided, or the acquired assets, stocks or shares be disposed of.

An appeal may be lodged against a decision of the AMO President to the Court of Protection of Competition and Consumers within one month of the date of receipt of the decision.

Statutory exemptions

The transactions listed above do not require any filing to the AMO if, among other things:

- the combined turnover of the target company and its subsidiaries did not exceed, in the territory of Poland, in either of the two financial years preceding the notification, the equivalent of EUR 10 million;
- the turnover of at least one of the merging parties or at least one of a joint venture's parents and their capital groups did not exceed the equivalent of EUR 10 million in either of the two financial years preceding the year of notification in the territory of Poland;
- the combined turnover of the target company and its subsidiaries plus the turnover achieved by the to-be-acquired property (if the target and the property belong to the same capital group) in either of the two financial years preceding the year of notification did not exceed together the equivalent of EUR 10 million in the territory of Poland;
- the undertakings concerned belong to the same capital group;
- the disposal of the acquired securities takes place within a year of the acquisition by a financial institution, and no voting rights (except the right to receive a dividend) are exercised or such rights are exercised solely with a view to the resale of the undertaking concerned, or its part, or its assets, or the securities acquired;
- the shares are acquired on a temporary basis with a view to safeguarding the creditors' interests, and the creditor does not exercise any voting rights, except for the right to resell them; or
- control is taken in the course of a liquidation process, except when the acquiring company is a competitor of the undertaking over which control is to be taken or belongs to the same capital group to which the competitor belongs.

Collective consumer interests

The AMO implements a governmental policy of consumer protection. The primary objective of the AMO in this area is to represent public interest, i.e. to initiate administrative proceedings in cases of practices infringing collective consumer interests. In consequence, the AMO President may issue decisions prohibiting practices which infringe the rights of weaker market participants and impose a fine of up to 10% of the revenue earned in the financial year preceding the year in which the penalty is imposed.

The AMO cooperates with municipal and district consumer ombudsmen and non-governmental organizations financed by the State Budget (Consumer Federation, Polish Consumer Association) that provide free-of-charge legal services in individual cases.

Fine for the infringement of collective consumer interests

Pursuant to the Antimonopoly Act, the AMO President has the power to fine enterprises for practices that are detrimental to consumers. The sanctions may reach up to 10% of the revenue gained by an enterprise in the financial year preceding the decision.

Since 10 May 2013, the rules for setting fines for infringements of collective consumer rights have been in force. They aim at improving the transparency of the methodology used to determine the penalties. The document will allow enterprises to make a preliminary estimate of the fine which they may face for acting to the detriment of consumers.

Pursuant to the Guidelines, the fine will depend on the stage of contracting in which the breach occurred. The most severe fines will be imposed for unlawful activities taking place during the performance of the contract, while lesser fines will be set for infringements happening before and during the time when the contract is being concluded.

When determining the final fine, the AMO President may also take into account certain mitigating circumstances – e.g. the fact that a given practice was discontinued before legal proceedings were instituted, active cooperation with the AMO President or paying voluntary compensation to the persons aggrieved by the prohibited practices. The AMO President may also consider aggravating circumstances, such as the intentional character of the conduct, repeated infringements and significant profits gained in a dishonest way.

Taking into consideration the fact that on 17 April 2016 the amendments to the Antimonopoly Act (“Amendments”) enter into force, it is likely that the AMO President will issue new Guidelines to reflect the fact that using abusive clauses is not considered to be a practice of infringement of collective consumer interests and that *misselling* is recognized as a new practice which infringes collective consumer interests.

Abusive Clauses

Contractual clauses that have not been negotiated individually are not binding for consumers if they structure the consumers’ rights and obligations in a way that is contrary to good practice and grossly violates their interests; in particular if they:

- exclude or limit liability towards the consumer in the event of personal injury;
- exclude or severely limit liability towards the consumer for nonperformance or improper performance of a contractual obligation;
- refer to clauses that the consumer was unable to review before concluding the contract;
- grant the person with which the consumer concludes the contract the exclusive right to interpret the contract; or
- exclude the jurisdiction of Polish courts, or submit disputes to a Polish or foreign arbitration panel or other body.

The list of such clauses is not exhaustive.

According to the Amendments, the AMO President decides which clauses are abusive.

The AMO President initiates proceedings *ex officio*. However, consumers, the Insurance Ombudsman, consumer organizations and foreign organizations whose statutory objective justifies the notification of abusive clauses which threaten consumer interests may inform the AMO President about such clauses.

In connection with the amendments, the AMO President issues two types of decisions:

- recognizing the provisions as abusive and prohibiting their use, in which case the AMO President may oblige the undertaking to inform consumers about the prohibited clause or to release a statement (or statements) of appropriate content; or

- Imposing commitments to take or abandon certain actions; the AMO President may indicate the deadline to fulfill the commitments.

The proceedings should be completed within four months, and in particularly complicated cases, no longer than five months from the date on which the proceedings were initiated.

Fine for Abusive Clauses

The AMO President has the power to fine undertakings for applying an abusive clause. The sanctions may reach up to 10% of the revenue gained by an enterprise in the financial year preceding the decision.

Commitment Decisions

In case of competition-restricting practices, infringing collective consumer interests and in case of the recognition of the provisions of a standard contract as abusive, the AMO President may issue a “commitment decision,” whereby the AMO President accepts the commitments made by the undertaking concerned, which, if complied with, will result in the elimination of the prohibited practices and their effects. Commitment decisions are beneficial to undertakings because they entail full immunity from fines. They are also a faster and cheaper solution for both the public and the wrongdoer.

In October 2015, the AMO President issued the “Clarifications on issuing a commitment decision in cases of competition-restricting practices and practices infringing collective consumer interests,” The Clarifications set out the circumstances in which the AMO President may conclude proceedings by way of conciliation and specifies the conditions for accepting commitments by undertakings to cease the prohibited practice. In the Clarifications, the AMO President defined commitment decisions as a way of terminating proceedings by negotiation. Moreover, the AMO President indicates that he expects not only that undertakings will commit to terminating prohibited practices, but also that they will indicate the way to nullify their consequences, e.g. by changing the agreement, reducing the price etc.

Although the Clarifications are not legally binding, the AMO President will adhere to them to ensure that transparent and homogeneous rules are applied.

The Unfair Competition Act

The Unfair Competition Act defines an act of unfair competition as any activity which harms or infringes the interest of an entrepreneur (that is, an individual, legal person or other entity who performs economic activity) or a customer.

The Unfair Competition Act provides an open list of examples of activities that constitute acts of unfair competition. These are as follows:

- the use of another enterprise’s name;
- false or misleading labeling, or the absence of labeling indicating the geographical origin of goods and services, their quantity, quality and ingredients;
- the disclosure of business secrets;
- inducing another company’s customers or employees to breach their contracts;
- copying another manufacturer’s finished product;
- bribery of a person who performs public duties;

- the dissemination of untrue and confusing information concerning another business;
- obstructing access to the market through:
 - predatory pricing,
 - inducing other parties not to deal with other entrepreneurs,
 - discriminating against customers,
 - unreasonably different treatment of certain clients; demanding additional fees for the admission of goods for sale other than trade margins,
 - taking action aimed at forcing clients to select a specific entrepreneur as their contracting party, or creating conditions permitting third parties to force the purchase of goods or services from a specific entrepreneur;
- dishonest or misleading advertising;
- organizing pyramid selling systems;
- the sale of goods or services to consumers connected with granting all or some of them a bonus consisting of goods and services different from those which are the object of the sale;
- the introduction by discount stores of branded products which are the property of the owner of the network or its subsidiary companies in quantities exceeding 20% of the value of their turnover.

Civil remedies are available to an entrepreneur whose interests have been harmed by acts of unfair competition. These include an interim court order ordering the cessation of prohibited acts, as well as the elimination of the consequences of prohibited acts, the right to make one or several statements of a specified content and form, redress of losses suffered, the return of unjustified benefits, and the adjudication of a certain amount for a specified social purpose.

Additionally, certain acts of unfair competition may lead to parallel criminal responsibility (fine or imprisonment).

Furthermore, if the acts of unfair competition threaten or violate the collective interests of consumers, the AMO President may also initiate proceedings under the Antimonopoly Act and impose fines of up to 10% of the annual turnover of the wrongdoer.

The Unfair Commercial Practices Act

The Unfair Commercial Practices Act defines an unfair commercial practice as a practice which is contrary to good customs and which exerts a negative influence on the commercial decisions of an average consumer, involving the purchase of goods and services.

