



K&L GATES

A Guide to Doing Business in Poland



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INTRODUCTION

WHY POLAND?

Some may recognize Poland due to the fact that the country is located between Russia and Germany. Others may have some knowledge or recollection of Polish cities or monuments. Some may find it interesting that the Polish film “Ida” won an Oscar this year. But for a number of people, Poland is still an agricultural country. And it is—Poland is the second largest producer, after China, of apples and the top producer in the European Union of poultry. So while Poland is an agricultural country, it is at the same time a country with considerable high-tech industries. Poland is very strong in the manufacturing and production of buses, roof windows (with a Polish producer the second largest in Europe), sail boats, railroad equipment, and ships and water craft.

Poland is a republic, with the capital Warsaw a mid-size city with 1.7 million inhabitants. Both the area of Poland and the population place the country sixth in Europe in terms of size. The country’s currency, the Polish Zloty, is fully convertible and, according to some experts, played an important role in Poland’s resilience during the financial crisis. Simply put, a flexible exchange rate against the euro amortizes external shocks hitting Poland from other parts of the world. The country’s time zone is the same as France’s and Germany’s and the Polish gross national product (GNP) is comparable with Belgium and Switzerland.

Poland today is a stable democracy. It scores relatively low in the Corruption Perceptions Index compared to its neighbors in Central and Eastern Europe. It is a member of the EU, NATO, OECD, WTO, IMF, and Schengen Zone. Poland is knocking on the G20’s door as its gross national product puts it, depending on the methodology applied, in 20th or 21st place with regard to GNP and it is competing for this place with Switzerland. Poland is recognized by the financial markets as a stable economy.

Poland is sometimes called a crisis-proof country, and this term was used because the country proved to be resilient during the global financial crisis. This is attributable to a number of reasons, including that only 45 percent of Polish GNP is connected to exports, meaning the country is not very dependent on exports and is more reliant on its own internal

market. Also, the inflation rate is low and gross domestic product (GDP) growth in 2014 was 3.3 percent, while in 2015 it will probably amount to 3.5 or 3.8 percent. This is still one of the highest GDP growth rates in Europe.

Poland is recognized as a good place for international investment and foreign direct investment (FDI). According to UNCTAD, it is the 14th most attractive FDI destination; according to EY, the second most attractive country for FDI in the next three years; and the third most attractive as a quality location for manufacturing according to the *Financial Times*. What is the reason for such excellent rankings? According to UNCTAD, the main advantages of Poland are its stable economic situation, market growth, internal market size, access to regional markets, cooperation with suppliers, and system of investment incentives.

So what are the most important factors for investing in Poland? According to a survey prepared by AHK Poland in 2014, investors care most about: labor costs (42 percent), the ability and quality of suppliers (49 percent), quality of higher education and productivity and motivation of the employees (57 percent), workforce skills (71 percent), and EU membership (90 percent).

We hope this guide will provide you with some useful information on the Polish economy and the business, corporate, competition, employment, intellectual property, real estate, and tax environment in the country.

Sincerely yours,

Maciej Jamka

Administrative Partner

K&L Gates Warsaw



ABOUT K&L GATES

K&L Gates is a global law firm with approximately 2,000 lawyers who operate in fully integrated offices across five continents. It has been named to *Law360*'s Global 20 for five consecutive years for being involved in the "largest, significant and groundbreaking international and cross-border matters over the past year." We feature eight offices across Europe and are the fastest growing law firm in the Asia Pacific*. K&L Gates was named for the third consecutive year to the Client Service 30 in 2015**, ranking eighth among 650 law firms as rated by in-house counsel.

Capitalizing on domestic and cross-border opportunities presents particular challenges. To assist clients in navigating these challenges, our Warsaw lawyers offer a unique combination of national and international experience in corporate, M&A, IP, and real estate transactions and litigation, as well as policy, regulatory, and government relations matters. This combination allows the team to provide clients with unparalleled depth and scope of advice in domestic as well as out bound legal matters.

Main Practice Areas in Warsaw

- Banking and Finance
- Corporate/M&A
- Capital Markets
- Competition
- Energy and Natural Resources
- Intellectual Property
- Labor and Employment
- Litigation and Dispute Resolution
- Public Procurement/Government Contracts/Regulatory
- Real Estate

Recognition

Our firm is recognized consistently for providing clients with the most sophisticated solutions to legal challenges around the world. Our Warsaw lawyers have been recommended for years in the most renowned international rankings, including *Chambers Global*, *Chambers Europe*, and *Legal500*, among others. In 2015, the Warsaw office received 14 individual recommendations for lawyers and 14 recommendations for practice groups.

To see more, please visit: klgates.com/pl/recognition

* FT Innovative Lawyers Asia-Pacific

** BTI Client Service Survey

CORPORATE

GENERAL OBSERVATIONS

General

Polish law defines business activity as “for-profit activity in the form of production, construction, trade, service, search for, identification and extraction of natural resources, as well as professional activity carried out in an organized and continuous manner.” The definition applies equally to Polish citizens, Polish companies, and foreign persons or companies (Foreigners), but Foreigners are subject to special rules regarding the form in which they are allowed to carry out “business activity.”

In general, carrying on economic activity in Poland should be free and allowed to everyone on equal terms subject to the conditions specified in the law. There is however a difference between treatment of investors from the European Union and European Free Trade Association members’ countries as well as countries that entered into specific treaties with the EU and investors from other countries. The first category of investors may conduct economic activity on the same terms as Polish citizens and choose any legal form of doing business that is possible under the Polish law. Other investors from outside the EU and EFTA member countries must have permits legalizing their stay in Poland or be limited to one of the below presented forms:

- a) a limited liability company;
- b) a joint-stock company;
- c) a limited partnership;
- d) a limited joint stock partnership;
- e) a branch office; or
- f) a representative office.

In addition, individuals may, in some circumstances, set up sole proprietorships.

Regulations Common to All Business Entities

All business entities in Poland (whether foreign or Polish-owned) are subject to certain common rules.

First, any entity (with the exception of a licensed representative

office) that does business in Poland, regardless of its corporate form, must be registered with the National Court Register (the Register) before commencing business activity. Its role is to provide official information on the identity and legal form of each business entity and, to the extent applicable, the entity's share capital, the provisions of its articles of association, and the names of the persons who are authorized to bind the company in transactions with third parties. The formalities of registration are essentially the same for each type of business entity, even though the specific forms used may be different. Entry into the Register requires payment of a fixed fee of PLN 500.

Apart from registration, the following actions must be taken before any company in Poland¹:

- a) publication of an announcement in the *Monitor Sądowy i Gospodarczy* (an official court bulletin);
- b) opening of a bank account;
- c) obtaining a title (which may be a lease) to the premises in which the entity will maintain its registered seat;
- d) notification of the applicable labor inspection office and sanitary inspection office regarding the place of business, the type and scope of activity to be conducted, the expected number of employees, and all measures the company intends to take to ensure health and safety in the workplace (e.g. ventilation, air-conditioning, etc.).

From 1 December 2014 the statistical number (REGON), tax identification number (NIP), as well as registration with the social security office (ZUS) are assigned automatically by means of a data communication network and after submission of a registration application to the Register. This procedure should not take more than seven days. During the prescribed period the commercial company will obtain a REGON and NIP in the Register, which allows commencing of business activity, regardless of the informational duties that need to be completed afterward (i.e. within 21 days of registration).

The process of commencing, registering, and completing the formalities can take two to three weeks (sometimes longer), depending on the speed and backlog of the courts.

¹ When establishing a branch office and a representative office, the same formalities should be maintained, except that a representative office is not required to publish an announcement in the *Monitor Sądowy i Gospodarczy*.

SETTING UP COMPANIES IN POLAND

Below is a brief description of the business forms which may be used by Foreigners in Poland. The various business forms described in this section are all subject to the regulations and procedural requirements described in the “Regulations Common to All Business Entities” section above.

Limited Liability Company

General Characteristics and Powers

A Polish limited liability company (*Spółka z ograniczoną odpowiedzialnością* or LLC for purposes of this memo) may be established by Polish citizens, as well as by Foreigners, or some combination of Polish citizens/entities and Foreigners. However, it may not be established solely by another single-member (Polish or non-Polish) LLC.

