

**DOING  
BUSINESS  
IN**

**Poland**





*doing business  
in Poland*

# *foreword*

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**HLB Poland**

**January, 2017**

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# general information

## location

The Republic of Poland is situated between the Baltic Sea in the North and two mountain ranges (the Sudetes and Carpathian Mountains)

in the South. Bordered by Germany to the West; The Czech Republic and Slovakia to the South; Ukraine and Belarus to the East; and the Baltic Sea, Kaliningrad Oblast (a Russian exclave) and Lithuania to the North.

## key facts

<b>Area</b>	<b>312,679 km<sup>2</sup></b> (120,726 sq. mi.)
<b>Population</b>	<b>38.630 million</b> (approx. Aug. 2016)
<b>Employed people</b>	<b>16.012 million</b> (approx. Aug. 2016)
<b>Capital city / Population</b>	<b>Warsaw (Warszawa) / 1,735,442</b> (2015)
<b>EU economy</b>	<b>8th largest</b> in terms of GDP
<b>Public debt burden</b>	<b>50.4%</b> of GDP (compared to 86.8% in the EU)
<b>Unemployment rate</b>	<b>7.5%</b> (December 2015 according to Eurostat)
<b>European funds 2014-2020</b>	<b>EUR 195.8 billion</b> (the largest amount among EU members)
<b>Special Economics Zones (SEZs)</b>	<b>14</b>
<b>Administrative divisions</b>	<b>16 provinces, 314 counties and 2478 communes</b>
<b>The legislative branch</b>	Lower house ( <b>460 MP's</b> ) + Senate ( <b>100 senators</b> )
<b>The executive branch</b>	The President ( <b>5 year term</b> )
<b>The judiciary branch</b>	The Supreme Court, common courts, administrative courts and military courts
<b>Language</b>	<b>Polish</b>
<b>Currency*</b>	<b>Złoty (PLN) = 100 grosz (gr.) per Złoty</b>
<b>Average life expectancy (years)</b>	<b>80.3</b> for woman / <b>72.1</b> for men (Aug. 2016)

Sources: Central Statistical Office, *tradingeconomics.com* and United Nations Department of Economics & Social Affairs: Population Division)

*\*Despite the fact Poland is an EU-member state, it is not member of the EURO-Zone. The date of EURO introduction has not been determined yet. Poland is a member of the Schengen Area and the EU single market.*

The Polish Złoty (PLN) is fully convertible. All international transfers (e.g. profits and royalties) related to an investment can be carried out freely and without delay.

Poland's high-income economy is considered to be one of the largest of the post-Communist countries and is one of the fastest growing

within the EU. Having a strong domestic market, low private debt, flexible currency, and not being dependent on a single export sector, Poland is the only European economy to have avoided the late 2000s recession. Since the fall of the communist government, Poland has pursued a policy of liberalising the economy. It

is an example of the transition from a centrally planned to a primarily market-based economy. The country's most successful exports include machinery, furniture, food products, clothing, shoes and cosmetics. Poland's largest trading partner is Germany.

## climate

The climate is mostly temperate throughout the country. The climate is oceanic in the north and west and becomes gradually warmer and continental towards the south and east. Summers are generally warm, with average temperatures between 18°C and 30°C (64.4°F and 86.0°F) depending on the region. Winters are rather cold, with average temperatures around 3°C (37.4°F) in the northwest and -6°C (21°F) in the northeast. Precipitation falls throughout the year, although, especially in the east; winter is drier than summer.

The warmest region in Poland is Lower Silesia located in south-western Poland where temperatures in the summer average between 24°C and 32°C (75°F and 90°F), but can go as high as 34°C to 39°C (93.2°F to 102.2°F) on some days in the warmest months - July and August. The warmest cities in Poland are Tarnów, which is situated in Lesser Poland and Wrocław, which is located in Lower Silesia. The average temperatures in Wrocław are 20°C (68 °F) in the summer and 0°C (32.0°F) in the winter, but Tarnów has the longest summer in all of Poland, which lasts for 115 days, from mid-May to mid-September. The coldest region of Poland is in the North-East in the Podlaskie Voivodeship, near the border of Belarus and Lithuania. Usually the coldest city is Suwałki. The climate is affected by cold fronts which come from Scandinavia and Siberia. The average temperature in the winter in Podlaskie ranges from -6°C to -4°C (21°F to 25°F).

## constitution

Poland is a representative democracy, with a President as the Head of State, whose current constitution dates from 1997. Poland ranks in the top 20% of the most peaceful countries in the world, according to the Global Peace Index. The government structure centres on the Council of Ministers, led by a Prime Minister. The President appoints the cabinet according to the proposals of the Prime Minister, typically from the majority coalition in the Sejm. The President is elected by popular vote every five years. The President

is Andrzej Duda and the Prime Minister is Beata Szydło (both as at August 2016).

Poland's current constitution was adopted by the National Assembly of Poland on 2 April, 1997 approved by a national referendum on 25 May, 1997, and came into effect on 17 October, 1997. It guarantees a multi-party state, the freedoms of religion, speech and assembly, and specifically casts off many Communist ideals to create a 'free market economic system'. It requires public officials to pursue ecologically sound public policy and acknowledges the inviolability of the home, the right to form trade unions, and to strike, whilst at the same time prohibiting the practices of forced medical experimentation, torture and corporal punishment.

## legal system

Poland is a republic formed on the democratic basis. The Republic of Poland is based on the Montesquieu's separation of powers principle. The legislative power is vested in the Parliament consisting of the lower house 'Sejm' and the upper house 'Senate'. The executive power is vested in the President of Poland and the Council of Ministers and the judicial power is vested in courts and tribunals.

The Republic of Poland is an unitary state. According to the administrative reform of 1998, the country is divided into 16 provinces ('województwa'). The provinces are divided into 'poviats' (currently 350), and then further to the basic administrative units ('gminas') (currently 2488). The Republic of Poland is a member of the European Union.

The sources of the Polish law are divided into two categories: universally binding law and internal law.

According to the latest Constitution of 2 April, 1997 the sources of universally binding Polish law are: the Constitution itself as the supreme law of the land, the statute ('ustawa'), ratified international agreement and regulation ('rozporządzenie'). In addition to these sources it has to be mentioned as well that enactments issued in the course of operation of official bodies constitute universally binding law in the territory of the body that issued such enactments (local law).

In order to come into force, the statutes, regulations and enactments of local law have to be published. The statutes also regulate the conditions for promulgations of ratified

international agreements and other international agreements; however, in general they are published in the same manner as statutes.

The aforementioned acts are published in the Official Journal of Laws of the Republic of Poland ('Dziennik Ustaw'). In addition, there are a number of local law journals that are published in provinces' official journals.

All other acts constitute a part of internal law. They bind only the organs of public administration and self-government which are subordinated to the issuing organs and organisational units.

The examples of such acts are: resolutions ('uchwała') adopted by the Sejm, Senate and the Council of Ministers, orders ('zarządzenie') issued by the President of the Republic of Poland, the President of the Council of Ministers and ministers, the acts of local law that are not universally binding and non-ratified international agreements.

These acts are published in the Journal of Laws of the Republic of Poland ('Dziennik Ustaw'), mostly in the Official Journal of the Republic of Poland ('Monitor Polski') and in the local official journals.

The Constitution guarantees civil rights and liberties, specifies the mutual relationships between judicial, legislative and executive powers. It also decides the form and way of electing, and appointing the most important institutions, such as the Sejm and the Senate (the lower and upper chamber of the Polish parliament), the President and the Council of Ministers.

There are three authorities in Poland:

- The legislative authority: held by the Sejm and Senate
- The executive authority: exercised by the Council of Ministers and the President
- The judiciary authority: held by the Court and Tribunals

## **local law**

The acts of local law are binding within territory where the issuing body exercises its powers. These acts may only be issued on the basis provided in the statute and within the limits prescribed in the statute.

## **the court system**

The Polish legal system is based on the continental legal system (civil law tradition). The common courts in Poland are the courts of appeal, provincial courts ('okręg') and district courts ('rejon'). They are competent to hear criminal law cases, civil law cases, family and custody law cases, labour law cases and social insurance cases.

The military courts are the military provincial courts and military unit courts. They have judiciary control within the Polish Army in criminal cases and other cases that are allocated to them by relevant statutes.

The administrative judiciary belongs to the High Administrative Court. This court has judicial control of public administration and operates through 10 delegated centres of the same Court.

## **supreme court**

The Supreme Court is the highest central judicial organ in the Republic of Poland and thus the highest court of appeal. The main tasks of the Supreme Court are to administer justice in Poland, together with the common, administrative and military courts, to consider cessation as a form of extraordinary appeal and to adopt law interpreting resolutions.

## **constitutional tribunal**

The Constitutional Tribunal is an organ of the judiciary, competent to decide the conformity of the issued law with the Constitution, disputes concerning competence between the organs of central administration, the conformity of the political parties' tasks with the Constitution and to hear constitutional complaints filed by citizens. The English version of the act on Constitutional Tribunal and other related acts are provided on the Polish Constitutional Tribunal web page.

## **parliament**

The Parliament was unicameral until 1989. In 1989, after a nationwide referendum, the law was changed and the second chamber i.e., the Senate, was again re-established (the Parliament was also bicameral before the Second World War). The Sejm and the Senate exercise the legislative power in the Republic of Poland.

## **sejm (Lower House of Parliament)**

The Sejm shares its legislative function with the Senate as well as exercises control over

the activities of the Council of Ministers within the scope specified by the provisions of the Constitution and statutes. There are 460 Members of the Sejm.

### **senate (Upper House of Parliament)**

The Senate shares its legislative function with the Sejm; simultaneously, it is part of the governmental system in Poland. There are 100 Members of the Senate.

### **president**

The President of the Republic of Poland is the supreme representative of the Poland (head of state) and the guarantor of the continuity of State authority. The President is the part of the executive authority, sharing the competencies with the Council of Ministers. The President of the Republic is elected by the Nation, in universal, equal and direct elections, conducted by secret ballot.

### **government**

The Polish government is called the Council of Ministers and it is chaired by the President of the Council of Ministers. The Council of Ministers is appointed by the President of the Republic of Poland. It consists of ministers who govern given areas of central administration as well as other chairmen of various Committees that were included in the Council of Ministers. It will be also worth visiting the official web site of Poland to see the main characteristics of the Polish state.

### **EU & other memberships**

Poland became the 25th Member State of the Council of Europe on 26 November, 1991. In 2004 Poland joined the EU as a 'new' Member State. For more than ten years Poland has supported the idea behind the internal market, knowing full well how much Poland stands to gain from it. Having been given PLN 422 billion from the Multiannual Financial Framework (2007-2013), the negotiations for the 2014-2020, a key to Poland's long-term development prospects, have been one of Poland's most important and hardest-won political achievements having successfully negotiated an increase of PLN 19 billion, to PLN 441 billion, despite major EU budget cuts. Poland's well thought-out and consistently implemented strategy was based on an alliance with European institutions and co-operations with countries belonging to the Friends of Cohesion group.