The Unfair Commercial Practices Act regards two types of practices as exceptionally unfair:

- misleading commercial practices which involve an action or omission which, by depriving the average consumer of access to important information, may deny them the possibility of making a free choice. This includes:
 - surreptitious advertising, meaning the use of editorial content in the media to promote a product where a business entity has paid for the promotion without making that

- clear in the content, or by way of images or sounds that are clearly identifiable by the consumer (advertorial),
- displaying a trust mark, quality mark or equivalent when the business entity has not obtained the necessary authorization,
 - bait advertising, i.e. the sale of a particular product at a specific price and not disclosing the fact that the business entity may not be able to supply this particular (or similar) product in a sufficient amount for the price and at a time which is justified in relation to the product, the scope in which it is advertised, and the price;
- aggressive commercial practices which are practices involving the unlawful exertion of pressure which considerably reduce or may reduce the average consumer's freedom of choice, including:
 - making persistent and unwanted (not caused by the action or omission of the consumer) solicitations by telephone, fax, e-mail or other remote media except in circumstances and to the extent justified to enforce a contractual obligation as allowed by relevant laws,
 - conducting visits to the consumer's home, ignoring the consumer's request to leave or not to return, except in circumstances and to the extent justified to enforce a contractual obligation as allowed by relevant laws,
 - creating the impression that the consumer cannot leave the entity's premises until a contract is concluded.

Remedies available to consumers include the right to demand in civil courts the discontinuation of the unfair practice, the elimination of its effects, and redress for the loss suffered. In addition, the Unfair Commercial Practices Act provides for criminal penalties for conducting unfair commercial practices.

If the unfair commercial practices threaten or violate the collective interests of consumers, the AMO President may also initiate proceedings under the Antimonopoly Act and impose fines of up to 10% of the annual turnover of the wrongdoer.

State aid rules

As of 1 May 2004, the EU rules on State aid are applied directly in Poland. Therefore, it is the European Commission that has the exclusive right to approve aid in excess of the *de minimis* threshold (EUR 200,000 within three calendar years) granted by the public authorities to companies operating in Poland, unless they fall under block exemption regulations.

As of 1 May 2004, the AMO was granted the function of a liaison body in proceedings before the European Commission regarding notifications of aid, and before the European Court of Justice regarding aid granted in violation of EU principles. Since then the AMO has been a national supervisory body that ensures that EU State aid law and national implementation rules are well understood and applied by the authorities granting the aid.

8

Property Law

Property Law

Property ownership and title issues

Poland has a well-developed system of land registration and comprehensive legislation regulating the transfer of land.

Polish law recognizes the following types of title and interest in land: ownership; perpetual usufruct; limited rights in property; possession; and rights arising from obligations.

Ownership (*własność*)

Ownership, as it is referred to in Poland, is a title over real property equivalent to a “freehold title” in the English system. Ownership conveys freedom of use, including the receiving of benefits and transfer for an unlimited period of time.

Perpetual usufruct (*użytkowanie wieczyste*)

The right of usufruct is a transferable, alienable and mortgageable right of use which may be granted by the State in relation to state-owned land or a self-governmental body with respect to land owned by a commune. It conveys the free right of use of the land, including the receiving of benefits and the transfer of the right. The word “perpetual” is to some extent misleading, as the perpetual usufruct may be granted for a maximum of 99 years, although it is renewable.

Physical and legal persons can be granted the right of perpetual usufruct to land owned by the State Treasury or by the local municipality. Under Polish law, perpetual usufruct ranks second in the hierarchy of interests in real property.

Physical or legal persons who on 13 October 2005 were perpetual usufructuaries of a real property may apply for the conversion of the perpetual usufruct right into the right of ownership in accordance with the Act on the transfer of the perpetual usufruct right into ownership.

Limited rights in property (*ograniczone prawa rzeczowe*)

In addition to the above, there are the following statutory limited rights in property under Polish law, which are enforceable against owners, usufructuaries and/or third parties:

- usufruct (*użytkowanie*);
- land easement (*służebność gruntowa*);
- personal easement (*służebność osobista*);
- transmission easement (*służebność przesyłu*);
- cooperative Ownership Right to Premises (*spółdzielcze własnościowe prawo do lokalu*);
- mortgage (*hipoteka*);

Obligatory rights to real estate – lease and tenancy

Except in respect of certain mandatory rules pursuant to the Civil Code, the parties to a contract are free to regulate their relationship with regard to real property. The following types of agreements are commonly used:

Leasehold (najem)

A leasehold is a contract under which the lessor undertakes to allow the use of the real property by the lessee and the lessee undertakes to pay the lessor an agreed amount of rent.

An agreement for the lease of real property or premises for a period exceeding one year must be made in writing. If the lease agreement is entered into for a period longer than 10 years (or, if it is concluded between entrepreneurs for longer than 30 years), after the lapse of such a 10-year (or 30-year) period, it is considered as having been entered into for an unlimited period of time and therefore easily terminated.

Lease agreements executed for a specific period of time terminate upon the expiry of the agreed lease period, or when one party gives notice to the other upon the occurrence of termination events. Such termination events must be precisely defined in the lease agreements. According to Polish law, provisions of a lease agreement which allow one party to terminate a lease agreement that has been executed for a specific period of time by giving notice at its discretion (i.e. without the necessity of providing the other party with due cause) are invalid.

A buyer of a leased property may terminate a lease agreement even if the agreement was executed for a specific period of time. The buyer of the leased property does not enjoy such a right if the lease agreement was executed for a specific period of time in writing, bears a certified date (for example, a public notary made a statement on the execution copy of the lease agreement stating that it had seen it on a specific date) and the real property/premises was/were handed over to the lessee.

Tenancy (dzierżawa)

Based on a tenancy agreement, the landlord grants the tenant the right to use the real properties (including the right to collect any benefits), and the tenant undertakes to pay the landlord an agreed amount of rent.

The most important feature distinguishing a tenancy from a leasehold is the entitlement of the tenant to collect revenue/benefits arising from the property. As a result of this division, land (or a development site) is usually held under tenancy while premises are held under leasehold.

A typical use for a leasehold would be the short lease of an apartment or office, whereas tenancy would typically be used for the lease of farmland, due to the possibility of the tenant to collect benefits from the subject of the tenancy (i.e. collect farm produce).

Appropriate classification of these two titles is vital from the point of view of the parties' rights and obligations, including in particular the maximum protection duration period and termination regime. It should be kept in mind that even if the parties named a given agreement a tenancy, but this given agreement had characteristics of a leasehold, then from the legal perspective they would be bound by a leasehold agreement.

Registration

Legal title to land can generally be assessed on the basis of entries made in land and mortgage registers maintained for each real property by the relevant district courts. The content of these registers is deemed conclusive as to the legal title held by the owner or perpetual usufructuary. The legal interests of third parties, such as lease agreements, commitment to sell the real property or the right of first refusal, can also be found in the land and mortgage registers, though it is not mandatory to reveal them. Once revealed, such interests become binding for the third parties acquiring the real property, and no party can effectively claim a lack of knowledge about such interests. Mortgages must be evidenced in the registers.

The principle of reliability of the land and mortgage register protects those who acquire real property and rely in good faith on the entries made by the court in the land and mortgage register. Those who acquire land free of charge cannot claim protection under the principle of reliability of the register. A person acquiring land from an entity registered in the land and mortgage register as its owner would effectively become the new owner even in cases where the entry was erroneous, provided that the other conditions for the operation of the principle of reliability of the register are met.

The land and mortgage registers also include entries with respect to the area of land and the structures existing thereon. However, such entries are not legally conclusive and they are not reliable in practice. This information might be confirmed based on land surveys, geodetic registers, plans and specifications concerning public utility facilities, etc.

Right of first refusal

Under Polish regulations there are several types of statutory rights of first refusal. These include:

- the right of first refusal of local communes - in general this is effective in the event of (i) the sale of undeveloped land in perpetual usufruct, (ii) the sale of the ownership right to undeveloped property previously acquired from a commune or the State Treasury, (iii) historical monuments, (iv) the sale of property designated for public purposes or for which a decision of public investment was issued;
- the right of first refusal of tenants, co-owners, or the Agricultural Property Agency - effective in the case of agricultural properties (that is, properties which are used, or may potentially be used for agriculture, if the local zoning plan does not provide otherwise). The right of first refusal is granted to the Agricultural Property Agency if an agricultural property is of an area of 5 ha or bigger.

Failure to notify the entity holding a statutory right of first refusal on the transfer of real property results in the transfer agreement being declared null and void.

Foreign purchasers

Generally, the purchase of real property in Poland by a foreign person requires a permit from the Minister of Internal Affairs and Administration. However, citizens or business entities from the European Economic Area and Switzerland are released from the obligation to obtain a permit for the acquisition of real property, as well as for the acquisition of shares in companies which own or which are perpetual usufructuaries of real property in Poland.

This entitlement is, however, limited with respect to the acquisition of agricultural or forest land by a foreign person (including a Polish subsidiary of a foreign company) for a period of 12 years from the date of accession of Poland to the European Union. Thus, until 1 May 2016, such acquisition requires a permit which is issued by the Ministry of Internal Affairs and Administration. The procedure is time consuming. Failure to obtain a permit results in the acquisition agreement being declared null and void.