An LLC is founded through the execution of an official document by a Polish notary called a “Deed of Formation.” The Deed of Formation consists of (i) signed articles of incorporation, (ii) a record of the taking up of shares, and (iii) a description of the LLC’s initial board members.

The minimum founding capital for a Polish LLC is PLN 5,000. Contributions of capital may be in cash or “in kind”. Capital contributions may be made after the Deed of Formation is signed; however, all capital contributions must be made prior to filing for registration (unpaid capital is not allowed.) Importantly, it is not possible to have “authorized but unissued” share capital in an LLC.

All founding capital is divided into shares of a nominal value of PLN 50 or greater, which may be of equal or unequal value. All founding members must take up shares in the LLC and the shares cannot be certificated.

As a general rule, shares in an LLC may be transferred or pledged (as long as this is done pursuant to a written document with signatures authenticated by a notary). The Deed of Formation may impose limitations on the free transfer of shares (such as a restriction requiring the consent of other shareholders or the granting of a “right of preemption” or “right of first refusal” to other shareholders, giving them a priority right to buy any shares to be sold). Shares in an LLC are not considered “securities” under Polish law (as shares in a joint stock company are), meaning they cannot be traded on regulated or non-regulated markets and may be transferred only by way of a written agreement with notarized signatures.

Shares in an LLC may be “preferred” to voting rights, dividends, and distributions upon liquidation. However, preferred voting shares are limited to a maximum of three votes per share and dividends of not more than 150 percent of the regular shares’ dividends.

An LLC’s day-to-day operations are typically conducted by a Management Board, although the Polish Commercial Companies Code provides that some actions, such as dissolution of the corporation or amendment of the Deed of Formation, may be taken only by the shareholders and that certain other actions (e.g. actions by the board involving an amount of money over the level specified in the Deed) require the shareholders’ prior approval. The Management Board may consist of one or more members (who can be Polish or non-Polish citizens). Typically, any single member of the Management Board has the power to represent the LLC; however, the Deed of Formation may require multiple representation. As a general rule, the shareholders and Management Board members of an LLC are shielded from liability for the LLC’s debts and obligations. However, Management Board members are personally liable for unpaid taxes of the LLC and may also be liable for unsatisfied judgments against the LLC where the LLC has become insolvent and the Management Board has failed without good reason to timely initiate bankruptcy or composition proceedings. The Management Board members of any LLC that is in financial difficulty need to monitor this issue. Nonetheless, the Polish law does not recognize the concept of legal entities serving as directors of the company. Further, management and supervisory board members must always be individuals with full legal capacity. Moreover, there is no obligation to have Polish citizens on such boards.

An LLC may also have a Supervisory Board (or Audit Committee). A Supervisory Board is not mandatory unless the LLC has more than 25 shareholders and over PLN 500,000 in founding capital. Supervisory Board must be also established if the shareholders decide on such obligation in the company’s Deed of Formation. The Supervisory Board (the same as Management Board) is elected by the shareholders. Its role is to assist the shareholders in overseeing the Management Board.

Formation and Registration of the LLC

The founding documents for an LLC must be prepared and signed in front of a Polish notary. After the Deed of Formation is signed and the initial capital contributions have been made, but before registration in the Register is requested, the LLC is considered an “LLC in organization.” At this point, although the LLC is not formally established, it can carry out the business for which it was formed.

Prior to the registration, the Management Board should fulfill additional formalities like (i) obtain title (which may be a lease) to the premises in which the entity will maintain its offices and (ii) open a bank account.



Other Formalities

When the registration in the Register is completed, the Management Board or a proxy of the company should register the LLC for the purpose of VAT, EU-VAT, and corporate income tax issues. Furthermore, within 21 days of the completion of the registration procedure, the Management Board or the proxy should also submit additional documentation to the relevant tax authority consisting of a list of the bank accounts of the LLC, list of addresses of locations of economic activities, the address where the accounting records of LLC are kept, and the expected number of employees of the LLC. Tax authority will forward this information accordingly to the Statistical Office and National Social Insurance Institution.

Costs

The costs to establish an LLC (excluding legal fees and employment, leasing, and other operational costs) include:

- a) civil transactions tax, collected by the Notary preparing the Deed of Formation, amounting to 0.5 percent of the initial capitalization of the LLC;
- b) the Notary fee, collected by the Notary preparing the Deed of Formation, in an amount that varies according to the initial capitalization of the LLC from PLN 160 to not more than PLN 10,000 in any event;
- c) a PLN 500 registration fee and a PLN 100 fee for publishing the required announcement in the official court bulletin;
- d) a PLN 170 for VAT registration;
- e) there is no fee for income tax registration.

Joint Stock Company

General Characteristics and Powers

A Polish joint stock company (*spółka akcyjna* or JSC for purposes of this memo) is normally used when there are a large number of shareholders or when the equity structure of the entity is relatively complicated. A JSC is the only form of company typically used for businesses that wish to have their securities traded on the Warsaw Stock Exchange. Unlike an LLC (or any of the other forms of Polish companies), a JSC can issue debt securities, and it can issue voting and non-voting shares. The shareholders of a JSC have broad autonomy to diversify the rights related to different classes of shares in the JSC and to establish the company's capital structure. In contrast to shares in an LLC, a share in a JSC is considered a "security" and may be traded on regulated or non-regulated markets of securities markets.

If a JSC is "privately held" (that is, its shares are not traded on regulated or non-regulated securities markets), then its shares, although still considered "securities," are not subject to the Polish Securities Law, but only to the Commercial Companies Code.

As with an LLC, a JSC may have one or more founding members, but a single shareholder LLC may not be a sole owner of a JSC. All founding members must take shares in the JSC. As with an LLC, a JSC is established by signing a Deed of Formation in front of a notary.

A JSC's minimum founding capital is PLN 100,000.

The share capital of a JSC must be divided into indivisible shares of equal nominal value not lower than PLN 0.01. All shares issued by a public company must have one vote per share, but other companies may issue shares with up to two votes each.

Capital contributions may be “in kind” or in cash, but “in kind” contributions must be valued by a qualified appraiser (auditor) and approved by the court. Only 25 percent of the initial capital contributions must be made before filing the JSC documents for registration in the Register, but in this case only registered shares can be issued. If made up contributions are “in kind” the remaining 75 percent must be made within one year after registration of the JSC; if made up of cash, there is no statutory deadline for the remaining capitalization. A JSC must have a bank account to which cash contributions can be made before filing for registration.

Shares in a JSC can be issued in registered or bearer form. However, bearer shares cannot be preferred. Shares may be preferred to voting rights and rights to dividends, and liquidating distributions. However, preferred voting shares are limited to a maximum of two votes per share and to dividends not greater than 150 percent of the dividend granted to holders of regular shares.

A JSC is managed by a Management Board and must also have a Supervisory Board. Further, a JSC must establish and maintain a reserve capital fund into which at least 8 percent of its net annual profits are to be transferred until the fund attains a level equal to at least one-third of the company's registered share capital. JSCs are required to have their annual financial statements audited by a qualified accountant.

Transfers or registered pledges of JSC shares must be in writing and no notarization is needed.

Many of the aspects of forming a JSC, such as the costs and time needed for founding and registering, are the same as for an LLC. However, because a JSC's capitalization requirements are higher, the stamp duty taxes and notary fees are also higher. Moreover, making “in-kind” contributions to the share capital of a JSC may extend the time needed for court registration because of the requirement of a court-approved valuation.

Limited Partnership

A limited partnership (*spółka komandytowa* or LP for the purposes of this memo) is not a legal person, although it may enter into contracts in the company's name, and sue and be sued in the company's name. As with an LLC and JSC, the Deed of Formation of an LP must be executed by a notary. LP has no minimum share capital requirements.

There are two types of partners in an LP, who differ in the scope of their liability. The first type (Complementary Partners) are partners jointly and severally liable to the full extent of their personal assets for all obligations of the LP. However, the LP's creditors must first seek payment of their claims from the assets of the LP before seeking recourse against the Complementary Partners. The Complementary Partners may be

natural or legal persons. Each Complementary Partner has the power to represent the LP.

The other type of partners (Limited Partners) are liable for the LP's obligations only up to a declared amount indicated in the Register. Limited Partners do not have a right to represent an LP without authorization granted by the Complementary Partners.