Since 2004, Poland has enjoyed the business and trade benefits of being part of one large market governed by principles, such as the free movement of goods, services, capital and persons.

The borderless importing and exporting of goods within the European market, no matter where the goods were manufactured, is one of the main benefits of the EU.

Poland is a member of all major economic and political international organisations at global level and regional level (Europe, Central Europe). After 1989, Poland began an intensive period of economic development, supported by its membership of various international organisations. This helped to accelerate development, promote the Polish economy globally and enabled collaboration with other countries. The most important are:

- The United Nations (UN),
- North Atlantic Treaty Organisation (NATO, from 1999),
- General Agreement of Tariffs & Trade (GATT, from 1995),
- World Trade Organisation (WTO, from 1995),
- World Bank Group (WB),
- International Monetary Fund (IMF),
- The Organisation for Economic Co-operation & Development (OECD, from 1996),
- The European Union (EU, from 2004),
- EU Shengen Agreement (from 2007),

and others being: The Council of Europe, The Council of Baltic Sea States, The Visegrad Group, The Weimar Triangle, The Organisation for Security & Co-operation in Europe (OSCE).

Poland has gained a strong political position and reputation of a country that is predictable and responsible, thanks to very good economic performance and political stability in the hard times of economic crisis, and to the high support for integration, unlike other European societies.

## business hours & public holidays

Normal working hours are from 8am to 4pm on weekdays, and 8am to 2pm on Saturdays. Employees can take a 15 minute break, if they are working more than 6 hours a day.

From 29 November, 2002, an employer may allow an unpaid 60 minute lunch break. Going for lunch is not common and employees normally bring in sandwiches from home. For shift workers, working hours are normally 6am-2pm, 2pm-10pm, and 10pm-6am.

## national holidays

- 1 January - (New Year's Day)
- 6 January - (Three Kings)
- March/April - Easter Sunday and Monday
- 1 May - (May Day)
- 3 May - (National Day (Proclamation of Constitution of May 3, 1791). *In practice many people book a holiday on 2 May, in order to have the 1st, 2nd and 3rd of May off*)
- May/June - (*Pentecost Sunday (the date changes every year, depending on the date of Easter)*)
- May/June - (*Corpus Christi (the date changes every year, depending on the date of Easter)*)
- 15 August - (Assumption of Virgin Mary and Polish Army Day (*the anniversary of the Polish victory at the Battle of Warsaw against the Russian Army in 1920*))
- 1 November - (All Saints' Day)
- 11 November - (National Independence Day (*Poland regained its independence in 1918*))
- 25 December - (Christmas Day)
- 26 December - (St Stephens Day)
- 6 December - (It is not a public holiday, but it is known as Santa Claus Day, a day when people usually exchange gifts)

# investment factors

## special features

Poland is a promising country for investors. International reports describe the Polish economy as safe for business environment and long-term planning, with a low risk of financial crisis, offering investment opportunities in connection with the modernisation of infrastructure and introduction of modern technologies to enterprises. Poland is fortunate to be located in Central-Eastern Europe (CEE), considered to be the 'heart of Europe'. A perfect location for investments in transport and logistics because of its perfect location with regard to consumption and production zones. This, together with its EU membership, makes Poland a perfect gateway to the single European market of around 455 million consumers.

## 10 reasons to invest in Poland

1. Successful economy
2. Population
3. Qualified & competitive labour force
4. Central-Eastern Europe (CEE) location
5. Labour costs
6. Poland is the largest beneficiary from the EU budget
7. Political stability based on EU & NATO membership
8. Large domestic market
9. Steadily improving conditions for running a business
10. Poland as one of the top countries in UNCTAD's World Investment Prospects Surveys (2014-2016)

## investment protection

Poland is a member of the Multilateral Investment Guarantee Agency (MIGA), an international organisation for the protection of investment, belonging to the World Bank-IMF

group. Poland has signed a number of Bilateral International Treaties (BITs) with 60 countries, which support and protect foreign investments, for example, with the United States, Germany, UK, France, Austria, Switzerland, China, Spain, The Netherlands, Sweden, Finland, Norway and Denmark.

Poland is a signatory to the following agreements - Bern, Universal Copyright Conventions (UCC) Paris & Geneva, Trade-Related Aspects of Intellectual Property Rights (TRIPS) and World Intellectual Property Organisation Copyright Treaty (WIPO or WCT). Existing legislation guarantees the protection of all forms of property, including patents, copyrights, trademarks and semi-conductor chip layout design. Trademark law and copyright law are compatible with EU directives.

## foreign exchange control

No restrictions are imposed on the import or export of capital. Repatriation payments can be made in any currency. Both residents and non-residents can hold bank accounts in any currency.

## repatriation of profits

Polish law allows for unrestricted repatriation of profits. There are no restrictions on the transfer of shares inside Poland and the repatriation of proceeds. Foreigners can convert and transfer currency in order to make payments in other countries of they may transfer their share of profits (after the taxes have been deducted) for their Polish activities. The capital gained by foreign investors in Poland can be completely withdrawn from Poland in certain cases like liquidation, expropriation and others.

The transfer of funds from Poland is legal and individuals who perform such transfers and conduct foreign exchange transactions must use a bank as an intermediary if the transfer exceeds a certain amount.

## education

Poland combines an outstanding level of general education with strong mathematics and science disciplines. According to the latest 2015 OECD study, the country ranked fifth in Europe and eleventh in the World, ahead of the UK and the United States. The UK in 2015 was heavily influenced by the approach in Poland, after it leapt up international rankings.

Poland's high ranking in the OECD study does not come as a surprise. In recent years, Poland has in impressive style climbed to the top of the Programme for International Student Assessment (PISA) classification, which evaluates the knowledge of 15 year-olds within the fields of mathematics and science. PISA has been long-regarded as the benchmark for the OECD test.

The latest OECD ranking is also to a large extent based on the PISA results, within which Polish students claimed joint first place in the European Union, alongside the Netherlands, Estonia and Finland. The top spots overall were taken by Asian countries.

The availability of technically educated graduates at a fraction of the cost of western labour creates a perfect environment for both manufacturing, service centres, R&D-oriented companies, and with these mathematics skills provide the perfect platform for accounting services.

## stable economic performance

Since 1997 the Polish economy has grown steadily and the standard of living has improved substantially.

The Gross Domestic Product (GDP) of Poland was 474.78 billion US dollars in 2015. The GDP of Poland represents 0.77% of the world economy. GDP in Poland averaged 249.25 USD Billion from 1985 until 2015, reaching an all time high of 544.97 USD Billion in 2014 and a record low of 63.90 USD Billion in 1987. GDP in Poland as is reported by the World Bank Group.

### ECONOMIC BACKGROUND

- **8th** biggest economy in the EU in terms of GDP
- **6th** most populated country in the EU
- Central and Eastern Europe - **largest market**
- Polish GDP growth **3.3%** (2014) - EU average in 2014 **1.4%**, grew in 2015 to **2.5%**, with a forecast increase in 2018 to **3.5%\***
- **50.4%** of GDP - public debt burden, compared to 86.8% in the EU\*

- Stable inflation rate\*: -0.9% (Aug. 2016) - 0.2% Q2/17
- Decreasing unemployment rate\*: **8.8%** actual Aug. 2016 - **8.2%** Q2/17 - **6.5%** 2020
- **EUR 82.5 billion** EU Funds 2014-2020 Cohesion Policy (the largest amount among EU members) + **EUR 32.09 billion** EU Funds 2014-2020 Agricultural Policy
- Growing industrial production, retail sales and domestic demand
- The World Bank's report 'Doing Business 2010-2016' classified Poland as the greatest improver in terms of ease in doing business (improving by 13.3% points)

*\*According to [tradingeconomics.com/poland](http://tradingeconomics.com/poland)*

Fiscal prudence and keeping the economy growing in recent years have also enabled the Polish government to keep the level of public debt within reasonable limits. There are several factors explaining the robustness of the Polish economy to the economic turmoil of the last few years. Poland enjoys a good competitive position and high attractiveness as a production site. Producers have unlimited access to the whole European market and they enjoy access to quickly improving infrastructure. The cost of labour, although gradually increasing, is still low and represents only a fraction of Western European levels, but the quality and consequently the productivity of Polish workers is constantly improving, making it one of the most competitive countries in Europe.

Poland's huge domestic market is a valuable asset and it is also taken into account by foreign investors. In 2013, the relation of exports to GDP in Poland was only 46.1%, whereas in neighbouring countries, such as the Czech Republic, Hungary and Slovakia it was much higher - 77.2%, 88.8% and 93% respectively. It means Poland is much less dependent on changing external environments. Yet the export growth recorded in recent years was also satisfactory, despite the adverse conditions in the EU. Growth reached 8.0% in 2013, 5.7% in 2014 and 6.3% growth in 2015.

The Polish banking sector proved to be healthy, profitable and resilient to global financial turbulence, while Polish firms and households are only moderately indebted. Praise for this should be attributed, partly, to the banking supervision in Poland. Additionally, the stabilizing role played by the foreign owners of banks that control over 70% of the banking assets of Poland should be praised as well. Despite some initial fears, foreign holding companies were ready to extend additional short-term loans to their Polish subsidiaries during

the global turmoil than trying to transfer liquidity abroad.

All the economic fundamentals of the country, connected with the macroeconomic equilibrium, safety and stability of the financial sector, and the competitiveness of companies, have been greatly strengthened. As a result, Poland was perfectly able to face the global crisis and withstand both the financial storm and the deep world-wide recession

and has emerged in astonishingly good shape. Despite the many problems that may still appear, the Polish economy is attractive, stable and set to grow substantially more than the EU average in the coming years.

The biggest advantages of Poland are a stable macroeconomic balance, low inflation, its own currency (PLN) and a healthy and profitable banking sector.