Agricultural lands

Presently, in the Polish Parliament, a new law concerning the sale of agricultural lands is being processed. According to the present wording of the new law, individual farmers are, generally, the only entities which may acquire agricultural lands in Poland. The President of the Agricultural Property Agency may grant its consent to the acquisition of agricultural lands by other entities. The Agency will have the right of first refusal in relation to the sale of all agricultural lands as well as to the sale of shares in a company which holds the title to agricultural land in Poland.

Generally, based on the projected law, the sale of lands making up part of the State Agricultural Ownership Reserves will be withheld for five years.

The new law is not binding yet. It is planned to enter into force on 30 April 2016.

Construction process

The issues concerning the construction process in Poland are regulated by the Act of 27 March 2003 on Zoning Planning and the Act of 7 July 1994 - Construction Law ("Construction Law").

According to the Construction Law, the following persons are participants in the construction process:

- investor;
- investor's supervision inspector;
- designer;
- construction site manager or works manager.

The investor is the main participant in the construction process, which is confirmed by the scope of their duties and their position in the investment process specified in Construction Law.

Before construction begins, the investor must check certain essential pieces of information, i.e.:

- whether the real estate to be developed is covered by a local zoning plan;
- whether the function of the real estate is agricultural, industrial or construction;
- whether the investor holds appropriate legal title to the land, allowing the real estate to be used for construction purposes.

If the legal status of the real estate is clear and it may be used for the planned investment in accordance with the applicable provisions of law, the construction process may begin. During this process, the investor should obtain a building permit, which may be issued directly on the basis of the local zoning plan, or – if there is no such plan covering certain property – on the basis of a site permit.

Once the construction process is completed an occupancy permit is issued. During periods of use, the owner or managing entity should ensure that periodic inspections take place. If the investment is of a specific nature, not typically located or has other specific features, certain additional decisions might be required before the investment may be properly started or completed.

Location of large-space commercial complexes

On 11 November 2015, new regulations regarding the location of large-space commercial complexes entered into force. The new regulations changed the planning and spatial development law. According to the new law, new investments involving the construction of commercial complexes of a sale area of more than 2,000 m² may be located based on binding local zoning plans only.

9 Contract Law

Contract Law

Contract law is regulated by the Polish Civil Code. The principles of Polish contract law are based on the continental European legal model; mainly on the Napoleonic Code that was in force in a part of Poland from 1811 to 1934. Freedom to contract is the main principle of contract law.

The Civil Code regulates certain types of contracts (such as sales contracts, construction contracts, contracts for services, etc.). Parties may also form contracts that are not expressly regulated by the Civil Code and may structure relationships at their discretion, provided that the content or goals of such relationships do not violate the principles of public order.

The Civil Code was adopted in 1964 and it underwent significant changes which entered into force on 25 September 2003. These include new definitions of the terms “consumer”, “entrepreneur” and “enterprise”, and a new regulation on business names (*firma*), commercial representation (*prokura*) and the conclusion of contracts. The Civil Law Codification Commission is currently working on a new version of the Civil Code. The purpose of its work is to harmonize the Civil Code with the Constitution of the Republic of Poland, EU law and to reflect the established practices of international trade.

Consumer protection

On 25 December 2014, the Act on the Rights of the Consumer came into force. The Act regulates the legal issues related to consumer rights and the obligations of entrepreneurs in relation to it. The adoption of the law stemmed from the need to adjust Polish legislation to the provisions of EU law.

The consumer may not waive the rights conferred on him/her by The Act. Provisions of agreements that are less favorable to the consumer than the bill’s provisions are invalid, and in their place the provisions of The Act apply. The Act defines the responsibilities of entrepreneurs who enter into contracts with consumers, the rules and procedures for concluding a contract for distance and off-premises contracts by entrepreneurs with consumers. The Act also establishes the consumer’s right to withdraw from a distance agreement concluded with an entrepreneur. The provisions of the new act expanded the catalog of disclosure requirements imposed on entrepreneurs in relation to consumers.

Polish language requirement

According to a recent amendment to the Act on Polish Language of 2000, agreements generally do not have to be executed in Polish. The exceptions to this include:

- labor and consumer agreements, if the consumer or employee is domiciled in Poland during the execution of the agreement and the agreement is executed in Poland;
- dealings with certain public authorities.

Conflict of laws in civil and commercial matters. Rome I and Rome II Regulations.

When entering into an international transaction, one of the most important issues is the governing law which is applicable to the agreement. As Poland is a member of the European Union, the rules of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 (Rome I) are applied in order to determine the law which is applicable to international contractual obligations. This has been the case since 17 December 2009. Thus, on the entire territory of the European Union, the so-called “conflict-of-law” rules are unified, and the law applicable to each contract shall be determined in the same manner.

As a general rule, Rome I allows the parties to choose the law governing a contract. The choice can be made expressly in the agreement or may be demonstrated by the terms of the contract or the circumstances of the case. The parties can select the law applicable to the whole or only a part of the contract. However, there are some restrictions. For example, if the elements relevant to a contract are located in a country other than the country of the chosen law, it will not enable the parties to exclude the regulations which are mandatory in that country and which cannot be excluded contractually. Rome I also sets forth the rules that determine the applicable law if the parties to an agreement have not chosen one.

Moreover, since 11 January 2009, Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 (Rome II) has been applied in order to determine the law applicable to non-contractual obligations in civil and commercial matters in situations involving a conflict of laws. It determines the law applicable to non-contractual obligations arising from:

- torts/delicts;
- unjust enrichment;
- management of third party business (*negotiorum gestio*);
- breach of duty towards another party in contractual negotiations (*culpa in contrahendo*).

As a general rule, the law applicable to a non-contractual obligation shall be the law of the country in which the breach occurs. Furthermore, the parties may also agree to submit non-contractual obligations to the law of their choice by an agreement entered into after the event giving rise to the breach, or, where all the parties are pursuing a commercial activity, also by an agreement negotiated before that event.

In situations involving a conflict of laws not covered by either Rome I or Rome II, the provisions of the Private International Law Act of 4 February 2011 shall apply.

10 Employment Law

Employment Law

The labor code

Polish labor law is statutory and regulates most aspects of an employment relationship. As a rule, an employer is allowed to provide more favorable conditions in an employment agreement or internal regulations than those provided for by law.

Definition of an employment agreement

Each agreement signed between the parties shall be deemed an employment agreement if one party is obliged to perform specified duties under the supervision of the employer at the time and place specified by the employer in return for remuneration. Employment agreements can have a fixed term or be of indefinite duration. It is possible to enter into a separate contract for a trial period of up to three months.

As a rule, the period of employment under a fixed-term contract, as well as the total period of employment under fixed-term contracts concluded between the same parties of the employment relationship, may not exceed 33 months, and the total number of contracts may not exceed three. Exceeding these limits will result in the conclusion of a contract for an indefinite period.

Continuing employment after a merger or takeover

In the case of a merger or takeover by a new employer, employees are automatically transferred to the new employer and do not need to sign new employment contracts. The former and the new employer are jointly and severally liable for the obligations resulting from the employment relationship which originated before the merger or takeover.

If there are no trade unions operating in a given place of employment, both the current and the new employer are obliged to notify their respective employees in writing about the timeframe of the intended merger or takeover, the reasons for the merger, and the possible effects it will have on the company's recruitment policy. The notice should be delivered to the employees 30 days before the planned merger or takeover. If there is a trade union organization in the Company, the employer is obliged to issue the aforementioned information about the transfer directly to the trade unions.

If the current or new employer intends to introduce modifications to the employment relationships (conditions of employment), it is obliged to initiate negotiations with trade unions in order to conclude the respective agreement within a period of 30 days after the notification was given. If no agreement is concluded, the employer is entitled to take the necessary actions individually, but must still respect the negotiation arrangements with trade unions.

Employees have the right to terminate their contracts by giving seven days' notice within two months of the date of the transfer. By contrast, the employer may not give the merger or takeover as the reason for the termination of the employment.

The transfer of employees should also be consulted with the works council.

Termination

Either party may terminate an employment contract with notice.

The length of notice is dependent on the employee's period of employment and, in exceptional cases, on the employment period with their previous employer if the employee was taken over by a new employer. Any decision by the employer to terminate an employment agreement concluded for an indefinite period, with or without notice, should be accompanied by a statement giving reasons

justifying the termination and information about the employee's right to appeal to the Labor Court. The trade union representing the employee should be consulted and should receive the reasons for the termination of the agreement in writing. However, it has no right to veto the employer's decision.

The length of notice of termination for an employee in a contract for an indefinite time period and a fixed term depends on the actual length of employment at the time notice is given. The notice periods required by the Labor Code are as follows:

- two weeks – if the employee has been employed for less than six months;
- one month – if the employee has been employed for at least six months, but less than three years;
- three months – if the employee has been employed for at least three years.