Limited Joint-stock Partnership

A limited joint-stock partnership (*spółka komandytowo-akcyjna* or LJSP for purposes of this memo) is similar to an LP. A LJSP combines the structures of an LP and a JSC. Like an LP, it has two types of partners. The first type is the Complementary Partners, but the second type is more like shareholders in a JSC (they are not liable for the obligations of the LJSP but are obliged to take and pay for shares in the LJSP). As in an LP, the Complementary Partners have the power to represent the LJSP, while the shareholders may do so only by virtue of an authorization issued by the Complementary Partners.

The minimum share capital of an LJSP is PLN 50,000. The contributions may be in cash or “in kind.” The deed of an LJSP must be executed by a notary.

The day-to-day business of an LJSP is managed by the Complementary Partners (there is no Management Board). However, where the number of shareholders exceeds 25, a Supervisory Board must be established.

The General Meeting consists of all the shareholders and the Complementary Partners of the LJSP may take part in it but it is not obligatory. The General Meeting has mainly supervisory powers. It also has the power to make the most important decisions concerning the existence of the LJSP (for instance, it may adopt a resolution to dissolve the LJSP).

Other Partnerships

Apart from LP and LJSP there are other forms of partnerships available to investors entering the Polish market from EU and EFTA member countries. There are registered partnerships and professional partnerships (eligible for persons practising one of the free professions listed in the law). As in the case of other companies, they are also subject to registration in the Register. The main feature of these companies is that partners are personally liable for partnerships' obligations, but in a professional partnership the partner is not liable for the partnership's obligations arising out of the professional activity of the other partner.

ISSUES RELATED TO COMPANIES

LLC and JSC “In Organization”

A newly formed LLC or JSC acquires legal personality only after it is registered in the Register, i.e., it comes into being in such a way that it may be held liable for obligations, debts, etc. However, as soon as the articles of incorporation are signed before a notary, and before the registration is complete, the LLC or JSC (being an LLC or JSC “in organization”) has the power (a) to enter into certain kinds of contracts (e.g. those that help it toward full organization and operation, such as opening a bank account, leasing office space, purchasing assets, employing workers, etc.) and (b) to apply for and be granted administrative permits (e.g. zoning and construction permits, permits to purchase real estate in Poland, environmental permits, etc.).

Until the LLC or JSC acquires legal personality (i.e., it is registered in the Register), its founders may be personally liable for the obligations and debts of the company up to the value of their contributions. The LLC or JSC in organization cannot enter into contracts of indemnification with the founders, as this would not be seen as a contract that assisted in the formation of the company.

Online LLC, Registered Partnership, and LP

The Polish companies code enables the registration of some companies online. Online registration is possible for LLCs since 2012 and since 2015 for registered partnerships and LPs. In order to form a company, shareholder(s) use a standard articles of association form available in the electronic system operated by the Ministry of Justice and sign it with a digital signature. Online registration is permitted for both Polish citizens and Foreigners. It must be stressed that the standard form of articles of association is very simple covering only the basic elements required by the Companies code. Investors looking for more complex and sophisticated structures should set up a company in the traditional manner, i.e. before a Polish notary. The benefit of online registration is that the application is supposed to be considered within 24 hours, although in practice this deadline is often extended by a few days. Companies registering via the Internet may complete their contribution to the company within seven days from the registration date. At some point in the future, the electronic system will also enable amendments and termination of the company online. At present, only online registration is permissible.

OPENING A BRANCH OFFICE OR REPRESENTATIVE OFFICE IN POLAND

General

Foreigners who do not wish to create an entirely new corporate entity in Poland may be able to establish a “branch office” or “representative office” in Poland. A branch office may be opened only if “reciprocity” exists between Poland and the company’s home country. No such reciprocity is required to open a representative office in Poland, but the scope of activities permitted of a representative office is very limited.

Branch Office

Under Polish law, a branch office is regarded as a part of a Foreign entity seated abroad (i.e., it has no separate identity in Poland). Therefore, a branch office in Poland may not operate or hold itself out as the Foreigner’s “main office.” Importantly, the “parent company”² of the branch office is fully liable for the debts and liabilities of the branch office.

The branch office may engage in all activities that the parent company engages in. This means that the branch office’s scope of activities cannot be broader than the scope of activities of the parent company. Since the parent company is liable for the obligations of the branch office, this form probably makes sense only where the operations in Poland are expected to be relatively small and where the risk of loss or liability from the Polish operations is relatively low.

The fee to register a branch office in the Register is currently PLN 500 (the same as for forming a new Polish company) plus PLN 100 for the announcement in the official court bulletin. Polish Accountancy Law requires that a branch office keep separate accounting records in Polish. The branch office is subject to Polish VAT. The time needed to create a branch office is approximately six to eight weeks.

Representative Office

A foreign entity may establish a “representative office” in Poland which may engage only in advertising and promotion of the business of the Foreigner. A representative office may not conduct any other economic activity. The representative office cannot enter into any commercial agreements. The Foreigner is liable for the obligations of its representative office.

A representative office may start its activity as soon as it is registered on the List of Representative Offices kept by the Ministry of Economy (it does not have to register in the Register). The current registration fee is PLN 1,000.

² We use this term advisedly. Because the branch office is considered a part of the main company, there is no genuine parent - subsidiary relationship.

³ Individuals with dual citizenship, one of which is Polish, are considered to be Polish citizens.

In accordance with the Polish Accountancy Law, a representative office must keep separate accounting books in Polish. The time needed to create a representative office is approximately six to eight weeks.

ECONOMIC ACTIVITY OF INDIVIDUALS

General

Generally speaking, individuals who do not have Polish citizenship are subject to the same general rules that apply to companies.³ Except as described later in this section, a foreign individual may engage in “business activity” in Poland only by establishing a company to do so. As described in the “Regulations Common to All Business Entities” section, there are six business forms available to a foreign individual wishing to do business in Poland from outside EU or EFTA member countries: a limited liability company, joint stock company, limited partnership, limited joint stock partnership, branch office, and representative office (the latter two being subject to significant restrictions on their activities). Additionally, in some cases, it also may be possible for a foreign individual to operate as a “sole proprietorship.”

Sole Proprietorship

As in most countries, small businesses in Poland are often operated as sole proprietorships, although these have the same registration obligations with the Polish authorities as other Polish business forms (e.g. registration with the statistical office, the tax office, the social security office, and the labor inspection office). A sole proprietorship is not a formal company, although it is subject to the requirements listed in “Regulations Common to All Business Entities” section.⁴ It is the simplest way to conduct business in Poland as it is subject to fewer regulations than other business types. Foreign individuals may operate a sole proprietorship in Poland if they originate from EU or EFTA member countries or countries having appropriate treaties with EU or member countries provided they legalize their residence in Poland. A sole proprietorship may be carried out in the name of an individual or with a supplementary fictitious business name. The sole proprietor is personally liable (to the full extent of his or her personal assets) for all obligations arising out of its business. For this reason, an individual who wishes to conduct business activity in Poland may wish to form a company that will protect it from liability. A sole proprietorship must be registered in the Central Economic Activity Registration and Information (CEIDG). There are no capital requirements for sole proprietorships. Entry into the register of business activities does not require a payment.

⁴ Except for publication in the official court bulletin and obtaining title to premises.



It may be possible for a foreign individual who runs a sole proprietorship outside Poland to establish a Branch Office or Representative Office in Poland, provided that person otherwise meets the formal requirements described in the “Opening a Branch Office or Representative Office in Poland” section for establishing such an office. Reciprocity must be shown in order to establish a Branch Office of a foreign sole proprietorship, but not to establish a Representative Office.

GOVERNMENT APPROVALS

In Poland, performing business activity is in general free to all investors except for specific categories of exceptional public interest for which a concession, license, or permit are required.

