

Poland

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Doing business in Poland

Warsaw 2013

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1. The country at a glance

What languages are spoken?

The official language in Poland is Polish. Among foreign languages, English has become predominant, particularly among managers and other professionals. German, French and Russian are also often encountered.

What is the exchange rate for the U.S. dollar, the Euro?

As of 1 October 2013, the average exchange rates for the Polish zloty (PLN) were EUR 1 = PLN 4.1892 and USD 1 = PLN 3.0969.

Describe your country's geography, proximity to other countries and climate

Poland is a country in Central Europe, bordering the Baltic Sea. Most of the territory is lowlands, but there are highlands and mountain ranges in the southern part of the country. Poland lies in a transitional climate zone between the fairly moderate oceanic climate to the west and the more continental climate to the east. Poland is crossed by various air currents as a result of its location in the centre of Europe and the parallel arrangement of the geographical lands. The average temperature in summer ranges from 16.5 to 20°C and in winter between -6 and 0°C. The average annual air temperature in Poland is 7-9°C (apart from mountain regions).

Are there cultural influences or prohibitions on the way business is conducted?

The Polish legal system does not display any particular cultural factors that directly affect the conduct of business. The only restrictions that may exist are those sanctioned at the statutory level.

Are there religious influences or prohibitions on the way business is conducted?

The Polish legal system does not display any particular religious factors that directly affect the conduct of business. The only restrictions that may exist are those sanctioned at the statutory level.

Explain your country's infrastructure. Be sure to explain which cities have airports, railroad systems, ports, and public transportation

Rail Infrastructure

Polish State Railways (*Polskie Koleje Państwowe*) operates in the form of a capital group comprising PKP SA and various operating subsidiaries handling passenger and freight carriage and infrastructure.

There are over 19,000 km of rail lines in operation in Poland. As of the end of 2012, about 43% of rail lines were in good technical condition. The poor technical state of the Polish rail lines has caused the maximum speeds on a significant length of the rail network to be reduced in recent years, extending the travel time significantly on a number of important routes, making rail carriage less competitive and increasing the energy consumption rates of carriers.

PKP SA owns and manages a significant portion of the railway stations and railway infrastructure in Poland. It manages 2,500 stations. Reform of the Polish railway sector has been underway for several years. A key stage of organisational restructuring has been completed, restructuring of finances and assets have been undertaken, and restructuring of employment has begun. The first stage of reform is privatisation of PKP Cargo, the leader in the rail transport of goods in Poland (IPO process pending).

Aviation Infrastructure

The largest airport in Poland is Warsaw Chopin International Airport. Although half of

Poland's air passengers pass through the Warsaw airport, its relative prominence is expected to fall as traffic grows in other regions which had previously been artificially restricted. Other busy airports with scheduled international flights include those in Bydgoszcz, Gdańsk, Kraków, Katowice, Lublin, Łódź, Poznań, Rzeszów, Szczecin, Szczytno, Wrocław and Zielona Góra. A second airport in the Warsaw area, in Modlin, serves as a regional airport complementing the main Warsaw Chopin airport. The flagship national carrier is LOT Polish Airlines.

Maritime Infrastructure

With direct access to the Baltic Sea and a coastline of 528 km, Poland has favourable conditions for development of its maritime economy. Maritime transport and port services are a highly profitable sector. The main ports are at Gdańsk, Gdynia, Świnoujście and Szczecin. The largest of these is the seaport at Gdańsk.

Public Transport

The public transit system is well-developed in major cities, with an extensive network of bus and tram lines (and, in Warsaw, the country's only metro system). It is difficult to present an overall model of operations of municipal transit in Poland because each city administers the system under its own regulations. There are certain typical features, however, such as the need to purchase a ticket for transit, a differentiated fare schedule, and the use of tourist cards providing unlimited travel for visitors.

Explain the communication system

The stationary telephone services market is now growing slowly in Poland and is dominated by Telekomunikacja Polska SA (part of the Orange Group). There is much faster growth on the mobile market, where four major players now compete: T-Mobile (operated by T-Mobile Polska SA), Plus (operated by Polkomtel), Orange (operated by PTK Centertel – TP SA group), and Play (operated by P4).

Describe the public services – i.e. water, electricity, gas. Are they publicly or privately owned?

Public services are provided directly to citizens (within the public sector) by the public administration, or via financing of private commercial companies contracted to provide specific services. Issues considered within the area of public services are not directed to just one of these groups (e.g. only to governmental agencies) but are applicable to all of them regardless of the organisational solutions in place within a given territorial governmental unit.

Public services cover an extensive and varied range of areas that are hard to assess briefly. Some are in poor condition (e.g. the public healthcare system) while others function well (e.g. public supply of water, gas and power). Assessment is also difficult because of variations in services offered across different territorial divisions within the country (provinces, counties and local districts).

2. General considerations

Investment Policies

Poland is regarded as a reliable partner in business ventures. Membership of the European Union (as well as OECD, WTO and other international organisations), a

strategic geographical location, and numerous instruments to foster entrepreneurship make Poland one of the most attractive investment locations in Europe.

The Polish Information and Foreign Investment Agency was established in order to assist foreign investors in Poland. Investors may also draw on the support of various other state institutions (e.g. the Polish Agency for Enterprise Development and the National Fund for Environmental Protection and Water Management).

Businesses planning to invest in high-priority sectors of the economy may obtain particular assistance in the form of government grants.

These sectors include:

- automotive
- electronics
- aviation
- high-tech services
- R&D
- biotechnology.

The largest industrial sectors include foods, petroleum refining, automotive and metallurgy. Poland is also the regional leader in BPO/SSC services.

Diplomatic Relations

Poland has been a member of the European Union since 2004 and NATO since 1999. The Republic of Poland maintains diplomatic relations with most countries around the world, and there are about 160 accredited diplomatic missions in Poland.

Locations and contact details for diplomatic missions in Poland and Polish diplomatic missions abroad are published on the website of the Polish Ministry of Foreign Affairs (www.msz.gov.pl). The Business Freedom Act of 2 July 2004 governs taking up, carrying out and winding up business activity within Poland as well as the tasks of public administrative bodies in this respect.

Foreign persons from countries that are member states of the EU, member states of the EFTA belonging to the EEA (Iceland, Liechtenstein and Norway) and Switzerland may take up and carry out business activity in

Poland under the same conditions as Polish businesses in all types of corporate forms.

Individuals who are not citizens of Poland or of another aforementioned country may also take up and carry out business activity in Poland under the same conditions as nationals from those countries if they, *inter alia*:

- have obtained a permit to settle in Poland,
- have obtained consent for a tolerated stay or refugee status in Poland, or
- enjoy temporary protected status in Poland.

Unless otherwise provided by treaty, other foreign persons have the right to take up and perform business activity only in the following corporate forms:

- limited partnership (sp.k.)
- joint-stock limited partnership (SKA)
- limited-liability company (sp. z o.o.)
- joint-stock company (SA)

and may also join such companies and take up or acquire shares therein.

Foreign businesses may also conduct business activity in the form of a branch (*oddział*) or establish a representative office (*przedstawicielstwo*) in Poland.

There are a few restrictions on foreign investors in selected industries, such as broadcast media, insurance and air transport. There are also restrictions on purchase of land and other real estate by persons who are not nationals of EEA member states (the EU plus Iceland, Norway and Liechtenstein).

Detailed information on restrictions on investments in Poland may be found at the website of the Polish Information and Foreign Investment Agency

(www.paiz.gov.pl/polish_law).

EU citizens

Citizens of EU member states, other EFTA member states belonging to the EEA (Iceland,

Liechtenstein or Norway) or Switzerland, as well as their family members, may enter Poland and stay there for up to 90 days without registration of their stay.

Since 21 December 2007 Poland has been a part of the Schengen Area. There is no requirement to hold a valid travel document or other document confirming identity while travelling between border-free Schengen EU countries. However, it is better to hold a passport or other document confirming identity for proof if needed. A citizen of an EU country not part of the Schengen Area must hold a valid travel document or other document confirming his or her identity and citizenship in order to cross the Polish border.

Other foreigners

Other foreigners, i.e. citizens of countries other than the EU member states, EFTA member states belonging to the EEA (Iceland, Liechtenstein and Norway) and Switzerland, who intend to enter and remain in Poland are required to obtain an appropriate visa, but there are a number of exemptions from this requirement currently in force, e.g. with respect to citizens of Australia, Canada, Japan, Malaysia, Singapore, South Korea and the US (a full list is available at the website of the Ministry of Foreign Affairs).

The visa exemption, whether for EU countries or the other countries with an exemption, does not apply to entry for certain purposes, e.g. for study, work or other gainful employment.

Types of visas

Citizens of third countries (not eligible for a visa exemption) may enter Poland with a visa for a definite period:

- a Schengen visa (C visa), permitting one or more entries and stays so long as the total stay or total length of consecutive stays in other countries within the Schengen area does not exceed 3 months in the course of the 6-month period following the first entry into the Schengen area; or
- a national visa (D visa), permitting entry and unbroken stay only in

Poland, or several successive stays, lasting a total of no longer than 3 months and not exceeding a total of 1 year during the period of validity of the visa.

Specific information about visas for citizens of foreign countries may be found on the website of the Ministry of Foreign Affairs (http://www.msz.gov.pl/en/travel_to_poland/visa/).

A Schengen visa or national visa, other than an airport transit visa (type A) authorising the holder only to cross through the territory, may be issued for such purposes as tourism, visiting, business activity, work, study, research, medical treatment, temporary residence, settlement, or long-term EU residence.

An application for a Schengen visa should generally be filed at the consulate of the given country of the Schengen area in the foreigner's country of legal residence. In the case of a planned visit to one country in the Schengen area, the application should be filed with the consulate of that country, or if visits are planned to several countries in the Schengen area the application is filed with the consulate of the country which is the main purpose of the foreigner's travel.

An application for a national visa should generally be filed with the Polish consulate in the country of the applicant's legal residence. If the foreigner is legally staying in an EU or EEA member state, a work visa may also be issued by a consulate there.

In order to obtain a Schengen visa or national visa, the foreigner is required to file the following documents (in person or through an attorney – specific information is available from each consulate):

- completed application form (typically available for download from the website of the specific consulate)
- photos (specific requirements are provided by the consulate)
- copy of travel document (passport or other), issued within the past 10 years and expiring no earlier than 3 months

before the end of the visa period applied for, with at least 1 or 2 free pages (depending on the consulate) – the original passport is presented when filing the application, and some consulates also require additional identification

- proof of payment of the visa fee
- documents concerning lodging or proof of sufficient funds to cover lodging costs in Poland or the Schengen area
- documents confirming that the applicant has sufficient funds to cover living costs for the entire period of the planned stay and to cover the costs of returning to the country of origin or residence or for transit to a third country which will grant an entry permit, or the possibility of lawfully obtaining such funds (does not apply to citizens of the EU, EEA or Switzerland or accompanying persons)
- information demonstrating that the applicant will leave Poland or the Schengen area (typically a return ticket)
- when required for citizens of the particular country, proof of public health insurance, or travel insurance with medical cover for at least EUR 30,000 valid for the period of intended stay in Poland or the Schengen area
- other documents demonstrating the purpose of the visit (e.g. invitation, proof of family ties, employer statement, work permit, employment contract, travel plan) – specific information provided by each consulate
- most consulates and other authorities reserve the right to require additional documents that may prove necessary for consideration of the application.

An application for a Schengen visa may be filed no earlier than 3 months prior to the start of the planned visit and typically no later than about 10 days prior to travelling because the visa procedure usually lasts

several business days. However, the deadline for filing may vary depending on the applicant's country of origin and the consulate where the application is filed, and may be as long as 30 or 60 days prior to travel; specific information is provided by each consulate.

An application for a national visa must be filed sufficiently far in advance; the period depends on the applicant's country of origin and the consulate where the application is filed. Consideration of the application may take up to 1 or 2 months; specific information is provided by each consulate.

The normal fee for applying for a Schengen visa is EUR 60. The visa fee for children age 6–12 is EUR 35, and there are certain fee exemptions, e.g. for children below age 6 and students travelling for study. If the visa is denied, the fee is not refunded.

The fee for a national visa is EUR 60, but may vary depending on the country of origin, based on agreements entered into by Poland (e.g. in the case of Belarus and Ukraine).

There are no restrictions on travel within Polish territory.

Government

The Polish election system, as in most democracies, provides guarantees that elections will be conducted fairly and that representatives will be chosen who reflect as closely as possible the political views of the citizens. The right to vote in national elections (for members of the Sejm (lower house of Parliament) and the Senate, and the President) is held by all Polish citizens who are at least 18 years old and have not been stripped of their public rights through a legally final conviction. The right to run for elective office is subject to age restrictions. To be elected to the Sejm, the candidate must be a Polish citizen who is at least 21 on the date of the election, to the Senate 30, or to be President 35, and holding full public rights. All legally operating political parties may nominate candidates for the Parliament, and independent candidates may also run. A

candidate for President of Poland must obtain the signatures of at least 100,000 Polish citizens entitled to vote. The Election Ordinance defines the methods of voting and candidacy in elections for Parliament (Sejm and Senate), President, and regional and local elections, as well as referenda. Elections to the Sejm and the Senate and regional and local offices are held every 4 years, and elections for President every 5 years. In exceptional circumstances terms of elective office may be shortened or lengthened. The Sejm elections bear 5 main features:

- universality (all adult citizens are entitled to vote, without regard to sex, race, origin, education or property)
- equality (one person one vote, and all votes are equal)
- secrecy (guaranteeing fairness and protecting citizens from unlawful pressure, ballots are cast in secrecy, with only the fact of voting at the local precinct being recorded by the election commission)
- directness (voters choose a specific candidate or slate of candidates, without the intermediation of electors such as the Electoral College in the election of the US President)
- proportionality (candidates from party slates who obtain the most votes are elected to the Sejm, with the number of seats determined using the D'Hondt method).

Senate elections have 3 main features which are universality, directness and secrecy. Contrary to Sejm elections, Senate members are elected in a single-member district system.

The next parliamentary elections in Poland will be held in 2015.

The current Prime Minister of Poland is Donald Tusk. Following the win by his party, Civic Platform, in the parliamentary elections of 2011, he heads for the second term in a row a coalition government of Civic Platform and the Polish People's Party. They

have formed a stable parliamentary coalition since the 2007 elections.

A transformation of the overall system in Poland took place following 1989, completely changing the political setup. In the past decade Poland was governed by a coalition of the Democratic Left Alliance and the Polish People's Party, a coalition of Law & Justice, Self-Defence and the League of Polish Families, and the current coalition of Civic Platform and the Polish People's Party.

Over the past decade, the office of President of Poland was held by Aleksander Kwaśniewski, followed by the late Lech Kaczyński. The incumbent, Bronisław Komorowski, was elected in 2010.

Under the constitutional principle of judicial independence, a judge deciding a case is subject only to the Constitution and the laws, and must not be subjected to any external pressures, particularly from the executive branch of government. Independence means decisional autonomy, but does not mean a lack of official subordination within the hierarchical structure of the courts. It does require, however, that the correctness of a ruling be reviewed only by another court, under the procedure provided by law. According to guidelines laid down by the Constitutional Tribunal, judicial independence comprises the following elements:

- impartiality with respect to the parties to a proceeding
- independence with respect to non-judicial authorities and institutions
- self-sufficiency of the judge with respect to judicial authorities and institutions
- freedom from the influence of political factors, particularly pressure from political parties
- the judge's internal autonomy.

The principle of independence should assure stability in the functioning of the justice system notwithstanding changes that may occur within institutions of the legislative and executive branches, but criticism has been

raised against the monolithic structure of the judiciary in Poland and restrictions on the independence of judges imposed by a bureaucratic system of hierarchy within the judiciary.

Under a choice of venue clause, the parties to a contract may submit existing or potential disputes under their agreement to the jurisdiction of the state court for a specific geographical location, or to an arbitration court (under an arbitration clause). Foreign courts may be chosen as well. The choice of a court does not in itself operate as a choice of the law applicable to the contract, but in practice it is typical to include a choice of law together with a choice of court. There are some restrictions on the parties' discretion in this respect. They may not alter the subject-matter jurisdiction of the court or the geographical venue of a court that has exclusive jurisdiction. In dealings with consumers, a business's imposition of the jurisdiction of the court for its own geographical location is regarded as an abusive clause.

Enforcement of judgments from other EU member states is governed by the Brussels I Regulation (Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters), which has been in force with respect to Poland since its admission to the EU (1 May 2004). The Lugano Convention (Convention of 16 September 1988 on jurisdiction and the enforcement of judgments in civil and commercial matters) also applies in cross-border matters. Significantly, under Art. 25 of Regulation 44/2001, the court of a member state is required to rule on its own lack of jurisdiction at the court's own motion if it is requested to hear a case that lies in the exclusive jurisdiction of another member state. Thus the provisions concerning exclusive jurisdiction, set forth in Art. 22 of Regulation 44/2001, and the related case law, are of great practical significance, and, in Poland, the provisions of the Civil Procedure Code concerning international civil procedure will

apply. With respect to foreign arbitration awards, the New York Convention (1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards) helps the holder of an award obtain enforcement in Poland.

Alternative dispute resolution (e.g. mediation), in the sense of out-of-court dispute resolution processes conducted by a neutral third party, other than arbitration, is covered by the European Commission Green Paper on alternative dispute resolution in civil and commercial law procedure (2002), which also applies to Poland. A court alternative dispute resolution process (e.g. court mediation) in civil and commercial matters, however, is the subject of Directive 2008/52/EC of European Parliament and the Council of 21 May 2008 on certain aspects of mediation on civil and commercial matters. The Polish Civil Procedure Code is generally considered to conform to the provisions of that directive.

There is a widespread belief that court cases in Poland drag on for years. Unfortunately this is often the case. However, more and more often the courts will decide a case within a matter of a few months. Much depends on the complexity of the case, the procedure used, and the actions of the other party. Sometimes a party will obtain a legally final ruling only after several years of disputes before courts of various instances.

Rulings of Polish courts are enforced elsewhere in the EU under Regulation 44/2001 and are also enforced under the Lugano Convention in signatory states.

The common courts in Poland comprise district courts, regional courts and appellate courts. They have general jurisdiction over civil and criminal matters, family and guardianship cases, and labour and social insurance matters, unless reserved to the jurisdiction of other courts. Among the distinctions in subject-matter jurisdiction of the various levels of common courts, minor civil and criminal cases are considered at the first instance by the district courts (including municipal courts), and more significant cases by the regional courts. Generally matters are

considered by the district courts unless jurisdiction is reserved to the regional courts; such cases include:

- monetary and other proprietary claims where the amount in dispute exceeds PLN 75,000 (with certain exceptions)
- non-proprietary claims
- copyright and patent claims
- claims under the Press Law
- claims for partition of a cooperative
- unfair competition claims
- claims to set aside corporate resolutions
- cases seeking to declare a person incompetent.