#### Macroeconomic indicators and projections (OECD 2016)

<b>POLAND</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
	Current prices PLN billion					
<b>GDP y/y change (as a % from the 2012 figure)</b>	1,629.0	1.3	3.3	3.6	3.4	3.5
<b>Exports of goods and services</b>	723.6	6.1	6.4	6.6	4.4	5.4
<b>Imports of goods and services</b>	731.3	1.7	10.0	6.0	5.2	6.5
<b>Employment y/y change (As a % from 2012 figures)</b>						
-	-0.1	1.9	1.0	0.6	0.5	
<b>Unemployment rate (as a % of labour force)</b>	-	10.3	9.0	7.4	7.1	6.9
<b>Trade balance (as a % of GDP)</b>	-	1.9	1.3	2.7	1.8	1.3
<b>Consumer price index (as a % from 2012 figure)</b>	-	1.0	0.1	-0.9	1.0 <sup>^</sup>	1.7 <sup>^</sup>
<b>Core consumer prices (as a % from 2012 figure)</b>	-	1.2	0.7	0.5	1.1 <sup>^</sup>	1.7 <sup>^</sup>
<b>GDP per capita (in USD)</b>	13,427	13,605	14,062	14,580	-	-
<b>Unemployment rate (%)</b>	10.09	10.33	9.00	7.50	6.95 <sup>**</sup>	6.85 <sup>^</sup>
<b>Inflation rate (%)</b>	3.56	0.99	0.05	-0.87	-0.9 <sup>*</sup>	-
<b>PLN/EUR</b>	4.1824	4.1960	4.1853	4.1827	4.3645 <sup>**</sup>	-
<b>PLN/USD</b>	3.2556	3.1600	3.1546	3.7712	3.9164 <sup>**</sup>	-
<b>PLN/STERLING</b>	5.1568	4.9422	5.1921	5.7631	5.5143 <sup>**</sup>	-

\* July 2016 – Source Central Statistical Office of Poland (GUS)

\*\*As at August 2016

<sup>^</sup>Forecast as at August 2016

# entrepreneurial environment

## principal forms of business

### business activities

The general rules related to conducting business are regulated by the Freedom of Economic Activity Act dated 2 July, 2004. The Act is also known under the name of 'business constitution', because the Act governs the undertaking, conducting and legal limitation of business activities in Poland. The Act is the source of various terms, e.g. entrepreneurship or economic activity, which remain applicable in relation to business activities. The Act contains a list of specific licenses that have to be acquired in order to undertake business activities.

The rule of the Act are applicable to natural persons and legal entities. However, the Act distinguishes between the investors from EU/EFTA and other third party countries.

Natural persons and legal entities from the EU/EFTA countries, in regard to conducting business in Poland, fall under the same conditions and rules as Polish individuals or companies. Such a foreign entity may choose any legal form of their business activity in Poland freely with the same restrictions as are applicable for Polish naturals or companies, if any.

Unless international agreements state otherwise, and all requirements are fulfilled, a foreign company or natural person based outside the EU/EFTA zone may conduct business only in the form of:

- Limited Liability Partnership (LLP) - Spółka Komandytowa (Sp. K.)
- Limited Joint-Stock Partnership - Spółka Komandytowo-Akcyjna (S.K.A.)
- Limited Liability Company (LLC) - Spółka z ograniczoną odpowiedzialnością (Sp. z o.o.)
- Registered Partnership - Spółka Jawna (SP.J)

- Joint-Stock Company - Spółka akcyjna (S.A.)

Despite these limitations, such business entities incorporated in Poland in accordance with the Polish regulations are permitted to conduct business without restriction based on the same rules as Polish and other EU companies. It follows that there are no restrictions related to the source of capital and, consequently, no administrative permit can be applied for by virtue of the parent company being the source of capital.

Instead of incorporation of a legal entity, a foreign company may create a branch or a representative office in Poland.

A branch office is restricted to conducting business activity only in the scope of the parent company. Registration in the Entrepreneurs' Register maintained by the court (hereinafter referred as 'KRS') is compulsory. The branch office has its own KRS number.

A representative office may only perform advertising or marketing activities for the benefit of the parent company. However, such entities are obliged to perform all activities in accordance with Polish law, including Polish Accounting Rules. The register of Representative Offices of Foreign Companies is maintained by the Ministry of Economy in Warsaw. Representative offices and branch offices shall appoint a representative to act on their behalf.

Polish regulations allow domestic and foreign enterprises to operate under a wide variety of legal forms. Besides the limited liability company, which is probably the most attractive legal vehicle for foreign investors to conduct business in Poland, there are a number of other forms of business organisations.

The Polish Code of Commercial Companies sets forth six forms of commercial association as follows:

- General partnership,
- Limited Partnership (LP),
- Limited Liability Partnership (LLP),
- Partnership limited by shares,
- Limited Liability Company (LLC),
- Joint-Stock Company / Public Limited Company (PLC).

Apart from the Polish Code of Commercial Companies, Polish law also provides other legal forms to conduct business activities. In the following text we will provide you with a short description and characteristic of each of the aforementioned forms. However, we will concentrate on the limited liability company, which is often chosen by foreign investors.

LIMITED LIABILITY COMPANY (LLC) - 'Spółka z ograniczoną odpowiedzialnością' or its abbreviation 'Sp. z o.o.'

The Polish LLC remains very similar to the German limited liability company as its concept was inspired by German law. The name of the LLC emphasises the fact that the shareholders of the entity are not personally liable for the company's debts. The main feature of the LLC is to ensure that the company is treated as a separate legal entity from its shareholders or sole shareholder.

The significant advantages of the LLC in comparison with other legal forms provided by Polish law are as follows:

- relatively low costs of incorporation of the company,
- the company may conduct business activities immediately after signing the Articles of Association,
- fast registration process at KRS,
- limited liability and low minimum share capital,
- clear and simple rules in relation to the daily management of the company,
- low operational costs.

The LLC may be incorporated by one or more person or/and entity. However, the LLC cannot be incorporated by another single-shareholder LLC governed by Polish or foreign law. Nevertheless, Polish law does not prohibit the holding of 100% of shares by another single-shareholder LLC. Therefore, the above mentioned restriction concerns only the registration process of the LLC.

The incorporation of a LLC is executed before a Polish notary and the Articles of Association must be notarised. The company may also be incorporated by an attorney in fact, acting upon a prior given 'Power of Attorney' (PoA).

The Articles of Association should specify:

- the business name of the company including the additional description 'Spółka z ograniczoną odpowiedzialnością' or its abbreviation 'Sp. z o.o.',
- the seat of the company,
- the scope of the business activity,
- the amount of share capital,
- information, on the number of shares along with their value, owned by each shareholder,
- whether the company has been incorporated for a limited period of time.

The Code of Commercial Companies outlines the minimum content of the Articles of Association, but it is quite common to have a wide range of additional rules which make this legal form very flexible. Under Polish law, the LLC must have a minimum share capital of 5,000.00 PLN with the minimum nominal value of 50.00 PLN per each share. Contributions may be made in cash or in kind. The contribution in kind remains at the free disposal of the management board.

Corporate bodies of a Limited Liability Company

The limited liability company may have three governing bodies: the management board, the general meeting of the shareholders and the supervisory board. The latter is required only if the company has more than 25 shareholders and if its share capital exceeds 500,000.00 PLN. The Polish corporate governance system is basically a two-tier system with separation of the management and oversight functions carried out by the supervisory board prescribed by law.

The Management Board is a body which deals with the affairs of the company and represents the company before the third parties. The duties and prerogatives of the Management Board differ significantly from the duties and prerogatives of the Board of Directors, which is typical from what the common law states. The Management Board may consist of one or more members (no difference whether Poles or foreigners), that can be appointed from the shareholders or from third parties. Unless the Articles of Association stipulate otherwise, members of the Management Board are appointed and dismissed by the resolution of the General Meeting of the Shareholders.

The statutory duty of a Supervisory Board is to exercise permanent control over all areas of the company's activities, however, as stated above, there is no obligation to appoint a Supervisory Board. The Management Board is not bound by the instructions given by the Supervisory Board. A Supervisory Board consists of at least three members appointed by a resolution of the General Meeting of the Shareholders. Foreign investors usually do not appoint Supervisory Board in their Polish subsidiaries.

The third body - The General Meeting of Shareholders, consists of the shareholders. The Code of Commercial Companies distinguishes between the 'Ordinary' and 'Extraordinary' General Meetings. The Ordinary General Meeting of the Shareholders is held within six months of the end of each financial year. Polish law stipulates precisely which issues should be put on the agenda (e.g. consideration and approval of the management report and financial report). An Extraordinary General Meeting is called in cases stipulated in the Code of Commercial Companies or in the Articles of Association. An Extraordinary General Meeting might be also called if any authorised person or body finds it necessary. A shareholder may be present at the meeting either in person or by representatives with a power of attorney granted in writing.

### **Liability in a Limited Liability Company**

The shareholders of a LLC are not liable for the company's debts or obligations. Instead, shareholders can only lose their investment (monetary contribution or in-kind contribution invested to take up the shares in the share capital of the company). Polish law states that other persons may be liable for a company's obligations. With regards to a company being in the process of formation, liability for the company's obligations is born jointly by the company and people acting on its behalf. To protect the economic interests of the company's business partners and of public institutions (e.g. tax authorities), Polish law states that in certain circumstances members of the Management Board may be liable for the debts of the company.

### **JOINT-STOCK COMPANY/PUBLIC LIMITED COMPANY (PLC) - 'Spółka akcyjna' or its abbreviation 'S. A.'**

A joint-stock company/public limited company is very similar to a limited liability company with regard to the liability of shareholders, governing body and taxation. However, the provisions stipulated by the Code of Commercial

Companies in relation to the PLC are relatively more formalistic and provide additional obligations which must be fulfilled by the company. This has a direct impact on the cost of incorporation and running the company. In fact, this legal form is used for businesses planning an IPO, searching for PE/VC investors or when this form is required by Polish law (e.g. banks, pension funds and other financial institutions).

Similarly to a LLC, a PLC is treated as a separate legal entity from its stockholders or sole stockholder. A PLC can be incorporated by one or more person/entity. However, a PLC cannot be incorporated by another single-shareholder limited liability company governed by Polish or foreign law. The restriction concerns only the registration process. The statutes of the PLC should be signed before a Polish notary. Nonetheless, the company may be incorporated by an attorney under a power of attorney granted to him. The company comes into existence on the implementation of the statute. Only registration in the Entrepreneurs' Register provides the PLC with its full legal status.

The statutes should specify:

- the business name of the company, including the additional description 'Spółka akcyjna', or its abbreviation 'S.A.',
- the seat of the company,
- the scope of its business activity,
- whether the company has been incorporated for a limited period of time,
- the amount of the company's share capital and the amount paid up to cover share capital before registration,
- the nominal value of the shares and their number with an indication of whether they are registered, or bearer shares,
- whether various types are provided, and if so, the number of shares of a specific type and their related rights,
- the founder's name,
- the number of members of the management Board and Supervisory Board (at least the minimum and maximum number of members of these bodies with information concerning the entity authorised to define the membership),
- the gazette selected for publication of the company announcement if the company intends to publish announcements in addition to those published in court and business gazette (Monitor Sądowy i Gospodarczy).

Under Polish law the joint-stock company must have a minimum share capital of 100,000.00 PLN and the minimum nominal value of the stock must be 0.01 PLN. Contributions may be made in cash or in kind and the contribution in kind must be at the disposal of the Management Board.

### **Corporate bodies of a Joint-Stock Company / PLC**

A PLC Company has three governing bodies: the Management Board, the General Assembly and the Supervisory Board, which is statutory. The features, duties and obligation of the Supervisory Board and Management Board are almost the same as in the case of a LLC.

The General Assembly is a body created by stockholders who may exercise the rights stipulated in the Code of Commercial Companies and the statute. An Annual General Assembly must be called within six months of the company's financial year and the items on the agenda are stipulated by law.