A concession is the most demanding type of these approvals and is issued in the form of an administrative decision by an appropriate government member. Concessions are issued in business areas monopolized by the State Treasury. The number of concessions awarded may be limited and in case the number of applicants is greater than number of concessions available, the concession is granted in a tender procedure. The list of activities requiring the concession is exhaustive and includes:

- a) prospecting, exploration of deposits of hydrocarbons and solid minerals constituting the property of the State Treasury, prospecting and exploration of underground storage of carbon dioxide complex, mining of minerals from deposits, underground bulk storage of substances, underground waste dumping, underground storage of carbon dioxide;
- b) manufacture of and trading in explosives, weapons, and ammunition, as well as products and technologies used for military or police purposes;
- c) manufacture, processing, storage, transmission, distribution of, and trade in fuels and energy;
- d) transmission of carbon dioxide for the purpose of underground storage;
- e) protection of persons and property;
- f) broadcasting of radio and TV programmes, with the exception of programmes broadcast exclusively within an ICT system that does not use any terrestrial or satellite systems or cable networks;
- g) transport by air;
- h) operation of casinos.

Permits are also issued in the form of administrative decisions. As opposed to with a concession, an administrative body is under a duty to issue a permit if the applicant meets all the requirements. Permits are necessary for a number of activities such as:

- a) production of spirits and tobacco products;
- b) bottling, trading, and sale of alcoholic beverages;
- c) use of nuclear energy;
- d) conducting business activity within special economic zone;
- e) operating a bank;
- f) operating a securities and commodities exchange;
- g) operating a brokerage house;
- h) insurance activity;
- i) operating lotteries, cash bingo games, and betting.

A license is required to provide road and rail transportation.

Another form of limitation of business activity in Poland is the registration of regulated activity, which is required if the type of activity is perceived under the law as regulated activity. Such activities include: running temporary work agencies, storing personal employment files, providing money exchange services, postal and telecommunication services, tourist services, and organized horse racing.

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COMPETITION LAW

Competition law in Poland is harmonized with the EU law and has been recently amended—the amendments came to life in mid-January 2015.

Polish competition law regulates three main sectors:

- 1) merger clearance
- 2) anticompetition behavior
- 3) consumer protection

Polish authority (the Competition and Consumer Protection Office or the CCPO) closely cooperates with the European Commission, including referrals, joint conferences, and information exchange.

The CCPO decisions are appealable to the Polish competition court.

MERGER CLEARANCE

Thresholds for merger clearance in Poland are lower than in the EU and a Polish “component” is required. Filing in Poland may be required if:

- worldwide aggregate turnover of capital groups involved exceeded 1 billion euro in the past fiscal year; or
- Polish aggregate turnover of capital groups involved exceeded 50 million euro in the past fiscal year, and
- transaction causes or may cause effect in Poland.

Some multinational or even foreign M&A deals may require clearance in Poland. The transaction would not be invalid without the Polish clearance and the investigation by the CCPO is practically limited, however transactional documentation may require all local clearance proceedings completed before closing.

Typical M&A deals include share acquisition, asset transfer, and joint-venture (it should be noted that all types j-v are subject to filing, regardless whether full-function or non full-function).

Certain transactions may be exempted, for instance:

- because of the lower thresholds (below 10 million euro in each of the two preceding fiscal years generated in Poland);
- intra-group M&As; or

- temporary acquisition of shares by a financial institution to re-sell within one year (term may be extended).

ANTICOMPETITIVE BEHAVIORS

Various types of anticompetitive behaviors may be considered breach of competition regulations. The law provides for a list of examples which is not exhaustive.

The following acts are expressly forbidden by Polish competition law:

- price fixing and setting other conditions of sale or supply;
- production, sale, technical development; or investment restriction;
- market sharing;
- discrimination;
- tying and bundling;
- market entry restriction or elimination from the market; and
- bid rigging.

Also, abuse of dominant position is illegal.

There are very low requirements regarding evidence and the CCPO may use various exploratory techniques, such as dawn raids, market surveys, external analysis, or their own intelligence, as well as cooperate with other governmental authorities, such as police.

Transactions or acts breaching the regulation are invalid by virtue of law; for instance, a contract may be invalid in part or entirely.

Some vertical restraints may be exempted, for instance:

- exclusivity of supplies is allowed for a maximum of five years;
- exemption depends on market positions of parties—generally 30 percent threshold applies.

Severe penalties may be imposed on businesses (recently extended to managers and key officers) for certain anticompetitive behaviors:

- firms may be fined with up to 10 percent of their past year turnover;
- managers and key officers may be fined with up to 2 million zloty (appr. 670,000 USD, 500,000 EUR)—only for anti-competitive agreements (with the exception of bid rigging).

CONSUMER PROTECTION

Consumer protection regards only aggregate consumer interests, while individual protection is available from courts.

List of unlawful anti consumer clauses—also known as abusive clauses—is available from the public register on the CCPO's website (there are currently around 6,000 abusive clauses registered).

CCPO has certain tools which may be applied in pursuing the consumer protection policy; for instance it may issue a public warning of anticonsumer behavior if it suspects that a particular act (such as misleading advertisement) may breach consumers' rights.

INVESTIGATION, LENIENCY, AND PRIVATE ENFORCEMENT

One of the investigation tools used more often in Poland is dawn raids. CCPO's officers may be accompanied by police and have the right to search firms' premises and vehicles, as well as private homes.

Severe penalties may be imposed for interruption or disturbance of the investigation (recent fines for disturbing a dawn raid imposed in Poland exceeded 130 million zloty (appr. \$43.5 million USD, 32.5 million EUR)).

There are several types of leniency available for those who are parties to an anticompetitive agreement. Leniency may lead to:

- full immunity for a whistle-blower;
- reduction from 20 percent to 50 percent of fine to the next in line; or
- a new institution called leniency plus may be applied whereupon the reduction by 30 percent is available in a pending case and full immunity in relation to a new matter reported by an applicant.

The CCPO's investigation may end up with an infringement decision.

Private enforcement is not very popular in Poland yet, but this trend may change in time.

ANTICORRUPTION REGULATIONS

Anticorruption regulations in Poland are quite often related to anticompetition behaviors such as cartels or bid rigging.

Polish law provides for penalization of individuals as a rule—according to the Polish penal code a violator may be imprisoned for up to 12 years for corruption.

Firms may also be held liable for corruption, if an officer or a representative of a firm committed a bribery.

A broad range of penalties may be imposed:

- fine up to 5 million zloty (appr. \$1.670 million USD, 1.250 million EUR), but not exceeding 3 percent of annual revenue;
- seizure of profits or goods obtained as a result of corruption;
- optionally: prohibition of advertisement, refusal of state aid, refusal to be allowed to participate in public tenders, publication of court verdict.

Only bribery of a public officer is penalized; public officer definition includes:

- President of Poland, Polish and European PM, judge, public prosecutor, notary public, court receiver;
- member of governmental or municipal authorities, including controlling bodies;
- police officer, army member.

Polish subsidiaries of U.S. or UK firms should be aware that the FCPA or Bribery Act applies to their acts too: mother company in the U.S. or UK may be fined for a Polish subsidiary's behavior.

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EMPLOYMENT LAW

The main act governing employment issues in Poland is the Labor Code adopted on 26 June 1974. There are also specific regulations concerning: trade unions, employee personal data, collective redundancies, etc. Since joining the European Union in 2004, Polish employment law has been harmonized with EU laws. Currently, it provides a similar level of protection as in other EU member states (e.g. in the field of equal treatment, working time, collective redundancies, transfer of employment establishment, etc.). Employment law in Poland is rather formalistic and still “paper based” though.

EMPLOYMENT CONTRACTS

Most popular types of employment contracts include:

- contracts for probationary period (up to three months)
- fixed-term contracts
- contracts for indefinite period of time
- contracts for replacement of absent employee

Employment contract must define at least:

- type of work (position)
- place of work
- remuneration
- working time (full time/part time)
- date of commencement of work

Employment contracts should be made in writing and in Polish (bilingual forms are allowed though). Lack of a written contract may result in a fine (up to PLN 30,000; approximately EUR 7,200).

Each employee must be registered with the Social Security Agency within seven days following the commencement of employment at a given employer. Before admitting an employee to work, he/she should undergo: health and safety training, occupational training, and medical check up.

The following circumstances are commonly recognized to be characteristic of an employment contract (irrespective of the formal name of the contract):

- subordination to a superior
- payment in exchange for work
- obligation to perform work personally

- work performed in place and time indicated by an employer
- work performed at the “risk” of an employer
- paid holiday and sick leave

Hidden employment (i.e. signing a civil law (service) contract where an employment contract should be entered into) may result in a fine up to PLN 30,000 (approximately EUR 7,150) or—at least in theory—in criminal sanctions, including imprisonment.

