

Defense industry

Our capabilities in Poland



Market overview

Since the nineties, the Polish defense market has experienced a high flow of leading global defense contractors keen to take a place at the forefront of the political, business and cultural changes occurring in Central and Eastern Europe. The acquisition of 48 F-16 multirole jets back in 2003 was the first high-value acquisition of western armaments by the Polish Government in the post-Soviet world.

The Polish defense industry struggled to compete both on international and Polish defense markets, which led to the consolidation of the industry, aimed at absorbing new technologies through offset arrangements entered into by the Polish Government. The Polish defense industry desperately needed to take part in the most important defense projects in the region. In 2013, the vast majority of Polish defense companies consolidated into the Polish Armament Group (*Polska Grupa Zbrojeniowa SA*) consisting of 60 local defense companies owned by the Polish State Treasury. Following the completion of the consolidation process, successful and smooth collaboration with the Polish Armament Group is a key to success in terms of certain high-value defense acquisition projects.

The Polish Government has outlined the significant defense spending to be undertaken in the next few years as part of the Government's defense strategy. The long-term forecast provides for USD 49 billion of new investment in Polish defense capabilities through acquisitions and modernization. This enormous increase in armaments and related infrastructure spending provides significant opportunities for defense contractors, both local and international.

Major Defense Acquisition Programs

In the coming years, the Polish Government will focus on the initiation (or successful completion) of a number of high-value armament acquisition programs. The current Technical Modernization Plan of the Polish Armed Forces for 2017-2026 reveals that such acquisitions as multirole fighters (Harpia Program), short and medium range air defense systems (Narew Program/Wisła Program), attack helicopters (Kruk Program) and submarines (Orka Program) will be the focus of the attention of the Polish Ministry of National Defense. Nonetheless, in our experience foreign contractors may also be interested in small and medium size acquisition projects, which may facilitate cooperation with the Polish Government on more sensitive and critical programs.



Fot. Spc. Aaron Good / www.eur.army.mil

Our capabilities in defense projects

- Defense procurement – legal framework
- Offset law
- IP – protecting the crown jewels
- Tax aspects of defense procurements

Understanding the sector

We have successfully completed a number of defense projects arranged by the Armament Inspectorate (responsible for the majority of defense acquisition programs in Poland) as well as the offset proceedings coordinated by the Office for Offset Agreements at the Ministry of National Defense.

We have a strong track record of successful negotiations with both the Polish Ministry of National Defense and the local defense industry. In addition, we are familiar with the Polish Government's and local suppliers' expectations regarding structuring, risk allocation and commercial rights such as intellectual property and technical data.

We assist our defense clients from the very beginning of the acquisition process, advise them on responding to Polish Government RFP requirements, and provide insight on how the Polish Government prefers to work. We assist them in all stages of long-term supply projects.





Defense procurement – legal framework

Our team has significant experience in various defense procurement projects. We have handled defense procurement cases under both Public Procurement Law and the internal regulations of the Ministry of National Defense. We assist our clients in case of competitive tenders and sole source proceedings. We make sure that any actions undertaken by our clients are compliant with defense procurement regulations and competition laws. Our team is also experienced in representing clients in appeal proceedings before the National Chamber of Appeal (*Krajowa Izba Odwoławcza*) and the District Court (*Sąd Okręgowy*).

Where the products of our clients are the subject of Government-to-Government agreements concerning military equipment (e.g. within Foreign Military Sales), we have supported our clients throughout the entire process and advised them on any matters relating to the Government-to-Government defense procurement regulations.

The members of our defense team hold Polish security clearance allowing them to access and process information classified as CONFIDENTIAL. This unique capability allows us to advise our clients in acquisition proceedings which require access to classified information, as well as in case of appeal proceedings before the National Chamber of Appeal or District Court requiring reference to classified information.