If an employee appeals against their termination and, during the court proceedings it is determined that the notice of termination of the contract for an indefinite period was unjustified, or that it was contrary to the provisions on the termination of employment contracts, the court will rule that the notice of termination is ineffective. If the contract has already been terminated, upon request, the court may order that the employee be reinstated according to the original conditions or order compensation to be paid to the employee. The court may disregard an employee's request to be reinstated if it determines that it is impossible to do so, or that to consider such a request is pointless, and as an alternative may order that compensation be paid. The compensation will amount to the remuneration owed for a period of between two weeks and three months, and not less than the remuneration owed for the period of notice.

Employment regulations provide for the types of employees whose employment agreement may not be terminated (members of the management of trade unions or a works council, pregnant women, women on maternity leave and many others).

Termination without notice

An employer is entitled to terminate a contract of employment without notice due to the fault of the employee if:

- the employee commits a serious breach of their basic duties as an employee;
- the employee commits an offence that renders further employment at their post impossible, if the offence is obvious or has been confirmed by a court judgment;
- the employee loses, through their own fault, a license necessary for the performance of work at their post.

A contract of employment may not be terminated without notice due to the fault of the employee if one month has elapsed since the employer became aware of the circumstances warranting such termination. Prior to such termination, the employer must seek the opinion of the trade union representing the employee. The opinion is not binding for the employer.

An employer is entitled to terminate a contract of employment without notice and not due to the fault of the employee if:

- the employee is incapable of working due to illness and such incapacity lasts: (i) longer than three months in cases where the employee has been employed in the same business establishment for less than six months, or (ii) longer than the illness-allowance period and the period of the first three months of rehabilitation allowance in cases where the employee has

been employed in the same establishment for at least six months, or (iii) where the incapacity was caused by an accident at work or is the direct result of performing their work tasks;

- the employee is absent from their work for more than one month for a justified reason other than those mentioned above.

A contract of employment may not be terminated without notice and not due to the fault of the employee when the employee is absent in order to care for a child, or has been placed in isolation because of a contagious disease and is in receipt of an allowance on that account.

In the event of the unlawful termination of an employment contract without notice, the employee is entitled to appeal to the labor court and request reinstatement according to the former conditions of employment, or to receive compensation.

An employee is entitled to terminate a contract of employment without notice if:

- a medical certificate has been issued that states that the employee's work is harmful to their health, and the employer failed to transfer the employee within the time specified in the medical certificate to another job that is appropriate for their state of health and vocational skills;
- the employer committed a serious violation of its basic duties towards the employee.

The employer, in the event of the wrongful termination of the employment contract by the employee without notice in the cases defined above, is entitled to appeal to the labor court and request compensation.

Remuneration regulations

Employers must prepare written regulations concerning remuneration if they employ at least 20 persons and they are not covered by the collective labor agreement concluded by the company.

Employees may not renounce their right to remuneration or transfer that right to another person.

Remuneration for work must be paid at least once per month, in arrears, on the same day of the month fixed in advance, but not later than within the first 10 days of the next calendar month.

If an employee is prepared to perform work but cannot do so for reasons connected with their employer, the employee is entitled to receive remuneration according to their individual rate of pay per hour or per month, and if such a component of remuneration has not been identified, 60% of their normal remuneration, but not less than the minimum wage.

A pension bonus equal to one month's salary must be paid to all employees whose employment expired in connection with a disability or retirement.

Restriction and competition

Under the Labor Code, an employer may stipulate in a separate agreement that employees cannot undertake competitive activity or accept a job offer from a competitor either during employment or for a given period after the termination of the employment.

This restriction may only apply to activity directly connected with that of the employer. During the employment period, the restriction may be imposed on all employees. After termination of employment, the restriction may only be applied to those employees who have had access to various trade secrets and confidential information relating to or belonging to the employer, the disclosure of which could cause damage to the employer.

A non-competition agreement which comes into effect after termination of employment should specify the terms of the restriction as well as the amount of compensation due to the employee, which cannot be less than 25% of the employee's remuneration received prior to termination of employment for a period corresponding to the term of the restriction. Compensation is payable for the whole restriction period. The parties may agree for the compensation to be paid monthly or conclude other payment terms.

Work regulations

Employers must prepare work regulations containing rules concerning organization and order at work, and the related rights and obligations of employees and employers if there are 20 or more persons employed and there is no collective labor agreement concluded by the employer and employees covering these matters.

Working hours are eight hours per day and average 40 hours per week (in an average five-day working week). The Labor Code allows for different work schedules, such as a decrease in working hours through a collective labor agreement. The statutory annual overtime limit is 150 hours per year. It is possible to set higher overtime limits either in collective labor agreements, remuneration regulations, or in certain situations in employment contracts. However, the maximum number of hours worked by an employee in any given week cannot exceed an average of 48 hours within the agreed settlement period.

In consideration for overtime worked on weekdays, Sundays and on public holidays, which, according to the work schedule in a particular place are working days, an employee is entitled to an additional 50% allowance. In consideration for overtime worked at night, on Sundays and public holidays that are not working days for an employee, and for overtime worked on days off work granted to an employee in lieu of work performed on Sundays or public holidays, an employee will receive an additional 100% allowance.

The minimum length of paid holiday leave is 20 days after less than 10 years of work and 26 days after at least 10 years of work. All employment (regardless of the employer) is credited for the purpose of calculating the number of days due. Post-elementary education is also taken into consideration. Secondary school graduates receive four years' credit and university level graduates receive a total of eight years' credit towards calculating the number of days of paid leave due.

An employee who commences work for the first time shall, in the calendar year in which they commenced work, acquire the right to paid leave after each month of work at 1/12 of the length of leave due to them after working for one year. The right to subsequent leave shall be acquired by the employee during each successive calendar year.

Mass lay-offs

Mass lay-offs are regulated by the Act on Mass Redundancies dated 13 March 2003 (as amended) (the "Mass Redundancy Act"). The Act, however, does not apply to employment establishments which employ fewer than 20 employees.

Mass redundancies are deemed to take place when an employer who employs at least 20 persons within a period of not longer than 30 days terminates the employment relationships by notice with:

- at least 10 employees, if the employer employs fewer than 100 persons; or
- 10% of employees, if the employer employs at least 100 but fewer than 300 persons; or
- 30 employees, if the employer employs 300 or more persons.

Terminations by mutual agreement of the parties are included in the above threshold if there are at least five employees terminated this way.

Procedure

Pursuant to the Mass Redundancy Act, the procedure for mass lay-offs is as follows:

- employers shall consult trade unions and work councils about their intention to conduct mass lay-offs. In particular, these consultations shall regard the possibility of avoiding or reducing the extent of the mass lay-offs and labor issues connected with the lay-offs, including in particular the possibility of requalification or professional training, as well as finding other employment for employees who are going to be laid off;
- employers shall notify the company trade unions and work councils in writing of the following: the causes of the intended mass lay-offs, the number of employees and professional groups to which they belong, the professional groups of employees covered by the lay-offs, the period during which such lay-offs will occur, the proposed criteria for selecting employees for the lay-offs, the order of employee lay-offs and proposals as to how to resolve any labor issues connected with the intended lay-offs. Where the lay-offs are covered by cash benefits, employers shall additionally present methods by which the level of these benefits shall be established. The notice should be delivered to company trade unions within a period which enables the unions to make proposals regarding the above mentioned matters by carrying out consultations;
- written notice should also be delivered to the local labor office;
- if consent as to the content of the agreement cannot be reached within 20 days, the employer must prepare regulations defining the procedure for mass lay-offs with special regard to agreements agreed with the company trade unions in the course of negotiating the agreement;
- if no agreement has been reached, the employer must inform the company trade union representing its employees about the termination of each employment agreement. The company trade union must register any protest within five days of receiving this information;
- where the company trade unions do not operate at the given employer, their rights connected with the mass lay-off procedure shall be available to employee representatives selected in procedures adopted at the given employer. The employer prepares regulations on the procedure of mass lay-offs after consulting the representatives;
- the employer shall notify the proper labor office in writing of the agreements reached with the company trade union or with the representatives regarding the lay-offs, including the total number of employees and which employees are to be laid off, the reasons for the lay-offs, and the period during which the lay-offs are to be made;
- after completing this procedure, notice of the lay-offs may be given to employees;
- the termination of employment relationships with employees resulting from these notices may occur no sooner than after 30 days from the date of the notification delivered to the local labor office;
- termination notices are delivered in accordance with the regulations regarding the periods of termination notice, special protection of employees etc.;
- with regard to protected employees (for example, persons close to retirement, pregnant women and those on maternity leave) it is only possible to change their current terms and

conditions of work and remuneration. If the procedure described above results in a reduction in remuneration, such employees will be entitled to an equalization payment until the end of the period of their protection;

- in the case of contracts of employment concluded for an indefinite period of time where the notice period amounts to three months, the employer may shorten the notice period to a minimum of one month. The employee shall be entitled to indemnity for the remaining 2-month period of notice.