WORKING TIME

There are various working time systems which can be applied by employers in Poland.

The applicable working time standards in the most popular, the so-called “basic” working time system, are: (i) eight hours a day; and (ii) an average of 40 hours in an average five day working week in the applicable settlement period which currently cannot exceed 12 months.

Weekly working time, together with overtime hours, cannot exceed an average of 48 hours in the applicable settlement period.

Work performed in excess of the applicable working time standards (in the basic working time system—eight hours per day and an average of 40 hours per week) constitutes overtime work.

Overtime work can take place in case of the “particular needs of an employer,” e.g.: client’s urgent request; closing of a project (there is no catalogue of such needs; it should be analyzed on a case-by-case basis).

The overtime work cannot be planned upfront, e.g. an employer cannot plan that a given employee employed in the basic working time system will work nine hours a day.

For performance of overtime work employees are entitled to additional remuneration and allowance (50 or 100 percent). Alternatively, overtime work can (and sometimes must) be compensated with time off.

HOLIDAY

Length of annual leave depends on a given employee's educational and general years of service and it amounts to 20 or 26 days (e.g. employees with higher education and—at the same time—at least 2 years of service are entitled to 26 days).

Annual leave should be granted to an employee in the same calendar year for which it is due. Unused vacation leave is carried over to the next year and must be granted until the end of September.

An employer may revoke the employee's leave in case his/her presence at work is required due to unforeseeable circumstances. In such a case, the employer is obliged to cover the costs incurred in direct relation to the revocation.

Payment in lieu of unused leave can be made only if the employment is terminated. It is not allowed to "pay out" the holiday entitlement in the course of employment.

On top of the annual leave, there are 13 public holidays per year (including two public holidays always falling on Sunday).

SICK PAY

Sick pay rules stem from the universally applicable provisions of law. This issue is not regulated by individual employment contracts (unless more beneficial—than the statutory - rules are to be applied to employees). Employers pay for 33 days of sickness in a calendar year ("sickness remuneration"). Such a payment corresponds to (as a general rule) 80 percent of a given employee's monthly remuneration. Further periods of sickness are financed by the state.

MATERNITY

Maternity leave currently amounts to 52 weeks. Employees are entitled to maternity allowance financed by the state (and not by the employer), which corresponds to (as a general rule) 80 percent of remuneration.

Only the first 20 weeks of the maternity leave are mandatory.

The remaining part is granted upon the employee's request only (such a request is binding though).

The first 14 weeks of the leave are available to the mother only. The remaining part can be shared between the parents.

In addition, a father employee is entitled to paternity leave of two weeks.

During the pregnancy and the period of the maternity leave, employees are entitled to special protection against termination of employment.

EMPLOYEE PERSONAL DATA

Polish law provides for a number of obligations of employers regarding their employees' data protection. There are very strict rules on the processing and storage of such data including the obligation to issue a so-called "policy on the safety of personal data" and "instruction on managing the computer system used for personal data processing."

The scope of data that can be collected from employees is limited to:

- name and surname
- names of parents
- date of birth
- place of residence
- PESEL number (indicated in the ID card)
- other personal data of the employee and personal data of his/her family members—if needed for granting benefits or exercising specific rights under the applicable provisions of law

Under Polish law, only an employer (i.e. the company that directly and formally employs employees) is entitled to process personal data of its employees. In consequence, it is (as a rule) illegal to simply share such data with, e.g. other companies from the same capital group. To do so, a specific service agreement and agreement on entrustment of personal data processing need to be signed.

EMPLOYEE REPRESENTATION

There are numerous consultation and information obligations towards employee representatives (trade unions, work councils, and employee representatives appointed on an “ad hoc” basis—for the purpose of specific consultation processes). For example:

- 1) internal labor law acts (e.g. work and remuneration regulations) must be consulted with trade unions and (as a general rule) with works councils (if present at a given employer);
- 2) termination of employment contract for an indefinite period with or without notice must also be consulted with trade unions (if present); the union’s opinion is non-binding

Trade unions are usually present at big, former state owned companies. A union’s presence in the private sector is not common. The same remark applies to the existence of collective bargaining agreements. Poland has relatively low union density (approx. 10 percent of employees) in comparison to the EU average of 23 percent.

In general, a trade union may be created by a group of at least 10 employees.

Work councils are quite common in Poland. They are present in both former state owned companies and private sector large entities.

EMPLOYMENT COSTS

Employment cost places Poland in the middle of the European stake.

TYPE OF SOCIAL INSURANCE	CONTRIBUTIONS FINANCED BY AN EMPLOYER	CONTRIBUTIONS FINANCED BY AN EMPLOYEE (DEDUCTED FROM GROSS SALARY)
Retirement pension insurance	9.76%	9.76%
Disability insurance	6.50%	1.50%
Work accident and occupational disease insurance	1.93% (as a rule)	-
Sickness insurance	-	2.45%
Health insurance	-	9.00%
Work Fund	2.45%	-
Employee Guaranteed Benefits Fund	0.1%	-

Income tax (withheld and remitted by the employer) is calculated in the following manner:

TAXABLE BASE IN PLN (GROSS SALARY AFTER SOCIAL DEDUCTIONS)		TAX DUE
Over	Up To	
	85,528	18% less the amount reducing the tax PLN 556.02
85,528		14,839.02 + 32% of the excess over PLN 85,528

The minimum monthly salary in Poland in 2015 amounts to PLN 1,750 gross (approx. EUR 420). The below table presents employment costs in total—calculated on the basis of the minimum salary.

TYPE OF SOCIAL INSURANCE	CONTRIBUTIONS COVERED BY THE EMPLOYER	THE VALUE OF CONTRIBUTION WHICH BURDENS THE EMPLOYER
Retirement pension insurance	9.76%	1,750 x 9.76% = PLN 170.80
Disability insurance	6.50%	1,750 x 6.50% = PLN 113.75
Work accident and occupational disease insurance	1.93% (as a rule)	1,750 x 1.93% = PLN 33.78
Work Fund	2.45%	1,750 x 2.45% = PLN 42.88
Employee Guaranteed Benefits Fund	0.1%	1,750 x 0.1% = PLN 1.75
TOTAL	20.74 %	PLN 362.96

Thus, the total cost of hiring an employee with the minimum salary in 2015 amounts to PLN 2,112.96 (gross remuneration—PLN 1,750 + employer’s costs PLN 362.96). The net salary paid to the employee would amount to PLN 1,286.16.

Average gross salary in the private sector in fourth quarter of 2014 in Poland amounted to PLN 4,138.58.

TERMINATION OF EMPLOYMENT

An employment contract can be terminated:

- unilaterally (with or without notice) or
- by way of a mutual agreement

In case of an employment contract for indefinite period, statutory notice periods depend on the employment record with a given employer: (i) two weeks—when the employment is shorter than six months; (ii) one month—if the employment



lasts at least six months; or (iii) three months - when the employment lasts at least three years.

In general, a fixed-term contract can be terminated with notice only if: (i) it has been concluded for a period exceeding six months; and (at the same time) (ii) it provides for the possibility of earlier termination with notice. Then the statutory notice period amounts to two weeks.

A contract of employment (irrespective of its type) may provide for a longer—than the statutory—notice periods. The effectiveness of such an extension must be analyzed on a case-by-case basis. In principle, the extension will be found effective if—in a given case—it is to the relevant employee's advantage. Shortening of the statutory notice periods in an employment contract (i.e. upfront) is permissible only with respect to the notice served by the employee.

Notice periods expressed in months elapse as at the end of the calendar month (i.e. three months' notice involves three full calendar months) and notice periods expressed in weeks elapse on Saturday.

Termination of an employment contract for indefinite period with notice must be based on a justified reason. The notice letter needs to indicate such a reason (it must also meet certain other requirements, e.g. instruction on the right to appeal to a labor court).

Termination without notice (disciplinary dismissal) is possible in exceptional cases only set forth in the applicable provisions of law, e.g. a serious, intentional breach of basic employment duties (such as theft).

Certain groups of employees are entitled to special protection against dismissal.

Statutory severance pay is due in the event of redundancies (so-called "termination of employment for reasons not concerning employees") carried out by employers with at least 20 employees. It varies from one up to three months' remuneration (depending on employment record with a given employee)—in 2015 this amount is capped at PLN 26,250 (approximately EUR 6,400).