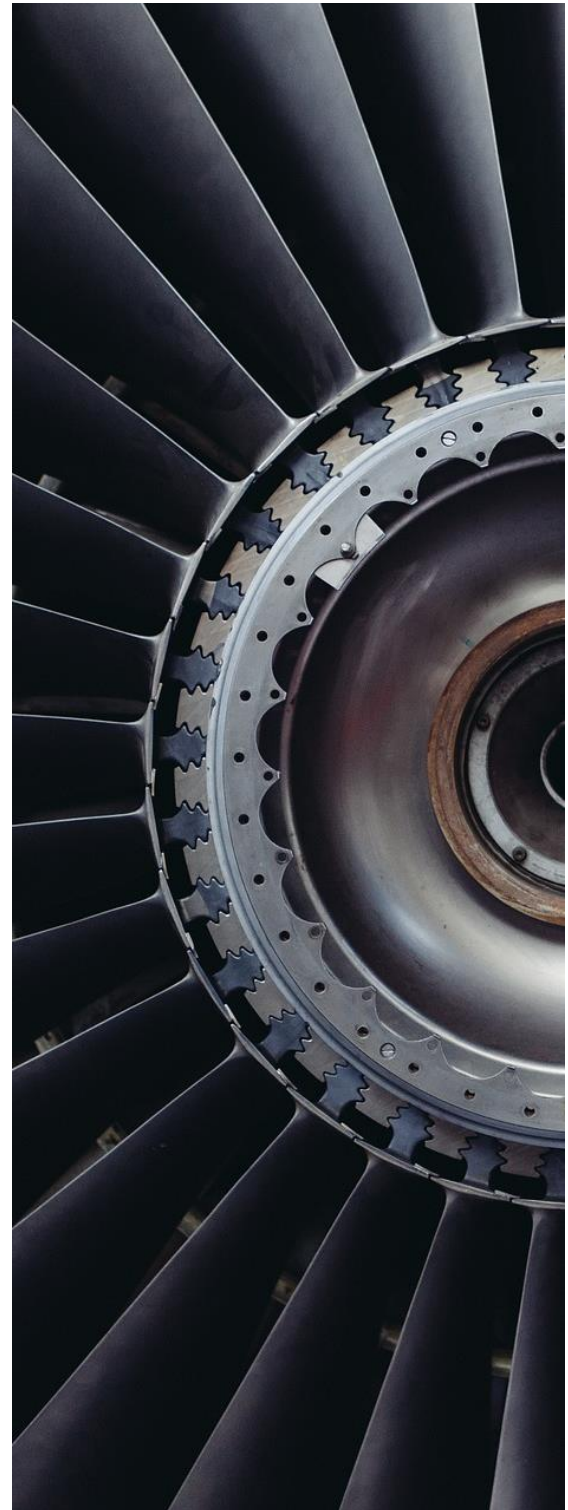
The members of our defense team are ranked as leading individuals in the area of Public Law in Poland (The Legal 500 EMEA 2019).

Offset law

Since the Polish defense industry is very much interested in absorbing the best cutting-edge defense technologies, in 2014 the Polish Parliament adopted the Offset Act (preceded by the offset regulations dated 1999), a statute establishing the legal framework for offset arrangements between foreign contractors (or other third parties), the Polish Government and the local defense industry.

The Polish offset law has a “direct” nature, as the Offset Act links the technologies to be transferred to the Polish defense industry with the subject matter of the acquisition proceedings. Therefore, in comparison to the prior offset regulations, the offset must not have an economic nature only (e.g. investment in the automotive sector in Poland).

We assist our clients throughout the entire offset process and navigate them through the complex offset legal framework. Our offset-related advice covers working with the client on the offset offer, negotiations of the offset agreement with the Polish Ministry of National Defense as well as working on offset business agreements with the Polish defense industry.





IP – protecting the crown jewels

Intellectual property and technical data clauses in Defense contracts are often among the most heavily negotiated. The Polish Ministry of National Defense aims to obtain sufficient rights for the Polish Army and national defense contractors to maintain capability. The rights provider (offsetor) aims to protect its valuable commercial asset and limit the risk of unwanted disclosure to a competitor.