Severance payment

A severance payment is made to dismissed employees in accordance with the rules applicable to the calculation of the cash equivalent of unused holiday leave.

The amount of the severance payment depends upon the length of employment of the employee with a given employer as follows:

- the equivalent of one month's salary if the employee has worked for less than two years;
- the equivalent of two months' salary if the employee has worked for two to eight years;
- the equivalent of three months' salary if the employee has worked for more than eight years.

The level of severance pay may not exceed 15 times the minimum monthly salary as published by the government as of the date of the termination of employment.

Social benefits fund

All employers employing at least 20 full-time employees on January 1st of a given year are under a statutory obligation to create a Social Benefits Fund that finances social activities such as cultural, educational, sports and recreational activities. The fund should also provide a nursery, kindergarten or similar for children at pre-school age and loans and grants for housing. The Fund is made up of annual contributions based on 37.5% of the average monthly wage (per employee,) in the domestic economy in the preceding year, or in the second half of the preceding year if the average monthly wage was then higher³. The Chairman of the Central Statistical Office announces the average monthly wage every year in the official newspaper, Monitor Polski.

The rules governing the allocation of the Fund's resources are defined in the regulations of a company and must be agreed to by the trade unions or, where there are no trade unions, an employee chosen by the workforce to represent its interests.

The works council

All employers who reach a staffing level of 50 or more employees are under a statutory obligation to notify their employees about their right to establish a works council in accordance with the procedure in place at the place of employment. Otherwise, the employer may be liable to a penalty of restricted liberty or a fine.

The works council shall comprise:

- in the case of 50 to 250 employees – three members;
- in the case of 251 to 500 employees – five members;

³ Please note that in 2016, it is specified that the contributions are calculated based on the average monthly wage as of the second half of 2010, i.e. it amounts to PLN 2,917.14.

- in the case of more than 500 employees – seven members.

The obligation to set up a works council shall not apply to employers that are parties to an agreement concerning information and consultation of employees that was entered into prior to the date of entry into force of The Act on Information and Consultation of Employees (the “Information Act”) which provides for a framework for information and consultation which is no less favorable than that established in The Information Act.

Council members are elected in accordance with the rules specified in the Information Act.

Information and consultation

Employers are required to provide the works council with information on:

- the recent and probable development of their activities and financial standing;
- the situation, structure and probable development of the staffing structure, and on any measures envisaged with a view to maintaining current staff levels;
- measures likely to lead to substantial changes in work organization or in contractual relations.

Employers have to inform their employees if any changes are anticipated or action is planned, or upon the written request of the works council.

Employers should provide this information at a time, in a manner and worded in such a way as to enable the members of the works council to become acquainted with the subject matter and analyze the information.

The opinion of the works council is passed if it is approved by the majority of works council members.

Employers are required to enter into consultations with the works council on the following matters:

- the situation, structure and probable development of employment, and on any measures envisaged with a view to maintaining current staff levels;
- measures likely to lead to substantial changes in work organization or in contractual relations.

Consultations shall take place at a time, in a manner and with such content as is appropriate to enable the employer to take action on the subject matter of the consultations and with a view to reaching an agreement between the works council and the employer.

Neither the opinion nor the outcome of consultations is binding for the employer.

Failure to comply with these obligations could expose the employer to the penalty of restricted liberty or a fine.

11

Bankruptcy

Bankruptcy

The Law on Bankruptcy of 28 February 2003 (the Bankruptcy Act) came into force on 1 October 2003. It regulates principally all the issues of bankruptcy, including special procedures concerning the insolvency of banks, insurance companies and bond issuers.

General

The main purpose of the bankruptcy law is to liquidate and monetize a debtor's property to repay its creditors to the extent possible.

A debtor may be declared bankrupt if it becomes insolvent within the meaning of the bankruptcy law. A debtor being a corporate entity (e.g. a limited liability company) is deemed insolvent if:

- it loses its ability to satisfy its outstanding debts (it is presumed that a debtor is not able to satisfy its outstanding debts if the delay in satisfaction of those debts exceeds three months) - a mere delay in payment of debts is not sufficient;
- the amount of its liabilities exceeds the value of its property and such negative surplus lasts for a period of 24 months (however, certain liabilities are not taken into account).

However, a bankruptcy court is entitled to dismiss a motion for the declaration of bankruptcy in certain situations, in particular if:

- the debtor's property is not sufficient to cover the costs of the bankruptcy proceedings (the court may also reject a motion for declaration of bankruptcy if the debtor's property is significantly encumbered with a mortgage or a pledge (and some other type of in rem security) and the value of those assets that are free of such encumbrances is not sufficient to cover the costs of the bankruptcy proceedings),
- the claim submitted by a creditor filing a motion for declaration of bankruptcy is a disputed claim, and the dispute over such claim arose before the motion was filed.

Motion for declaration of bankruptcy

Both a debtor and a creditor (also a foreign creditor) is entitled to submit a motion for a declaration of bankruptcy. In particular, a creditor should prove in its motion that the debtor is insolvent (within the meaning specified above) and there are other unsatisfied creditors; the creditor should also at least substantiate its claim towards the debtor.

Upon filing the motion for declaration of bankruptcy, so-called proceedings in the matter of the debtor's bankruptcy are initiated. In these proceedings the bankruptcy court reviews the motion in order to decide whether or not to declare the debtor bankrupt. The debtor is entitled to take part in the proceedings and may argue that it is not insolvent or that the motion for declaration of its bankruptcy should be dismissed on other grounds. The bankruptcy law stipulates that the court should issue its decision within two months of the date of filing the motion – in practice, however, it usually takes longer to make this decision (even three to six months). It is important to note that even if the debtor repays the creditor after filing the motion (but before the decision of the bankruptcy court is issued) the bankruptcy court may disregard the creditor's decision to withdraw the motion and declare the debtor's bankruptcy.

A bankruptcy court is entitled to issue an injunction order to secure the debtor's property until the decision over the debtor's bankruptcy is made. For instance, the court may appoint a temporary court supervisor to supervise the debtor's actions and its property, and/or to suspend enforcement proceedings carried out against the debtor's property.

Declaration of bankruptcy

If the bankruptcy court accepts the motion, it declares the debtor bankrupt and appoints a bankruptcy trustee. By declaring the debtor bankrupt, the proper bankruptcy proceedings are initiated. The debtor's property ("bankruptcy estate") should be handed over to the trustees with all documents (including accounting books and tax documentation) related to the bankruptcy estate. The trustee should make an inventory of the bankruptcy estate and once it is finished should liquidate (monetize) the estate to repay the bankrupt debtor's creditors to the extent still possible.

Each creditor that would like to participate in the bankruptcy proceedings should submit a claim to the judge supervising the bankruptcy proceedings (this applies also to creditors that earlier submitted a motion for declaration of bankruptcy). As a rule, each creditor should submit its claim within 30 days of the publication of the decision on the declaration of bankruptcy. The claim is reviewed by the trustee and, if accepted (and only to the extent accepted), is placed on the list of receivables and the creditor is entitled to take part in the bankruptcy proceedings.

"Prepared liquidation" (a special tool for buying a debtor's business assets)

It is possible that a bankruptcy court could approve, when issuing a decision on the declaration of bankruptcy, that the debtor's enterprise, or an organized part of the enterprise or material business assets, are sold to a specified buyer for a specified price. This option is called "prepared liquidation" and its aim is to speed up the bankruptcy proceedings. A creditor interested in this option is entitled to apply to the court to approve this prepared sale of the debtor's assets, even without the debtor's consent (however, in practice this option would usually have to be pre-arranged with the debtor to be effectively executed). In such case the creditor is required to file to the court a valuation of the debtor's assets prepared by an appraiser authorized to act as a court-appointed expert.

Please note that this "prepared liquidation" mechanism was introduced to the bankruptcy law on 1 January 2016, and, to our knowledge, it has not been tested in practice yet. Thus, it is difficult to determine how the bankruptcy courts would approach motions asking for "prepared liquidation". It seems, however, that this tool may be an interesting option for buyers (arranged by a creditor or a debtor) that would like to buy a debtor's business (or part of it) at the very beginning of the bankruptcy proceedings.

Category of claims

Claims that are subject to repayment by a trustee (from funds received from the monetization of a bankruptcy estate) are divided into four categories. Trade receivables are considered as second category claims (this category covers also taxes) and are repaid only if first category claims are satisfied in full. The first category claims include, in particular, the costs of bankruptcy proceedings (including the trustee's fee) and other expenses and claims arising after the debtor is declared bankrupt.