An employee has the right to appeal against: (i) the notice—within seven days following the receipt of the notice letter; or (ii) termination without notice—within 14 days from the termination date. The claim may be based on formal reasons (e.g. incorrect form of the notice letter, lack of consultation procedure) or "fairness" reasons (e.g. the reason is not genuine, not serious or specific enough or discriminatory). In general, an employee may claim compensation or reinstatement in previous job (the latter is possible in case of an indefinite contract only).

MOST POPULAR CLAIMS

The most common employee claims are related to:

- overtime remuneration
- bonus payments
- appeals against termination of employment
- mobbing (bullying) and harassment

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INTELLECTUAL PROPERTY

The main areas of intellectual property law in Poland include patents, copyrights, trademarks, data protection, and unfair competition. The Warsaw Office of K&L Gates offers comprehensive legal services in each of these ranges. The basic legislations on these areas are *Industrial Property Law Act*, *Copyright and Related Rights Act*, *Personal Data Protection Act*, and *Unfair Competition Act*. Polish legislation is essentially influenced by European legislation which implies harmonization of legislation on the basis of EU law. Poland is also a party to a significant number of international agreements such as the TRIPS Agreement and the Madrid Agreement (WIPO system).

PATENTS

Patents in Poland are regulated by the *Industrial Property Law Act* of 2000. Patent can be granted only for an invention and the protection period is 20 years. By obtaining a patent, entitled party acquires the right to the exclusive use of the invention, for economic and professional purposes on the territory of Poland. To gain a patent the four basic conditions must be met by a potential invention. These conditions are: technical nature of the invention, novelty, inventive step, and industrial applicability. A patent is granted after examination of the fulfillment of those conditions by the Polish Patent Office. For purpose of this verification the patent application must include a detailed description of the invention, underlying its essential elements. The application must also be clear and supported by the material disclosed in the specification. Priority in granting a patent is based on the “first to file” principle. Besides the patent application, there are separate registration procedures regarding utility models and industrial designs.

COPYRIGHTS

Copyrights in Poland are regulated by the *Copyright and Related Rights Act* of 1994. Polish copyright law protects, *inter alia*, literary, scientific, and artistic works, if they constitute personal, intellectual creation. A work is protected by copyright if it is creative, has an individual character, and is fixed in any form, regardless of the value, purpose, and manner of expression. Besides that, works do not have to fulfill any formal requirements in order to be protected.

Copyrights in Poland are divided into moral rights and economic rights. Moral rights are non-transferable and are vested only in the creator. Economic rights are transferable, but

copyright agreements are governed by specific regulations and general rule of contractual freedom is not fully applicable to them. The holder may grant other parties permission to use the work under a license agreement or by contract transferring the rights to the work.

The economic rights are limited by the rules of permitted use, specifying the limitations and exclusions of copyright protection. The Act distinguishes between permitted use for private purposes and public permitted use.

Unless the statute or the contract provides otherwise, the employer obtains copyrights to the works created by the employee as a result of the exercise of the employee's duties.

Copyrights are the area covered by the harmonization within the EU. European legislation in this field do not have direct effect for the domestic legal order, but such acts as, for instance, Directive 2001/29/EC on harmonization of certain aspects of copyrights, are reflected in the national legislation and have a significant impact on the interpretation of national copyright law.

TRADEMARKS

Trademarks are regulated in Poland in the *Industrial Property Law Act* of 2000. As a trademark can be registered any mark (for instance a word, a symbol, figurative element) capable of being presented graphically and capable of distinguishing goods of one entrepreneur from those of the others. Consequently, the basic conditions of registration such mark as a trademark are, firstly: a link with a specific entrepreneur and secondly, a distinctive character in relation to the relevant goods.

By granting a trademark protection, a holder of right is entitled to exclusive use of the trademark for economic and professional purposes in the territory of Poland. Entitled party may claim for the cessation of using similar or identical marks by another party and compensation.

Trademark registration procedure requires the submission of the application to the Polish Patent Office that contains detailed information about the mark and indication of the goods for which the mark will be used. One application may relate to only one trademark. It is also necessary to specify the classes of goods for which the protection is sought. The protection period is 10 years and can be extended.

Parallel to national legislation, there exists European system based on Regulation Ec. No. 207/2009 on the Community Trademark constituting grounds for community trademarks granted by the Office for Harmonization in the Internal Market, being effective in all EU member states.

Trademarks are protected both by civil and criminal law. In the latter case the key role is played by the customs authorities and the police.

DATA PROTECTION

Protection of personal data is regulated in Poland by the Personal Data Protection Act of 1997, based on the EU personal data protection framework. According to this legislation, personal data is considered to be any information relating to an identified or identifiable person. Collection and processing of data is permitted only in accordance with one of the conditions listed in the relevant provisions of the *Personal Data Protection Act*. These conditions include, *inter alia*, consent of data subject or fulfilling a contract to which the data subject is a party. Personal data controller is obliged to submit the existence of a data filing system to the Data Protection Authority. Alternatively, a personal data controller can appoint a data protection official, keeping a record of data filing systems of the personal data controller. Such data protection official must be

registered by the Data Protection Authority. Personal data can be transferred freely to countries within the EEA. To transfer data to countries outside the EEA, written consent of data subject is usually needed. It is also permitted if the data controller provides sufficient safeguards by implementing standard contractual clauses approved by EU Council or binding corporate rules approved by the National Data Protection Authority. Within the EU there are works to create the unified data protection system by enacting General Data Protection Regulation.

UNFAIR COMPETITION

Unfair competition is regulated by combating *Unfair Competition Act* of 1993. According to this act an “act of unfair competition,” is an act contrary to law or good practices, if it threatens or violates the interests of another entrepreneur or customer. This general principle is substantiated by statutory examples of unfair commercial practices that are deemed to be illegal. Such practices are, *inter alia*, misleading naming of the company, false or fraudulent description of geographical origin of the goods or services, misleading naming of goods or services, violation of trade secrets, incitement to termination or non-performance of a binding contract, slavish imitation of products, obstruction of access to the market, or bribery of a public official. In case of violation of fair competition rules, the injured party is entitled to a number of claims of which of the significant importance are compensation of financial loss and right to have the effects of the breaches removed by the infringer.

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REAL PROPERTY LAW

Polish regulations regarding real property issues have specific features which differentiate them from other legal systems (e.g. perpetual usufruct right). However, in general these regulations are similar to the other legal systems based on the civil code. The summary below explains some general issues regarding real property law in Poland.

LEGAL TITLE

Ownership

Ownership provides for the broadest scope of rights to real estate which may be limited by the law and rules of “social co-existence.” It is fully transferable and encompasses the right to possess, use, transfer, dispose of, encumber, and derive benefits and income from the real estate.

Perpetual Usufruct

The perpetual usufruct right (*użytkowanie wieczyste*) is similar to the ownership right, however, it may be established by the State Treasury or local governmental entities only.

The perpetual usufruct right is transferable, it can be encumbered, including with easements, usufruct or with a mortgage. It differs from the ownership right in two major ways: (i) it is limited in time, i.e. may be granted for 40 or up to 99 years and (ii) it requires a one-off fee payable upon its establishment and annual fees. The first one-off fee amounts to between 15 percent up to 25 percent of the real property value and annual fees differ from 1 percent (for properties designated for residential use) up to 3 percent (for properties designated for commercial use) of the real property value.

An agreement on establishment of the perpetual usufruct right may contain certain requirements regarding its permitted designation, or development of the property. Perpetual usufruct right may be, under certain conditions, converted into ownership title.

Leases and Other Forms of Real Property Use

Real property may be leased (under a lease or tenancy agreement) for a maximum fixed term of 30 years (or for an indefinite term). The lease (or tenancy) agreement executed for a defined period of time may be terminated for reasons specified in the agreement, or in the civil code. The law provides also for other types of real property use, such as usufruct (*użytkowanie*) or easement (*służebność*).

A usufruct is a limited right to the real property, which allows the holder to derive certain benefits but it is not transferable and it expires if not exercised for a period of 10 years.

An easement over land is a limited property right. It may be granted over a part of a real property for the benefit of another real property (described in more detail in the “Statutory Preemptive Rights” section below). An easement needs to be registered in the land and mortgage register in order to be effectively established.