We are well versed in navigating these intellectual property and technical data issues and developing solutions suited to the circumstances of the customer's case. Our intellectual property team specializes in all aspects of intellectual property protection, providing the full range of strategic brand protection advice. Our strategic brand protection expertise includes trade mark registration, prosecution, anti-counterfeiting, targeted enforcement, copyright, trade secrets, marketing issues, trading names, design registration, consumer protection, product liability and commercial intellectual property litigation.

The Baker McKenzie Warsaw office has an undisputed position as the top law firm in terms of Intellectual Property matters in Poland (The Legal 500 EMEA 2019 & The Chambers Global 2019).

Tax aspects of defense procurements

Defense procurements are always affected by indirect taxes (VAT, excise, fuel duty) and often by customs duties and import fees. The proper structuring of contracts makes it possible to avoid unnecessary burdens and unexpected costs. Our tax experts are able to provide solutions which make it possible to optimize tax liabilities using both general schemes and special arrangements for defense or to propose possible devices to be agreed as a part of a contract.

Military equipment and goods that can be used for military purposes (dual-use goods) are subject to special regulatory means if they are subjected to international trade - first of all export, but to some extent also import and intra-EU transfers. Our specialists are keen to provide professional assistance in those areas to be in compliance with EU and local Polish law on controlled goods.

Our team of tax experts is recognized on the market as having 'unique understanding of how businesses are run' and it is ranked as the top tax team in Poland (The Legal 500 EMEA 2019 & The Chambers Global 2019).





Defense experience in Poland

Having extensive experience in the defense sector in Poland, we are in a position to assist clients in terms of navigating the risks and capturing the opportunities associated with defense projects in Poland.

- **Lockheed Martin** – advising the client on different aspects relating to defense procurement proceedings concerning the acquisition of F-16 multirole jet fighter aircraft by the Polish Ministry of National Defense.
- **Lockheed Martin** – advising on the acquisition of PZL Mielec, a part of Sikorsky Group, as well as on any post-acquisition and corporate matters.
- **A major American defense company** – advising in the course of:
 - preparation, negotiations and implementation of an offset agreement and any related agreements connected with the biggest defense procurement in Poland concerning the acquisition of a medium range air and missile defense system for the Polish Armed Forces;
 - different public procurement procedures conducted by the Polish Ministry of Defense;
 - defense procurement proceedings connected with the acquisition by the Polish Armed Forces of Troposcatter Communication Apparatus and Reconnaissance Sensor Systems as well as on its other potential future deliveries for the Polish Armed Forces and the strategy for the planned projects.
- **A major American aerospace company and leading manufacturer of commercial jetliners, military aircraft, rotorcraft, electronic and defense systems, missiles, satellites, launch vehicles, and advanced information and communication systems** – advising during the VIP and Head of State aircraft tender procedures, including the sole-source. The scope of our advice covered:
 - advising on the compliance of our client's tender with the public procurement regulations;
 - negotiating with the Armament Inspectorate (Ministry of National Defense) regarding the terms and conditions of the supply agreement;
 - representing our client in two appeal proceedings before the National Chamber of Appeals;
 - representing our client in complaint proceedings before the District Court in Warsaw.
- **A major American aerospace company and leading manufacturer of commercial jetliners, military aircraft, rotorcraft, electronic and defense systems, missiles, satellites, launch vehicles, and advanced information and communication systems** – advising within different public procurement tenders conducted by the Polish Ministry of National Defense, including air munitions for F-16 aircraft.
- **A major American defense company** – advising on different aspects of the export, import and transit of military items and dual-use items to, from or through the territory of the Republic of Poland.
- **One of the world's leaders in technologies and integrated training solutions for civil aviation and defense** – advising in the course of public procurement proceedings concerning the delivery of:
 - flight simulators for the Polish Armed Forces;
 - modern battlefield simulation systems for armored and mechanized units in



Poland, as well as the provision of training services to the Polish Land Forces.