The territory of Poland is regarded as a single legal jurisdiction, which means that Polish law applies uniformly across all territorial units. Under the EU accession treaty, EU law also applies in Poland from 1 May 2004, providing for the precedence of Community law over national law.

European Union law gives the parties freedom to choose the jurisdiction of the courts as well as the law governing a contract. If the parties fail to make such a choice, the proper court and the applicable law will be determined under the relevant EU provisions—Regulation 44/2001, which applies to civil and commercial matters other than tax, customs and administrative cases and certain civil matters (e.g. incompetence, family law, inheritance and bankruptcy). However, the law governing a contract between businesses will be determined by the Rome I Regulation (Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations). The rules of Rome I apply directly (to contracts concluded after 17 December 2009), with priority over Polish choice of law rules and treaties between member states.

Environmental Considerations

Environmental law in Poland draws upon the Polish Constitution and EU law, as well as Polish statutes. The emphasis on assuring that Polish environmental law conforms to EU requirements follows from the importance that the EU places on this issue. This issue comes up during the real estate development process, in projects financed out of EU funds, where compliance with EU requirements is one of the conditions for receiving funding.

Requirements under environmental law that must be considered when conducting business, and which the relevant administrative agencies are tasked with enforcing, have been extended significantly within the past decade.

Environmental protection is addressed by Poland's 1997 Constitution, which provides that protecting the environment and conducting pro-ecological policies are tasks of the public authorities. They are also required to support civic environmental protection initiatives. The Constitution also outlines the guiding principles of environmental law, such as the principle of sustainable development, the right to obtain information about the environment, and the "polluter pays" principle, although it is left to the Parliament to establish the details by statute.

Polish environmental law was significantly overhauled prior to EU accession, in light of the need for Poland to comply with the *acquis communautaire*, which have much to do with environmental protection. The Environmental Protection Law, with systematic and supreme importance in this field in Poland, came into force in 2001. Other new acts passed in connection with the process of harmonising Polish law with EU law include the Waste Act, also enacted in 2001 (however recently superseded by a new Waste Act enacted in 2012), and the Water Law. A new Act on Protection of Nature was adopted in 2004. After Poland's EU accession, legal reforms have continued as required to implement EU directives, for example with the Act on Preventing and Remedying Damage to the Environment, passed in 2007, implementing the

Environmental Liability Directive (2004/35/CE).

In light of the increasing environmental protection duties of the state administration, new governmental agencies were established in 2008: the General Directorate for Environmental Protection and 16 province directorates. The goal was to concentrate environmental protection tasks, which had previously been distributed among various agencies, within one specialised governmental administrative structure. The new institution assumed numerous duties previously carried out by province governors, province marshals, county executives, and other central and territorial governmental agencies that were not environmental specialists. These changes have improved the functioning of environmental impact assessments, which are crucial for investors, as well as issuance of environmental plans and programmes. The skills of the officials handling environmental issues have also increased thanks to the new administrative approach.

Like the EU law, Polish environmental regulations are extensive and complex. The first regulations that investors carrying out a project are likely to encounter are those involving environmental impact assessment. In Poland these issues are governed by the 2008 Act on Access to Environmental Information, Public Participation in Environmental Protection and Environmental Impact Assessments. The act lays down several different procedures for environmental impact assessment, first divided into strategic assessments and assessments of particular projects. For investors, the assessment of individual projects, concerning the environmental impact of a specific undertaking, is the most important, and is conducted in a procedure involving issuance of a decision on environmental conditions. Obtaining a decision on environmental conditions is necessary in order to obtain a development permit (e.g. a building permit).

It is mandatory to conduct this procedure for a planned undertaking that would always

have a significant impact on the environment, as well as an undertaking that may potentially have a significant impact on the environment.

As part of the environmental impact assessment procedure, it may be necessary to prepare a report and conduct public consultation.

Conducting the individual impact assessment procedure results in development of a set of information enabling proper formulation of the decision on environmental conditions. The main elements of the decision will be a designation of the type and location of the project, the conditions for use of the land, as well as how the project will be used and operated, and requirements for counteracting industrial accidents. Other elements of the decision will depend on the specific nature of the undertaking and the site.

Intellectual Property

Trademarks, patents, industrial designs, utility models, geographical designations, and topography of integrated circuits are mainly regulated by the Industrial Property Law of 30 June 2000 and the following European Union law:

- Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs
- Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (codified version)
- Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89

Copyright

Protection of copyright in Poland is governed by the Act on Copyright and Related Rights of 4 February 1994.

Know-how

Know-how is protected as a trade secret under the Act on Counteracting Unfair Competition of 16 April 1993.

Computer programs

Protection of computer programs in Poland is governed by the Act on Copyright and Related Rights of 4 February 1994.

Poland has signed many different international treaties relating to intellectual property, including the following:

- Paris Convention for the Protection of Intellectual Property (20 March 1883)
- Convention Establishing the World Intellectual Property Organisation (Stockholm, 14 July 1967)
- Marrakesh Agreement Establishing the World Trade Organisation (15 April 1994)
- Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (15 June 1957)
- Madrid Agreement Concerning the International Registration of Marks (14 April 1891)
- Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (Madrid, 27 June 1989)
- European Patent Convention (Munich, 5 October 1973)
- Berne Convention for the Protection of Literary and Artistic Works (9 September 1886)
- Universal Copyright Convention (Geneva, 6 September 1952)
- WIPO Copyright Treaty (Geneva, 20 December 1996)
- International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting

Organisations (Rome, 26 October 1961)

- WIPO Performances and Phonograms Treaty (Geneva, 20 December 1996)
- Singapore Treaty on the Law of Trademarks (27 March 2006)
- Hague Agreement concerning the International Registration of Industrial Designs (Geneva, 2 July 1999)

In Poland, protection of intellectual property rights is granted by a decision of the Polish Patent Office. Intellectual property rights are then disclosed in registers of the Polish Patent Office. The exception is copyright, because the author of a copyrightable work enjoys copyright protection without having to comply with any formalities. The competent authority in copyright matters is the Ministry of Culture and National Heritage.

Current Polish law does not require notarial certification of documents issued by the Polish Patent Office. Notarisation could, however, be required in the process of obtaining an apostille or legalisation of documents issued by the Polish Patent Office for the purposes of use abroad.

The issuance and scope of licences for industrial property rights (e.g., patents and trademarks) is governed by the Industrial Property Law. A licence must be in writing to be valid.

In the instances listed below, the Patent Office can grant a compulsory licence allowing another person to use a patented invention:

- when it is necessary to prevent or alleviate a threat to the security of the State, in particular with respect to defence, public order, protection of human life and health, and environmental protection
- when it is found that a patent is being abused
- when it is found that the holder of a patent that has earlier priority (a prior patent), by refusal to consent to a licence, is preventing satisfaction of the

needs of the national market through exploitation of the patented invention (a secondary patent) the exploitation of which would encroach on the prior patent; the holder of the prior patent can then demand a licence to use the invention that is the subject of the secondary patent (a mutual licence).

The user of an invention under such compulsory licence is required to pay the holder a licence fee.

Licences for copyright are governed by the Act on Copyright and Related Rights of 4 February 1994. Such licences must specify

the areas of exploitation of the work protected by copyright to be valid. Only an exclusive licence must be in writing to be valid.

There is a lack of established case law in Poland concerning the amount of a licence fee for exploitation of intellectual property rights.

Licences between foreign companies and wholly owned Polish subsidiaries typically include a licence to use trademarks, trade names, and copyrights owned by the foreign company.

3. State aid

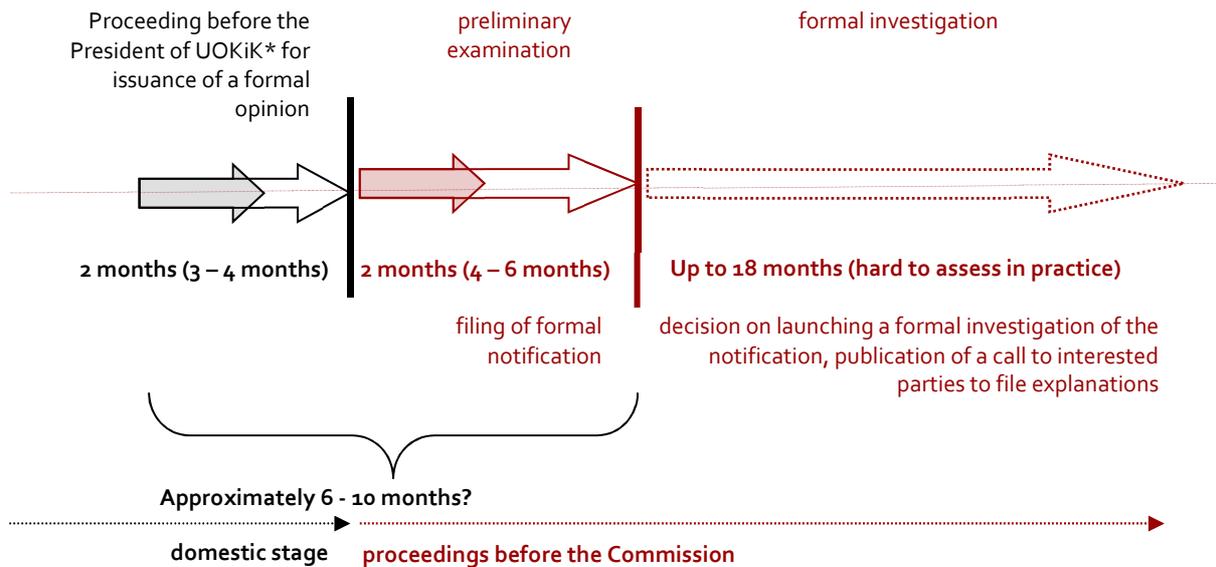
Under European Union law, state aid means an advantage in any form whatsoever conferred on a selective basis to undertakings by national public authorities, to the extent that it affects trade between EU member states. Therefore, subsidies granted to private individuals or general measures open to all enterprises do not constitute state aid.

The EU generally prohibits state aid. However, EU law also defines circumstances when government intervention is necessary for a well-functioning and equitable economy. Therefore, EU law leaves room for a number of policy objectives with which aid from a member state may be considered compatible.

Admissibility of state aid

The application of exemptions to the general prohibition of state aid rests exclusively with the European Commission. The fundamental element of the supervision exercised by the Commission is the notification procedure, which member states must follow except in certain instances. It is only after approval by the Commission that an aid measure may be implemented. The Commission also has the power to order recovery of incompatible state aid.

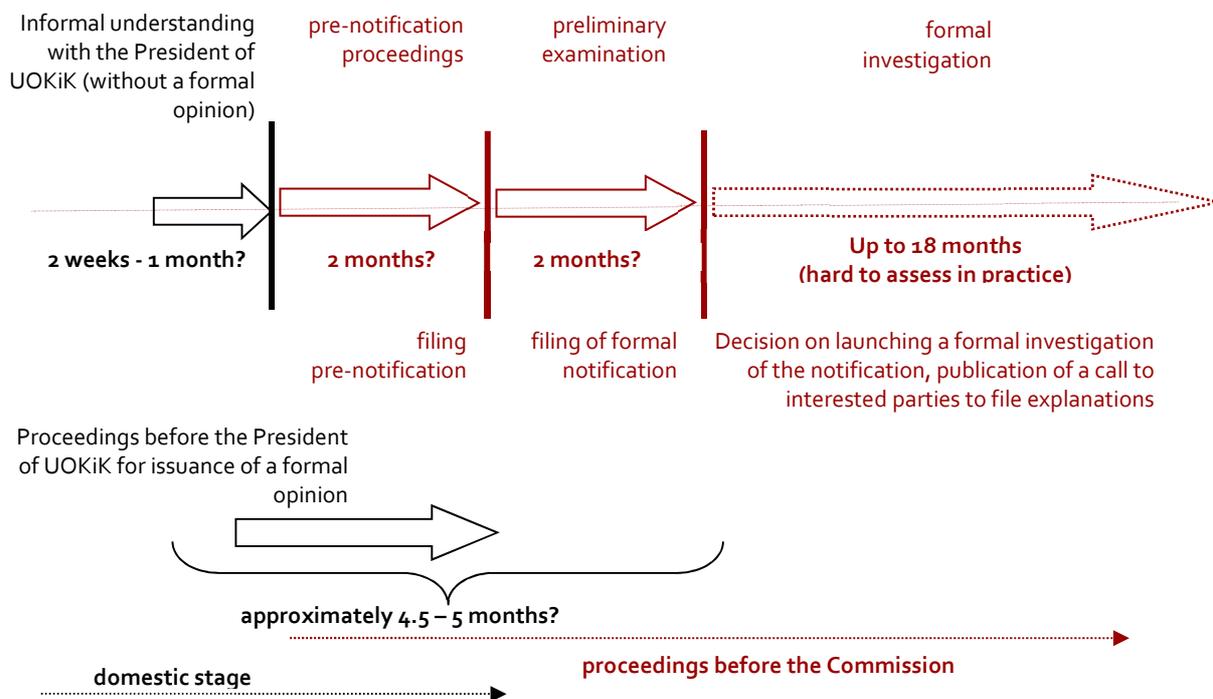
The notification process may be depicted as follows:



*UOKiK = Office of Competition and Consumer Protection (Polish competition authority)

Alternatively, in pre-notification proceedings, a formal opinion may be obtained from the Polish competition authority (UOKiK)

simultaneously with the proceedings before the European Commission, which can expedite the entire process.



The pre-notification procedure was formally introduced in 2009. The main purpose is to enhance the quality of notifications. Pre-notification is not mandatory, but it is recommended to simplify and expedite the examination of state aid measures by the Commission, particularly in more complicated cases.

Types of state aid

Regional aid

Targeted to regions where the per capita GDP is less than 75% of the average GDP in the European Union. The whole Polish territory is currently considered eligible for this type of aid. Financing is available to all sectors, except for agriculture, fishing, mining, transport, automotive, shipbuilding, steel industry and synthetic fibres. The intensity of the regional aid in Poland during 2007–2013 ranges between 40% (30% in 2011) and 70% except for projects where eligible expenditures exceed EUR 50 million, in which case the state aid intensity is calculated in accordance with a specific formula. “Aid intensity” is the level of aid available under a given scheme and is expressed as a percentage of the eligible costs. “Eligible costs” are the expenditures listed under specific measures which constitute the basis for calculating the available aid. Starting from 2014 (through 2020), the structure of regional aid will change with respect to intensity; aid will be granted at most at the level of 50% (4 provinces), and the lower levels will be 35% (8 provinces), 25% (3 provinces) and 15% (with respect to Masovia Province).

Horizontal aid

Focused on selected goals, irrespective of the geographical region. The principal types of expenditure financed from the horizontal aid scheme are *ad hoc* aid to businesses, support for SMEs, aid for employment and new jobs, innovation and R&D projects, and investments related to environmental protection.

Sectoral aid

Geared to supporting specific sectors, connected with the restructuring of both whole areas of the economy and individual companies representing particular industries.

Restructuring and rescue aid for firms in difficulty

Usually available in extraordinary circumstances, on the condition that the beneficiary provide a credible restructuring plan demonstrating that if it receives the aid it will be able to restore long-term viability in the foreseeable future.

De minimis aid

Granted to a single beneficiary, not exceeding EUR 200,000 over three consecutive years (unless exceptional thresholds apply, e.g. for road transport or services of general economic interest). This type of state aid does not have to be notified to the European Commission.

Principal state aid measures available in Poland

Special Economic Zone regime

A SEZ permit allows an investor to benefit from a corporate income tax exemption for income from operations within the scope of the SEZ permit and in the territory of the SEZ. An investor operating under a SEZ permit is obliged to join a tender for the SEZ permit and, if necessary, SEZ real estate, as well as pay a SEZ fee (usually dependent on the area used by the investor).

New technologies relief

Deduction of up to 50% of the expenditures for acquisition or use of technological expertise in the form of intangible assets, in particular the results of research and development, which enable generation of new or improved products or services and which have not been in use for more than 5 years, as confirmed by an opinion of an independent scientific institute. This incentive is unavailable for investors operating under a Special Economic Zone permit. It may be carried forward for three years after inclusion in the books of the investor and should be

repaid if within three years the new technologies are sold or made available (even partly) to a third party, or the investor becomes insolvent or receives any reimbursement of the expenditures for acquisition of the new technologies.

Real estate tax exemption

In 2013, the maximum applicable rates for commercially used areas are PLN 22.84 per sq m of a building's usable area and PLN 0.88 per sq m of land. The actual rates and exemptions are introduced by local councils. Local councils typically provide for RET exemptions, conditional upon making investment expenditures at a certain level in their territory, creating a certain number of jobs and/or operating under a SEZ permit. In some areas the maximum amount of this aid is limited by the *de minimis* threshold of EUR 200,000 in each of three consecutive years; however, the local councils are occasionally prepared to introduce new measures to meet the needs of new investors, and it is not unusual to expand the incentive beyond the *de minimis* threshold.

Infrastructure investments

Depending on the investment scheme, this might involve a state aid component, but may also become a non-state aid investment incentive. An infrastructure investment may involve, in particular, improvements in road infrastructure, site development and the like. Arrangements in this regard are usually negotiated with city councils or other local stakeholders.

Investment packages and other measures

Arranged on an individual basis and involving mixed state aid and non-state aid incentives, such as the forms mentioned above. Investment incentives may also involve, on a standalone basis: scholarships

– usually granted by city councils, refund of costs of equipment or refitting of workplaces, training cost refunds, and so on.

Refund for eco-friendly investments

Available upon application to the National and Regional Funds for Environmental Protection and Water Management. The actual scope of aid depends on the given aid programme. The investor must commit to invest in eco-friendly solutions.

Long-term direct subsidies

Granted under long-term plans adopted individually for a particular project by the Polish government, for either creation of employment or capital expenditures. Such subsidies may be negotiated with the Polish government.

EU funds

The actual aid varies significantly and depends on the project. It is granted by the relevant governmental agencies in a formal procedure. The availability usually depends on the level of the investor's commitment and innovativeness as well as the industry involved. The allocation of EU funds to recipients in Poland in the 2007–2013 budgetary period has indeed been significant. The budgets for aid in some of the most popular programmes were exhausted in 2010. The policy on state aid granted from EU funds will change starting from 2014. The aid will mainly consist of refundable subsidies, which is less favourable for beneficiaries than the non-refundable aid that is usually granted now. It is a common trend in the EU, however, that the law governing state aid will be more severe and restrictive. Preparation of the legal framework which enters into force in 2014 is still in progress.