VERIFYING LEGAL TITLE

Real Property Due Diligence

As a market standard, a purchaser of real property, prior to its acquisition, conducts a due diligence, i.e. examines the legal status of the real property, as well as the construction, technical, financial and other issues, depending on the type of real property to be acquired, purpose and structure of the transaction (‘asset deal’ or ‘share deal’). The degree of complexity of the due diligence is usually connected with the size and value of the investment.

The scope of the legal due diligence conducted depends on the type of real property to be acquired and the purpose of the transaction. The purpose thereof is to identify the risks associated with the acquisition. With regard to transactions using external financing, a positive outcome of the legal due diligence is often a condition for loan disbursement.

During a due diligence process, among other issues, the following are analyzed:

- **Legal status of the real property:** this stage encompasses reviewing the land and mortgage registers, land registers, maps describing the location of the real property, and documents confirming the seller’s legal title thereto;
- **Encumbrances:** e.g. easements, mortgages, and preemptive purchase rights;
- **Construction process:** confirmation that the development

was made based on and in accordance with relevant decisions;

- **Agreements regarding the real property:** e.g. for media supply, lease, or tenancy contracts;
- **Fees and charges:** including real property tax and / or a perpetual usufruct fee; and
- **Restitution or other claims.**

Land and Mortgage Register

The land and mortgage registries are maintained electronically and each person and entity is granted access thereto electronically. A purchaser acquiring real property based on entries in the land and mortgage register benefits from the “public credibility” concept, i.e. he/she is protected when—generally—acting in good faith and when the transaction is not free of charge.

The land and mortgage register provides for certain information regarding the real property, described in the following sections:

- **Section I:** description of real property and description of rights thereto
- **Section II:** indication of the owner/perpetual usufructuary
- **Section III:** encumbrances (other than mortgage) warnings and other restrictions in disposal
- **Section IV:** mortgages

The competent district courts are responsible for making entries and maintaining land and mortgage registries.

Entries in land and mortgage registers are deemed to be true and accurate.



Easements and Mortgages

Polish law provides for the following types of easements:

- ground easement;
- personal easement; and
- transmission easement.

Ground easements are established for the benefit of each owner (or perpetual usufructuary) of real property. The holder of the easement may use the encumbered real property in a manner described in the agreement regarding its establishment. The owner of the encumbered real property may also be limited in exercising certain rights thereto. An easement expires if not exercised for a period of 10 years.

Personal easements are established for the benefit of a natural person and are not transferable. The scope of rights is similar to a ground easement.

A real property may also be encumbered with a so-called transmission easement, i.e. a right in favor of an entrepreneur who intends to construct or which owns the transmission equipment facilities (e.g. for supplying or discharging liquids, gas, electricity etc.) under which the entrepreneur may use the real property within a designated scope, in accordance with the purpose of the facilities.

A mortgage is a specific type of an encumbrance securing, usually, financing granted for the benefit of its owner (or holder of perpetual property right). For its valid establishment, it needs to be registered in the land and mortgage register maintained for the real property.

PERMITTING AND REGULATORY ASPECTS

Permit for Acquisition of Real Property by Foreigners

Under Polish law, acquisition of an ownership or perpetual usufruct title to a real property by foreigners from outside of European Economic Area (as well as acquisition of shares in companies holding such properties and controlled by such foreigners) as well as acquisition of agricultural or forestry properties by all foreigners requires a permit issued by the Polish Ministry of Internal Affairs. A permit should be obtained before the real property is acquired, otherwise the agreement for acquisition will be deemed as invalid. With regard to the permits for the acquisition of agricultural properties, a permit is issued upon consultations with the Ministry of Agriculture.

Corporate Requirements

Sale or acquisition of real property by a limited liability or joint stock company requires a shareholders' meeting to adopt a resolution approving such transaction, unless the articles of

association or statutes state otherwise. In absence of such resolution, the transaction shall be deemed invalid. The statute or articles of association may also provide for other requirements applicable for the real property sale or acquisition.

Statutory Preemptive Rights

Polish law provides for a statutory preemptive right of certain authorities and governmental entities, with regard to certain real properties designated for sale. The preemptive right refers to an obligation of the seller to offer the real property to such designated entity before it may be sold to a third party.

The following are the most common examples of the preemptive right applicability:

- **With respect to an undeveloped real property acquired previously from the municipality:** granted for the benefit of respective local municipality;
- **With respect to an undeveloped real property under perpetual usufruct:** granted for the benefit of a local municipality;
- **With respect to a real property located within a special economic zone:** granted for the benefit of the manager of such zone; or
- **With respect to certain agricultural properties:** granted for the benefit of the tenant or the Agency of Agricultural Properties.

An authorized entity is entitled to exercise its preemptive right on the same terms and conditions (including for the same price), as agreed between the seller and the buyer. A transaction, which is concluded without offering of the preemptive right to the authorized entity, will be regarded invalid under the law.

PLANNING AND ZONING

Planning and zoning regulations specify, in particular, the designation of the real property, requirements with regard to localization of investments and manner of real property development. From an investment perspective, the most crucial are local zoning plans and if lacking—zoning decisions, i.e. decisions on the conditions for development (*decyzja o warunkach zabudowy*), or decisions on localization of a public purpose development (*decyzja o ustaleniu lokalizacji inwestycji celu publicznego*).

Local Planning

Enactment of a local zoning plan (*miejskowy plan zagospodarowania przestrzennego*) is preceded by adoption of the zoning program which constitutes the basis for the

municipal authorities to adopt a zoning plan for a designated area. This is a multi-stage and time-consuming process, which involves numerous public bodies and requires public consultations. It may take a year or longer between adoption by the municipal council of a resolution on the preparation of the local zoning plan and resolution on the final adoption thereof. Local zoning plans become officially binding once published in the official journal issued in the relevant voivodship (*województwo*).

The procedure of amending the local zoning plan is as complex as the adoption thereof, involving municipal and other authorities' approval in the process as well as public consultations.

Zoning Decisions

Zoning decisions specify conditions for the development of the real property for the areas where a zoning plan has not been enacted.

Zoning decisions are issued by local municipal authorities as:

- decisions on development conditions (*decyzja o warunkach zabudowy*), or
- decisions on localization of a public purpose development (*decyzja o ustaleniu lokalizacji inwestycji celu publicznego*)

DEVELOPMENT PROCESS

Building Process

Pursuant to Polish building law, performance of construction works requires, in general, obtaining of a decision approving the architectural design and granting of the building permit from the relevant authorities. The building permit is issued based on the local zoning plan or—in the absence thereof—a zoning decision.

A building permit is required for the construction, reconstruction, assembly, repair, or demolition of a majority of developments. Commencement of development without a valid building permit results in the development being regarded as “construction lawlessness.” In such a case, the competent building supervision authority has the right to issue a decision on the demolition thereof, unless legalization of such development is possible (under several circumstances).

An application for a building permit must be filed together with the relevant:

- architectural design;
- statement on the investor's right to use the real property for development purposes;

- final and binding zoning decision (if applicable); and
- expert opinions and other approvals, required and specified by applicable regulations.

The law stipulates also a limited list of constructions that do not require a building permit. Instead, a notification on the planned development is required. The investor may proceed with its development if the relevant authority does not object within 30 days as of the date of such notification.

Contracting Building Process

Generally, contracts for the performance of construction works correspond to EU standards and practices (including the applicability of FIDIC type contracts used for many developments). Construction works contracts are usually structured as complex works agreements (where all works are performed by a general contractor), or as contracts for specific task(s).

While negotiating a construction works contract, the issue of joint and several liability of the investor and general contractor for the remuneration due for subcontractors engaged by the general contractors needs to be taken into account. As result, a precise mechanism of payment which will limit the risk of double payment for the same work performed must be included in the relevant contract. It should also be noted that the contractor may demand from the investor a guarantee for making payment due under the contract (issued as a bank or insurance guarantee). The above right cannot be waived in the contract.

Occupancy Permit

Generally, after completion of construction works for which a decision on a building permit was required, the investor is obliged to obtain a final occupancy permit. The permit needs to confirm that the development fulfills the respective health and safety, fire, and other regulations. The building may be admitted for use only after issuance and validation of the occupancy permit.