Secured creditors

It is worth emphasizing that so-called secured creditors (usually banks) enjoy a preferred treatment in bankruptcy proceedings. The secured claims (e.g. claims secured with a mortgage or pledge established over the bankrupt debtor's property) are satisfied not from the bankruptcy pool (proceeds received from the monetization of the bankruptcy estate) but from the proceeds received from the sale of encumbered assets (only a surplus of the secured claims over the amount of secured claims is transferred to the bankruptcy pool for the benefit of all (unsecured) creditors).

Timeframe

The liquidation of a bankruptcy estate and repayment of creditors should be carried out as soon as possible. However, the exact timeframe for completing bankruptcy proceedings depends on the circumstances of a given case. In practice it may even take a couple of years (two to five years) before the bankruptcy estate is fully liquidated, and the funds received from the trustee are repaid to the creditors.

Cross-border bankruptcy proceedings

The Bankruptcy Act provides for specific regulations regarding bankruptcy proceedings conducted abroad against a debtor that has its assets within the territory of Poland. These provisions are generally applicable with respect to non-EU Countries. Such proceedings will be valid under Polish law if they are recognized by a Polish court.

Declaration of bankruptcy abroad does not prevent bankruptcy from also being declared in Poland. However, once foreign bankruptcy proceedings are recognized, bankruptcy declared in Poland will relate only to the assets located in Poland.

The issues relating to bankruptcy declared within the territory of the European Union are regulated by Council Regulation no. 1346/2000 dated 29 May 2000 on insolvency proceedings. Therefore, bankruptcy declared in one EU Country is automatically recognized in Poland.

The new procedure of restructuring

On 1 January 2016 a new restructuring law came into force – the Restructuring Act. The main objective of the new law is the introduction of effective instruments to carry out the restructuring of the debtor's company and prevent its liquidation. The Act introduces and defines in detail the four types of restructuring proceedings: proceedings of the approval system, accelerated reorganization, arrangement and remedial proceedings.

Entrepreneurs in a difficult financial situation – insolvent or threatened with insolvency – may select a repair procedure tailored to their needs. The purpose of restructuring proceedings is to enable change in the structure of assets, liabilities, businesses and employment.

12 Intellectual Property Rights

Intellectual Property Rights

Polish intellectual property law is governed by several legal acts, the most important being the Industrial Property Law of 30 June 2000 (the “IPL”) and the Act on Copyright and Related Rights of 4 February. Additionally, there are various civil, penal and administrative provisions, particularly customs procedures, which are relevant for the protection of IP rights in Poland.

Protection under the IPL relates primarily to inventions, utility models, industrial designs, trademarks (including renowned and well-known trademarks), geographical indications and the topographies of integrated circuits. The act also regulates protection against civil and penal infringement by third parties of all the aforesaid rights. Other commercial designations of origin, such as unregistered trademarks, company names, as well as unfair competition acts, data exclusivity etc. are governed by separate regulations.

According to the IPL regulations, a party to the proceedings for granting a patent, protection right or right in registration before the Patent Office is allowed to act in person or may be represented by a legal representative. Persons who do not have their place of residence or registered office in the EU are represented by a legal representative.

Some of the above mentioned rights, i.e. trademarks and designs, may also be protected as EU Trademarks and Registered Community Designs on the territory of the whole European Union, including Poland, by virtue of registrations by the European Union Intellectual Property Office (EUIPO) in Alicante, Spain (previously the Office for Harmonization in the Internal Market).

One of the limits of IP rights is expressed by “the concept of the exhaustion of IP rights”. Also, Polish law stipulates, as is mandatory in the EU, for the exhaustion of registered IP rights on the territory of the European Economic Area.

Patents (*Patenty*)

Protection of inventions is assured under the IPL. A patentable invention is any new solution (novelty on a global scale is needed) of a technical character that does not obviously result from prior art and is capable of practical or industrial application. Patents are not granted for:

- inventions whose exploitation could be contrary either to public policy or morality (inventions are not considered to be contrary to public policy merely because their use is prohibited by law);
- plant varieties or animal breeds and purely biological processes of plant and animal production (does not apply to microbiological processes or the products obtained by such methods) – the method of production of plants or animals is purely biological if it consists entirely of natural phenomena such as crossing or selection;
- methods of treatment of people or animals via surgery or therapy and diagnostic methods applicable to people or animals (does not apply to products, in particular substances or mixtures, used for diagnosis or treatment).

The following categories cannot be considered as inventions (and therefore cannot be granted patents), in particular:

- discoveries, scientific theories and mathematical methods;
- creations of a merely aesthetic character;
- plans, rules and methods for mental activities, business or games;

- creations whose incapability of exploitation may be proved under the generally accepted and recognized principles of science;
- creations or methods for which either the ability of use cannot be proven or whose use might not bring the results expected by the applicant;
- computer programs;
- presentations of information.

What is more, the human body (in the various stages of its formation and development) cannot be considered as an invention, as well as common discoveries of one of its elements, including the sequence or partial sequence of genes.

Patent protection is extended to cover chemical compounds, pharmaceuticals and foodstuffs. Protection is awarded for a period of 20 years. The Polish patent office may extend protection by an additional five years for patents relating to medicinal or plant protection products by granting a supplementary protection certificate. On 1 March 2004, Poland joined the European Patents Convention and became a member of the European Patent Organization. From that date onwards, Poland may be designated as a country for the protection of European patents. Thus, Polish law relating to patents is harmonized with the European Patents Convention. It is also in harmony with Community legislature in this area.

Possession of a patent right confers the exclusive right to use the invention throughout Poland. The right to obtain a patent is vested with the inventor and/or the party to whom the invention was transferred. Where an invention has been created by an inventor in the course of his/her duties as an employee or in the execution of a contract, the right to the patent belongs to the employer or the commissioning party, unless otherwise agreed by the parties concerned. To apply for a patent, a petition has to be filed with the Polish Patent Office together with a description of the invention, patent claims, and an abstract of the description and drawings where necessary. Patent applications are published by the Polish Patent Office 18 months after the date of priority.

An invention enjoys temporary protection as of the moment of publication of the application for registration, effective from the date on which the application for registration is filed. Progressive fees must be paid from the first to the 20th year of patent protection in order to maintain a valid patent. The right to a patent, or the patent itself, may be assigned and be subject to succession. A patent holder may authorize another person to use his/her invention by way of a license agreement.

Utility models (*Wzory użytkowe*)

Utility models, also known as petty patents, are any new and useful inventions of a technical nature affecting the shape, construction or permanent assembly of an object. Utility models are a less well-known way of protecting technical solutions that are “not complicated enough” to merit patent protection. It is thus relatively easy to obtain protection for a utility model in Poland, and if during the assessment of a patent invention the Patent Office finds that a patent may not be granted, the applicant has the possibility of converting his/her patent application into a utility model.

Utility models are protected by a protection right which confers the exclusive right to exploit a utility model only for profit or professional purposes within the territory of Poland for a definite period of 10 years following the date of the application with the Patent Office.

Industrial designs (*Wzory przemysłowe*)

A design is an exclusive right to the novel outward appearance (the bodywork) of a product or a part of it, resulting from the features of the lines, contours, colors, shape, texture and/or materials of the

product itself and/or its ornamentation. The basic requirement for this type of protection is the novelty and individual character of the design.

Industrial designs may be registered with the Polish Patent Office. However, one may also rely on copyright protection for either registered or unregistered designs. The protection period for registered designs lasts for a maximum of 25 years from the filing date. Registration of an industrial design does not deprive it of copyright protection. However, the fact that the right is registered is important as it gives greater certainty and solidity in the event of infringements.

An unregistered Community design grants protection for a period of three years from the date on which the design was first made available to the public within the Community. An unregistered Community design confers on its holder only the right to prevent reproduction/copying. This right is recommended if the design was made public prior to registration and is suddenly infringed upon – this is so because an unregistered design grants fewer rights (merely against direct reproduction/copying) and lasts for only three years. Moreover, it is harder to prove the date on which it was made public within the Community.

Trademarks (*Znaki towarowe*)

According to the IPL, a trademark is any sign which can be graphically represented, provided that it is capable of distinguishing the goods of one undertaking from those of another. Trademark protection is obtained by way of registration (or through use, pursuant to the unfair competition provisions). Usually, the first applicant for a trademark is entitled to have it registered and to have the exclusive use thereof. Polish trademark provisions are fully harmonized with EU trademark law. However, compliance with the interpretations of the European Court of Justice may sometimes differ before the Polish courts.