4. Financial facilities

Banking/Financial Facilities

Financial system

The Polish financial system is governed by various laws, including the Banking Law, the Payment Services Act, the Insurance Activity Act, the Investment Funds Act, and the Trading in Financial Instruments Act.

Supervision over the financial market is governed by the Supervision of the Financial Market Act and the Supervision of the Capital Market Act, under which the Polish Financial Supervision Authority is established as the supervisory body. The Financial Supervision Authority is tasked with supervision of banking, capital markets, insurance, pension schemes and electronic money institutions. It also issues permits required by law to conduct regulated financial activity, e.g. banking. The aim of financial market supervision is to ensure the smooth, stable, secure and transparent operation of the market, to promote confidence in the financial market, and to ensure that the interests of market participants are protected. The Financial Supervisory Authority's activity is overseen by the Prime Minister.

The banking system in Poland comprises the central bank (the National Bank of Poland) and commercial, retail and investment banks.

Foreign banks may operate in Poland by establishing a bank in Poland, opening a branch office, or, for cross-border activity, by notification to the Polish Financial Supervision Authority if they are licensed in another EU member state.

In addition to banks, the following types of financial institutions also operate in Poland: brokerages, insurance companies, leasing companies, factoring companies and collection agencies, firms providing payment services, pension funds, investment funds, and firms selling financial products (insurance and investment funds).

Lending

Although the general rule is that lending activities do not require any special licensing, Polish law distinguishes "loans" and "credits". Credits and some other activities which are ancillary to lending may only be conducted by entities which are organised as banks or co-operative credit unions (e.g. accepting deposits, maintaining bank accounts, granting bank guarantees, and conducting bank cash settlements) or investment firms (e.g. buying or selling financial instruments for their own account, managing portfolios which include one or more financial instruments, providing investment advice, offering financial instruments, etc.)

Banks and investment firms must comply with specific organisational requirements and obtain a license from the Polish Financial Supervision Authority for the given type of activity.

Investors may take out loans from Polish banks. The banks, however, are subject to certain restrictions and limitations (such as checking the borrower's creditworthiness, and obligatory establishment of security in case of lack of creditworthiness) which arise from the law or are issued by the Financial Supervisory Authority in the form of binding procedures or recommendations.

Finally, restrictions on interest rates apply in Poland. The highest admissible interest rate depends on the lombard rate published by the National Bank of Poland (16% as of 4 July 2013). This restriction applies regardless of the law governing a loan agreement.

Opening a bank account

Generally, a foreign investor is not required to open a bank account in Poland in order to do business here. A business operating in Poland must hold a bank account for settlements with the tax office and contracting parties, but the account may be maintained

at a Polish bank or a bank elsewhere in the European Union.

Capital Market

The Warsaw Stock Exchange, which has been active since 1991, plays a pivotal role in stimulating the financial market. The WSE lists more than 398 Polish companies, with an overall market value of PLN 613 billion, and 46 foreign companies with joint capital of PLN 262 billion.

Securities are listed on the main market of the WSE or on the alternative market, NewConnect, which is also operated by the WSE. Debt securities are listed on the WSE's Catalist and BondSpot markets.

Public trading in equity and debt securities may take place through sale on the primary market or in secondary trading.

Trading of securities listed on the Warsaw Stock Exchange requires a monetary and securities account for settling transactions which is maintained by a brokerage or custodian authorised to conduct such activity in Poland.

In order to open the above accounts, an investor must present identification—for individuals, a passport or identity card, and for businesses, corporate documents demonstrating the right to act for the business. Brokerage or custodian internal regulations may also indicate specific types of documents necessary to open an account (which can also be opened by internet or mail).

A public offering of securities to more than 150 persons or to unspecified addressees, or the admission of securities to trading on the Warsaw Stock Exchange, requires:

- preparation of a prospectus (in accordance with EU Regulation 809/2004)
- approval of the prospectus by the Polish Financial Supervision Authority
- publication of the prospectus.

Polish law provides for situations where preparation of a prospectus is not necessary, e.g. when an offering is addressed exclusively to qualified investors.

The passport rule under the Prospectus Directive (2003/71/EC) is a part of Polish law. It provides that when shares are to be admitted to trading on regulated markets in several member states, the prospectus approved in the home state is valid for admission of the shares to trading in other EU member states.

The trading day at the Warsaw Stock Exchange runs from 9:00 a.m. through 5:00 p.m., Monday through Friday.

There is a notification obligation with regard to an acquisition or sale of a number of shares of public companies. Any investor who:

- acquires or owns more than 5%, 10%, 15%, 20%, 25%, 33%, 33-1/3%, 50%, 75% or 90% of the total number of votes at the general meeting of shareholders of a public company; or
- holds at least 5%, 10%, 15%, 20%, 25%, 33%, 33-1/3%, 50%, 75% or 90% of the total number of votes at the general meeting and, as a result of a reduction in such share, holds 5%, 10%, 15%, 20%, 25%, 33%, 33-1/3%, 50%, 75%, 90% or less, respectively, of the total number of votes,

must notify the Financial Supervision Authority and the company immediately, but not later than within 4 or 6 days of the change in interest in the total number of votes or from the date of acknowledgement that such a change occurred.

The same notification obligation arises on an acquisition or sale of a number of shares which changes the number of previously held shares over:

- the 10% threshold by at least 2% of the total number of votes at the general meeting in respect to a company admitted to trading of its shares on the official stock exchange or by 5% if the shares are admitted on a stock

- exchange other than the official one;
or
- the 33% threshold by at least 1% of the total number of votes at the general meeting.

An increase in the number of votes at the general meeting of shareholders by more than:

- 10% within 60 days if the number of votes already possessed is less than 33% of the total votes in a company;
or

- 5% within 12 months if the number of votes already possessed is at least 33% of the total votes in the company,

may take place only through a public offer for subscription by sale or conversion of such shares in an amount of at least 10% or 5%, respectively, of the total votes in the company.

The threshold of 33% of total votes can be exceeded only if a voluntary call is announced to acquire 66% of the votes, or the 66% threshold only if a voluntary public call is announced for all remaining shares.

5. Exchange controls

Business Transactions with Nationals, Residents or Non-Residents

In Poland, foreign exchange matters are governed by the Foreign Exchange Law.

The law defines a resident as *inter alia*:

- an individual with a permanent place of residence in Poland
- an entity with its place of registration in Poland
- a branch, representative office or company established in Poland by a non-resident.

A non-resident is:

- an individual with a permanent place of residence abroad
- an entity with its place of registration abroad
- a branch, representative office or company located abroad, set up by a resident.

The law distinguishes between non-residents from EU countries and non-residents from "third countries," meaning countries that are not only outside the EU but also outside the European Economic Area and OECD. Non-

residents from the EU (as well as EEA and OECD) are treated with priority, and currency transactions in their case are subject to much more lenient restrictions than currency transactions with non-residents from third countries. Non-residents from countries with which Poland has entered into tax treaties are treated similarly to those from the EU, and enjoy similar latitude.

Foreign exchange regulations provide certain requirements to submit reports to the National Bank of Poland. These requirements apply to residents conducting transactions with non-residents. The reporting requirements apply if total assets or liabilities connected to foreign exchange transactions at the end of the year is at least PLN 3 million or between PLN 10 million and PLN 300 million (or PLN 7 million in the case of individuals). Furthermore, resident should fulfil reporting requirements in the case of holding at least 10% of the votes or shares in foreign entities, debt securities or money-market instruments issued on a foreign market, receivables from non-residents or payables to non-residents, money-market instruments, derivatives and other securities issued by non-residents, credit and loans received from foreigners.

The Foreign Exchange Law does not provide for restrictions in granting loans between residents and non-residents. However, residents with long-term loans from non-residents or long-term liabilities to non-residents under finance leasing agreements, with a total exceeding PLN 3 million as of the end of a quarter, are required to file quarterly reports with the National Bank of Poland on the state of the liabilities.

Investment Controls

The Foreign Exchange Law is generally based on the principle of free foreign trade, but for certain activities it is still necessary to obtain an individual foreign exchange permit, issued by the president of the National Bank of Poland upon written application, including the rationale for the activity.

Non-residents from third countries must obtain a permit to sell short-term debt securities (below one year) or claims in Poland, unless they acquired them in Poland.

Residents need a foreign exchange permit:

- to open accounts in banks and branches of banks located in third countries, either directly or through intermediaries, with certain exceptions
- to acquire abroad:
 - shares in companies that are registered in third countries
 - participation units in collective investment funds that are registered in third countries
 - debt securities issued by non-residents from third countries
- to sell short-term debt securities (below one year) or claims in third countries.

Money Transfer

Daily exchange rates for foreign currency and other foreign exchange units are announced by the National Bank of Poland. However, banks or bureaux de change are free to set

their own exchange rates.

Foreign investors are generally entitled to transfer all of their profits, and capital gains may be transferred abroad without the need to obtain special permission.

Residents need a foreign exchange permit to move Polish or foreign currency to third countries in order to start or develop business activities in those countries, with the exception of such activities as direct services, performance of existing contracts, or promotion and advertising activities conducted by the resident domestically.

Residents and non-residents crossing the state border are required to declare to customs officials or the Border Guards the import or export of gold, platinum, or Polish or foreign currency worth more than EUR 10,000. In the case of money transfers abroad or payments within Poland related to foreign exchange, residents and non-residents are required to conduct such transactions via banks if the value of the transfer or payment exceeds EUR 15,000.

There are certain restrictions on purchase of real estate (outright ownership or perpetual usufruct) in Poland by foreign nationals. Similar rules apply to acquisition of shares in companies registered in Poland that hold real estate. In both cases there is a distinction between foreign nationals who are citizens of a European Economic Area member state and those who are not.

A foreign national who is not a citizen of an EEA member state is required to obtain a permit from the Minister of the Interior to purchase real estate in Poland. In the case of shares, a permit is required only if as a result of the acquisition a non-resident will gain control of a Polish company that holds real estate.

Foreign nationals who are citizens of an EEA member state or conducting business in an EEA member state are in most cases not required to obtain a permit. Under the EU accession treaty, they may still be required to obtain a permit to purchase agricultural or forest land in Poland, through April 2016.

6. Import/export regulations

Customs Regulations

Poland is a founding member of the WTO, a party to GATT (since 1967) and a member of the OECD (since 1996). Following accession to the European Union, since 1 May 2004 Poland has also been a member of the customs union formed by all the EU member states. Consequently, customs duties may only be levied in Poland in accordance with EU customs law, including the EU Customs Code and the Common Customs Tariff. EU customs laws are directly applicable and effective in Poland, which implies that national customs authorities and courts are required to set aside any conflicting national regulation or practice.

It is thus assumed that the customs rules and the rates of customs duties applied by Polish authorities are identical to those which would apply if the goods were traded in any other EU member state. In addition, common rules for external trade are established or negotiated by the EU on behalf of all the member states. Nonetheless, in practice the same goods may occasionally be classified differently depending on the member state of entry. This may lead to distorted application of the customs duties.

As far as internal trade within the EU is concerned, any goods already admitted to trade within the EU may move freely between any member states, without any customs duties or other charges with equivalent effect. Moreover, they may usually cross the border between EU member states without being subject to any regular inspections or controls.

Whenever any quotas are imposed by EU law on specific products, import licences are issued by the authorities of the relevant member states. The procedure governing administration of quotas is laid down in Council Regulation (EC) No 717/2008 of 17 July 2008 establishing a Community procedure for administering quantitative quotas, as amended.

A distinction is made between tariff barriers (EU customs tariffs, tariff quotas, tariff ceilings, and total or partial suspension of duty) and non-tariff barriers (monitoring of imports and exports, quantitative quotas, import and export bans, and technical bans).

The basis for calculating duty is the customs value of the goods, which is the price paid or due for the goods plus transport and insurance costs incurred up to the EU border, if not included in the cost of the goods. In certain instances the customs authorities may estimate the customs value.

Goods may be submitted to customs clearance directly by the trader or its representatives, such as customs agencies, shippers or carriers represented via customs agents employed. In practice, customs agencies typically handle the relevant importation formalities.

Goods arriving in or leaving the EU may be subject to various customs procedures which, if applied properly, may considerably mitigate exposure to customs duties, improve cash flow or reduce formalities. For instance, goods imported into the EU to be processed or developed may be subject to the inward processing procedure, in which case the customs duties would only be imposed on the added value arising while the goods are processed within the EU. Parallel rules would apply to outward processing, when goods are being shipped outside the EU for further manufacturing purposes. In other cases, goods may be brought to the EU for temporary use without triggering any customs duties if they leave the EU customs territory in time. Moreover, EU and international customs laws often exempt or mitigate customs levies applicable to goods of particular kinds (e.g. high tech) or originating from specific regions or countries (e.g. under the recent trade agreement with South Korea).

[Binding Tariff Information](#)

The EU has created the Binding Tariff Information (BTI) system as a tool to assist economic operators in obtaining the correct tariff classification for goods they intend to import or export. A BTI is issued on request by the customs authorities of the member states. It is valid throughout the EU, regardless of the member state that issued it.

The main benefit to the holder is legal certainty with regard to tariff classification. A BTI is generally valid for 6 years. However, in certain cases (e.g. publication of a classification regulation, a change in interpretation of nomenclature at the international level, or any other possibility laid down by the provisions for implementation of the Customs Code), a BTI may cease to be valid.

In such circumstances, the economic operator may continue applying the BTI for a further 6 months, if specific supplies have already been contracted under the BTI.

All BTIs issued by the national customs authorities are introduced into the European Binding Tariff Information (EBTI) database run by the European Commission.

National procedural aspects

In Poland customs proceedings (including import and export clearance) are carried out by customs offices. Decisions of the customs offices are appealable to customs chambers within 14 days from receipt (rulings, usually addressing procedural issues, within 7 days). Complaints against decisions or rulings of customs chambers may be filed with the administrative court within 30 days from receipt.

Jurisdiction of EU courts

EU courts hold jurisdiction over customs issues throughout the EU. The European Court of Justice issues preliminary rulings on customs law upon references from national courts. Moreover, EU courts review acts of the EU Commission, and may annul them on substantive or procedural grounds.

Examples of customs debates currently underway in Poland

Customs clearance documents (e.g. SADs) are subject to excessively formal examination. This often leads to subsequent challenge of SADs in post-import inspections, claiming failure to provide accurate data or appropriate information. It is argued that the involvement of the authorities in customs clearance cannot be purely automatic but should involve a certain degree of examination of the underlying data. It is also claimed that the automatic approach may violate the principle of reliance, as importers whose goods are cleared assume that their SADs comply with import regulations.

Recent debates also include customs treatment of goods imported for the purpose of assembly of a finished product. When the parts are of such quantity and range that they form all or almost all of the components required for assembly of a product, Polish customs authorities often tend to impose the customs rate (usually several times higher) that would apply to the finished product upon importation.

Interplay between EU and international customs and trade law

Bilateral trade agreements with third countries are negotiated by the European Union on behalf of all EU member states.

International customs and trade law (e.g. adopted by the World Customs Organisation or the World Trade Organisation) has no direct application in the EU customs area. It is implemented through EU regulations which apply directly in the EU member state.

As the EU tariffs are based on WCO standards, WCO guidelines may be used for interpretation.

In case of a dispute between the EU and third countries, various customs fora (Customs Code Committee, WTO panel and similar bodies within the WCO) provide necessary dispute resolution and interpretation.

Exports

Export restrictions are intended to prevent export of rare goods, protect human life and health, promote international peace, and prevent trade in illegal goods and other unforeseeable actions. The instruments that may be applied to further this policy, as need be, include export bans, licences and permits, and monitoring of exported goods.

Export permits may be necessary for a firm to sell its products on the market of a third country. Export permits are issued by the Export Control Department at the Ministry of Economy.

Export bans are adopted on the European Union level and include a list of countries and organisations covered.

Export restrictions also apply to export of strategic goods and technologies (an individual export permit) as well as dual-use items. In Poland, the issue of dual-use items is regulated by the Act on Commercial Manufacture and Sale of Explosives, Weapons, Ammunition and Technologies for Military or Police Use of 22 June 2001 and by the Act on Foreign Trade in Goods, Technologies and Services of Strategic Importance for National Security and the Maintenance of International Peace and Security of 29 November 2000. Moreover, sales of dual-use items outside Poland are usually carried out on the basis of the general EU permit established by Council Regulation (EC) No 428/2009 of May 2009. Exports of such products require administrative permits issued by the Minister of Economy. In contrast to exports, no permits are required for imports of those products to Poland.

Export duties are applied rarely, chiefly on raw materials in order to encourage processing within Poland. Export duties increase the exporter's costs.

Imports

Admission of certain classes of goods from third countries requires that the importer hold an import permit (and present it upon clearance) issued by the competent authority of an EU member state (in Poland, the Minister of Economy).

Import permits are required for import of, *inter alia*, industrial goods that are subject to quotas, as well as certain classes of goods subject to automatic registration.

Issuance of such permits may be conditional upon payment of a deposit (in the form of cash or a guarantee). The deposit may be paid for the applicant by a third party. It is also permissible to transfer a deposit from a licence that has been returned by the importer to a new application. If the licence is used in an amount no greater than 5%, the deposit is forfeited in its entirety to the State Treasury; likewise in the case of use of the licence other than for its intended use, or failure to return the licence within two months after the end of its period of validity. The manner in which the deposit is paid and returned is set forth in the regulation of the Minister of Economy of 18 May 2004.

Furthermore, import of strategic goods requires an individual import permit.

Applications for import licences in Poland are filed with the Department of Trade Administration at the Ministry of Economy.

7. Structures for doing business

Governmental Participation

The Polish state (via the State Treasury) holds all or part of the shares in certain companies

and enterprises. There are also state legal persons and state enterprises that conduct business activity. Since the transformation of

the Polish political and economic system began in 1989, some of them underwent commercialisation (i.e., transformation from state entities into corporations with shares) and privatisation (with all or part of the shares then being sold to private investors). Generally, the state no longer takes any part in newly created enterprises. One exception is when the public-private partnership structure is used, for infrastructure projects and other ventures. These are governed by a special law, the Public-Private Partnership Act, because state participation in business activity must always be governed by statute.

The nature of the state's participation in ownership or functioning of a given economic entity depends on the applicable statutes and the purposes to be furthered by the given undertaking, as laid down by the law. State participation in a given venture or company does not affect the investor's liability, which continues to be based on general rules, e.g. under contract or tort principles.

With respect to restrictions on capitalisation, in the sense of a minimum or maximum share the state may hold in a given venture or entity, there are a set of companies in sensitive areas in which the state has special entitlements not enjoyed by private owners. These are laid down by the Act on Special Rights of the Minister of Treasury and Exercise Thereof in Certain Capital Companies or Capital Groups Operating in the Electricity, Oil and Gas Sectors.