COMMERCIALIZATION

Lease and Tenancy Agreements

Lease and tenancy agreements are mostly applicable to the commercialization of office, industrial, warehouse, or other properties. Under a lease agreement (*umowa najmu*) the lessee is, in principle, authorized to use the real property, while under a tenancy agreement (*umowa dzierżawy*) the tenant may use the real property and gain benefits (*pożytki*) therefrom. Both

types of contracts may be executed for a fixed term (up to 30 years—unless the landlord or the lessee is not an entrepreneur) or for an unspecified period of time.

Rent and Security

Most commercial lease agreements provide for an indexation scheme:

- **If the rent is payable in euro (or as a euro equivalent):** pursuant to the Harmonized Index of Consumer Prices; or
- **If the rent is in denominated in PLN:** pursuant to the inflation index published by the Polish Statistical Office (*Główny Urząd Statystyczny*).

Leases concerning premises designated for commercial activity often provide for a “percentage,” or “turnover” rent, calculated based on the profits obtained by the lessee from the business operation conducted in the premises.

As a prevailing market standard, lessors require lessees to provide a security for the due performance of their obligations under the lease contract. Such security is usually granted in the form of a bank guarantee, deposit, surety, or “voluntary submission to enforcement” pursuant to the applicable provisions of the Polish Code of Civil Proceedings.

Condition of the Premises and Fit-out Arrangements

According to the Polish civil code, the lessor should hand over the premises to the lessee in a state and condition fit for the agreed purpose. The parties may agree otherwise, therefore in practice, the lessor usually provides the lessee with a budget for the fit-out or the parties split the fit-out costs in the agreed proportion.

Since the Polish legal regulations provide for relatively general provisions governing the parties’ rights and obligations under lease agreements, in practice they usually refer to various issues governing their contractual relations, such as handover procedures, maintenance and repairs, service fees, insurance, return of the premises, and settlement of improvements made within the premises.

NEW REGULATIONS IN PROGRESS

Development Right (*Prawo zabudowy*)

Save for certain exceptions that are strictly defined, under the Polish law a building is owned by the owner (or perpetual usufructuary) of the real property (plot). The new concept of “development right” will allow the construction on the plot of a building to be owned not by the plot owner, but by the entity which has developed it. It is proposed that the development right will be established for 30 to 100 years, and it will be transferrable, and subject to disclosure in the land and mortgage register. The preliminary legislation works in that regard are still pending.

New Building Code

The main purpose of the new Building Code is to unify the building law, zoning and related regulations in one legal act, to simplify and shorten the administrative procedures and also to waive the requirement to obtain a building permit in a wide range of situations. The preliminary legislation works are still pending.

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INTRODUCTION TO GENERAL RULES OF TAXATION

PERSONAL INCOME TAX

General rule provides that residents (meaning individuals with their place of residence in Poland) are taxed on their worldwide income, regardless of where the income is earned (unlimited tax obligation in Poland). Whereas, non-residents (individuals who do not have a place of residence in Poland) are taxed solely on Polish-source income (limited tax obligation in Poland). In order to obtain status of resident for tax purpose, one of the following conditions needs to be met:

- physical presence in the territory of Poland for more than 183 days during a tax year, or
- possession of centre of personal or economic interests in Poland.

However, each time the appropriate criteria contained in an international tax treaty must be applied to determine whether the actual place of residence for tax purposes takes place.

Personal income tax (PIT) is calculated according to a progressive tax scale 18 -32 percent. Tax rates vary depending on the income earned, defined as the total revenue minus tax deductible costs, earned in a given taxable year. Although, individuals carrying out business activity may apply special rule with 19 percent rate yet without allowances.

There are specific provisions concerning the joint taxation of married taxpayers as well as preferential single parent taxation.

SUBSIDIARY VS BRANCH VS REPRESENTATIVE

A Polish subsidiary is considered as legal entity with the same rights and obligations as a local company, therefore is a subject to unlimited tax obligation, whereas a branch of foreign entity is liable to income tax but only in respect of income earned in Poland, unless international agreements on avoidance of double taxation provide otherwise. General rule provides that representatives of foreigners, whose scope of activity is limited solely to auxiliary and preparatory actions, are not subject to tax in Poland.

CORPORATE INCOME TAX

Legal entities (such as limited liability companies, joint-stock companies), companies in process of incorporation, tax capital groups, and, from 2014, also limited joint stock partnership with registered seat or management established in Poland, are subject to Corporate income tax (CIT).

The entire income of taxpayers who have their registered office or management in the territory of the Republic of Poland (residents) is subject to tax obligation, irrespective of where the income is earned. In case of non-residents, only income earned by them in the territory of the Republic of Poland is subject to tax obligation.

The object of CIT is income including company's profits concerning business income, most passive income and capital gains. Dividends received by legal entity, with resident status, from another company with registered seat in EU/EEA are exempt from tax after fulfilment of certain holding and participation requirements.

CIT rate amounts to 19 percent. Withholding tax (WHT) on dividends amounts to 19 percent, whereas on interest and royalties 20 percent. Those rates are usually reduced under double taxation treaty or qualify for an exemption under EU parent-subsidiary directive (in case of dividends) and EU interest and royalties directive.

Polish law provides anti-avoidance regulations concerning CFC rules (introduced from 1 January 2015), transfer pricing and new thin capitalization regime (also amended on 1 January 2015). Transfer pricing provisions authorize tax authorities to make required adjustments if the transactions between related parties do not comply with the arm's length principle. Under new CFC rules, Polish residents will be obliged to pay 19 percent of tax on the income accrued by their controlled foreign companies, whereas thin capitalization regime refers to related party debt and provide for a debt to equity ratio of 1:1, any interest on debt exceeding this ratio is not deductible.

Polish tax law indicates that losses may be carried forward for five years, yet the deduction in a given year cannot exceed 50 percent of the incurred losses. There are no provisions which allow carryback of losses.

VALUE ADDED TAX

Value added tax (VAT) is imposed on the following activities: (i) supply of goods and services in exchange for a consideration in the territory of the country; (ii) the export of goods; (iii) the import of goods into the territory of the country; (iv) the intra-Community acquisition of goods in exchange for a consideration in the territory of the country, and (v) the intra-Community supply of goods.

Legal entities, organisational units without legal personality and individuals independently conducting the economic activity, irrespective of the aim or result of said activity, are a taxable persons in the meaning of VAT.

According to VAT regulations, economic activity includes any activity of producers, traders, or suppliers of services, including entities extracting natural resources and farmers, as well as activity of persons performing liberal professions. Economic activity also includes, in particular, activities which consist in the use of goods or intangible assets in a continuous manner for income purposes.

The activities such as financial services (lending, maintaining bank accounts, currency exchange), insurance and reinsurance services, certain medical services, some educational or culture and sports-related services are qualified for certain exemptions under VAT.

The standard VAT rate applicable in Poland amounts to 23%, however there are also preferential rates available for certain goods and services in the amounts of 8 percent, 5 percent and 0 percent.

TRANSFER TAX

Tax on civil law transactions (PCC) is imposed on certain types of transactions including i.e. sales agreements, loan agreements, establishment of mortgage, irregular deposit agreements or articles of association. Tax rates vary between 0,5 percent to 2 percent. General rule provides that transactions (other than articles of association and its amendments) subject to VAT or exempt from VAT are not covered by transfer tax.

EU TAX LAW/DOUBLE TAXATION TREATIES

Poland has concluded around 80 double taxation treaties. According to provisions of such treaties and EU directives certain exemptions and reductions in respect of WHT usually apply and allow to minimize tax burdens of gained income.

PROCEDURAL ASPECTS (TAX RULINGS)

Taxpayers may request a ruling concerning tax treatment of specific transaction. Tax ruling is submitted to competent tax authority and obtained within three months from its submission. Such issued interpretation is binding on the tax authorities and protects the taxpayer from adverse consequences should the tax authorities later change an opinion. Fee amounts to PLN 40 per question.

GENERAL OVERVIEW OF TAX INCENTIVES

There are certain tax incentives available for entrepreneurs investing in special economic zones, as well as local incentives introduced by municipal council in form of resolution constituting exemption from property tax. Polish tax system offers also for individuals and legal entities special tax privilege described as relief for acquisition of innovative technologies.

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