### **Liability in a Joint-Stock Company / PLC**

Just as in the case of the LLC, the stockholders of the PLC are not liable for any debts or obligations of the company, and Polish law does not provide any exemptions from this principle. The stockholders can only lose their investment (e.g. monetary contribution or in-kind contribution invested to take up the shares in the share capital of the company). To protect the economic interests of the company's business partners and of public institutions (e.g. tax authorities), Polish law states that in certain circumstances members of the management board may be liable for the debts of the company.

## **other corporate entities**

### **CIVIL PARTNERSHIP**

A civil partnership governed by the Civil Code is used for small businesses. A civil partnership does not have any legal personality and is considered by Polish law as a civil agreement between at least two individuals or legal entities. The partners of the civil partnership are jointly and separately liable for any debts incurred in the partnership. The partners are registered in the Business Activity Register. The profits of the civil partnership are subject to personal income tax due to the fact that civil partnerships are perceived as transparent for tax purposes by Polish tax law. Foreign investors rarely choose this legal vehicle for their investments in Poland.

## **GENERAL PARTNERSHIP**

A General partnership is an association of at least two partners operating an enterprise under its own business name. The General partnership is governed by the Code of Commercial Companies. The company is registered in the Entrepreneurs' Register (KRS). The General partnership is not a separate entity, it is a legal organisation with the capacity to acquire rights, incur debts, sue and be sued. The rights and obligations of the partners are stipulated in the partnership agreement. Each partner has unlimited liability for the debts of the General partnership, where execution from the assets of the partnership proves ineffective (subsidiary liability of the partner).

### **LIMITED PARTNERSHIP**

In the General partnership all partners are fully liable for the partnership's debts, whereas in the case of the Limited Partnership there are general partners with unlimited liability and limited partners, whose liability is restricted to their fixed partnership contributions. The name of the general partner should be revealed in the partnership's name. On the other hand, if the business name of the Limited Partnership includes the name of a limited partner in the partnership's business name, the limited partner bears an unlimited liability as if it were the general partner. Although a partnership itself is not a legal entity, it may acquire rights and incur liabilities, acquire title to real estate and sue or be sued.

The mixed construct of the Limited Partnership with a LLC as a sole general partner is used quite often by foreign investors in order to limit liability and to achieve the optimal taxation model.

### **LIMITED LIABILITY PARTNERSHIP**

A Limited Liability Partnership is a partnership incorporated by professionals (such as lawyers, tax advisors or doctors), for the purpose of rendering professional services. A partner of the Limited Liability Partnership may only be a person authorised to carry on the profession. The main feature of the Limited Liability Partnership is that a partner is not liable for the obligation of the partnership incurred in connection with the professional activities of other partners.

### **PARTNERSHIP LIMITED BY SHARES**

A Partnership limited by shares has two types of participators. It has at least one partner

with unlimited liability (general partner) and at least one partner that is a stockholder. The Partnership limited by shares is a mixture of a partnership and a joint stock company. This form of activity is relatively uncommon, however, it is used in atypical investments conducted by PE/VC investors. The business name of a joint-stock company should include the names of one or more general partners and the additional description ('spółka komandtowo-akcyjna'). If the stockholders' name is included in the partnership's name, the stockholder has unlimited liability for any obligation of the partnership. The minimal share capital is 50,000.00 PLN and the statute must be signed in front of a Polish notary. The partnership comes into existence upon the registration in the Entrepreneurs' Register.

### **SOLE PROPRIETORSHIP**

The simplest form of doing small business in Poland is the legal form known as sole proprietorship. The proprietorship is created upon the registration in the Business Activity Register held by the head of the municipality. The owner has unlimited liability for any debts connected with the sole proprietorship. This legal form is used by foreign managers and directors as a platform to render their services for Polish companies.

### **BRANCH OFFICE**

Foreign investors may establish branches in Poland to conduct the same business as the foreign investor. From a legal point of view, the branch is part of the foreign enterprise and does not have its own legal identity. The branch is registered in the Entrepreneurs' Register and may conduct business upon its registration.

### **REPRESENTATIVE OFFICE**

Foreign investors are also allowed to establish representative offices, which in their simplest form only relate to the involvement of international business in Poland. Despite this, the representative offices may not conduct business activities in Poland and can only carry out activities in respect of the advertising and promotion of a foreign investor's business.

### **EUROPEAN COMPANY**

On 8 October, 2004 the council regulation (EC) No. 2157/2001 on the Statute for the European Company (SE) entered into force. The European Company is regulated by the European Economic Interest Grouping and the

European Company Act dated on 4 March, 2005. A European Company may be formed in one of four ways: the merger of at least two joint-stock companies, the formation of a holding company, the formation of a joint subsidiary, or the conversion of a joint-stock company under the additional conditions prescribed by law. The SE must have a minimum subscribed capital of 120,000.00 EUR. Monetary contributions and in-kind contributions are permissible. In case of a cash contribution, at least one quarter of the nominal value should be covered before the registration. Shares subscribed for in-kind contributions must be covered in full no later than one year after the date of the company's registration.

The Statutes of the SE must constitute as governing bodies the the General Meeting of the Shareholders and either a Management Board and a Supervisory Board (known as two-tier system) or an administrative board (known as one-tier system). Under the two-tier system, the SE is managed by the Management Board. The member or members of the Management Board are empowered to represent the company. They are appointed and dismissed by the Supervisory Board. No person may be a member of both the Management Board and the Supervisory Board of the same company at the same time. Under the one-tier system, the SE is managed by an administrative board. The member or members of the administrative board have the power to represent the company. Under the single-tier system, the administrative board may delegate the power of management to one or more of its members.

### **EUROPEAN ECONOMIC INTEREST GROUPING**

Apart from the European Company, Polish law provides a second supranational form of business organisation, known as the 'European Economic Interest Grouping'. The main feature of the EEIG is that its purpose is not to make profits, but to develop the economic interests and activities of its members.

## establishing and registering an entity

The first step in incorporating an entity is to choose the appropriate legal form. This has a significant effect on the further proceedings. The LLC or PLC are probably the most attractive legal vehicles for foreign investors conducting business in Poland. Therefore, the following explanations will focus on the above. The formation of LLC and PLC is executed before a Polish notary and the Articles of Association must be notarised. In effect, the company as an entity is incorporated. The company as an organisation (before the documents are submitted to the Court) may, in its own name, acquire rights, including ownership of immovable property and other rights in rem, incur obligations, sue, and be sued. The company must also choose its business address. In the registration process, the address is confirmed by the lease agreement or the title of ownership of the real estate. The initial capital of the company must be paid in full by the LLC and at least in 25% by the PLC before the moment of submitting the documents to the Court. All companies in Poland are required to open a bank account. The documents required for the opening of an account may be different at every bank (e.g. articles of association/statute, and the specimen signatures of those authorised to represent the company). The next step is to submit an application to the National Court Register (KRS).

Apart from an application form (KRS-W3), the following attachments are required upon registration of LLC:

- articles of association,
- documents appointing the company's governing body (the Management Board),
- a statement from all members of the Management Board that the contributions initial capital have been made by the shareholders in full,
- consent to the appointment of a company's representatives,
- a list of the shareholders, the number and nominal value of shares held.

The following attachments to the application form (KRS-W4) are required upon registration of the PLC:

- a company's statute,
- notary deeds on incorporation of a company, and on the subscription of stocks,
- documents appointing the company's governing bodies (the Management Board and the Supervisory Board),

- consent to the appointment of a company's representatives,
- a statement from all members of the Management Board that the stock payments and contributions in kind envisaged by the charter have been effected lawfully,
- a confirmation for the stock payments from bank or an investment company.

The court fee for the registration is 500.00 PLN and 100.10 PLN for the publication in Monitor Sądowy i Gospodarczy.

As of 1 December, 2014, changes to the Act on The National Register Court have been introduced aiming at speeding up the registration procedure of a new company. REGON identification number (assigned by the Central Statistical Office - Główny Urząd Statystyczny), as well as Tax Identification Number (assigned by the Tax Office) are now assigned automatically after an entry of a new company in the National Register Court is made. Relevant data of a new company is also automatically transferred to the National Insurance system. This solution should significantly reduce the time of the registration procedure.

From 1 January, 2012, an LLC can also be established using standard articles of association available in the Information and Communications Technology (ICT) system. The new registration procedure, carried out by filling in the registration form, articles of association and the list of shareholders all in the ICT system, is aimed at removing barriers to starting a business. As of 15 January, 2015 the same procedure can be used while establishing and entering into an agreement of a limited partnership, as well as general partnership.

Additionally, from 1 April, 2016, it will also be possible in the ICT system to make changes in the articles of association of an LLC, limited partnership and a general partnership as well as to dissolve these companies. Shareholders in an LLC will also be able to sell their shares and undertake resolutions using the electronic model.

# *investment incentives\**

**Poland is a beneficiary of considerable EU funds which have allowed it to establish a broad system of support for business. Numerous investment incentives and sources of state aid are available, also for investors operating within 'Special Economic Zones' (SEZs).**

In 2014-2020 Poland will receive EUR 82.5 billion under the EU cohesion policy. These funds may be used to help implement domestic and 16 regional operational programmes. Moreover, Poland will receive funds under the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund, which will enable the country to implement programmes targeted at the agricultural sector and the fisheries sector.

When looking for business financing opportunities it is also important to remember national sources which are available, for instance, from the National Centre for Research and Development, the National Fund for Environmental Protection and Water Management or the Ministry of Economy.

This broad catalogue of support instruments offers numerous investment incentives to entrepreneurs. Support is available, inter alia, for:

- investments into fixed assets and into the creation of new jobs,
- research and development activities,
- activities related to environmental protection (e.g. support for investments in renewable energy sources)
- training,
- acquisition of a new technology.

**Poland's total allocation of European Structural and Investment Funds (ESIF) for 2014-2020 - EUR 89 billion (approx.), which is 1st for the EU member states, which is more than double Italy in 2nd place with EUR 43.8 billion (approx.).**

Investment incentives granted to entrepreneurs must be in line with both domestic and EU legislation concerning the provision of state

aid, which define the rules of combining aid from various sources, maximum support levels, beneficiary categories and detailed criteria to be met when applying for assistance.

Support is possible both at the investment stage of the project, and after its completion, during the operational stage. One example of an important state aid instrument at the investment stage is the 'Programme for the support of investments of particular significance to the Polish economy for 2011-2020' (Program wspierania inwestycji o istotnym znaczenia dla gospodarki polskiej na lata 2011-2020).

Business opportunities in Poland can be considered attractive, due to a solid base of economic growth over the past years. Additionally, Poland has not been hit by the global financial crisis in the same way as other countries.

The banking sector is stable, the main indicators for FDI's are excellent and local government investment is at a high level. Furthermore, the structural funds from the EU will underline this tendency and keep the investment volume on a high or even increasing level.

Public aid for FDI is ensured mainly through the laws constituting the Special Economic Zones (SEZ). The opportunities are highly interesting for long-term direct investment. It is possible to combine different instruments of public aid, but this cannot exceed the admissible intensity of regional aid.