- A leading Finnish manufacturer of armored wheeled vehicles and weapons systems as well as a provider of defense, security and aviation life-cycle support services and technology solutions – advising, during negotiations with a Polish partner of:
 - business (technology transfer) agreements fulfilling offset commitments;
 - subsequent cooperation arrangements aimed at incorporating the Polish partner into the global supply chain;
 - technology transfer and license agreement concerning in particular the configuration of armored wheeled vehicles.
- A Polish state-owned fund responsible for management of the leading Polish shipbuilding companies – advising a Polish state-owned fund responsible for management of the leading Polish shipbuilding companies in terms of the potential sale of submarines to the Polish Armed Forces in cooperation with a foreign partner.
- A Poland-based Private Equity fund – advising on the sale of a leading satellite services group, with operating entities in Poland and Germany, focused on the defense and security sector.



Global defense experience

Baker McKenzie has worked extensively with a wide variety of clients in the defense industry on matters that cover the globe. We have longstanding relationships with companies spanning the spectrum from industry leaders to medium and small contractors both at home and abroad. We understand the intricacies, sensitivities and issues that commonly impact defense contractors and that accompany the complicated overlap with the public sector.

- **Lockheed Martin** – advising an aerospace company on the structuring and establishment of a new entity in Japan.
- **Raytheon** – assisted in a government procurement process involving the sale of weather forecasting systems and related technologies to the Mexican National Weather Service.
- **L-3 Communications** – advising the security systems company on South Korean corporate law filing requirements.
- **Safran S.A.** – assisted the aerospace and defense company with respect to certain Canadian export controls and ITAR issues.
- **General Dynamics** – advised on the Close Combat Vehicle (CCV) procurement process issued by Canada's federal Department of National Defense, in which the bidders originate from France, Germany, Canada and the United Kingdom.
- **General Dynamics** – acquisition of shares in Mediaware. Issues arising included restrictions on the transfer of Defense related intellectual property outside of Australia and the impacts of transferring intellectual property developed with assistance from an AusIndustry grant to a foreign corporation.
- **Naval Group** – advised on its successful selection for the Australian Future Submarine Program (Competitive Evaluation Process for the SEA1000 submarine fleet replacement project).
- **Airbus Military** – advised on various aspects of its AIR5402 Multi-Role Tanker Transport (MRTT) project for its A330 tanker with the Department of Defense.





Team

Our experts in Poland



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About Baker McKenzie in Poland

Baker McKenzie Warsaw was opened in 1992 and currently employs over 100 lawyers and tax advisors, making us one of the largest law firms in Poland.

The Warsaw office provides legal services to the world's leading international corporations and local businesses. Our scope of services covers comprehensive legal and tax advisory issues in almost all areas of commercial law.