In addition to the above, it is worth noting that under the Special Economic Zones Act the government created a number of special zones where businesses benefit from a number of incentives, including certain tax privileges. Businesses are allowed to operate in an SEZ upon receiving a licence from the Minister of Economy.

Joint Ventures

A joint venture, in the sense of economic cooperation by business entities in order to achieve a specific economic purpose, may involve conclusion of an agreement between

the businesses in which they undertake to perform specific actions in order to achieve a common economic purpose. Under Polish law, joint venture agreements are treated as contracts of an unspecified type, which are governed by the general provisions of the Civil Code on contract formation and performance. In certain instances, depending on the specific contractual provisions, a joint venture agreement may be treated like a partnership agreement for an ordinary partnership, in which case the relevant provisions of the Civil Code concerning ordinary partnerships will apply accordingly.

A joint venture may also take the form of a joint venture company, in which businesses cooperate by jointly forming a new entity, typically in the form of a commercial company. Then the operations of the JVC will be governed by the relevant provisions of the Civil Code, the Commercial Companies Code, and other laws relevant to the specific corporate form in which the JVC operates.

It is important to consider the ramifications under antitrust law and other aspects of competition law when entering into a joint venture.

If a joint venture consists of businesses entering into a joint venture agreement, it is not subject to any specific form of registration or particular fees. The businesses involved will continue to bear unlimited liability to third parties for obligations incurred in carrying out the joint venture. As against one another, the parties to the joint venture agreement may divide or share the risks based on their business arrangements, but those arrangements will not be binding on third parties.

If a joint venture company is established, it must be registered in accordance with the rules applicable to the specific corporate form used for the JVC. For more specific information, including relevant fees, formalities, and principles of liability for the company's obligations, please refer to the sections of this guide relevant to the corporate form used.

There are no specific restrictions on capitalisation of joint ventures, but general rules concerning capital requirements may come into play, for example thin capitalisation rules, as discussed elsewhere in this guide.

Limited-Liability Companies

In Poland there are two types of “capital companies” (corporations): the limited-liability company (*spółka z ograniczoną odpowiedzialnością*, abbreviation sp. z o.o.) and the joint-stock company (*spółka akcyjna*, abbreviation SA). In both forms, the shareholders are not personally liable for the company’s debts, but are at risk only for the value paid for the shares.

Limited-liability company

The limited-liability company is the typical form for a closely held (private) company, with shareholders who are limited in number and closely involved in oversight of the company’s affairs. A limited-liability company is a convenient legal form for wholly owned subsidiaries of foreign companies (except in certain areas, such as banking or insurance, where a joint-stock company is required). It may be established by one or more persons for any lawful purpose, unless otherwise provided by law. A limited-liability company may not be established solely by another single-shareholder limited-liability company, however.

The share capital of the company must be at least PLN 5,000, divided into shares of equal or unequal par value. The minimum par value per share is PLN 50.

A limited-liability company is established as follows:

The shareholders sign articles of association in the form of a notarial deed. Upon conclusion of the articles of association, a so-called limited-liability company in organisation is established. The company in organisation is represented by the management board or a proxy appointed by unanimous resolution of the shareholders. The company in organisation may acquire

property in its own name, including real estate and other tangibles, incur liabilities, and sue or be sued. The phrase *w organizacji* (in organisation) is appended to the end of the name.

Establishment of the company requires:

- conclusion of the articles of association in the form of a notarial deed
- payment by the shareholders of their contributions to cover the entire share capital, along with any premium if they take up shares for a price higher than the par value
- appointment of the management board
- appointment of the supervisory board or audit committee, if required by law or the articles of association
- entry in the National Court Register.

From 2012 it is also possible to conclude the articles of association in an electronic form signed with certified electronic signatures. However, in practice this e-form does not seem to be very popular and conclusion of the articles of association of a limited-liability company in the notarial form is still the most common.

The management board applies to the register court for the seat of the company to enter the company in the National Court Register. All members of the management board sign the motion to register the company. Under the “one-stop shop” rule, the motion for registration of the company also contains a motion for registration at the tax office and statistical office, as well as the labour office if the company plans to hire staff.

Upon entry in the National Court Register, the company obtains legal personality and becomes duly incorporated, ceases to be in organisation, and assumes the rights and obligations of the company in organisation.

Joint-stock company

A joint-stock company is the typical form for a company that may have numerous or

diverse shareholders, and is the required form for public companies and for certain types of business (such as banks and insurance companies). It may be established by one or more persons, but not solely by a single-shareholder limited-liability company.

The share capital of a joint-stock company must be at least PLN 100,000, divided into shares of equal par value. The par value per share may not be below 1 grosz (PLN 0.01).

A joint-stock company is established as follows:

The founders sign the statute of the company, in the form of a notarial deed. The company is established when all the shares are taken up. Upon formation a joint-stock company "in organisation" is created. Until appointment of the management board, the company in organisation is represented by all of the founders together or by a proxy appointed by unanimous resolution of the founders.

The company in organisation may acquire property in its own name, including real estate and other tangibles, incur liabilities, and sue or be sued. The phrase *w organizacji* (in organisation) is appended to the end of the name.

Establishment of a joint-stock company requires:

- formation of the company, including signing of the statute by the founders and taking up all the shares
- payment by the shareholders of contributions to cover the share capital (although the share capital may be covered up to at least one-fourth of its value prior to registration, subject to specific rules for in-kind contributions)
- appointment of the management board and supervisory board
- entry in the National Court Register.

The management board files a motion with the registry court for the seat of the company in order to enter the company in the National Court Register. All members of the management board sign the motion to

register the company. Under the "one-stop shop" rule, the motion for registration of the company also contains a motion for registration at the tax office and statistical office, as well as the labour office if the company plans to hire staff.

Upon entry in the National Court Register, the company obtains legal personality and becomes duly incorporated, ceases to be in organisation, and assumes the rights and obligations of the company in organisation.

In the case of either a limited-liability company or a joint-stock company, the process of drawing up the articles of association or the statute, appointment of the authorities, and payment of the share capital takes about 3 weeks. Then it takes about another 3 to 4 weeks to obtain entry in the National Court Register.

A special form of joint-stock company that may be incorporated under Polish law is a European Company (*Societas Europaea*), regulated under the Council Regulation on the Statute for a European Company (2157/2001) and supplementary Polish legislation.

Costs of establishing capital company

Minimum share capital for limited-liability company: PLN 5,000

Minimum share capital for joint-stock company: PLN 100,000

- The fee for drawing up the articles of association or statute (notarial deed) depends on the amount of the share capital and should be confirmed in each case by the notary.
- There is a tax on civil-law transactions of 0.5% of the share capital, payable upon signing the articles of association or statute.
- The registry court fee is PLN 500 plus PLN 100 for mandatory announcement in the official journal *Monitor Sądowy i Gospodarczy*.
- The cost of VAT registration is PLN 170.

- There is no fee for income tax registration.

If a power of attorney is used, there is a stamp duty of PLN 17 on each power of attorney.

There is no requirement for a shareholder or member of the management board or supervisory board to be a Polish national. Nonetheless, a member of the management board, supervisory board or audit committee or liquidator must be a natural person with full legal capacity.

So long as the minimum requirements for share capital are met, the manner of capitalisation of the company may be adjusted to suit the considerations of the shareholders, e.g. from a tax point of view.

Liability Companies, Unlimited

The only companies under Polish law that are regarded as legal persons are the capital companies, i.e. the limited-liability company and the joint-stock company, and they both offer shareholders limited liability. The other types of company under Polish law, referred to as “personal companies,” are all some form of partnership. “Personal companies,” discussed in more detail below, do not have legal personality, but are regarded as “organisational units without legal personality.” Personal companies involve unlimited liability to some degree, for at least some of the partners. Nonetheless, both capital companies and personal companies themselves bear unlimited liability for the company’s own obligations.

Partnerships, General or Limited

Under Polish law, there are several types of partnerships that are regarded as “commercial companies” and governed by the Commercial Companies Code: the registered partnership (*spółka jawna*, abbreviation s.j.), the professional partnership (*spółka partnerska*, sp.p.), the limited partnership (*spółka komandytowa*,

sp.k.) and the joint-stock limited partnership (*spółka komandytowo-akcyjna*, SKA).

Personal commercial companies are established upon entry in the National Court Register. Such companies may acquire property in their own name, including real estate and other tangibles, incur liabilities, and sue or be sued. A personal commercial company does business under its own company name.

In a registered partnership or professional partnership, the partners are personally liable for the obligations of the partnership; however, in the case of a professional partnership, a partner is not personally liable for the company’s obligations arising out of the professional practice of other members of the partnership.

Another form of unlimited partnership is the ordinary or “civil” partnership (*spółka cywilna*, s.c.), which is not considered a “commercial company” and not a separate business entity from its partners. It is governed by the Civil Code rather than the Commercial Companies Code. It is not regarded as a separate legal entity (legal person or organisational unit without legal personality), but acts through its partners. In order for a foreign individual to do business in Poland via an ordinary partnership, he or she must meet the requirements provided for operating a sole proprietorship (discussed in detail in point G below).

There are two types of limited partnerships: the limited partnership and the joint-stock limited partnership.

Partners in partnerships may be natural persons, legal persons, or organisational units without legal personality. If a partner is a natural person, in the case of an ordinary partnership, registered partnership or professional partnership, he or she must meet the requirements for a sole proprietorship (discussed below); there is no such restriction in the case of a limited partnership or joint-stock limited partnership. A commercial company, whether a legal person (limited-liability company or joint-stock company) or an organisational unit without legal

personality (registered partnership, professional partnership, limited partnership or joint-stock limited partnership) may generally be a partner in a partnership.

There is a special requirement for partners in a professional partnership: They may only be natural persons who are authorised to practise one of the free professions, e.g. persons licensed to practise as an accountant, advocate, appraiser, architect, auditor, dentist, engineer, insurance broker, investment adviser, legal adviser, midwife, notary, nurse, patent attorney, pharmacist, physician, securities broker, sworn translator, tax adviser or veterinarian. Practice of the free profession within the professional partnership may also be conditioned on fulfilment of additional requirements set forth in other laws.

The partnership agreement for a limited partnership or joint-stock limited partnership must always be drawn up in the form of a notary deed. For other partnerships, the partnership agreement must only be made in writing, unless real estate is to be contributed to the partnership, in which case a notarial deed is required.

Personal companies (i.e. partnerships other than the ordinary partnership) are subject to entry in the National Court Register; the registration fee (including mandatory announcement in the official journal *Monitor Sądowy i Gospodarczy*) is PLN 600. An ordinary partnership is entered instead in the Central Registration and Information on Business (CEIDG).

There are generally no specific requirements concerning the amount of partnership contributions, except that a joint-stock limited partnership must have a minimum share capital of PLN 50,000.

The two types of limited partnerships are the limited partnership and the joint-stock limited partnership. In either of these partnerships, there are two types of partners: There are one or more general partners, who have unlimited liability for the debts of the partnership, but enjoy additional rights, e.g. the right to conduct the affairs of the

partnership and represent the partnership. There are also one or more limited partners (also referred to as a "stockholder" in the case of a joint-stock limited partnership). A limited partner in a limited partnership is liable only up to a fixed sum established in the partnership agreement. A stockholder in a joint-stock limited partnership does not bear any personal liability as such for the partnership's obligations, but bears an economic risk up to the value paid for the stock.

In other personal companies, the partners are personally liable without limit for the obligations of the partnership, but it is secondary liability, meaning that creditors may execute against the partner's assets only when execution against the partnership is ineffective.

In the case of an ordinary partnership, the partners' liability is primary. Each partner is treated like an individual business entity, and the partnership as such is not a business entity. Partners in an ordinary partnership are jointly and severally liable for the obligations of the partnership without limit.

Partnerships, Undisclosed

Under current Polish law, there are no specific regulations recognising the notion of a silent partnership. (The concept was once regulated in the former Obligations Code, since repealed.) Now, a silent partnership may be established in the sense of an unclassified type of agreement under general principles of freedom of contract. It constitutes a contractual relationship rather than a legal entity. The silent partner makes a contribution (e.g. in the form of cash or other consideration) and then participates in the profit generated by the activity conducted by the active partner. The silent partner is not revealed in any way externally and thus bears no liability for the business that is conducted. The silent partner has no right to conduct the affairs of the business or represent the business.

Because of a lack of appropriate regulations, operating in the form of a silent partnership

may be problematic, particularly because tax and other public authorities often treat the operations of a silent partnership as a type of *de facto* ordinary partnership or treat the silent partner's contribution as a loan.

A silent-partner relationship is created by entering into an agreement. The parties are free to frame the terms of the agreement within their discretion, so long as the substance of the relationship and its purpose are not contrary to the law, principles of social coexistence or the nature of a silent partnership.

The agreement need not be made in writing, but for evidentiary purposes written form is preferable, and a more rigorous form such as a notarial deed may also be used. A particular form may be required by specific regulations (e.g. for transfer of real estate or an enterprise).

The active partner operates the business and thus is required to register as a business entity in the relevant form.

Because a silent partnership is only a contractual arrangement and is not subject to registration, there are no specific costs entailed in establishing one, other than a possible requirement to pay civil-law transactions tax.

It appears that because the silent partner does not conduct business activity, no particular restrictions or requirements apply to the silent partner. The active partner is a business entity, and thus is subject to the regulations concerning conduct of business activity, e.g. in the form of a sole proprietorship.

A silent partner does not bear liability for the obligations of the business. The active partner is liable without limitation for the obligations of the business.

Sole Proprietorships

Business may be conducted in Poland in the form of a sole proprietorship. A sole proprietorship may be conducted only by a natural person with full legal capacity.

Foreign individuals may operate a sole proprietorship in Poland if they meet any of the following criteria:

- They are citizens of a member state of the EU, EEA or EFTA, or a country whose citizens have the right to conduct business here under a treaty with the EU or its member states.
- In Poland, they hold any of the following:
 - settlement permit
 - permit for long-term residence in the EU
 - residence permit for a fixed period
 - family reunification residence permit for a fixed period
 - refugee status
 - supplementary protection
 - consent to tolerated stay
 - residence permit for a fixed period, and married to a Polish citizen residing in Poland
 - a visa, if prior to issuance of the visa they were authorised to conduct business under a residence permit for a fixed period
- They enjoy temporary protection in Poland.
- They hold a valid Polish Card (for foreigners of Polish background).
- They are family members of citizens of EU member states.

Conducting business as a sole proprietorship requires entry in the Central Registration and Information on Business (CEIDG), which is administered via the local commune for the individual's place of residence. Business may be commenced upon filing of the application for entry in CEIDG, or the applicant may designate a later date for starting to conduct business—there are no temporal restrictions in this respect. There is no fee for the application.

A person conducting business in the form of a sole proprietorship bears unlimited liability for the obligations of the business.

There are no capital requirements for a sole proprietorship.

Subsidiaries/Branches/Representative Offices

Foreign business entities, i.e. natural persons without Polish citizenship, legal persons with their registered office abroad, organisational units with legal capacity but without legal personality registered abroad, conducting business abroad, may establish a representative offices, branches or subsidiaries in Poland.

A representative office of a foreign business may conduct activity in Poland only involving advertising and promotion of the given foreign entity.

A branch of a foreign business entity may be established under the principle of reciprocity, unless otherwise provided by treaty. A branch may perform activity only within the scope of the activity of the foreign entity.

Establishment of subsidiaries means the ability to conduct business under the rules provided by Polish law.

As for foreign individuals, they may conduct business in Poland on the same basis as Polish citizens if they meet the criteria outlined above (point G) for operating a sole proprietorship.

Other foreign persons may take up and conduct business in Poland only in the form of a limited-liability company, joint-stock company, limited partnership or joint-stock limited partnership, and may take up or acquire shares in such companies, unless otherwise provided by treaty.

A representative office is established by entry in the register of representative offices maintained by the Minister of Economy. Under the administrative procedure guidelines, the entry should be made within 30 days after submission of the application, but in practice, if the application is complete and in order, the entry should be made within

just a few days. A certificate of entry is then issued. The application is subject to stamp duty of PLN 1,000, not counting other costs such as sworn translations of the required documents.

A branch of a foreign business entity is established by entry in the commercial register of the National Court Register. The guidelines call for the registry court to make the entry within 7 days, although in practice the time varies from less than a week to as long as a month. The fee for the court filing plus mandatory announcement in the official journal *Monitor Sądowy i Gospodarczy* is PLN 600. There are other costs as well, such as fees for sworn translations of required documents.

Neither a representative office nor a branch has legal personality. They are considered a part of the foreign business entity, which is responsible for their actions and their obligations. The foreign entity is the party to legal relationships, such as contracts concluded by the representative office or branch, lawsuits or the like.

Subsidiaries are typically created in the form of a limited-liability company. Establishment of the company, as with other commercial companies (joint-stock company, registered partnership, professional partnership, limited partnership or joint-stock limited partnership), requires entry in the commercial register of the National Court Register. (The requirements and fees are discussed in detail in the previous section.)

If a foreign parent establishes a Polish subsidiary, they may enter into an agreement providing for management of the subsidiary or upstreaming of profit. Such agreement may define the scope of liability of the parent for damage to the subsidiary for improper performance, or the scope of liability of the parent for the subsidiary's obligations to creditors, or may exclude such liability. Otherwise, the liability of the parent as a shareholder will depend on the general rules for the given type of company.

It is not required that a Polish citizen be a shareholder or member of the company's

authorities. However, in the case of a representative office or branch it is necessary to provide the name and address within Poland of a person responsible for representing the office or branch.

Any restrictions concerning citizenship (see below) or requirement to know the Polish language may arise out of other specific regulations. For example, the Banking Law requires that at least two persons appointed to the management board of a bank know Polish, and there are similar requirements under the Act on Insurance Activity with respect to members of the management board of a domestic insurance company. The Polish Financial Supervision Authority, which exercises oversight of such financial institutions, may waive the Polish language requirement.

Trusts and other Fiduciary Entities

The institution of the trust, in the sense of an arrangement under Anglo-Saxon legal principles in which legal title to assets is held in the name of a trustee for the benefit of a beneficiary who has a beneficial interest in the assets, is not recognised under Polish law. Therefore, under choice of law rules, a trust as such may not be established in Poland.

Nonetheless, transactions structured in a manner similar to a trust, and with similar purposes, are recognised in Poland. The regulations concerning a service agreement (*umowa zlecenia*) will typically apply in such cases. In such an agreement, the contractor undertakes to perform a specific legal act for the principal, for a fee.

8. Requirements for establishing a business

Antitrust Laws

Businesses in Poland are prohibited from abusing a dominant position or entering into agreements restricting competition, as set forth in the Competition and Consumer Protection Act of 16 February 2007.