## **EU structural funds 2014-2020**

From 2014 to 2020 Poland will gain EUR 82.5 billion from EU Cohesion Policy (approx. EUR 77 billion after deducting transfers relating to additional funds for i.e. help for the poorest people and Connecting Europe Facility instrument). This sum will be increased owing to the necessary contribution from the Polish Government. Financial support will be provided mainly within the framework of national and regional Operational Programmes. The three most important national Operating Programmes are: In-frastructure and Environment, Smart

Growth and Knowledge, Education and Development. Apart from a group of 6 national Operational Programmes covering issues at the national level, each of the 16 voivodships has its own specific Regional Operational Programme.

Financial support will be provided partly as investment aid and partly as other types of aid, among others:

- R & D activity grants,
- environmental grants,
- training grants.

Investment support will be granted mainly in the form of repayable financial instruments. Non-repayable support in the form of grants will go to conducting R&D work, purchasing R&D equipment and to the most innovative investments (related to R&D works implementation), which will enable the generation of new technologies, new products and services.

The following table illustrates operational programmes available in Poland and estimated budget distribution.

name	total funds	amount in EUR billions
<b>OP Infrastructure &amp; Environment</b>	33%	27.4
<b>OP Smart Growth</b>	10%	8.6
<b>OP Knowledge, Education &amp; Development</b>	6%	4.7
<b>OP Eastern Poland</b>	2%	2.0
<b>OP Digital Poland</b>	3%	2.2
<b>OP Technical Assistance</b>	1%	0.7
<b>16 'Regional' Operational Programmes</b>	38%	31.1

#### **operational programme - knowledge, education & development (KED OP)**

Financed from the European Social Fund (ESF).

In the view of the scale of social problems, 65% of the EU funds are being allocated to the implementation of projects which will be co-financed by the European Social Fund. A substantial part of these funds under that programme is focused on the implementation

#### **operational programme - infrastructure & environment (IaE OP)**

For needs relating to transport, the environment and other types of infrastructure, 33% of the total funds will be distributed for this programme from sources of the European Regional Development Fund (ERDF) and the Cohesion Fund. The aim of IaE OP is to support an environmentally-friendly, low-emission economy strengthening territorial and social cohesion. Issues connected with balanced development will also have a major importance due to the following streams of investment in the energy sector. The necessary investment in the diversification of traditional energy sources is to be achieved using market mechanisms, investing in renewable energy, reducing demand for energy and otherwise environmentally friendly projects. Investments of key supra-regional importance concerning the social infrastructure (health care, culture and higher education) will be complementary to these areas. The expected value of these indicators of expenditure on the implementation of the EUROPA 2020 goals will be reached by concentrating the EU funding on the activities for the conformity of the national transport system with the European system, mainly the development of the transport infrastructure of transnational outreach with respect to the principles of balanced development.

of the EUROPA 2020 goals. The programme is concentrated on the following areas: employment, education (including higher education), and social inclusion, development of the mobility and adaptability of workers and enterprises as well as issues connected with improvement of governing effectiveness. It creates an efficient and effective public administration at all levels, implementing a good governance principle and health promotion in human resources. The

overall goal of the programme is to optimise Poland's human resources potential through increasing employment, the adaptability of enterprises and employees, raising the level of education in society, reducing areas of social exclusion and supporting the development of the state's administrative structures.

The combination of all areas supported by the ESF and resources are concentrated on one central programme and on regional operational programmes, resulting from the need to ensure a consistent system for the implementation of ESF in Poland.

### **operational programme - smart growth (SG OP)**

Financed from the EFRD.

10% of the total of the EU funds is allocated to the SG OP. It is assumed that the highest performance value indicators will be reached under this programme. The focus of the SG OP is to increase the number of innovations by increasing R&D outlays, development of R&D institutions, and development of co-operation between the science and business, as well as diversifying entrepreneurship potential. The investment should be responsive to the needs of the EU Single Market.

The programme supports innovation at a national level. Innovation at local or regional levels is supported and promoted through the Regional Operational Programmes. The main goal of the Smart Growth Operational Programme is the development of the Polish economy based on innovative enterprises. The programme's detailed objectives include: increasing the innovativeness of enterprises, enhancing the competitiveness of Polish science, creating better, sustainable jobs and increasing the use of ICT in the economy.

### **operational programme - Eastern Poland (OP EP)**

The Operational Programme Eastern Poland (OP EP) is financed from the ERDF. The reason for the continuation of this programme is the lack of competitiveness and innovativeness of the five most disadvantaged regions: Lubelskie, Podkarpackie, Podlaskie, Świętokrzyskie and Warmińsko-Mazurskie. These voivodships are characterised by: low work productivity, low living standards, a low dynamic of economic development, poorly developed, inadequate transport infrastructure and insufficient growth factors.

The outreach of the OP EP covers the areas of intervention of other programmes but it differs in that its scope is restricted to selected areas which, because of the scale of activities and the expected long-term results, may have a special impact on the development process. This programme is an additional element of support under the EU Structural Funds which will enhance the actions of other programmes in Eastern Poland.

The Objective of the Operational Programme Eastern Poland is increasing competitiveness and innovativeness of in Eastern Poland macro-region. The main objective of the programme will be achieved through the implementation of specific objectives, namely:

- supporting innovativeness and R&D,
- supporting competitiveness of enterprises, especially in the area of internationalisation,
- increasing effectiveness of provincial cities and their functional areas transport systems,
- increasing inner cohesion of the macroregion.

### **operational programme - Digital Poland (OP DP)**

The Operational Programme Digital Poland (OP DP) is financed from the European Regional Development Fund. OP DP focuses mainly on the implementation of smart growth priority. 2.6% of the funds will be dedicated to ICT projects, broadband networks and e-services. OP DP also contributes to achieving the objectives of the Digital Agenda for Europe, which is one of the seven 'flagship initiatives' of the Europe 2020 Strategy. The programme is intended for administration offices and their units, as well as telecommunications operators. OP DP will support public administration especially in provision of public e-services.

In accordance with the strategic documents, OP DP should provide support in three areas:

- universal access to broadband Internet,
- content and services available through the network,
- digital competence development.

regional operational programmes

For the Regional Operational Programmes 38% of EU Structural Funds for the 2014-2020 Perspective have been allocated.

The justification for the preparation of the 16 ROPs is the decentralisation of the programming of regional development, an increased

effectiveness of the provision of development activities by the public administration, the strengthening of the civil and self-government dimensions, as well as the effective use of structural measures for the period of 2007-2013 by regions under the Regional Operational Programmes.

The objectives of the ROPs are on the one hand set by voivodships in compliance with regional development strategies, while on the other hand they are also compliant with the goals of EUROPA 2020 strategy. All ROPs have a similar structure, but their contents and financial resources are specified at the regional level. They need to harmonise the list of activities implemented under regional programmes resulting from a number of premises, of which the most important is to ensure the consistency between the regional approach and goals and priorities of the national and European strategies, as well as taking into account activities concerning state aid for the SMEs sector (uniform criteria for the granting of aid are laid down at the national level).

### **general rules for project development**

Before applying for EU Structural Funds the following key issues should be defined:

- the project's objective,
- the expected effect and benefits to be derived from the project,
- the starting and closing date of the project, as well as the duration of each project stage,
- the project's implementation path,
- the people involved in the project,
- the costs involved,
- the limitations and threats to project implementation,
- an analysis of financial sources,
- an analysis of requirements to be met by the beneficiary and the project (whether it would be eligible for co-financing or not),
- an analysis of the technical and financial aspects of the project.
- Regardless of the type of a programme, one has to take the following facts into consideration:
  - the financing authority will not assign any funds until it is presented with a coherent, logical and complete project,
  - development of a project requires considerable expenditure of time and money,
  - not all projects will be granted support

(failure to meet the criteria or comply with the procedures will result in project rejection),

- the project must be addressed to a clearly specified group of beneficiaries and respond to documented needs,
- the project must be in line with the beneficiary's statutory objectives and individual strategy,
- the project should contain a detailed timetable of actions - a cost estimate, as well as a system of promotion, monitoring and evaluation,
- the project costs must be fairly calculated, based on the actual costs incurred,
- a beneficiary should ensure the sustainability of a project for a minimum of five years, or, in the case of SMEs (small and medium enterprises), a minimum of three years following the project's completion.

### **incentives in Special Economic Zones (SEZs)**

A Special Economic Zone (SEZ) is a particular area defined by the regulations issued by the Ministry of the Economy for each SEZ. Such areas are specially earmarked with local infrastructure support, in which business activity can be conducted on preferential terms (corporate income tax exemption). The primary objective of providing public aid within an SEZ is to assist in the reduction of development disparities between regions, thereby strengthening economic and social cohesion. In order to operate within an SEZ and benefit from the aforementioned exemption, the investor must obtain a special permit which is issued by SEZ authorities.

## Special Economic Zones (SEZs) in Poland



Source: PAIIZ

The map above shows the main headquarters of each of the 14 SEZs (source PAIIZ). In addition to these, there are many subzones to help the investor place their project in the most suitable location. The combined area of all the SEZs currently exceeds 18,687 ha, although the total area of the SEZs cannot exceed 25,000 ha.

The conditions for conducting business within the SEZ are as follows:

- investment expenditure should amount to at least EUR 100,000.00,
- the entrepreneur's own share should be at least 25%,
- investment must be maintained for at least 5 years from the investment completion date (3 years for SME),
- newly created workplaces must be maintained for at least 5 years from the employment date (3 years for SME).

Investment sites located currently outside of a SEZ area may be incorporated into a SEZ under certain conditions. The incorporation process lasts from 6 to 9 months and is started after an interested entrepreneur submits an application to the relevant SEZ. CIT exemption can be utilised by the timeline of permission or given SEZs existence (currently 31 December, 2026). CIT exemption is provided only for profits earned from activities conducted within the SEZ.

In the SEZ permit, the investor must provide investment outlays, the intended level of employment, the date of commencing business and the deadlines for fulfilling all obligations mentioned in the permit, which is usually valid until the end of a given SEZs existence.

It takes between two and four months to complete all the requirements needed to obtain a SEZ permit and to start a business activity entitled to CIT exemption. The SEZ management collects an annual fee for administrating the SEZ.

## programme for the support of investments of considerable importance for Polish economy for years 2011-2020

A programme for the support of investments of considerable importance for Polish economy for years 2011-2020, was passed by the Council of Ministers in July 2011 and provides earmarked subsidies for new investment projects from the state.

This subsidy is granted on the basis of an agreement between the investor and the Minister of Development. Before the agreement is signed each investment undergoes an assessment process on the basis of defined criteria. The cash grant subsidy may not be combined with other forms of support engaging public aid, such as SEZ exemptions or EU Grants unless additional criteria are met.