Trademark applications are filed with the Polish Patent Office and cover one or more classes of products and/or services. Registration of a trademark takes place upon scrutiny of its form, registerability and of any potential conflicts with prior trademark registrations. It should be noted that the IPL recently underwent numerous crucial changes, of which the most important was the introduction of the opposition based trademark registration procedure previously unfamiliar to Polish law. Currently, the opposition based trademark registration procedure limits the obligation of the Polish Patent Office only to an examination of the absolute grounds preventing registration, such as the fact that the mark consists of or comprises the flag, coat of arms, national anthem or other insignia of the Republic of Poland, or consists of or comprises immoral, deceptive or scandalous matter; or matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols. What is more, at present it is the right holder's obligation to keep track of the information provided by the Polish Patent Office about any application which could be in conflict with the right holder's trademarks. The IPL provides also for the protection of well-known and renowned trademarks. The latter are protected (pursuant to Community law) not only with respect to similar but also with regard to different goods and services. The period of trademark protection lasts for 10 years from the date of the application, with the possibility of protection being extended indefinitely for subsequent 10-year periods.

The right derived from the registration of a trademark may be assigned or licensed. The trademark holder may demand the cessation of any acts of infringement, the surrender of unlawfully obtained profits and, in the event of culpable infringement, compensation for damage, either pursuant to the general principles of Polish civil law or as a payment of the amount of the respective license fee for the use of the trademark. The trademark protection expires if the trademark holder does not use the trademark within the territory of Poland for a period of five consecutive years after registration, or has failed to pay trademark protection renewal fees within a specific period. A registration may be cancelled if the requirements for registration were not met.

Polish trademark registration can be used as the basis for international trademark registration under the Madrid system, provided that the holder of the Polish trademark registration is a national of a State that is a signatory to the Madrid system or has a bona fide branch office in such signatory State. The Madrid system offers a trademark holder the possibility of having their trademark protected in several signatory States by filing one application directly with the national trademark office. An international trademark so registered is granted protection equivalent to the protection that would be granted pursuant to a direct application in each one of the countries designated by the applicant.

As of 1 May 2004, a trademark can also be granted protection as a European Union Trademark (EUTM) on the territory of Poland. Through a single procedure, the EUTM gives its holder a uniform right which is applicable in all Member States of the European Union. The EUTM is filed either directly with the European Union Intellectual Property Office (until March 2016: the Office for Harmonization in the Internal Market - OHIM), the Polish Patent Office, WIPO, or any other national patent and trademark office in any given Member State.

Copyright (*Prawo autorskie*)

Copyright in Poland applies to a wide range of different works, including literary, artistic, musical and dramatic works. It also extends to databases, as long as they are creative. Moreover, computer programs (software) are also, to a certain extent, protected under copyright law. Economic copyright consists of the exclusive right to use and dispose of a work as well as the right to remuneration. The work can be used and disposed of in special enumerated “fields of exploitation” (the types of uses of the copyrightable work). Economic copyright may be the subject of an assignment or a license. There are also the so-called moral rights of the author, which cannot be assigned. To name a few, the so-called moral rights of the author are as follows:

- the right of authorship of the work;
- the right to mark the work with the name or pseudonym of the author, or to make the work public anonymously;
- the right of integrity of the work’s content and form along with the right of its fair use;
- the right of supervision of the way the work is being used.

No formalities must be met for copyright to be protected in Poland. Copyright vests and comes into existence automatically upon the creation of a work. One does not have to (and cannot for that matter) register copyright in Poland. Most types of copyrightable works receive automatic protection against any unauthorized copying/reproduction until 70 years have elapsed since the death of their author.

Anti-counterfeiting on the borders

Increasingly, counterfeited products are originating in Eastern Europe and Asia, with many of them subsequently distributed across the EU. Hence, Polish customs offices are usually the primary “firewall” against floods of imports of such counterfeited goods.

Filing an appropriate application with the Director of the Customs Chamber helps to protect IP rights in Poland. Additionally, Polish Customs officers are authorized to seize goods that infringe upon IP rights on their own initiative (an ‘ex officio’ action). Nonetheless, the filing of a Customs application by the owners themselves is usually much more effective, since the Customs authority may not be familiar with the characteristics of IP rights and may not act promptly enough when faced with the infringing goods.

There are two types of such Customs applications:

- union application - which is submitted in one Member State and requests the Customs of that Member State or of other Member States to take action; and
- national application - which requests the Customs of a Member State to take action in that particular Member State.

No administrative fee is required to file a Customs application. However, it requires written undertakings to cover any liability or expenses incurred by Customs with regard to the matter. If, following a customs inspection, Polish Customs Officers have well-founded grounds to suspect a violation of IP rights, they will issue a decision ordering the seizure of such goods and immediately notify the party concerned. Pursuant to a simplified procedure under the European Community regulation, infringing goods can be destroyed at the request of the IP rights holder, provided that customs receive written permission from the declarant, i.e. the owner of the infringing goods.

If there is no such consent, the IP rights holder may initiate criminal proceedings within which the counterfeits can be destroyed.

13 Dispute Resolution

Dispute Resolution

State litigation

The courts

Judicial powers are exercised through the Supreme Court, the state courts of general jurisdiction, the administrative courts (including the Supreme Administrative Court and the provincial administrative courts), as well as the military courts.

In accordance with the Polish Constitution, court proceedings have two stages.

The Supreme Court plays a special role in the Polish legal system and its competences include, among other things, recognition of cassation appeals.

The state courts of general jurisdiction include district courts, regional courts and appeal courts. The function of the courts of first instance is fulfilled by either district or regional courts. Certain types of actions are heard by regional courts; in particular, matters with a value in excess of PLN 75,000 (i.e. approx. EUR 18,000). Decisions of a district court may be appealed against to a regional court. First-instance decisions of a regional court may be appealed against to an appeal court.

Civil cases are generally heard in courts of first instance by one judge only. In some cases, for example related to some labor regulations or family relations, cases are heard by a panel composed of one presiding judge and two lay judges. Appeals are heard by panels of three judges.

Judges, in the exercise of their office, are independent and subject only to the Constitution and statutes.

Enforcement of claims

The Civil Procedure Code of 1964 regulates proceedings in civil cases before the courts.

Proceedings are initiated by filing a statement of claim with the competent court. The statement of claim must be in writing and must include, among other things, the following information:

- a description of the nature of the claim;
- the value of the claim;
- the factual circumstances which are relied on to justify the claim;
- a motion (if any) for an order to secure the subject matter of the claim;
- details of any witnesses or experts nominated by the claimant and documentary evidence the claimant relies on.

Generally, the action ought to be brought before the court of first instance in whose jurisdiction the defendant is domiciled or has its seat.

The statement of claim is served on the defendant by the court. The defendant may then issue a response and/or lodge a counterclaim.

It is the responsibility of the parties to file motions requesting/proposing evidence or seeking permission to appoint experts, submit documents and call witnesses.

Procedural actions should be taken by the parties within time limits specified by the Civil Procedure Code.

A hearing is closed after the presentation of the evidence and when the parties have had an opportunity to be heard. If the defendant fails to appear at the hearing or does not participate in the hearing, the court can issue a default judgment. After closing the hearing, the court issues its verdict. The announcement of the judgment is generally public.

The Civil Procedure Code provides for special separate regulations in certain cases, including simplified proceedings and electronic proceedings.

As a general guide, proceedings can be expected to take approximately two years at the first-instance level.

Interim injunctions

An interim injunction is an instrument designed to secure claims that can be enforced through the state court or arbitration tribunals. When the court finds that a claim is legitimate and the claimant could be prevented from pursuing it if the claim is not secured, the court may issue an interim injunction prohibiting the transfer or disposal of the defendant's assets.

An interim injunction is obtained by filing a motion with the court, either prior to the proceedings being initiated or in the course of such proceedings. The court must examine the motion within one week after it is submitted.

An interim injunction does not lead directly to the satisfaction of a claim. The claimant must first obtain a judgment and then have it enforced against the defendant's assets in the usual way. If the court issues an interim injunction before the proceedings are initiated, it will set a date by which a statement of claim should be filed with the court. If this deadline is not met, the claim will cease to be secured.

A debtor may at any time demand annulment or amendment of the interim injunction if the reason for which the claim was secured ceases to exist or changes, or if the debtor deposits a sum of money with the court which is sufficient to secure the claim.

Securing evidence

Where there is a threat that a delay will prevent important evidence from being presented, or for other reasons, the court may secure evidence. This may be done either before or after the initiation of proceedings and upon a motion of the party or at the initiative of the court.

Legal costs

The costs of civil proceedings include, among others, the court costs, such as the court fee paid by the claimant on filing the statement of claim, the costs of legal representation and additional expenses associated with it.

Generally, the court fee amounts to 5% of the value of the claim; however, the maximum fee is PLN 100,000 (i.e. approx. EUR 25,000.)

A party that does not have adequate funds to cover the court costs may be released from the obligation to pay such costs fully or partially.

The losing party must generally meet all the costs that have been incurred by both parties, including the costs of legal representation as determined on the basis of the Regulation of the Minister of Justice on Advocates' Fees and Legal Advisers' Fees of September 2002.