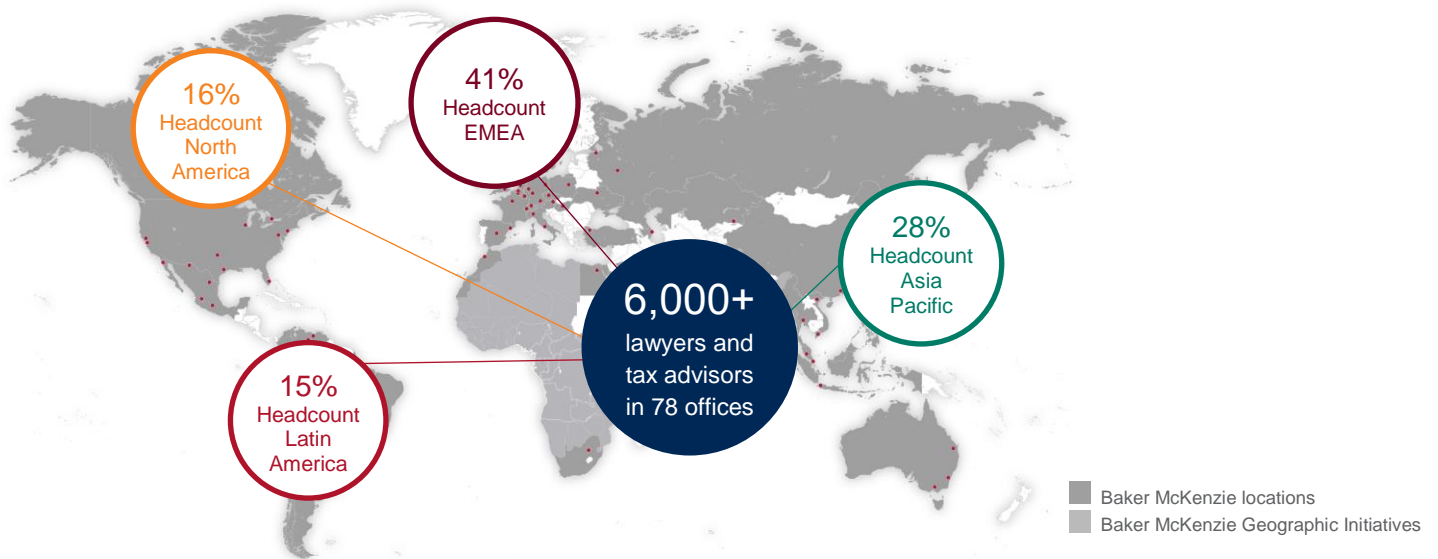
We have gained unique experience in the realization of a range of major and often pioneering transactions and projects.

We are active in economic organizations and engage in opinion-leading activity in the media, offering deep local knowledge and a sophisticated international perspective.

About our Firm

Fluency across borders

Our clients want a new breed of lawyers with excellent technical skills who can look ahead to help them navigate a constantly changing world. It means having lawyers who can anticipate what is coming next and are comfortable with business level discussions. Baker McKenzie more than meets these challenges.



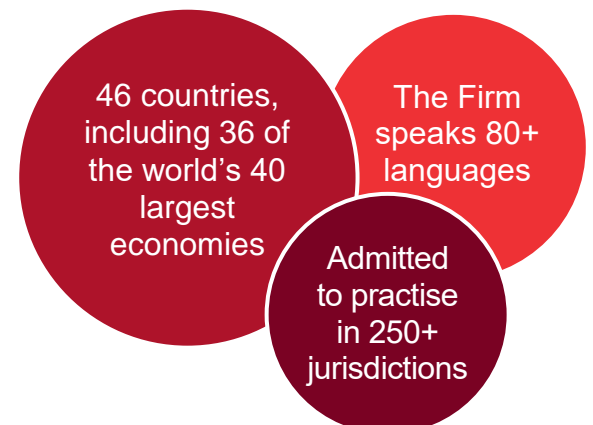
Core practices

- Antitrust & Competition
- Banking & Finance
- Capital Markets
- Compliance & Investigations
- Consumer & Retail
- Dispute Resolution
- Employment
- Energy, Mining & Infrastructure
- Environment & Climate Change
- Financial Institutions
- Healthcare
- Intellectual Property
- IT/Communications
- Mergers & Acquisitions
- Private Equity
- Real Estate
- Tax
- Technology, Media & Telecommunications
- Trade & Commerce

Geographic initiatives

Drawing upon our global expertise and a strong network of leading local firms, we are able to assist our clients in navigating Indian markets as well as newly opening markets in Asia and Africa.

Our fluency in working across borders, issues and practices allows us to simplify legal complexity, foresee risks others may overlook and identify commercial opportunities that many miss. This makes us advisers of choice to some of the world's leading multinational corporations.





Baker McKenzie helps clients overcome the challenges of competing in the global economy.

We solve complex legal problems across borders and practice areas. Our unique culture, developed over 65 years, enables our 13,000 people to understand local markets and navigate multiple jurisdictions, working together as trusted colleagues and friends to instil confidence in our clients.

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