The investment has to be maintained for at least 5 years from the date of its completion (3 years in the case of SMEs), and each newly created job has to be maintained for a period of at least 5 years from the date of its creation (3 years in case of SMEs). Incentives offered under the Programme starting from 1 July, 2014 are consistent with the rules on the award of state aid in the EU: Commission Regulation (EC) no. 651/2014 of 17 June, 2014 declaring certain categories of aid compatible with the common market in application of Articles 107 and 108 of the Treaty (Official Journal of the European Communities L 187 of 26 June, 2014, page 1). Aid that does not comply with the requirements of the Regulation may be granted after approval by the European Commission according to the procedures specified in the Guidelines on regional State aid for 2014-2020 (Official Journal of the European Communities C 209 of 23 July, 2013, page 1).

The Programme focuses on supporting foreign direct investment in sectors 'of particular importance to the national economy', which include:

- automotive sector,
- electronic and household appliances sector
- aviation sector,
- biotechnology sector,
- food processing sector,

- modern services sector (IT, ICT, SSC, BPO),
- research and development (R&D).

Grants will be awarded by the Ministry of Development, and will be payable in annual tranches for up to 5 years maximal until 2020.

### public private partnership (PPP)

Public-private partnerships (PPP) are institutions, in which state (local) authorities can work together with private investors to achieve common goals in an effective, accelerated and simple way.

PPP's promote growth, because more investment projects can be completed at the same time.

A law, which sets out the rules of co-operation between public authorities and private institutions, is an Act on Public-Private Partnership dated 19 December, 2008. This law has become part of the tools which already function within the Polish legal system.

The PPP Act regards the bodies, which may be considered as public entities in Art. 2 Sec. 1, to be:

- a public finance entity as defined by the regulations on public finance,
- other legal person (defined in the PPP Act).

Taking the above into consideration, we can enumerate some of the entities that fulfil the requirements of the statute to be regarded as public entities including: the organs of public authorities, including organs of government administration; state control, law enforcement bodies and their associations; a municipality; country and provincial authorities; entities financed by the state; and the local government (including other central or local state legal entities created under separate legislation for the purpose of performing public tasks), with the exclusion of enterprises, banks and commercial companies.

Moreover, the PPP Act has introduced improvements to the administering of real properties, such as:

- the possibility of the assignment of a property to a private partner or special purpose vehicle without holding a tender under the law on Real Property Management),
- the possibility of sale with a discount.

### Polish information and foreign investment agency (PALIIZ)

The Polish Information and Foreign Investment Agency (PALIIZ) is a useful partner for foreign entrepreneurs entering the Polish market. The Agency guides investors through all the essential administrative and legal procedures involved in a project. It also provides rapid access to detailed information relating to legal and business matters regarding investments.

Moreover, it helps with finding appropriate partners and suppliers together with new locations. The Agency was established in June 2003 to co-ordinate the economic promotion of Poland, stimulate the inflow of foreign direct investment, assist foreign companies in their investment processes and promote Polish exports. It was created in a merger between the State Foreign Investment Agency (PAIZ) and the Polish Information Agency (PAI). Both institutions were established in order to support the development of the Polish economy by raising the inflow of foreign investment and promotion of Poland abroad.

The Polish Information and Foreign Investment Agency provides professional advisory services for new investors in Poland, including:

- investment site selection in Poland,
- tailor-made investors visits to Poland,
- information on legal and economic environment,
- information on available investment incentives,
- facilitating contacts with central and local authorities,
- identification of suppliers and contractors,
- care of existing investors (support of reinvestments in Poland).

### the services provided by PALIIZ are free of charge

In order to ensure the best quality service, the Agency is divided into departments and bureaux with defined responsibilities:

- The Foreign Investment Department is responsible for winning foreign investors and ensuring the best quality services. The employees of this department advise companies in terms of the best location and take part in negotiations. The Foreign Investment Department assists companies with investment and also supports firms which have already invested in Poland.

- One of the most important departments is the Economic Promotion Department. Promotional activities of the department include the organisation of seminars, conferences, economic forums for investors both in Poland and abroad as well as exhibitions abroad. It is also responsible for publications and promotion materials on Poland and its economy. Since 2011, a China - Poland Economic Co-operation Centre operates in PAIiIZ as a 'One-Stop-Shop' providing comprehensive information on investment opportunities in Poland and offering support for Chinese companies during the investment process. The centre is responsible for: promotion of Poland as a location for FDI, identifying sources of foreign direct investment, supporting missions and delegations from China, preparing analysis & information, maintaining regular contact with Chinese companies operating in Poland as well as for the Go China Project. The Agency also has a China Representative Office in Shanghai. More information can be found on: [www.gochina.gov.pl](http://www.gochina.gov.pl).
- Additionally, since 2013 PAIiIZ has been implementing the 'Go Africa' programme. Its aim is to encourage Polish entrepreneurs to invest in African markets and promote Poland in Africa. Therefore PAIiIZ has organised: fact-finding missions to African countries, participation of Polish entrepreneurs in fairs, conferences, seminars and workshops both in Poland and in Africa. Furthermore, the Agency has prepared publications on African markets.
- The Information and Communication Department creates and implements the Agency's information policy. It deals with national and international media and promotes the positive image of PAIiIZ and its projects. The department is also responsible for organising study tours for foreign journalists and managing the Agency's web portals.
- The Economic Development Department (EDD) implements comprehensive action in developing strategic (PAIiIZ) plans as well as the substantive support of PAIiIZ. The Department is co-ordinated in conjunction with local government bodies and a support system for investors at a regional level. PAIiIZ experts provide support services for investors, post-investment care at a local level and are engaged in promotional activities associated with attracting investment to individual regions. Employees regularly acquire investment offers and

update this information on a database. The Department helps Polish companies in promoting their products on international market. EDD is also responsible for preparing investment offers for potential investors and co-operation with SEZs, local authorities and

Regional Investor Assistance Centres which work on promotion and increasing the FDI inflow into regions.

- Accountancy, financial, administrative and IT tasks belong to the Finance and Logistics Office. The employees of this department are responsible for financial documents and the monitoring of financial conditions of the agency.
- The Organisation and Personnel Office is responsible for organisational and HR issues as well as training.
- The Audit and Control Department is responsible for the internal auditing of the Agency and of other companies resulting from legal regulations.

All Agency activities are supported by Regional Investor Assistance Centres. Thanks to training and ongoing support by the Agency, the Centres provide comprehensive professional services for investors at voivodship level.

The Polish Information and Foreign Investment Agency is the best source of knowledge, not only for foreign entrepreneurs, but also for domestic companies.

On the website [www.paiz.gov.pl](http://www.paiz.gov.pl) investors can find all the necessary information concerning key facts about Poland, the Polish economy, legal regulations in Poland and all other detailed information which could be useful for any company wanting to set up a business in Poland.

You can contact them to learn more about how your company can profit from the unique business potential of Poland.

Contact details:

Polish Information and Foreign Investment Agency Foreign Investment Department  
ul. Bagatela 12  
00-585 Warsaw, Poland  
Tel.: +48 22 334 98 75  
Fax: +48 22 334 99 99  
E-mail: [invest@paiz.gov.pl](mailto:invest@paiz.gov.pl)

# *actually doing business in Poland*

**from start-up to performing a direct investment (Greenfield & Brownfield investments)**

## **activities requiring licenses, concessions or permits**

The general law stipulates that the undertaking and conducting of business activities is free. However, Polish law also states some exceptions to this general rule. It means that the undertaking and conducting of certain activities is limited and requires the consent of the Polish authorities or entry into the register of regulated services. We can divide the above-mentioned activities into 4 main groups:

- activities which may be undertaken and conducted freely,
- activities which may be undertaken and conducted on the basis of a concession,
- activities which may be undertaken and conducted on the basis of a license or permits,
- activities which may be undertaken and conducted upon registration into the register of regulated activities.

Furthermore, Polish law states that certain professional services may be conducted only by people who have an appropriate qualification (e.g. tax advisors, lawyers, real estate, appraisals, architects, accountants or financial advisors).

To conduct certain types of activities (e.g. bank or insurance funds, pension funds) Polish law requires the establishment of a specified legal form (e.g. joint-stock company).

## **concessions**

A concession is issued for a period of time between 5 and 50-years and is stipulated for business activities which have a significant importance for the interests of the State (e.g.

national security, public safety and major public interests).

## **licenses & permits**

Polish law also states other types of administrative decisions which are mandatory in order to undertake and conduct business activity. When the entrepreneur fulfils the statutory requirements stated by law, they may apply for an administrative decision (e.g. a permit or license). Polish law states that for almost thirty types of business activity you are required to obtain a permit or license. Below you will find some of the business activities which require such administrative decisions:

- national and international road transport (including goods and passengers),
- forwarding agency,
- railway stations,
- tourism agencies,
- private investigation and detective services,
- conduction of business in special economic zones,
- the operation of banks, insurance companies, brokerage agencies, investment funds or pension funds,
- wholesale trade and manufacturing of alcoholic beverages, casinos, lotteries and gambling.

## **registration for the register of regulated activities**

Such activities may be conducted when the entrepreneur fulfils their statutory requirements and upon registration into the register of regulated activities. Polish law states twenty types of regulated business activities. Below are some of the business activities which require entry into the register of regulated activities:

- the archiving of employees' and personal documentation,

- storage enterprises,
  - telecommunication,
  - the manufacturing of alcoholic beverages,
  - detective services,
  - work agencies,
  - the organising of horse races.

Authorities responsible for issuing concessions

<b>activity requiring a concession</b>	<b>authority</b>
Searching, exploration of minerals; underground storage of substances and waste in rock masses, or in underground mines	Ministry of Environment
The manufacturing of and trading in explosives, ammunition, weapons and other items and technology for military, or law enforcement purpose	Ministry of the Interior
Manufacturing, processing, storing, delivering, distributing and trading of fuels, energy	President of the Energy Regulatory Authority
Security services for persons and property	Ministry of the Interior
Radio and television broadcasting	President of the National Broadcasting Authority
Air transportation	President of the Civil Aviation Authority

## real estate market

The Polish real estate market has been strongly dominated in the past years by the outstanding position of the Polish capital Warsaw as the centre for major investment activities. In a second wave within the last five years other cities such as Wrocław, Tri City (Gdańsk, Gdynia, Sopot), Poznań, Katowice or Łódź have also developed a strong position. Not only have they attracted Industrial, BPO - or logistics investments, in addition they have become serious markets for international developers and investors, which have invested in local commercial and housing projects.

The financial crisis, which limited or partly blocked access to financial sources led to a generalised 'high risk classification' of Poland within the CEE countries on one level with Hungary, Ukraine or the Baltic countries. After the first wave of panic, international investors have stated that the Polish economy is stable. The European Commission expects Poland to grow by 3.4% in 2016. This stability is attracting new potential investors to Poland. Nevertheless, the adjustment to the strong growth of real estate prices has probably prevented the creation of a Real Estate bubble, which has already been developing quite strongly in the housing market.