The act also contains rules on merger control. The acquisition of an undertaking in Poland, or the creation of a new undertaking by two or more undertakings, must be notified to the competition authority (the Office of Competition and Consumer Protection – UOKiK) if the transaction and parties meet the financial thresholds set out in the act. The creation of a joint undertaking is subject to notification to the competition authority if the combined turnover of undertakings participating in the concentration in the year preceding the year of notification exceeded EUR 1 billion worldwide or EUR 50 million in Poland. Acquiring control of another undertaking is

subject to the notification requirement if the combined worldwide turnover of the acquirer's capital group and the target's capital group exceeds EUR 1 billion, or EUR 50 million in Poland. However, a transaction will be exempt from the notification requirement if the turnover in Poland of the target did not exceed EUR 10 million in either of the two years preceding the planned transaction.

In the case of acquisition of control, the notification should be filed by the acquirer. The creation of a joint venture must be notified jointly by the parties to the joint venture. The filing fee is currently PLN 5,000.

Notification of the intended concentration may be made once the intention is documented, for example by signing a letter of intent.

As of 2013 the competition authority's review of a notification may take up to two months or longer. There is a two-month statutory

waiting period following filing of a complete notification, but the competition authority may extend the period by requesting additional information (which it often does).

The amendment to the Competition and Consumer Protection Act which will probably enter into force in mid-2014 will change the merger control regime, among other things. The changes in the merger control procedure include an exemption for transactions involving the creation of a joint undertaking and introduction of a two-phase procedure. The creation of a joint undertaking will be exempt from the notification requirement if the turnover in Poland of the undertaking concerned did not exceed EUR 10 million in either of the two years preceding the planned transaction. As far as the two-phase procedure is concerned, the amended act provides that easy cases, raising no concerns about restriction of competition, will be closed within a month. More complicated cases, or cases raising justified concerns as to significant restriction of competition, will be extended for another four months by decision of the president of UOKiK.

Environmental Regulations

As in other EU countries, environmental laws must be taken into consideration when doing business in Poland, both at the stage of conducting development projects and during subsequent operations.

For many ventures, at the development stage, before obtaining a construction permit, it is necessary to obtain a decision on environmental conditions, if the project could have a significant environmental impact. The decision defines the site and type of project, conditions for use of the land during the stages of development and operation of the venture, with particular emphasis on the need to protect valuable natural resources or landmarks, as well as restrictions on interference with neighbouring plots. The decision may also impose an obligation to carry out compensatory measures as well as prevent, contain and monitor the environmental impact of the venture.

Before obtaining a decision on environmental conditions, it may be necessary to conduct an environmental impact assessment procedure, involving preparation of an EIA report and conducting public consultation, which may be costly and time-consuming for the investors.

During the operational phase, the venture must also comply with numerous requirements under Polish environmental law, depending on the type and extent of the activity.

For example, environmental permits may be necessary in order to conduct a given type of business, such as a permit for a specific installation defining the permissible limits for emission of gases and dust into the atmosphere. An integrated permit is required for certain types of installations whose operations could cause significant environmental harm of various types. A permit under the Water Law is required for particular types of water use, such as water intake or discharges to water or land.

Certain types of activity must meet additional conditions or obtain additional permits, for example businesses handling specific types of wastes, introducing products onto the market in packaging, or selling electronic equipment, and so on.

Failure to comply with environmental requirements may result in criminal, civil and/or administrative liability.

Administrative liability is of primary importance. There is a system of fines or increased fees that may be imposed by environmental protection authorities, and decisions may also be issued requiring reductions in environmental impact or remediation of damage, or even ordering shutdown of specific operations or a specific facility.

Alongside administrative liability there is also civil liability in damages, which is particularly significant for plants powered by natural forces, which are subject to strict liability.

Criminal sanctions may also be imposed for environmental offences. For example,

storage, disposal, processing or transport of waste in a manner that may threaten human life or health, cause substantial harm to plants or animals, or bring about a significant deterioration of the quality of water, air or soil is subject to a penalty of imprisonment ranging from 3 months to 5 years.

The three liability regimes operate on independent tracks, meaning that the same act could be subject to administrative, civil and/or criminal liability.

There are also certain fiscal and reporting obligations when taking up activity that may affect the environment. Businesses are required to maintain detailed records, file reports on use of the environment, and calculate and pay fees for use of the environment: waste storage, emissions into the atmosphere, wastewater discharge and so on. A particular concern with respect to handling of certain types of waste is the need to achieve specific levels of recycling and recovery, with relevant fees assessed for failure to meet the targets.

In addition to the obligation to pay various user fees, the regulations also provide for fees that serve as sanctions. If a business uses the environment without a required permit, it is required to pay "increased fees". For example, in the case of emission of gases or dust into the atmosphere, or discharging wastewater into the soil or water without a required permit, an "increased fee" for use of the environment will be imposed that is equal to 500% of the regular fee. Violation of a number of other regulations or permit conditions requires payment of administrative fines.

Additional costs may also arise out of obligations that may be imposed in decisions issued by environmental authorities. For example, a decision requiring limitations on environmental impact may impose an obligation on a business to take preventive measures, or the obligation to pay fines may be imposed on an entity conducting operations in violation of environmental regulations.

Government Approvals

According to Art. 22 of the Polish Constitution, "Limitations upon the freedom of economic activity may be imposed only by means of statute and only for important public reasons".

Thus there is a general principle of freedom to perform business activity, but in specific instances a concession, licence, permit or registration may be required. In some cases a company conducting certain types of activity is required to have personnel on staff who are licensed to practise a specific profession.

The most demanding form of licence is a "concession", which is issued for a fixed period of 5 to 50 years. A concession is issued through an administrative decision, but the issuing authority may exercise discretion, and thus the applicant may not demand a concession simply because it meets all of the requirements. In addition, the number of concessions awarded may be limited.

The Business Freedom Act of 2 July 2004 contains an exhaustive list of activities that require a concession:

- exploration and mining of mineral deposits, including storage of related wastes
- production and trade in explosives, arms and ammunition, and goods and technology for military or police uses
- production, storage, transmission, distribution and trading in fuels or energy
- protection of persons or property
- broadcast of radio or television programming
- air transport
- operation of casinos

A licence is required in order to operate road or rail transport.

A permit is required for such activity as:

- production of spirits and tobacco products

- bottling, trading and sale of alcoholic beverages
- insurance
- wholesale of pharmaceuticals and medical products
- use of nuclear energy
- operation of telephone, radio and television networks and use of radio broadcast and transmission equipment
- business operations within a Special Economic Zone.

Unlike a concession, issuance of a permit depends solely on meeting the specified grounds for qualification. If the grounds are met, the applicant has a right to receive the permit.

Under certain circumstances, acquisition of real estate in Poland by a foreigner requires a permit, which is issued by the Minister of the Interior, if there is no objection by the Minister of Defence or in the case of farmland by the Minister of Agriculture and Rural Development.

There are also legal regulations in force in Poland designed to counteract anti-competitive practices and practices infringing the collective interests of consumers, as well as business concentrations that may have a negative effect on competition within the territory of Poland.

It is hard to give more than general guidelines on how long it takes to obtain permits or licences. The state authorities that issue them are required to comply with rules for administrative procedure and to resolve matters without undue delay. Under the guidelines, a matter requiring explanatory proceedings should be resolved within one month, or a particularly complicated matter within two months. An appeal should be decided within one month. In practice the length of the procedure depends on the type of activity involved and the amount of documentation, and may last from about 2 weeks to several months.

The fee depends on the particular type of permit or licence involved.

Insurance

Certain types of activity require mandatory insurance.

Owners of motor vehicles (natural or legal persons or organisational units without legal personality) are required to hold civil liability insurance.

Individual farmers are required to hold civil liability insurance, and farm buildings must be insured against fire and other calamities.

Other insurance requirements are provided under specific regulations, where the activity may give rise to civil liability, e.g. for product defects, professional malpractice or the like. Currently there are specific regulations requiring civil liability insurance for such professions as:

- appraisers, architects and engineers
- advocates, legal advisers and tax advisers, including foreign lawyers giving legal advice in Poland, notaries, auditors and patent attorneys
- healthcare providers, such as physicians, and sponsors and researchers conducting clinical trials
- organising large-scale public events.

The issue of insurance for diplomatic personnel is governed by treaty or international convention.

The insurance industry is regulated by the state. Offering and providing insurance against risk may be conducted only in the form of a joint-stock company or mutual insurance society, pursuant to a licence issued by the Financial Supervision Authority, which oversees insurance activity, such as:

- review and approval of the insurer's statute
- approval of two members of the management board and certain forms of oversight concerning the supervisory board
- determination of required financial reserves/capital requirements.

In line with EU law, insurers from other EU member states can operate in Poland

through a branch or on the basis of the free movement of services principle.

9. Operation of a business

Advertising

The rules for advertising in Poland differ little from those generally found in other EU countries. The restrictions on advertising are not codified in one place, but are spread through various acts. In addition, many market participants follow self-regulation principles set forth in the Advertising Ethics Code adopted by the Polish Advertising Council.

In Poland, advertising content must be clearly distinct from other content or marked in a way that makes it clear that it is advertising. Advertising must not be misleading, or play on the audience's emotions by exploiting fear or superstitions, or the gullibility of minors, or intrude on privacy, in particular by bothersome solicitation in public places, sending unordered goods to customers at their cost, or abusing technical means of communication. Comparative advertising is permitted but only under certain conditions.

Advertising of tobacco, gambling, and prescription medicines is prohibited in Poland, as is advertising of alcoholic

beverages, with the exception of beer. Beer advertising is permitted but is subject to a number of restrictions, including time restrictions on radio and television ads.

Attorneys

In Polish law there is no requirement to use only the services of Polish lawyers.

A lawyer licensed elsewhere in the EU may register in Poland with the Regional Bar Chamber (for advocates) or the Regional Chamber of Legal Advisers (for legal

advisers) and practise regularly in Poland in the same scope as a Polish advocate or legal adviser, respectively.

A lawyer from outside the EU may also register with the bar in Poland, but their regular practice in Poland is limited to providing legal advice or opinions on the law of the country where they are licensed or international law.

Each Regional Bar Chamber and Regional Chamber of Legal Advisers maintains a list of licensed practitioners on its website.

Fees for court appearances by advocates are governed by a regulation of the Minister of Justice (Regulation of 28 September 2002), but the regulation only sets minimum fees, and only for work before the court. Thus advocates are free to set higher fees for court appearances and set their own rates for out-of-court work. There is a comparable system in place for legal advisers.

In litigation, the usual practice is that the prevailing party is awarded attorney's fees from the losing party, but only at the minimum rates provided by the regulation of the Minister of Justice. Thus, in practice, the prevailing party typically does not recoup its full attorney's fees.

Bookkeeping Requirements

Accounting records are maintained by each unit, which may outsource this task to accountants licensed in Poland or another EU member state.

If accounting records are maintained outside of the registered address or headquarters of the unit, the director of the unit must notify

the local tax office of the location where the books are maintained. The books must be maintained in a manner assuring access by inspectors if need be.

Accounting records are maintained in Polish language and currency. Sole proprietorships, ordinary partnerships, registered partnerships of individuals, and professional partnerships are required to maintain simplified accounting records (i.e. a record of income and expenditures), but once the net value of sales and financial operations in the prior tax year exceeds EUR 1.2 million, they are required to maintain full accounting records.

Capital companies (limited-liability companies and joint-stock companies) are required to maintain full accounting records.

Accounting standards in Poland are based on legal regulations as well as generally accepted principles. The Accounting Act of 29 September 1994 codifies the main principles of accounting, which include:

- periodicity
- individuality
- double entry
- continuity
- accrual basis/cash basis
- prudence
- materiality
- full and fair depiction
- matching.

Business Ethics/Codes

There are a number of various business ethics codes in Poland. Companies listed on the Warsaw Stock Exchange undertake to comply with corporate governance rules prepared by the Warsaw Stock Exchange.

There are also sector ethics codes, e.g. best practices of banks and other financial institutions, and chambers of commerce often issue such rules.

Ethics codes are also applied within certain professional groups, e.g. legal advisers and auditors.

Consumer Protection Laws

Businesses operating in Poland must comply with consumer protection laws. The Act on Combating Unfair Commercial Practices of 23 August 2007 prohibits the use of unfair business practices, such as those contrary to good practice and those which substantially distort or could distort the behaviour of an average consumer in the market. Practices that mislead consumers are, in particular, regarded as unfair. Unfair market practices may lead to civil and/or criminal liability.

It is also illegal for businesses to use practices that violate the collective interests of consumers. This prohibition arises under the Competition and Consumer Protection Act of 16 February 2007. Practices that violate collective interests of consumers are unlawful activities by businesses which are detrimental to consumers and which involve, for example, use of fraudulent or misleading advertising or illegal form contracts, or breach of the duty to provide consumers with reliable, truthful and complete information. Such practices are punishable by fines of up to 10% of the annual revenue of the business.

Businesses must also comply with the consumer sales regulations in the Specific Terms of Consumer Sales Act of 27 July 2002 (giving rights to consumers if products fail to conform with their sales contracts), and with the Act on Protection of Certain Consumer Rights and Liability for Damage Caused by Unsafe Products of 2 March 2000. This act provides, among other things, rules for distance selling and for sale of financial services.

In terms of consumer rights, the Consumer Credit Act of 12 May 2011 regulates rights and obligations related to consumer credit.

Construction

Costs of carrying out construction projects in Poland vary depending on numerous factors. Some of the key cost components include the cost of acquiring land for the project, the cost of construction materials, design costs, the costs of the general contractor and construction supervision, as well as financing costs.

Before beginning construction in Poland, a number of administrative consents and permits are required. The key ones include planning permission, which is based on local zoning plans that have been adopted and apply generally throughout the given area, or, if no local zoning plan has been adopted for the area, a decision on construction conditions and land use, which is issued at the application of the investor for a specific project.

In addition, as a rule, commencement of a construction project requires approval of the construction design, which is issued in the form of a building permit. There are some exceptions, generally involving minor, temporary and auxiliary structures.

When a decision on construction conditions and land use is required, it is obtained by applying to the local government administration. If the legal conditions are met, the investor will obtain a decision defining the fundamental and allowable parameters for the project. As a rule the decision should be issued within one month from filing the application.

The decision concerning the building permit is also issued by the local government administration, but in the case of certain major infrastructure projects, also by the regional governmental authority (province governor). Building permits are issued upon application by the investor, submitted with the complete construction design for the project. The decision should be issued within 65 days from filing the application.

The administrative procedure to obtain a decision on construction conditions or a building permit requires payment of treasury fees in an amount that is based on the size

and purpose of the project. The fees are reasonable, however, and represent a minor portion of the project costs.

Contracts

Based on the principle of freedom of contract, under Polish law an investor may freely enter into local contracts. In certain instances there may be a requirement to register the agreement or its effects (for example, when an investor buys or sells shares it may be necessary to enter this information in the company's share ledger or in the National Court Register; transfer of an interest in real estate must be entered in the land and mortgage register; and so on). Some agreements are subject to the tax on civil-law transactions (stamp duty), e.g. certain sale agreements and loan agreements.

Under Rome I (Regulation (EC) 539/2008), which is part of the Polish legal order, the parties to a contract may agree on the law that will govern the contract. However, if all of the factual circumstances surrounding the contract are tied to a state whose law was not chosen, the laws of that state that cannot be excluded by contract will also apply. Laws of mandatory application in the state whose court is deciding a case related to the contract will also apply, regardless of the choice of law clause.

Price Controls

As a rule, prices are agreed upon by the parties to a transaction. When determining prices, attention should be paid to relevant aspects of competition law and consumer law. Prices are subject to specific regulation in certain sectors of the economy.

Medicinal products, medical devices, foodstuffs intended for particular nutritional purposes and medical products

Official (fixed) prices apply to medicinal products, medical devices and foodstuffs intended for particular nutritional purposes that are reimbursed from public funds. The

official (fixed) price for a particular product is determined in an administrative decision of the Minister of Health granting reimbursement status to a specific product (possible refund levels: full refund, lump-sum charge, 50% refund and 30% refund). Under the Act on Reimbursement for Medicinal Products, Medical Devices and Foodstuffs Intended for Particular Nutritional Purposes Act of 12 May 2011, the prices of reimbursed products are official and fixed at all levels of distribution, i.e. at the level of manufacturer, wholesaler and pharmacy. An exception to this are supplies of medicinal products from manufacturers to public hospitals; in these cases, products are sourced within public procurement tenders and prices may be lower.

Because of the fixed prices, no discounts may be given to wholesalers, pharmacies, or patients.

Another result of this legal and economic arrangement is that the margins which wholesalers and retailers (pharmacies) may earn on sales of reimbursed products are also fixed. Furthermore, wholesalers and retailers cannot compete on the market through pricing of reimbursed products.

The list of reimbursed products is published by the Minister of Health. The list is regularly reviewed and revised, often upon application from producers and distributors of medicines and medical products which are subject to official prices.

Energy

Suppliers of electricity and gas are required to file their tariffs with the President of the Energy Regulatory Office for approval, unless they have been released from this obligation. Distribution system operators and transmission system operators must always file their tariffs for approval. The office also approves rates for heat. The tariffs specify the

conditions for charging prices and fees by energy companies. The rates are calculated in order to assure that the reasonable economic costs of the companies are covered, as well as justified development plans, while also protecting the interests of customers against unjustified prices. The rules for establishing the tariffs are set forth in executive regulations to the Energy Law. The administrative bodies with authority in this area are the Minister of Economy and the President of the Energy Regulatory Office.

Telecommunications and post

Fees for postal services are established by enterprises providing postal services, based on the costs of providing services. The rates for postal services must be approved by the President of the Office of Electronic Communications. She also exercises oversight over rates and services offered by telecommunications companies. In addition, as in the rest of the EU, Regulation (EC) 544/2009, governing prices for mobile roaming services, went into effect recently in Poland.

Transport

Official prices may also be set by local governments for public transit services and for taxis operating within the locality.

Other

Additionally, in the event of specific threats to the proper functioning of the state economy, the Council of Ministers may issue a regulation identifying goods or services subject to official prices. The Minister of Finance then issues a regulation establishing the official prices and sales margins for such goods and services.

Unless otherwise specified by statute, official prices and sales margins represent the legal maximum.

10. Cessation or termination of business

Termination

The costs of winding up a business depend on the legal form used.

In the case of liquidation of a personal company (registered partnership, professional partnership, limited partnership or joint-stock limited partnership), there is a fee for delisting the partnership from the National Court Register of PLN 300.

In the case of liquidation of a capital company (limited-liability company or joint-stock company), there is a fee of:

- PLN 550 for the court and for the announcement in the official journal *Monitor Sądowy i Gospodarczy*
- about PLN 600–1,000 for publication of opening of liquidation and the summons to creditors to present their claims for payment.