Appeals

Decisions of the courts of first instance may be appealed against to appeal courts. The Civil Procedure Code does not specify on what grounds appeals can be filed. However, the most common grounds include an error of substantive law as well as an infringement of procedural law.

The appeal court reviews the material submitted during the first-instance proceedings and any new evidence which was made available during the appeal proceedings. It may, however, disregard new evidence that was not presented before the court of first instance.

The appeal court may dismiss the appeal, accept the appeal and amend the judgment being appealed against, or it may, in some cases, annul the judgment of the court of first instance and submit the case for re-examination to the court of first instance.

The judgment of the appeal court may be appealed against to the Supreme Court on the grounds of an error of substantive law or a breach of procedural rules if such a breach could have had a material effect on the outcome of the case. Cassation appeals to the Supreme Court typically take a few years to complete and are considered extraordinary means of appeal.

In general, there is no right of appeal (cassation) to the Supreme Court where the amount in dispute is less than PLN 50,000 (i.e. approx. EUR 12,000). There is also no right of appeal in cases involving, among others, divorce, separation, maintenance, lease or rental payment and the breach of rights of possession of land.

Enforcement of judgments

Enforcement proceedings are instituted on the basis of “enforcement titles”, that is, documents that establish the claimant’s right to have a claim enforced against the defendant’s assets.

Enforcement titles include the following:

- final court judgments, court judgments subject to immediate enforcement and court settlements;
- judgments of an arbitration court or settlements reached before an arbitration court;
- settlements concluded during a mediation procedure;
- other judgments, such as a decision in bankruptcy proceedings;
- under certain conditions, notarial deeds in which the debtor has declared that he/she voluntarily submits to enforcement.

Enforcements are carried out by court enforcement officers, except for actions which are reserved for the court itself, such as supervising an auction.

Available methods of enforcement include seizure of the debtor’s bank account, seizure of the debtor’s remuneration for work, and the seizure and sale of moveable assets or real property.

Recognition and enforcement of foreign judgments

Judgments of foreign courts issued in civil matters are generally recognized automatically by the force of law. The judgment will not be recognized if, among other things:

- it is not final in the country in which it was issued;
- it was issued in a case which is subject to the exclusive jurisdiction of Polish courts;

- the defendant, who did not enter a dispute as to the merits of the case, was not properly served with the document instituting the proceedings and in sufficient time to enable defense;
- the party was deprived of the ability to defend itself in the course of the proceedings;
- a case relating to the same claim between the same parties was pending in the Republic of Poland earlier than before a foreign court;
- it is contrary to a previous final judgment of the Polish court or a previous final judgment of a foreign court which meets the conditions for its recognition in the Republic of Poland, issued in a case concerning the same claim between the same parties;
- the recognition would be contrary to the fundamental principles of the legal order of the Republic of Poland (the public order clause).

Foreign judgments in civil cases, enforceable by way of enforcement, become enforcement titles once their enforceability is declared by a Polish court. Enforceability is declared if the judgment is enforceable in the country of its origin and there are no obstacles, including the ones referred to above, as in the case of recognition of judgments.

The recognition and enforcement of judgments issued by the courts in EU member states is regulated by EC Regulation No. 1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

It is also worth mentioning that the European Union has a well-developed system of laws in place which are designed to help with cross-border litigation.

In some cases involving judgments issued in some countries that are not EU member states, the specific rules provided for in international agreements are followed. For example, Poland is a party to the Lugano Convention on jurisdiction and the enforcement of judgments in civil and commercial matters, and the provisions of this Convention apply to judgments issued in other signatory countries.

Arbitration

General

There has been a growing interest in arbitration in Poland since the political system changed in the late 1990s. Liberalization has led to an increase in the number of disputes between business entities. This increase has in turn led to the establishment of a growing number of standing arbitration courts by a variety of trading organizations, partnerships, funds etc.

Arbitration in Poland is regulated by the Civil Procedure Code and by relevant international conventions to which Poland is a party, specifically the New York Convention of 1958 and the European Convention of 1961. The Polish law on arbitration is based upon the UNCITRAL Model Law.

Poland is also bound by treaties on legal assistance and treaties intended to protect foreign investment concluded with many countries, some of which provide for arbitration as a means of dispute resolution.

Initiation of arbitration proceedings

According to the Civil Procedure Code, arbitration is generally available for disputes that may be settled in court. For a dispute to be submittable to arbitration, the parties must first evidence in writing their intention to do so in the form of an arbitration agreement. In the arbitration agreement the parties

must indicate the subject of a dispute and the legal relation from which the dispute arose or could arise.

In order to be effective, arbitration agreements must be in writing and signed by both parties. The agreement may also specify such matters as the identity of the arbitrators or the method of their appointment. The appointment can be left to a third party such as a professional body if the parties so wish.

Arbitral tribunals

Parties may freely specify the number of arbitrators. If they do not do this, the arbitral tribunal consists of three arbitrators. The parties may also choose their preferred method of appointing the arbitrators. Otherwise, the provisions of the Polish Civil Procedure Code apply.

Any natural person who has full capacity to perform acts in law can be an arbitrator, no matter what their citizenship is. Under Polish law, a state judge cannot be an arbitrator, but this does not apply to retired judges.

Arbitrators ought to remain impartial and independent. They cannot undertake their duties if there are doubts as to their impartiality or independence, or if they do not possess the qualifications specified in the parties' agreement, because otherwise they may be challenged. Also, the person appointed as an arbitrator should make known to the parties any circumstances that could raise doubts as to their impartiality or independence without delay.

Arbitration proceedings

Parties to arbitration proceedings are free to choose the rules of the proceedings, which gives them much autonomy.

On the other hand, the parties must be treated equally and each of them has the right to be heard and present their statements and supporting evidence.

Polish arbitration proceedings are also based on the principles of confidentiality and efficiency.

Arbitration awards

After completion of the arbitration proceedings, an arbitral award is issued. The Civil Procedure Code includes provisions as to the content of an arbitration award.

If any of the arbitrators refuse to sign the decision or are unable to do so for some reason, this must be noted on the decision itself. An arbitrator who disagrees with a majority decision may sign it but file a dissenting opinion. However, as long as the decision is signed by the majority of the arbitrators, it is legally effective.

Role of the state courts in arbitration

The state courts have a limited role in arbitration proceedings. They may appoint substitute arbitrators or the presiding arbitrator, remove an arbitrator, interview witnesses or set remuneration of arbitrators if the parties are unable to agree it.

The courts are also competent to hear motions for the annulment of arbitration awards. At the request of the interested parties they will also examine motions for the recognition and enforcement of arbitration awards.

Recognition and enforcement of arbitration awards

Arbitration awards issued by arbitration tribunals have the same status as judgments of the state court once they have been recognized or declared enforceable by the court.

Recognition or enforcement of an arbitral award requires application to the Polish state court. Generally, the grounds for refusal of recognition or enforcement of arbitral awards provided for in the Polish Civil Procedure Code are similar to those stipulated in the New York Convention.

Power to appeal and/or set aside arbitration awards

No appeal is available against an arbitration award and the state courts are not permitted to examine the merits of an arbitration matter. The only remedy is the right to file a motion for the annulment of the arbitration award with the state court.

The grounds on which a motion for the annulment of an arbitration court award can be filed are similar to the grounds on which a court may refuse to recognize or enforce an arbitration award.

Mediation

Much effort is being undertaken to make mediation more popular in Poland, in particular among business entities. Mediation is generally perceived as a faster and more efficient method of dispute resolution, which might be attractive to business parties wanting to save time and money.

As of 2005, the provisions of the Polish Civil Procedure Code provide for the option to institute voluntary mediation, including mediation on the basis of a mediation agreement and mediation at the instruction of the court.

In a mediation agreement the parties should specify the object of the agreement as well the mediator (or specify the method of appointment of the mediator). The agreement may be concluded in any form. The mediation agreement may take the form of either a clause that is inserted into the main body of the agreement or a separate agreement signed between the parties.

It is also possible to submit a request for mediation despite the lack of a mediation agreement. The other party can then give its consent to the request for mediation.

Mediation can also be conducted upon the initiative of the court. The court may, until the end of the first hearing, instruct the parties to enter into mediation (by way of a court decision). Upon the consent of the parties, mediation may also be started later.

Any person can be a mediator. Under Polish law, a state judge cannot be a mediator – but this does not apply to retired judges.

Mediation is voluntary, and the parties may withdraw from mediation at any time. The mediation proceedings should be conducted in confidence. The mediator is under obligation to keep in confidence all facts of which they gained knowledge in connection with the conducted mediation.

The best result that can be achieved by the parties to the mediation process is to reach a settlement. Such a settlement may be approved by the court and is subject to enforcement in the same way as a court settlement.

The court may refuse to approve the settlement if it does not conform to the law, it breaches good custom or constitutes an attempt to circumvent the law or if it is not comprehensible or contains discrepancies.



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