Poland is now going through a phase of consolidation but in a third wave we expect the following market developments:

- more selective choice of attractive locations (while new well located sites have lost within the crisis from 7.5%-15% of the boom-value, the price decrease of 2nd and 3rd choice locations will exceed 20% or 25% due to higher vacancies and more competition on the market),
- focus on investments and growth in less developed Cities with 100,000 to 500,000 inhabitants (Lublin, Rzeszów, Kielce, Białystok) - third wave after Warszawa, and other top Polish cities (Poznań, Wrocław, Tri City (Gdańsk, Gdynia, Sopot), Kraków, Katowice, Łódź),
- building quality will become more crucial for the valuation of the real estate.

The Polish market is becoming more mature. Poland and the Czech Republic remains the most developed and liquid market in the CEE region. Increasing diversity of capital flowing into Poland, which in turn translates into increasing competition among investors, greater liquidity and exerting upward pressure on property prices.

## acquiring real estate

### legal entitlement to real estate

Entitlement to real estate is regulated by the Polish Civil Code from 23 April, 1964. Real estate is understood to be grounds with premises, including facilities such as apartments, and houses etc., which are separate subjects of property in accordance with Polish Law. Full ownership gives the widest scope of rights related to real estate and can be restricted only under certain circumstances, defined by the Civil Code (neighbour or zoning regulations),

administrative law or the owner's will. Ownership is the ultimate right to real estate and provides the owner with a complete range of usage. Ownership is legally protected against any third parties acting against the owner. Ownership is not time-limited. Neither the government nor public offices have any right to interfere with ownership, the only exceptions being those presented in the zoning plan.

The Polish legal system offers several types of rights to real estate:

- ownership,
- perpetual usufruct,
- usufruct,
- real Estate easement,
- transmission easement,
- mortgage,
- lease.

### **ownership**

Full ownership gives the widest scope of rights related to real estate and can be restricted only under certain circumstances, which are defined by the Civil Code (neighbour or zoning regulations), administrative law or willingness of the owner. Ownership rights are the most complete and have a full scope of the usage of the property of land or building. The right of ownership is protected against all third parties, trying to act against the owner. Ownership rights are not time limited. The government or public offices do not have any right to influence ownership, except for zoning and taxation regulations. In some cases properties may be expropriated with compensation for the construction of a public road.

### **perpetual usufruct**

Perpetual usufruct is established with respect to land owned by the State Treasury or local government authorities. It is usually created for 99 years (the minimum period is 40 years) and may be extended. The perpetual usufructee is allowed to use the land in the same scope as the owner. However, the purpose of land use is defined by an agreement and should be recognised before purchasing the right of usufruct. This is because the owner (State Treasury or local government) may terminate the agreement if the land is used in a way contradictory to the way defined in the agreement. The purpose is generally defined by development and zoning regulations. Right to terminate the perpetual usufruct agreement

is used by State Treasury or local governments only in exceptional circumstances (continuous and flagrant violation of purpose).

The perpetual usufruct is transferred under the same rules as normal ownership and property rights for real estate. No special permit from the owner (the State Treasury or local government unit) is required (except when the transfer is carried out by foreigners). In most cases the perpetual usufruct may be transferred to full ownership upon application and payment of the transformation fee.

### **fee for perpetual usufruct**

Usufructees must pay the government an annual fee (until 31 March, 2009) separate from the obligatory land tax. The fee is calculated with respect to land value and cannot be changed more than once a year (for special types of land this period can be extended to 5 years). Because of the fee perpetual usufruct is recognised to be more expensive than ordinary ownership.

### **ownership vs perpetual usufruct**

A substantial difference between perpetual usufruct and ownership is that in the perpetual usufruct the building is a separate object of ownership from the land. After constructing a building, the perpetual usufructee becomes its owner with full ownership rights. In case of the termination of the perpetual usufruct, the usufructee has the right to obtain an equivalent market value of the building from the State Treasury or a local government.

### **usufruct**

Usufruct is a qualified property right established by the owner or perpetual usufructuary in a notarised deed. Usufruct allows for both using the real estate and gaining benefits therefrom. Usufruct can be either payable or free of charge, however in case of the latter it may be subject of additional taxation. The usufructuary is also obliged to incur costs related to the real property maintenance. Usufruct is non-transferable, and it can't be transferred to any other natural or legal person.

### **real estate easement**

Real estate easement is a qualified property right, under which the owner of a real estate may either use other real estate to a specified extent (defined in an easement contract), or possible actions with respect to his/her property are limited in order to increase the usefulness of

another property. Easements are established by contracts between property owners in the form of a notary deed. Easements shall be revealed in the land register.

### **transmission easement**

Transmission easement is a qualified property right that can be established for a grid operator that intends to construct or owns facilities used to transmit electricity. The easement authorises a grid operator to use the real estate to a specified extent, in line with the intended use of transmission facilities. The owner of the property may claim compensation from a grid operator (in case of all utilities) for limitations in property use related to the presence of transmission facilities.

### **another right to real estate**

The Polish Civil Code also recognises the right to use real estate in the form of lease, without ownership rights. Any legal entity, including a foreign company or natural person, may lease land without any special permit from the Ministry of Interior and Administration or any special conditions from local authorities. The freeholder may give his right to use and additionally to gain profit from the property to a third party. The Polish Civil Code recognises two types of lease contracts: *umowa najmu* (where only its use is possible) and *umowa dzierżawy* (for use and profit gain).

According to the above property rights and contractual rights related to usage by third parties, the law recognises so-called sale and lease back contracts. These allow a foreign company or natural person to get long-term rights for property use.

### **real estate acquisition**

Real estate acquisition is regulated by the provisions of the Polish Civil Code. Property transfer may be based only on a sales agreement, which stipulates all the parties' rights and obligations. Both real estate and perpetual usufruct transfers become valid through a sales agreement, which is obligatorily signed in front of a public notary in the form of a notary deed.

### **pre-sales agreement**

Prior to the final transfer of rights, decision makers may establish a so-called pre-sales agreement for selected land (or land with buildings). It is not necessary but highly recommended to make the pre-sales agreement in front of a public notary. In the pre-sales contract it is possible

to oblige the second party to realise specific conditions related to the property in question, such as clarifying legal status, the payment of mortgage and preparing for final sales. The pre-sales agreement may guarantee the rights for future property transfers, even without any pre-payment or minimal amounts as pre-payment.

### **real estate and mortgage register**

The above mentioned rules are binding for ownership or perpetual usufruct transfer. Both transactions differ in terms of when they actually come into force. In the case of ownership transfer, the date of signing the final agreement is the day the buyer becomes the property owner. Perpetual usufruct transfer requires (apart from signing the sales agreement) entering the new usufructee into the real estate and mortgage register kept by the proper court. As a consequence of the new entry of the buyer, the perpetual usufruct is transferred.

### **public purchase**

Purchasing real estate from public or government controlled authorities entails a special procedure, which involves public tender or auction. Public or government authorities guarantee equal conditions to all potential buyers.

### **acquisition of real estate by foreigners**

When on 1st May, 2004 Poland became a member state of the European Union and consequently joined the European Economic Area, the real estate purchasing procedure was altered to become more attractive for foreigners interested in investing in Poland.

However, certain binding regulations of Polish Law defined by the Act from 24 March, 1920 about the Acquisition of Real Estate by Foreigners (further referred to as the AARE), still states that foreigners with a seat registered outside the EEA intending to purchase real estate in Poland must obtain a permit from the Minister of Interior and Administration. The required permission is issued in the form of an administrative decision. This means that neither a public notary nor a Polish court or Government body can register or proceed with such action, and that the non-EEA entity will become neither owner nor usufructuary.

### **shares acquisitions**

This rule also applies to any acquisition of transactions or other legal actions when the

transaction concerns the shares/stocks (with the exemption of listed companies) of a legal entity with a registered seat in Poland, which is the owner or perpetual usufructuary of real estate. Permission from the Ministry of Interior and Administration is required for an acquisition or other legal action. A Polish company becomes controlled by a foreign company (which takes place when more than 50% of votes on the Shareholder/ Stakeholder Meeting belong to a foreign entity or when a company is controlled by similar natural persons as members of governing bodies like a Board of Directors).

### **exemptions for EEA companies**

The AARE classifies foreigners according to a foreign company's registered seat or foreign natural persons place of abode when they are located both within and outside the EEA.

When foreign companies and nationals are registered inside the EEA they are exempt from obtaining an acquisition permit. These entities do not require any permit for the acquisition of shares/stocks or real estate, except agricultural land and a forest. However, purchasing agricultural land or a forest (12 years from 1 May, 2004) or the so-called 'second house' (5 years from 1 May, 2004 until 30 April, 2009) still entails obtaining a permit, even for foreigners registered inside the EEA.

### **procedure of permission process**

The standard procedure involves obtaining a permit from the Ministry of Interior and Administration, which takes on average 3-4 months of administrative procedures. Moreover, it is also necessary to collect all required documents, which is a time-consuming process.

A foreign businessperson may apply for a promise regarding a prospective acquisition. Such a promise is in the form of a guarantee that he/she will obtain the permit without any special conditions or requirements. However, the promise is not an act that allows purchasing real estate or shares/stocks. In order to close or transfer ownership, a permit is mandatory.

## **investment process**

### **analysis**

The choice of location affects about 80% of the investment and follow-up costs (including development costs, transport costs, wages, taxes and energy). The first choice between 'Greenfield & Brownfield' defines the basic

scope of possibilities to choose between the location advantages.

Below is a short extract about the main location factors which we must consider during the investment process.

- greenfield vs. brownfield,
- the investment inside or outside the Special Economic Zone,
- the distance, quality and time of logistics to the main customers,
- labour costs, availability and the quality of desired blue-collar and white-collar workers,
- infrastructure and development costs (all media, roads, access and extension possibilities),
- the availability of required components suppliers,
- the appropriate contacts in local authorities.

### **step-by-step investment process**

#### **architecture planning**

If the Start of Production (SOP) or other deadlines for an investment have been set up for a near date, the planning of buildings and other utilities must be prepared in advance. If the location has an official zoning plan passed (in the form of the resolution of a local government), an architect can start planning without any delay. If there is no zoning plan the investor must apply for Conditions for Area Development and Construction (CADC), which define the basic scope of the buildings allowed to be constructed on the specific property. Depending on the complexity of buildings allowed under CADC the procedure of obtaining CADC decision takes from 3 to 6 months.

For the phase of architectural planning, a minimum period of 3 to 6 months must be taken into consideration before a well-prepared document is sent to the architectural office to apply for a building permit. Many companies often underestimate the volume of official documents and procedures which must be prepared in order to start their operations in Poland.

#### **zoning plans**

The property may be utilised only within the limits allowed in the zoning plan, regulated by the Act from 27 March, 2003 on Zoning Planning. Zoning plans are drawn up by communal authorities and in order to be effective have to be passed by communal council in the form of

resolution. The procedure related to the change of a zoning plan requires reconciliation with numerous authorities and public consultation what makes it time consuming (minimum time of 9 months).

The zoning plan defines all conditions regarding prospective land use and the scope of business that may be conducted on the properties located within geographical limits, defined in the zoning plan. Zoning plan regulations are general and apply to all owners of real estates.