The business will also incur costs for closing down the business, terminating contracts, shutting the office, paying the liquidator's fee and so on.

The duration of the liquidation process also depends on the legal form. In the case of shutting down a sole proprietorship, delisting takes up to 30 days after filing the application.

In the case of a personal company, there is no stated duration of the process, but it depends on the partners and the terms of the partnership agreement. Liquidation is effective upon delisting from the National Court Register.

In the case of a capital company, the announcement published in *Monitor Sądowy i Gospodarczy* will summon the creditors to submit their claims. Then the liquidators should wind up the company's current business, collect receivables, discharge obligations and liquidate the company's assets. After claims are satisfied or secured, the remaining assets are divided among the shareholders, no earlier than six months after

the summons is issued to creditors in the case of a limited-liability company, or one year in the case of a joint-stock company (in which case two announcements are required, and the earliest distribution date is counted from the second announcement). Liquidation of the company occurs upon delisting from the National Court Register.

There are no special rules for treatment of companies that are winding up their business. When a company enters liquidation or bankruptcy, the phrase "in liquidation" (*w likwidacji*) or "in bankruptcy" (*w upadłości*) is appended to the company name. This signals to potential customers or suppliers that the company intends to go out of business and thus is not entering into new business.

No government approval as such is required to liquidate a company, but termination of the existence of the company requires issuance of the decision of the registry court deleting the company from the commercial register. In the case of commercial companies, deletion from the National Court Register is a necessary element of winding up the business, because the company is not dissolved until it is delisted from the register. If the liquidation was not conducted lawfully, the court will refuse to delist the company, which may result in liability of persons acting for the company.

In the case of a sole proprietorship or partners of an ordinary partnership, where natural persons are entered as business entities in the Central Registration and Information on Business (CEIDG), winding up the business involves delisting from CEIDG.

A sole proprietor continues to be liable without limit for the obligations of the business after winding up.

Partners whose liability was unlimited in a partnership (partners in an ordinary partnership, registered partnership or professional partnership, and general partners in a limited partnership or joint-stock

limited partnership) continue to be jointly and severally liable for the obligations of the partnership after winding up.

In the case of capital companies, the liquidation cannot be closed until all creditors have been satisfied, or cash or security has been submitted to a court deposit to secure satisfaction of the creditors. Under certain circumstances, the liquidator or members of the management board who were serving at the time that obligations arose may be liable for the company's obligations.

An employer winding down its business is required to terminate all employment contracts and, within 7 days, deregister the employees with the Social Insurance Institution (ZUS). The employer should also deregister with ZUS as a remitter of social insurance contributions. When employment contracts are terminated for reasons attributable to the employer, typically some severance pay will be due; the amount is set forth in the labour law and depends on the employee's salary.

In the case of liquidation, the employer is also required to indicate an entity that will store employment documentation and set aside funds for this purpose.

This is just an overview of liquidation and does not cover all of the issues that may arise.

Insolvency

The Polish Bankruptcy and Recovery Law of 2003 governs the bankruptcy of businesses notwithstanding their legal form, including sole proprietors and partners of an ordinary partnership, as well as the bankruptcy of individuals (consumer bankruptcy). The Bankruptcy Law provides for a bankruptcy involving liquidation of the debtor's assets or bankruptcy with an arrangement option to ultimately find an arrangement with creditors allowing a return to normal business when executed. Bankruptcy with an arrangement option can only be declared if there are grounds to expect that creditors will be satisfied to a higher degree following an

arrangement than from liquidation of the bankruptcy estate. A debtor who is not yet insolvent but is reasonably anticipated to become insolvent in the future (as well as certain debtors slightly affected by insolvency) may seek to declare commencement of recovery proceedings. As the opening of such proceedings is beneficial to debtors (stay of enforcement proceedings, suspension of payment of obligations, etc.), recovery proceedings must conclude within 3–4 months of opening, during which a settlement plan with creditors must be agreed upon.

A business may be insolvent for cash flow reasons, failing to pay at least two (undisputed) debts as they become due, or because it has overwhelming obligations, exceeding the market value of the assets, even if it is paying its current debts as they become due.

Current jurisprudence takes a less stringent approach and there must be profound, and not temporary, problems for a business to be declared bankrupt.

A business is declared bankrupt by order of the court. A business operating in the form of a company with legal personality (limited-liability company or joint-stock company) is liable to creditors with all of its assets. Sole proprietors are also personally liable to creditors, as are partners of partnerships in line with the liability rules for each type of partnership.

The Bankruptcy Law classifies claims in terms of priority of satisfaction out of the liquidated assets in the case of a liquidation bankruptcy. The law treats secured creditors differently by allowing them (subject to certain statutory deductions and limitations) to be satisfied from the proceeds of the sale of the secured assets.

In case of distress, investors operating a business in the form of a company in Poland should comply with the obligations under the Commercial Companies Code. The management board should convene a shareholders' meeting (when statutory thresholds of balance sheet losses have been

surpassed) to decide whether the company should be liquidated.

Under the Bankruptcy Law, each representative of a debtor (i.e. management board member) has a statutory duty to file for bankruptcy within 14 days after a business becomes insolvent. Failure to do so may result in personal liability of board members for damages to creditors resulting from a delay in filing.

It is also possible to restructure a business without recourse to formal legal proceedings. These days there are more and more companies that decide to negotiate their position with creditors. There are no out-of-court procedures to regulate any such debt restructuring processes. Often—especially when financial institutions are involved—“standstill agreements” are signed, which under certain conditions freeze the rights of creditors to seek enforcement of their rights against the debtor and which allow the debtor to take measures to restructure assets

and deal with cash-flow problems. This generally involves debt restructuring, relief or postponement of payment, acquisition of new financing with regard to existing securities, adjustment of pre-existing contractual relationships with business partners, business reorganisation e.g. through sale of non-core assets or withdrawal from non-core activities, as well as arrangements with public authorities on restructuring of tax obligations and other public charges.

Currently, the Polish government is working on a large-scale amendment of the Bankruptcy and Recovery Law. New restructuring (preventive) procedures are to be introduced that will give more flexibility to out-of-court restructuring and simplify in-court proceedings (hybrid proceedings are to be included). Bankruptcy and restructuring laws are to be separated and an easier start given to those businesses that were already bankrupt (fresh start policy).

11. Labour legislation, relations, and supply

Employer/Employee Relations

Employment relations and the duties of employers and employees are governed by numerous laws, the most important of which include:

- Labour Code of 26 June 1974
- Act on Specific Rules for Termination of Employment on Grounds Not Attributable to the Employees of 13 March 2003
- Act on Notification and Consultation of Employees of 7 April 2006
- Labour Unions Act of 23 May 1991
- Act on Resolution of Collective Disputes of 23 May 1991
- Act on Hiring of Temporary Employees of 9 July 2003
- executive regulations issued pursuant to these laws, e.g.:
 - Regulation of Minister of Labour and Social Policy of 15 May 1996 on the Manner of Justification of Absence from Work and Issuance of Releases from Work to Employees
 - Regulation of Minister of Labour and Social Policy of 15 May 1996 on Specific Contents of Employment Certificates and the Manner and Procedure for Issuance and Correction Thereof
 - Regulation of Minister of Labour and Social Policy of 28 May 1996

on Employers' Maintenance of Employment-Related Documentation and Maintenance of Employees' Personnel Files.

Employment relations are also governed by internal regulations adopted at a given workplace, such as collective bargaining agreements, work rules and pay rules.

Polish labour law does not impose any duties on employers to train their employees, except for occupational health and safety training specified below in point C. Under the Labour Code, however, the employer should help staff improve their professional qualifications, while following a policy of equal treatment.

An employee who undergoes additional training to increase his or her professional skills at the request or consent of the employer has a right to paid training leave under rules set forth in the Labour Code and paid time off from work during part of the workday for the time necessary to travel to and attend mandatory classes. The employer may also provide additional benefits to the employee, particularly to cover training fees, textbooks, travel and lodging.

Where the employer sends the employee for training or other form of raising the employee's professional qualifications, the employer and employee may also enter into a separate agreement requiring the employee to continue the employment for up to 3 years after the end of the training, and in instances provided for in the Labour Code (e.g. interruption of training, termination of employment by the employee, or disciplinary termination by the employer) the employer may demand reimbursement of the training costs incurred by the employer.

Employment Regulations

There are no regulations in force in Poland that directly require an employer to hire Polish citizens. A requirement for candidates or employees to hold Polish citizenship may be applied only to employment at specific positions related to exercise of public functions, e.g. in the civil service.

Employment of foreigners in Poland is subject to certain restrictions, however, and depending on citizenship a work visa or relevant work permit may be required. Additionally, obtaining a Type A work permit requires prior announcement of the position for which the foreigner is to be hired at the local labour office in order to determine that there are no Polish candidates for the position.

The legal minimum wage is set by statute, and in 2013 it is PLN 1,600 per month.

The employee's working time may not exceed an average of 8 hours per day and 40 days per week in an average 5-day work week over a calculation period not exceeding 4 months. The employee is also entitled to at least 11 hours of uninterrupted rest each day, and each week at least 35 hours of uninterrupted rest, including Sunday. The labour law regulations governing working time admit numerous departures from these norms, e.g. extension of the workday to as long as 24 hours.

If the working time adopted in the given system is exceeded, the employee has a right to overtime pay. The weekly working time, including overtime, may not exceed an average of 48 hours over the adopted calculation period. This restriction, and the rules concerning minimum periods of rest, do not apply to staff managing the workplace for the employer. Staff managing the workplace for the employer, as well as managers of distinct organisational units, may, if necessary, work outside of normal working hours without any right to overtime or other additional pay. However, managers of distinct organisational units are entitled to overtime pay for work on Sunday or a public holiday, if they did not receive a day off in lieu.

The employee is entitled to annual holiday leave of 20 days per calendar year if employed less than 10 years, or 26 days if employed for 10 years or more. The employment period serving as the basis for calculating the length of annual leave includes not only the length of employment with the given employer but also prior

employers and certain educational periods; for example, staff who have completed university-level studies are credited with 8 years of employment for this purpose.

An employee may take annual holiday leave at a time agreed with the employer. Leave may be divided into portions, but in such case at least one portion of the leave must last at least 14 successive calendar days.

The employer is required to give the employee annual leave during the calendar year in which the employee earned the right to it. Unused leave should be given to the employee by 30 September of the following calendar year at the latest. A monetary equivalent for unused leave may be paid only in the case where leave is not taken because of termination or expiration of employment.

The employee has the right to release from work for the entire period required because of sickness, but only on the basis of a medical certificate. If sickness causes the employee to remain absent for an extended period, however, the employer has the right to terminate the employment without advance notice.

In the event of inability to work because of sickness, the employee is entitled to salary during the period of sickness, paid by the employer, for up to 33 days in the calendar year. An employee who is 50 or older is entitled to receive such salary for up to 14 days. After that period is exhausted, if the employee is still unable to work, he or she is entitled to a sickness benefit, followed by a rehabilitation benefit, and these are covered by social insurance.

Hiring and Firing Requirements

A person may be engaged to work in Poland under an employment contract, or, if the person is freelance, under a civil-law contract. However it is contrary to law to conclude a civil-law contract instead of an employment contract if the person is working under conditions typical for an employment relationship. The regulations and protections discussed in this section generally have to do

with work under an employment contract rather than freelance work under a civil-law contract.

Among employment contracts, they are classified depending on the duration of the contract, which is based on the intent of the parties' with respect to the employee's role and duties. Polish labour law provides for the following types of employment contracts:

- employment contract for an indefinite period
- employment contract for a definite period
- employment contract for a trial period
- employment contract for the period required to perform a specific job
- employment contract for the period of absence of another employee.

Polish law does not set any minimum number of staff that an employer must hire. However, when the number of staff exceeds 20 (regardless of the basis for their employment), the employer is required to establish internal work rules and pay rules. Polish law does not require employment of any minimum number of Polish citizens, and does not require that Polish citizens be hired for specific positions within a company.

When hiring staff, the employer is required to comply with rules of equal treatment and personal data protection. The regulations restrict in particular the scope of information that an employer may demand from an applicant or an employee to name, parents' names, date of birth, place of birth, residence or mailing address, education, previous employment, and—from an employee only—PESEL identification number, and family status if relevant to the employee's entitlements; and other personal data only as required by other regulations.

When hiring staff, the employer is required to enter into a written employment contract with the employee. If the employment contract is made orally, the employer is required, no later than the first day of work, to provide the employee written confirmation of the type of

contract and the terms. An employment contract must set forth the parties, the type of contract, the date, and terms of work and pay: type of work, place where work is to be performed, salary, working time, and starting date.

The employer is also required to notify the employee in writing, no later than 7 days after conclusion of the contract, concerning the standards for working time per day and week in place at the employer, the frequency of salary payment, the length of annual holiday leave the employee is entitled to, the length of the termination notice period applicable to the employee, any collective labour agreement that covers the employee, and, if the employer is not required to establish work rules, additional information concerning night-time hours, the place and time salary is paid, and the manner in which employees' arrival and presence at work is confirmed, or absence is justified.

Before admitting an employee to work, the employer is required to send the employee for a preliminary medical exam to determine whether there are any medical reasons the employee should not perform the work. The employee must also undergo occupational health and safety training. The employer itself is also required to undergo training in occupational health and safety insofar as necessary for it to carry out its own obligations. The training needs to be repeated periodically.

The employer is required to register the employee with the Social Insurance Institution (ZUS) within 7 days after he or she begins work.

As with hiring of staff, there are also legal requirements imposed on employers terminating employment. The labour law provides for three basic methods for termination of employment contracts.

Termination of employment contact by agreement of the parties

An employment contract of any type may be terminated at any time by agreement of the parties. This method does not require consultation with the labour union and does

not require any justification. This approach may also be used with employees who are in a protected category (e.g. pre-retirement, on holiday leave, or pregnant).

Termination upon notice by employer

An employment contract may be terminated by the employer upon notice. The length of the notice period depends on the type of contract.

The termination notice period for an employment contract for an indefinite period depends on the length of employment at the given employer: 2 weeks if the employee has been employed less than 6 months, 1 month if the employee has been employed 6 months or more but less than 3 years, or 3 months if the employee has been employed 3 years or longer.

An employment contract for a definite period may be terminated upon 2 weeks' notice, but only if it was concluded for longer than 6 months and the parties expressly provided in the contract that it could be terminated early.

The termination notice period for an employment contract for a trial period is 3 days if the trial period is 2 weeks or less, 1 week if the trial period is longer than 2 weeks but less than 3 months, or 2 weeks if the trial period is 3 months (which is the maximum length of employment for a trial period).

The employer's notice of termination must be in writing and include a notification of the employee's right to challenge the notice in labour court. The notice may be served on the employee in person or by post or courier, against return receipt.

In the case of termination of an employment contract for an indefinite period, the notice must also state the grounds for termination. The grounds may be attributable to the employee (e.g. unsatisfactory performance) or the employer (e.g. financial difficulty or elimination of the position). In the case of termination upon notice of an employment contract for a definite period or a trial period, it is not necessary to state grounds for termination.

The employer is required to give written notice to the labour union at the workplace (if any) of the intention to terminate an employee's contract for an indefinite period upon notice. The union then has 5 days to raise any objection. Such notice is in the nature of consultation, and the employer may terminate the employee's contract over the objection of the union.

Termination of employment contract without advance notice

The Labour Code contains an exhaustive list of grounds on which the employer may terminate an employment contract without advance notice (also referred to as a "disciplinary" firing). These include:

- the employee's serious breach of basic employment duties
- commission of a crime by the employee during the term of employment which prevents continued employment at the position he or she holds, if guilt is clear or has been determined in a legally final judgment
- loss, through the fault of the employee, of qualifications necessary for the employee to perform work at the position held.

Termination of an employment contract without advance notice due to the fault of the employee must be done within 1 month after the employer learns of the circumstances justifying termination.

The employer is required to give written notice to the labour union representing the employee (if any) of the intention to terminate an employee's contract without advance notice. The union then has 3 days to raise any objection. Such notice is in the nature of consultation, and the employer may terminate the employee's contract over the objection of the union.

Polish law also provides for the ability to terminate an employment contract without advance notice without fault of the employee, if the employee has been absent from work because of illness for longer than the period provided by law, or in the event of the

employee's justified absence from employment for other reasons. Such termination may not be carried out once the reason for the absence has ended and the employee has reported to work again.

In any event, the employer's notice terminating the employment contract must be in writing, stating the grounds for termination and including notification of the employee's right to challenge the termination in labour court. The notice may be served on the employee in person or by post or courier, against return receipt.

Some groups of employees are protected from dismissal, e.g. pregnant women, employees on maternity or parental leave, employees who are eligible for retirement within 4 years, etc. There are some exceptions that reduce this protection, e.g. in collective or individual redundancies (discussed below), bankruptcy, or liquidation of the employer.

Generally, the labour law does not impose on employers any duties with respect to employees after termination of employment, except to issue an employment certificate within 7 days and to deregister the employee for social insurance purposes.

However, when employment is terminated under the procedure for group layoffs, and the employer then rehires staff within the same trade, the employer is required to rehire former employees who declare their desire to be rehired within 1 year after termination. Rehiring in such case must occur within 15 months after termination.

There is a similar requirement in the case of termination due to 3 months' absence of the employee because he or she has been subject to temporary arrest.

Labour Availability

Both skilled and unskilled staff are readily available in Poland for positions across the full range of industries.

Labour Permits

In most cases when an employer seeks to hire a foreigner (except for citizens of the EU or EEA), the employee must obtain a work permit in Poland. Please see comments at section XVII(J).

Safety Standards

Regulations concerning on-the-job health and safety are set forth in the Labour Code and in executive regulations such as the Regulation of the Minister of Labour and Social Policy of 26 September 1997 on General Provisions for Occupational Health and Safety.

Employers are responsible for occupational health and safety and are subject to numerous duties in this respect. Compliance is enforced by frequent labour inspections.

Unions

Labour unions are a popular form for organising workers in Poland and enjoy significant entitlements and protections. They are vested with broad authority with respect to protection of employee interests, the right to strike, the right to dispute individual and group layoffs, and so on.

The largest labour union operating in Poland is the national union Solidarity (*NSZZ Solidarność*). There are sectoral unions acting for specific groups of employees (e.g. miners or nurses), but they do not automatically cover workers belonging to specific trades. An employer is not required to cooperate with labour unions in the employer's industry if the staff are not members of the union or covered by its actions.

A workplace labour union may be established at a given workplace and covers the given employer pursuant to a resolution establishing the union adopted by at least 10 persons authorised to form a labour union.

An employer may also be covered by the actions of a union operating at a level beyond the specific workplace, even if it does not operate at the given workplace, if at least one employee at the workplace joins the union.

Labour unions operating in Poland are independent and self-governing, and thus as a rule are apolitical.

An employer has no right or duty to establish or organise the activity of labour unions. They are established and operate on the basis of freedom of association.

An employer is, however, required to assure labour unions freedom of activity, specifically by providing them information necessary for them to conduct union activity, providing them premises and technical equipment, granting leave to union officers, and respecting the protection against termination of employment enjoyed by certain union members.

In Poland, collective labour arrangements do not automatically cover all workers within a given industry. For a specific employer and its employees to become subject to a collective labour arrangement, an agreement is required between the labour unions and the given employer.

In specific circumstances, upon joint application of an employer organisation and labour unions operating at a level beyond the specific workplace which have entered into a labour arrangement at a level extending beyond specific workplaces, the Minister of Labour may, if an important social interest requires, issue a regulation extending the arrangement in whole or part to staff of an employer not covered by any broader labour arrangement, conducting operations the same as or similar to those conducted by the employers covered by the arrangement, after obtaining an opinion from the employer or the indicated employers' organisation and the workplace labour organisation, if any, in place at the employer.

12. Polish tax system

Any public charges in Poland may be imposed only by a legal act with the rank of a statute adopted by the Parliament. Taxpayers have an opportunity to obtain individually binding interpretations of tax law.

Poland has a well-developed system of treaties on avoidance of double taxation.

Some of them, for example the treaty with Cyprus, in spite of recent amendments to this treaty, may constitute an effective tax planning instrument.

Poland has tax treaties with the following countries:

Albania	Iran	Qatar
Algeria	Ireland	Romania
Armenia	Isle of Man	Russia
Australia	Israel	Saudi Arabia
Austria	Italy	Serbia
Azerbaijan	Japan	Singapore
Bangladesh	Jersey	Slovakia
Belarus	Jordan	Slovenia
Belgium	Kazakhstan	South Africa
Bosnia & Herzegovina	Kuwait	South Korea
Bulgaria	Kyrgyzstan	Spain
Canada	Latvia	Sri Lanka
Chile	Lebanon	Sweden
China	Lithuania	Switzerland
Croatia	Luxembourg	Syria
Cyprus	Macedonia	Tajikistan
Czech Republic	Malaysia	Thailand
Denmark	Malta	Tunisia
Egypt	Mexico	Turkey
Estonia	Moldova	Ukraine
Finland	Mongolia	United Arab Emirates
France	Montenegro	United Kingdom
Georgia	Morocco	United States
Germany	Netherlands	Uruguay
Greece	New Zealand	Uzbekistan
Guernsey (signed on 8 October	Nigeria	Vietnam

2013, but not ratified yet)		
Hungary	Norway	Zambia
Iceland	Pakistan	Zimbabwe
India	Philippines	
Indonesia	Portugal	

Corporate income tax

The standard 19% CIT rate serves as a form of incentive for investors. The Polish Ministry of Finance is in the process of formulating a strategy for fighting erosion of the tax base. Thus currently there are regulations in the legislative process concerning foreign-controlled companies and a general clause for setting aside efforts to circumvent the law (the prior version of which was stricken by the Polish Constitutional Tribunal). It is anticipated that it will come into force in 2014. Taxpayers for CIT purposes are:

- legal persons, including joint-stock companies and limited-liability companies
- organisational units without legal personality, such as cooperatives; however, partnerships are generally not CIT payers (see discussion below and in the section concerning personal income tax).

Foreign partnerships do pay CIT in Poland on income earned in Poland, however, if in the country where they have their registration or management they are treated as legal persons and are subject to taxation on all their income, wherever earned.

With respect to the subject matter of taxation, the following are subject to CIT:

- all income, wherever earned (residency principle), in the case of taxpayers with their registered office or management in Poland, or
- only income earned in Poland (source principle), in the case of taxpayers that do not have their registered office or management in Poland.

These rules may be modified by tax treaties to which Poland is a party, or by EU regulations (see below).

Tax basis

The basis for taxation is generally income, understood as the difference between revenue and revenue-earning costs.

Revenue-earning costs are costs incurred for the purpose of achieving revenue or maintaining or securing a source of revenue, so long as they are not included in the list of expenditures that are excluded from revenue-earning costs.

Typical revenue-earning costs thus include such items as expenditures by an employer on employee salaries and pension schemes, royalties and licence fees, expenditures on raw materials, and so on.

Costs incurred to acquire or create fixed assets (e.g. buildings, machinery and vehicles) and intangibles (e.g. copyright) with an initial basis of over PLN 3,500 are generally subject to depreciation.

The rule is straight-line depreciation. The taxpayer may elect the declining-balance method, subject to certain restrictions (e.g. it may not be used for intangibles). Once a depreciation method has been adopted, it must be carried forward until the fixed asset is fully depreciated.

Revenue-earning costs generally do not include:

- VAT (with certain exceptions)
- interest on loans barred by thin capitalisation rules (see below)
- costs of increasing the company's share capital.

Revenue-earning costs directly tied to revenue (e.g. expenditures for raw materials used to create a good sold) are generally deducted during the tax year in which the corresponding revenue is earned. Indirect revenue-earning costs (e.g. general administration) are generally deducted as of the date they are incurred.

Thin capitalisation

Polish thin capitalisation rules limit the ability to deduct as revenue-earning costs the interest on loans to the taxpayer by specific creditors to the extent that the indebtedness to such creditors exceeds three times the company's share capital. Such creditors include:

- direct shareholders of the taxpayer whose share in the share capital is 25% or more
- affiliates of the taxpayer, where one entity holds at least 25% of the shares in each company.

It is anticipated that in 2014 thin capitalisation rules will also include indirect shareholders of the taxpayer, holding at least 25% of the share capital of the direct shareholders.

Losses

If a taxpayer generates a loss in a tax year, the loss may be carried forward over the next 5 tax years, but no more than 50% of the loss may be applied in any one tax year.

Exemptions and tax breaks

The CIT Act and separate acts provide for an extensive set of tax breaks and exemptions. Some of them include:

Tax break for new technologies

An acquirer of new technologies (in the form of intangibles) has a right to deduct an additional 50% of such expenditures, while maintaining the right to depreciate the full value of the investment. Taxpayers enjoying a tax exemption for operations in a Special Economic Zone are not eligible for this relief. There are restrictions with respect to the requirement for novelty and the requirement

to use the technology and not sell it over a defined period.

Exemption for investment funds and pension funds

From 1 January 2011, revenue of investment funds and pension funds from the EU or EEA are exempt from CIT. (Previously such exemption was applicable only to funds operating under Polish regulations.) Pension funds may enjoy this exemption only if their activity is exclusively limited to collecting and investing funds for the purpose of paying them out to participants in pension schemes after they reach retirement age.

Exemption for operations in Special Economic Zone

Revenues from operations in a Special Economic Zone are also exempt from CIT pursuant to the relevant permit.

Taxation at source

Polish CIT regulations generally provide for the need to withhold tax at the source on unearned income (dividends, interest and royalties), whether paid to Polish or foreign recipients. In light of the extensive system of tax treaties and EU regulations, there are many restrictions on imposition of tax in this respect.

Tax of dividends at source

Dividends paid by companies that are Polish residents are taxed at 19% of the revenue, and are withheld at the source.

Dividends paid by Polish companies may enjoy relief partially arising under implementation of the Parent-Subsidiary Directive, if:

- the recipient of the income is a company that is a tax resident of Poland or another member state of the EU or EEA or Switzerland (the recipient of the dividend may be a foreign establishment of the company in one of these countries)
- the recipient of the income directly holds no less than 10% of the shares (25% in the case of Switzerland) in the

company paying the dividends for an uninterrupted 2-year period, although the holding period may end after the date when the dividend is paid.

Taxation of dividends at the source may also be limited by a tax treaty. Most of the tax treaties entered into by Poland provide for taxation of dividends at the source, but at a rate lower than that normally provided by Polish law. Some treaties provide for an exemption from taxation at the source if the recipient holds the required percentage of the share capital of the company paying the dividend (e.g. tax treaties with Ireland, Kuwait and the UK).

Taxation at source on interest and royalties

Interest and royalties paid by companies that are tax residents of Poland to non-resident companies are generally subject to taxation of 20% at the source.

The statutory rate of taxation at the source on interest and royalties may be exempt from taxation under regulations implementing the Interest and Royalties Directive (2003/49/EC), paid by Polish companies (or under certain conditions by a foreign establishment of a company from another EU member state), if:

- the recipient of the income is a company that is a resident of an EU member state other than Poland, and
- one of the companies directly holds at least 25% of the shares in the other company, or another company that is a resident of an EU member state directly holds at least 25% of the shares in both of the companies (the payer and the recipient) for an uninterrupted period of at least 2 years, although such period may end after the date of receipt of the interest or royalties.

Tax treaties may also provide for reduction of the rate of taxation at the source, or even a

complete exemption (e.g. in the case of treaties with France and Spain). Many of the tax treaties to which Poland is a party that reduce the tax rate also provide for an exemption from taxation at the source of certain types of interest, such as interest on bank loans (e.g. treaties with Ireland, the Netherlands and the UK).

With respect to royalties, tax treaties typically provide only for a reduction in tax rates. In addition, some tax treaties provide for an exemption for certain types of rights (e.g. treaties with Canada, Finland, France, Ireland, Japan, Norway and Spain). It should be pointed out that there is a dispute in the case law and tax practice with respect to whether royalties on computer programs are subject to taxation at the source pursuant to tax treaties.

Capital gains tax

In Poland, capital gains are taxed at 19%.

Under Polish tax treaties, capital gains are taxed only by the country where the recipient of the income has its residence. Nonetheless, in many treaties concluded by Poland there is a clause under which income from sale of shares in a company whose assets chiefly consist of real estate is taxed in the country where the real estate is located (e.g. treaties with France, Spain, Sweden and the UK).

Transfer pricing

Polish transfer pricing regulations generally implement the OECD guidelines. Therefore transactions between related entities should generally be in line with market prices.

Operations of a subsidiary or branch

The chart below provides a comparison of the tax consequences of operations in the form of an establishment (e.g. a branch) or in the form of a subsidiary.

Tax aspect	Establishment	Subsidiary
entity regarded as taxpayer	headquarters	subsidiary
corporate veil	does not apply	applies
entity liable for tax arrears in Poland	headquarters	subsidiary
cost-splitting among entities	possible (area of tax risk)	possible (area of tax risk)
transfer pricing rules	may be applied in limited respect (to be expanded)	in most cases transfer pricing rules must be applied
thin capitalisation rules	not applicable, but rules comparable to transfer pricing come into play	applicable
tax at source	not charged	charged, but may be optimised

Declarations and deadlines

CIT is calculated on an annual basis, but taxpayers are required to pay monthly advances. For taxpayers beginning operations and for small taxpayers, it is possible to elect quarterly payments. An advance is due by the 20th day of the month following the end of the payment period in question (month or quarter). There is an exception for tax on interest and royalties paid to non-residents and for dividends, in which cases the payer is required to withhold tax on the date of payment and pay it over to the tax office by the 7th day of the following month.

Annual tax returns and the tax due thereunder (the difference between the total tax and advances paid) for the whole year must be submitted and paid within 3 months after the end of the end of the tax year. The tax year is generally the calendar year, but taxpayers may elect another 12-month period as the tax year. Additionally, companies paying out dividends, interest and royalties are required to submit relevant declarations and information with respect to tax withheld at the source and the income received by taxpayers.

VAT

Polish VAT regulations implement the VAT system developed under EU law. A

fundamental assumption of the system is neutrality: only added value is effectively subject to tax, as reflected in the rule of full deduction of input VAT on acquisition of goods and services used to conduct taxable activities.

VAT payers are legal persons, organisational units without legal personality (including partnerships), as well as individuals conducting economic activity for purposes of the VAT Act (which contains a broad definition of economic activity). In expressly provided instances, certain entities may be subject to VAT even though their activity does not fit within the definition of economic activity set forth in the act, and such entities generally are not VAT payers. Supply of new vehicles is such an activity. Taxpayers conducting cross-border transactions within the EU must carry out an EU VAT registration.

The basic VAT rate is 23%, and is applicable to all goods and services unless the act expressly provides for application of a reduced rate (8%, 5% or 0%) or exempts the good or service from VAT.

Reduced rates

The 8% rate applies to such items as processed foods and services related to transport, lodging and sport. The 5% rate applies to unprocessed foods, and the 0% rate applies to such items as exports and intra-Community supply of goods.

Exemptions

Some of the major categories of activities exempt from VAT include:

- educational services provided by accredited suppliers
- medical services provided by medical professionals and healthcare facilities
- lease of real estate for residential purposes
- sale of buildings and other structures or portions thereof, except for sale of residential real estate on the primary market (i.e. in connection with initial occupancy or prior to initial occupancy if there is less than 2 years between the sale and occupancy of the building, and in certain other instances).

Declarations and deadlines

VAT payers are required to file monthly VAT-7 declarations, by the 25th day of the following month, unless they elect quarterly payments, in which case declarations must be filed by the 25th day of the month following the end of the quarter. The tax is due at the same time.

Taxpayers registered as EU VAT payers are required to file summary reports with the tax office.

If the input VAT for a given settlement period is greater than the output VAT, the excess is carried over to the next settlement period, or the taxpayer has a right to seek a refund. The deadline for paying the refund is generally 60 days, but in some cases may be reduced to 25 days.

Excise tax

Excise tax is an indirect tax imposed on strictly defined consumption goods. Because excise tax is charged at only one level of turnover, there is no opportunity to subtract the excise tax paid from the excise tax due.

The following products are covered by excise harmonisation within the EU:

- energy products

- ethyl alcohol and alcoholic beverages
- tobacco products
- electricity.

In addition, the Polish Parliament has decided to impose excise tax on certain activities related to new passenger cars (i.e. prior to initial registration).

If supply of goods is also subject to VAT, excise tax is included in the VAT base.

Tax basis and rates

Methods for determining the basis for excise tax and the applicable rates are applied to specific excise goods. The rates may be:

- a lump sum, where the excise basis is determined based on product quantity (e.g. per MWh of electricity)
- a percentage, where the excise basis is the value of the good (applied only with respect to passenger cars); in certain instances the tax authorities may estimate the value
- mixed, i.e. combining a lump sum element and a percentage element (applicable to tobacco products).

Real estate tax

Taxpayers for purposes of real estate tax are all legal entities that are owners (or exercise authority over real estate as owners) or perpetual usufructuaries of land, or holders asserting title to real estate, apart from agricultural and forest land unless it is used for economic activity. In certain instances other possessors of real estate may be required to pay real estate tax.

The act defines only the maximum rates of real estate. The local authorities set the actual rate, which may be less. The tax basis is

- in the case of land, the area
- in the case of buildings, the usable area
- in the case of structures or parts thereof connected with conducting economic

activity, the value that is the basis for depreciation (or otherwise the market value).

Among the entities exempt from real estate tax are research and development centres. Local authorities may also introduce other exemptions as a form of public aid. Exemptions for specific taxpayers are impermissible. Subject-matter exemptions typically require that certain investment or employment thresholds be met.

Declarations and deadlines

Legal persons and organisational units without legal personality (including partnerships) are required to file declarations for the given tax year by 15 January of the following year. Taxpayers are required to pay the tax in instalments by the 15th of each month.

Individuals are not required to file declarations, but they are required to file statements concerning events that may result in creation, amendment or expiration of the tax obligation. Individuals pay the tax in four instalments, in accordance with an assessment issued for the year. Given the constitutive nature of the assessment, individuals are not required to calculate real estate tax themselves.

Tax on civil-law transactions

Civil-law transaction tax (in other words, stamp duty) is charged only on transactions specifically listed in Art. 1 of the Act on Civil-Law Transaction Tax. Any transaction that is not listed is not subject to the tax. Also exempt are any transactions as to which at least one of the parties is subject to VAT or enjoys a VAT exemption (other than transactions involving shares or real estate).

Among the most important transactions covered by the civil-law transaction tax are agreements on sale or exchange of chattels or property rights, loan agreements, and articles of association or amendments thereto. The rates vary depending on the type of transaction, for example, 0.5% of the

amount of a capital increase, or in the case of sale of real estate, 2% of the market value.

Declarations and deadlines

In most instances the taxpayer is the party regarded as the acquirer (e.g. the buyer, or the borrower in the case of a loan). On amendment of articles of association, the company itself is the taxpayer. The taxpayer is generally required to file a declaration (Form PCC-3) and pay the tax within 14 days following the transaction. If the transaction is conducted in the form of a notary deed, the notary is required to collect and remit the tax.

Mandatory social insurance and health insurance contributions

Business entities (whether legal persons, organisational units without legal personality, or individuals conducting business activity) are generally remitters of contributions for social insurance and public health insurance for individual employees and freelancers who do not have their own registered businesses. A portion of the contribution is paid by the employee or freelancer and deducted from their pay, and a portion is paid by the employer (or business hiring a freelancer).

Other business-related taxes

The taxes identified below are of relatively minor importance because of the insignificant tax levied or the limited scope of taxpayers affected:

- agricultural tax, charged on land classified as agricultural (including land covered by shrubs or woods), unless used for economic activity other than agriculture
- forest tax, charged on forest land, unless used for economic activity other than forestry
- tonnage tax, charged on specific types of income earned by ship owners operating seagoing vessels in international shipping

- transport tax, charged on vehicles of gross permissible weight above 3.5 metric tons.

Personal income tax

Personal income tax is generally due in Poland on:

- all income, wherever earned (residency principle), in the case of individuals who are Polish residents for tax purposes, i.e. who have the centre of their life interests in Poland or are in Poland for longer than 183 days within the tax year, or:

- only income earned in Poland (source principle), in the case of other taxpayers, who are not Polish tax residents but earn income in Poland.

These rules may be subject to modification under tax treaties entered into by Poland.

Taxpayers for PIT purposes are individuals. Various types of income may be taxed separately, while income from certain sources may be added together and taxed jointly.

Income (understood, as with CIT, as the difference between revenue received and revenue-earning costs) is generally taxed at the following scale (since 2010):

Tax basis	Rate applied
up to PLN 85,528	18%
above PLN 85,528	32%

Married couples have an option to file joint returns, and there is also a tax credit for persons raising children.

In-kind benefits provided by employer to employee are treated as part of the employee's salary, except for benefits which the employer is required to pay by law. In practice, this is an area which is subject to numerous controversies in the practice of tax authorities and in court decisions.

Business income

Income from business activity is subject to PIT according to the foregoing general tax scale. However, individuals conducting business may elect taxation of income at a flat rate of 19%. In light of the generally preferential nature of this rate, individuals conducting business who elect this system of taxation may not claim most other deductions or credits, and may not file joint marital returns.

In the case of a tax loss for the given year, the taxpayer may carry forward the loss over the next five years, but may not apply more than 50% of the loss within any one tax year.

There are also several simplified forms for taxation of business income, which are chiefly

designed for micro enterprises generating modest levels of income.

Taxation of partners

Partnerships are not taxpayers for purposes of income tax, but are pass-through entities, and partnership income is taxed at the level of the partners. The revenue and costs of the partnership are treated as business revenue and costs of the partners, in proportion to each partner's share in the profit of the partnership. Because partnership income is treated as business income, a partner may elect taxation at the flat rate of 19%. However, the administrative courts have held that income of partners earned under a managerial contract must be taxed at the general 18%/32% scale.

Capital gains

For purposes of Polish PIT, there is no general regulation treating capital gains separately from other sources of income, but there is specific treatment of certain forms of capital gains.

Income from disposal of shares in legal persons is subject to tax at the rate of 19%, as is income from sale of securities and

derivatives. Such income is reported in a separate return and is not combined with income from other sources. Income from the liquidation of a legal person is subject to taxation under the same rules as income from participation in profit of legal persons, at the rate of 19%.

Income from the sale of real estate is subject to taxation (at the rate of 19%) only if the real estate is sold within 5 years after acquisition or construction of the real estate. If real estate is sold as part of the taxpayer's business, the income is not treated as business income. Income from the sale of real estate is exempt from income tax if the income is used within 2 years to satisfy residential needs. There is a limit on this exemption based on the formula:

$$I \times Ex/R$$

where I = income from sale, Ex = expenditures on satisfying residential needs, and R = revenue from sale.

This exemption applies to real estate acquired after 31 December 2008. (Sale of real estate acquired prior to that date is subject to an earlier regime of taxation and exemptions in effect when the property was acquired.)

Estate and gift tax

Acquisition of assets through gift or inheritance may be subject to estate and gift

tax in Poland. Taxpayers are divided into three groups for this purpose, depending on their degree of relationship to the decedent or donor. There are different tax rates and exclusions for each of the three groups. Taxpayers from the first group (e.g. spouse and children) pay tax at the rate of 2/5/7% of the amount above the exclusion of PLN 9,637, depending on the value of the gift or inheritance. The highest tax is paid by recipients in the third group, i.e. unrelated persons, with a tax rate of 12/16/20% above an exclusion of PLN 4,902, depending on the value of the gift or inheritance.

Exemptions

There is a complete exemption from estate and gift tax for spouses, descendants, ancestors, stepchildren, siblings, or stepparents of the decedent or donor, if they file a relevant declaration with the tax office within 6 months after a deed of gift is drawn up by a notary, or the gift is made, or in the case of inheritance, after the court order confirming inheritance becomes legally final; in the case of cash gifts, confirmation of the transfer of funds between the donor's and recipient's bank accounts is filed with the declaration.

There are also exemptions for such items as acquisition of residential real estate (under certain conditions) and trademarks.

13. Immigration requirements

Immigration Controls

Poland has no immigration quotas.

No vaccinations or medical certificates are required for Poland. In case of citizens of most countries outside the EU or EEA who must obtain a visa to visit Poland for short time, proof of health insurance with minimum

cover of EUR 30,000 is required in order to obtain a visa.

Depending on citizenship, a foreigner may be required to obtain a visa before entering the country or obtain a visa at the airport or border when entering Polish territory. For visitors required to obtain a visa, the visa is the only required entry document. No

separate entry permits are required, and no exit permits are required. No re-entry permits are required. The number of entries to Polish territory (and in general the Schengen territory) is limited only in the case of a single-entry visa. Visas are discussed in more detail in the earlier section on travel restrictions.

Immigration Requirements/Formalities

Foreigners are not required to obtain a residency permit prior to arriving in Poland. The requirement to obtain a relevant stay document arises only when the length of the foreigner's stay or intended stay in Poland exceeds the statutory limit. Foreigners from outside the EU or EEA should obtain the relevant permit before the validity of the visa under which they entered Poland expires, if they intend to extend their stay.

EU and EEA citizens and their families

Citizens of the EU or EEA, as well as members of their family who are not EU or EEA citizens, may stay in Poland up to 3 months without the necessity to fulfil any additional conditions for stay (other than the requirement to register the address where they are staying). EU or EEA citizens staying in Poland longer than 3 months (meeting one of the conditions for stay set forth in Art. 16 and following of the Act on Entry, Stay and Exit from the Territory of the Republic of Poland by Citizens of European Union Member States and Members of Their Families of 14 July 2006) are required to register their stay, and family members who are not EU or EEA citizens are required to obtain a stay card.

This registration is done with a personal visit to the appropriate province governor's office and should be done no later than 3 months after entering Poland. Registration and issuance of the relevant certificate for the EU or EEA citizen is done on the spot. In the case of a stay card for a family member, confirmation of filing of the application is issued on the spot and the card itself is issued within 6 months. The applicant must enclose documents or a statement on fulfilment of the

conditions for the stay, and in the case of a stay card a photo is also required. A valid travel document must also be presented.

After 5 years' uninterrupted temporary residence in Poland, an EU or EEA citizen or family member obtains the right to permanent residence. The application for a certificate confirming the right to permanent residence for the EU or EEA citizen, or a permanent residence card in the case of a family member, is filed in person with the province governor for the place of stay of the EU or EEA citizen. A family member who is not an EU or EEA citizen must file the application before expiration of the stay card if he or she wishes to stay in Poland. The certificate for the EU or EEA citizen is issued on the spot. In the case of the family member, confirmation of filing of the application is issued on the spot and the card itself is issued within 6 months. Photos must be enclosed with the application, and a valid travel document must be presented.

Citizens of third countries

Temporary residence

A citizen of a third country may obtain the right to stay in Poland following the period indicated in a visa, under a temporary residence permit, settlement permit, or stay permit for a long-term EC resident. The resident is issued a stay card, which is used as a form of identity within Poland and entitles the holder to cross the border multiple times without obtaining a visa.

A citizen of a third country may seek a temporary residence permit if he or she has justified reasons for staying in Poland for longer than 3 months. These grounds are listed in detail in the Act on Foreigners of 13 June 2003, for example where the foreigner:

- holds a work permit, or, if a work permit is not required, a statement by an employer on the intent to hire the foreigner
- conducts business activity in Poland that is beneficial to the Polish economy, particularly furthering growth

of investments, technology transfer, innovation or job creation

- is a spouse of a Polish citizen, or
- will be studying in Poland at the undergraduate or postgraduate level.

An application for a temporary residence permit is filed with the province governor for the place where the applicant is staying, or if applying from abroad, will be staying. If the person is not in Poland yet, the application is filed and delivered via the relevant Polish consulate, and the applicant must also obtain a visa to enter Poland in order to take up temporary residence under the permit.

If the citizen of a third country is in Poland, the application for a temporary residence permit must be filed at least 45 days before the end of the period of stay indicated in the visa or the end of the period of residence provided in the existing temporary residence permit.

A temporary residence permit is issued for the period necessary to carry out the purpose of the stay in Poland, but generally no longer than 2 years. When the permit is issued, a stay card is also issued which is valid for the period set forth in the permit. The procedure should take no longer than 3 months.

Permanent residence

A citizen of a third country may obtain a settlement permit if he or she:

- is a minor child of a foreigner holding a settlement permit and was born in Poland
- has been married to a Polish citizen for at least 3 years and has been in Poland for an uninterrupted period of at least 2 years immediately prior to filing the application on the basis of a temporary residence permit
- has been in Poland for an uninterrupted period of no less than 10 years immediately prior to filing the application on the basis of consent to a tolerated stay under Art. 97(1)(1), 97(1)(1a) or 97(2) of the Act on Granting Protection to Foreigners in

the Republic of Poland, or for 5 years on the basis of a grant of refugee status or supplementary protection, or

- is the child of a Polish citizen and is under the citizen's parental authority.

An application for a settlement permit is filed with the province governor for the place of stay, and only during a period of lawful stay in Poland. An application filed abroad will not be considered.

A settlement permit is granted for an indefinite period. The recipient is issued a permanent residence card that is valid for 10 years. The procedure takes up to 3 months.

Long-term EC resident

A citizen of a third country may be granted a permit for a long-term EC resident if the person has stayed in Poland, legally and without interruption, for at least 5 years immediately prior to filing the application, and (with certain exceptions) has:

- a stable and regular source of income sufficient to cover the living costs of himself and his dependents, and
- health insurance, within the meaning of the regulations concerning universal health insurance, or proof of insurance cover for costs of treatment in Poland.

A stay in Poland is regarded as uninterrupted (with certain exceptions) if none of the interruptions have lasted longer than 6 months and in total did not exceed 10 months.

An application for a long-term EC resident permit is filed with the province governor for the place of stay of the third-country citizen during his or her lawful stay in Poland. (An application filed abroad will not be considered.)

A long-term EC resident permit is granted for an indefinite period. When the status is granted, the person is issued a residence card valid for 5 years. The procedure should take no longer than 3 months.

Regardless of the type of document held by the foreigner entitling him or her to stay in

Poland, the foreigner is required to notify the authority that issued the permit of any change of address.

Visas

Visas are discussed in the previous section on travel restrictions.

14. Expatriate employees

Cost of Living and Immigration

The cost of living in Poland is comparable to that elsewhere in Europe, but somewhat lower than the European average. The highest costs for items such as housing, food and services are found in Warsaw and other large cities.

The annual inflation rate as of 2012 was about 3.7%.

Drivers' Licences

Driver's licences issued by any EU member state are honoured in Poland. An EU citizen may use such a driver's licence in Poland without any time limits and with no requirement to exchange it for a Polish licence.

Poland is a party to the Vienna Convention on Road Traffic. A person holding a driver's licence issued abroad by another country that is a party to the convention may operate a motor vehicle in Poland on the foreign licence for 6 months following the start of temporary or permanent residence. After that period the resident may receive a Polish driver's licence of the relevant category upon relinquishing the foreign licence to the licensing authority in Poland. Under the principle of reciprocity, however, the minister for transport may issue regulations establishing other conditions for issuance of drivers' licences to citizens of certain states.

If a driver's licence was issued by a country that is not a party to the Vienna Convention on Road Traffic, an additional condition for obtaining a Polish licence is to pass the theory portion of the state drivers' exam and

submit a certified translation of the foreign licence.

If a foreigner does not hold a driver's licence, he or she must fulfil the requirements applicable to Polish citizens in order to operate a motor vehicle, i.e. take a driver's education course and pass exams on theory and practice.

Education

In Poland there is a well-developed system of high-quality public and private educational institutions from the preschool through the university levels. Schools are also available, particularly in Warsaw and a few other major cities, where instruction is in a foreign language.

Private schools set their own tuition and enrolment requirements, typically with no citizenship restrictions. Compared to most other countries in Europe, school fees are fairly low in Poland.

Education in public schools is generally free for citizens of Poland or other countries. Tuition is charged for preschool. Citizens of other countries are required to cover the costs of education. The rules in this respect are set forth in the Education System Act of 7 September 1991 and the regulation of the Minister of Education issued under the act, of 1 April 2010.

For education through the primary and secondary levels, children who are not Polish citizens may be enrolled:

- in a public preschool, the first grade of elementary school, or artistic schools,

under the rules applicable to Polish citizens

- in the second through sixth grades of public elementary schools, and in middle schools or high schools, on the basis of a certificate or other acceptable document concerning completion of the relevant level of education abroad, or if such documents are not available, on the basis of a placement interview with the director or teaching staff of the school. If the child does not know Polish, arrangements are made for the placement interview to be conducted in a language the child understands.

With respect to higher education, certain foreigners are entitled to pursue studies in Poland on the same basis as Polish citizens. These are foreigners who:

- hold a residence permit
- hold a valid Polish Card (for foreigners of Polish background)
- hold refugee status given in Poland, or enjoy temporary protection in Poland
- are a migrating employee who is a citizen of another EU, EEA or EFTA country, or any member of such person's family residing in Poland
- hold a permit for long-term residence in the European Communities issued in Poland
- hold a permit for temporary residence in Poland due to specific circumstances
- were given supplementary protection in Poland, or
- are citizens of another EU, EEA or EFTA country, and their family members, with a right to permanent residency.

Other foreigners may study in Poland under rules set forth by treaty, agreements with foreign entities, a decision of the Minister of Science and Higher Education, or a decision of the rector of the university. Such persons may pay tuition to study in Poland, or may study free of charge under a stipend from the

state, their home institution abroad, or the university itself.

Housing

A wide variety of housing options are available in Poland. Apartment buildings predominate in cities. Single-family houses are typically found on the outskirts of cities and in small towns and rural areas.

Acquisition of real estate in Poland may require a permit from the Minister of the Interior, but there are numerous exemptions, for example for citizens of EU or EEA member states or long-time Polish residents, or related to apartments or other individual residential units.

Foreigners coming to Poland are generally not required to secure housing before arrival. In some cases it is necessary to indicate the address where the foreigner will be staying in Poland, but this may be the address of a hotel or other location (e.g. with family or other persons).

Medical Care

High-quality medical care, both public and private, is available throughout Poland.

Visitors from outside the EU must pay for medical care in Poland. Citizens of most countries from outside the EU or EEA who are required to obtain a visa must present evidence of health insurance with a minimum cover of EUR 30,000.

Persons entitled to receive public healthcare under EU coordination regulations are entitled to free public healthcare services during their stay in Poland. They should obtain a European Health Insurance Card before travelling.

Whether or not a person has any health insurance, emergency medical services will always provide necessary aid.

The emergency number for ambulance service is 999 from landlines and 112 from mobile phones.

Moving Costs

Moving costs vary depending on the city, the circumstances, and the type of transport involved. There are relocation companies in Poland specialising in assisting expats in moving to Poland.

Work Contracts

The types of employment contracts in Poland and the related rules are discussed in the section concerning employment law. In the case of foreigners hired temporarily to work in Poland, they will typically be offered an employment contract for a definite period, with the period tied to the validity of the work permit, visa or other document legalising their stay in Poland. The employer may be Polish or foreign.

The employer and the employee have some discretion to choose the law that will govern the employment contract:

- In the case of the EU, such choice cannot deprive the employee of the protections provided by the law of the country where the employee works. If the parties do not decide on the governing law, the law of the country in which the employee works will apply (or if that cannot be determined, the law of the country where the employer is located).
- In the case of countries outside the EU, the employer and the employee may decide on the governing law if it is related to the employment. If the parties do not decide on the governing law, the employment relationship is governed by the law of the country in which the parties had their residence or registered office when the employment relationship was established. If the work is, was, or was to be performed at the employer's registered office, the law of the registered office will govern the contract. If the parties do not reside or have their registered office in the same country, or did not choose the law, the law of the country in which the

work is, was, or was to be performed will apply.

Work Permits

In most cases, in order to be able to work legally in Poland, a citizen of a country outside the EU or EEA needs a work permit. There are a number of exceptions, however, which must be considered in every case.

There are several types of permits:

- Type A, applicable in most cases, is required if a foreigner is to perform work in Poland for an employer whose registered office, residence, branch, establishment or other form of business is located in Poland.
- Type B is required if a foreigner is to perform work in Poland for a period exceeding 6 months within 12 consecutive months as a member of the management board of a company in Poland (whether the company is already entered in the commercial register or is still in organisation).
- Type C is required if a foreigner is to perform work in Poland for a foreign employer and is delegated for a period exceeding 30 days in a calendar year to the foreign entity's branch or establishment in Poland, or subsidiary or affiliate which has entered into a long-term cooperation agreement with the foreign entity.
- Type D is required if a foreigner is to perform work in Poland for a foreign employer without a branch, establishment or other form of business in Poland and is delegated to Poland to provide temporary or incidental services (e.g. export services).
- Type E is required if a foreigner is to perform work in Poland for a foreign employer and is delegated to Poland for a period exceeding 3 months within 6 consecutive months for a purpose other than as provided for permit types A through D.

Regardless of the type of work permit applicable, the party to the work permit procedure is always the employer intending to employ the foreigner, not the foreigner himself. The application is filed with the province governor in Poland. The documents required to be filed with the application vary depending on the type of permit involved.

Whenever a Type A permit is required, the company intending to employ a foreigner must first demonstrate that there are no suitable Polish candidates for the specific position. The procedure for this involves listing the position at the local labour office. If no suitable Polish candidates are found, the labour office will provide certification to this effect and the employer may then apply for the permit.

The fee for a work permit application is:

- PLN 50 for a permit for up to 3 months
- PLN 100 for a permit for longer than 3 months
- PLN 200 for a Type D permit
- 50% of the foregoing for an extension of a work permit

A work permit is generally issued within 30 days (or in more complicated cases two months).

A work permit is usually issued for a period not exceeding one year, but may be extended for further periods.

This memorandum is for information purposes only. It may under no circumstances be taken as a letter of advice or legal opinion and shall in no way incur the professional liability of the law firm Wardyński & Partners.

About Wardyński & Partners

Wardyński & Partners is an independent Polish law firm serving businesses, financial institutions, and public and private organisations, from Poland and abroad.

Since its establishment over two decades ago, the firm has won the trust of its numerous clients, many of whom the firm has been serving for years. Polish clients value our expertise and skill at solving their most difficult legal problems. Foreign clients also appreciate our familiarity with Poland's legal, economic and cultural realities, combined with the experience we have developed over our many years of serving international companies.

We draw upon leading global best practice in law firm management and high-tech solutions. We continually strive to improve the firm's operations, which redounds to the benefit of our clients.

We strive to meet the highest legal and business standards. We are actively involved in building a strong civil society governed by the rule of law. We participate in non-profit initiatives as well as pro bono activity within the Strategic Litigation Programme of the Helsinki Foundation for Human Rights.

Our lawyers are active members of Polish and international legal organisations, such as the International Bar Association, the American Bar Association and the

International Fiscal Association, which provide them access to global knowhow and help them develop contacts with leading professionals around the world—a peer network that can prove invaluable to our clients as well.

The firm is regarded as a congenial place to work. We support our lawyers in their efforts to achieve professional, business and social growth, through such initiatives as continuing legal education and training in management skills.

The firm now has over 100 lawyers, serving clients in Polish, English, French, German, Spanish, Russian, Czech and Korean.

We publish the Litigation Portal, Poland's first portal devoted to topics related to judicial, arbitration and administrative proceedings. In 2012, we launched our Transactions Portal, which presents key information concerning the legal aspects of transactions. It contains reports on the most important changes in law, key legal decisions, and comments by leading experts on mergers & acquisitions. Both portals are published in Polish and English versions.

The firm is also the publisher of Wardyński+, the first Polish-language app on legal topics for iPad and Android. The app is available free of charge at the App Store and Google Play.

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