Local authorities are empowered to create zoning plans with respect to municipality development. The municipality creates the zoning plan in accordance with voivodship and country zoning plans.

Zoning plans may be changed by the municipality either in accordance with the owner's application or when the area is modified by the Government. The latter situation is rather exceptional and takes place when the modifications are related to public interest (such as building roads and railways).

It should be noted that in case of Special Economic Zones all properties, located within a boundaries of a special economic zone have a zoning plan passed and effective.

### **conditions for area development and construction**

A significant area of Polish territory has no zoning plans. This situation requires an application to the municipality for CADC. CADC is required for any investment process of land development or new investment, such as the re-development of brown field sites. CADC may be applied for by an owner of a real estate or a third party. There can be multiple different CADC issued for a single property (unlike zoning plans or building permits, where only one document of that type may be issued and valid for a single property). Depending on complexity and real estate features (like soil class), different external authorities may be engaged in the process of reconciliation of CADC.

An application for a CADC should confirm specified conditions, e.g. that at least one adjacent plot is developed for a similar aim, has access to a public road and that the infrastructure is adequate for the planned investment. Obtaining the CADC may take up to 6 months, depending especially on whether the application presents the expected influence of the investment in the local community.

### **environmental decisions**

Before applying for a building permit an investor is obliged to conduct an environmental impact assessment (EIA) for the planned investment. The aim of the process is to define the related environmental risks at the stages of investment planning, construction and operations and minimise the negative impact. The process of EIA ends with obtaining an environmental impact decision (EID).

EID imposes environmental conditions for planning, construction and operations of an investment. Architectural design, building permit and other permits have to be compliant with conditions set in EID. As EID defines the level of noise and emissions it has an impact on future operations as well.

As EID has to be attached to the building permit application it has to be obtained first. In cases where there is no zoning plan and an investor applies for CADC, the environmental decision needs to be obtained before CADC. EIA is usually carried on simultaneously with the design process, as the architectural design and building permit need to be compliant with EID. The most important legal acts of the EIA process are the Act of 3 October, 2008 on the Provision of Information on the Environment and its Protection, Public Participation in the Environmental Protection and Environmental Impact Assessments and The Regulation of the Council of Ministers of 9 November, 2010 on types of projects likely to have a significant impact on the environment.

The above act define three types of investment projects with reference to EIA procedures:

- always having a significant impact on the environment (group I),
- may potentially have a significant impact on the environment (group II),
- cases in which modifications of civil structures are classified as projects from group I or group II.

Legal regulations list what types of investments should be qualified into group I or II. If an investment is not on the list no EID is required, however this must be confirmed by relevant authority.

As the EIA process requires significant amounts data and expertise it is strongly recommended to contract a specialised company that supports an investor in the EIA process.

The EIA procedure is carried out by the local government (commune), reconciled with local and regional authorities and in some cases consulted publicly. It can be divided into following key steps:

1. An investor prepares initial documents and submits them to the local government commune:
  - in case of group I - requests authority to define scope of the Environmental Report,
  - in case of other investment - provides general information regarding the investment (on a defined form) and requests decision if Environmental Report and Decision are required.
2. The local government gives initial ruling (after agreement with other authorities if needed):
  - in case of group I - defines scope of the Environmental Report,
  - in case of group II - decides that Environmental Report and Decision are required,
  - in other cases - decides that no EID is required - an Investor receives official confirmation that should be attached to building permit application.
3. An investor prepares an Environmental Report and submits it to the local government commune.
4. The local government analyses the report, reconciles it with relevant authorities and issues the EID (or may refuse to issue an EID).

In stages 2 and 4 the local government may decide to start a public consultation. The EIA process or requests amendments or complimentary information from the local authorities which are: local office of the National Sanitary Inspection (Sanepid) and Regional Authority for Environmental Protection (RDOS).

The EID process is one of the more complex and time consuming stages of the permitting process and depending on investment complexity and environmental impact takes from 4 to 6 months. If no EID is required official confirmation should be received between 2 to 6 weeks upon application.

An EID is valid for 4-years from the day when it becomes validated. An EID can also be transferred to a different entity.

## building permit

A building permit is an administrative decision approving an architectural design and entitles an investor to start construction work. Building Permits are issued by a district construction authority - Starosta. In larger cities building permits are issued by the city office. Some large and infrastructural investments (like sea ports or national roads and motorways) require building permits to be issued by a regional authority - Voivodship.

Building permits are issued upon application by an investor. Before the building permit is issued an authority verifies if architectural design and attached documents are legally compliant with Polish Construction Law (the authority is not entitled or allowed to check the technical characteristics of the design), zoning plan and informs owners of neighboring real estate about the fact that a building permit is about to be issued.

With the exception of architectural design a building permit application shall contain:

- a copy of the zoning plan or CADC decision;
- environmental Impact Decision,
- declaration that an investor holds a legal title allowing him/her to apply for a building permit,
- documents confirming that the design was agreed with all relevant authorities (like utility providers, administrators of public roads that provide access to the real estate).

The building permit is valid for 3 years from the day it was issued and validated. Building permits may be transferred to other entities.

The validation procedure protects interests of entities that may be influenced by an administrative decision, such as the building permit or EID. After a decision is issued a notification with a copy of a decision is sent to all engaged parties (neighbours and relevant authorities), which have 14 days to officially raise claims from the day they receive a copy of a decision. Notifications are usually sent via ordinary mail, which means that validation time takes 14-days, plus time required to deliver a letter with notification. If there are no objections or claims raised a decision receives a validation stamp.

Before construction work is started an investor needs to get a 'validation stamp' on the building permit and receive a construction log and inform the local construction inspectorate (Powiatowy

Inspektor Nadzoru Budowlanego) 7-days before construction work is planned to be started and appoint an official construction site manager (and work inspector if required).

In case of less complicated investments or some redevelopment work a less complicated procedure of 'construction works notification' may be used. In such case, an investor submits a simplified design (with relevant attachments) to a district construction authority. If an authority does not raise any objections within 30-days construction work may be started without further formalities.

### **use of operations permit**

After the construction works are finished an investment needs to obtain the usage permit before operations are started. In cases of less complicated constructions it is enough to inform a local construction inspectorate about the fact that construction works work was accomplished, if the inspectorate does not raise any objections within 14-days from the day it received the information an investor may start to use the building. Building permit defines whether an investment requires a usage permit or only notification.

In both cases the following documents needs to be delivered to the construction inspectorate:

- confirmation from the construction site manager (and construction inspector if required) that all work was accomplished, carried out compliant with the design and the construction site with the surrounding area is cleared from construction remnants,
- construction log,
- as-built geodesic map,
- approvals of connections issued by all relevant utility operators and road administrators,
- approvals and certificates for built-in materials, equipment and machines,
- protocols of checks and approvals for all relevant installations (electricity, fire protection, water, gas);
- approval of technical inspectorate for certain built-in machinery and equipment (lifts, tanks, boilers, cranes),
- documentation confirming energy characteristics of the building,

In order to receive the usage permit an investor needs to perform the following steps.

1. Collect all the above documents (Document confirming energy characteristics may be added in step 3).

2. Inform the local firefighting authority and the local office of the National Sanitary Inspection that the construction work was finished. Both authorities are entitled to check the construction site and all documents within 14-days after the information was received. If they do not react within the above-mentioned time an investor may proceed to the next step.

If one or both authorities decide to check the construction site and documents an investor has to receive a written positive approval to proceed further (if any authority raises objections to the construction site or documents improvements have to be made to receive approval).

3. After approvals are issued (or the above authorities do not react) an investor shall officially inform the local construction inspectorate, which checks the construction site and all documents again. If there are no objections the usage permit is issued. The building may be officially used after the usage permit is validated.

### **additional procedures**

Although not needed to obtain the usage permit there are some other permits related to environment protection that should be obtained before operations are started:

- Emissions permits - approving the start of operations of all installations emitting pollutants to air and water,
- Approval of the Environmental Inspectorate - if an investment required an EID an investor shall notify the Regional Environmental Inspectorate (Wojewódzki Inspektor Ochrony Środowiska) about the planned start of operations 30-days advance. The inspectorate is entitled to check the construction site and relevant documents to confirm that the investment was accomplished compliant with EID.

In 2015 there were major amendments to Constructional Law. The most important was for housing. However, this also exerts some influence on the investment process. The legislation, for example, withdraws the requirement to submit an application for a building permit and statements of ensuring the supply of utilities. Whether the object meets the requirements for attachment to specific networks will be verified only at the stage of putting the object in use.

# employment legislation

## the labour code

Every investor who wishes to start and develop their business activity in Poland must take into account the employment of workers. Polish law describes and regulates various possibilities of employment. The main legal form of employment is the employment relationship regulated by the Polish Labour Code from 26 June, 1974. The employment relationship is connected with the system of guarantees and rights of employees.

In accordance with the Labour Code the employee has a right to:

- receive sickness allowance,
- working time rules,
- special protection of some employees groups,
- procedure of termination of employment.

The Labour Code lists various forms of employment contract:

- for a probation period - this kind of contract may be concluded only once between a given employee and employer. Its purpose is to check the employee's suitability to perform duties for an extended period of time. The trial period shall not exceed three months,
- for a fixed period - this kind of contract is defined by a specified date,
- for an indefinite period,
- for a period of absence of another employee (i.e. a replacement employment contract).

Starting from 22 February, 2016, the Polish Employment Code will undergo vast changes in terms of fixed term employment contracts. The maximum duration of the fixed time employment contract from 22 February, 2016 will be 33-months. There is no differentiation between an indefinite period employment contracts and fixed time employment contracts in terms of notice periods, which are equal for both types of employment contracts. The notice periods last from 2-weeks to 3-months and are dependent upon seniority in the enterprise. It is allowed to conclude a fixed-term employment contract only three times. The fourth employment contract concluded with the same employer would be considered as an indefinite employment contract.

The employment contract must define parties, stipulate working hours, financial conditions, type of work and place of its performance. Moreover, it should be concluded in writing. Aside from the employment contract, the employee should receive from the employer written information concerning the employment within 7-days counting from the day when the work has started. The employee is obliged to perform work in the hours specified in the contract, as well as to carry out the instructions of their supervisors and act in the best interest of the employer.

## types of employment contract

An employment contract can be signed:

- for an indefinite period
- for a fixed term
  - for the same time it takes to complete a specific task (the description and duration of the task requires to be strictly specified in the contract),
  - to replace an employee - in the event of his or her justified absence from work; the employer can hire another worker under a fixed-term employment contract for the period of absence (the position of the replaced person requires to be strictly specified in the contract)

(The last two types of contracts require you to notify the National Labour Inspectorate within 5 working days)

All of these contracts can be preceded by an employment contract for a trial period of no more than three months.

An employment contract is concluded in writing and should be signed no later than on the day before the employee starts working. If no contract is signed, then the employee should be provided with written confirmation of the contract conditions on the day he starts work at the latest. Any changes in employment contract conditions should also be made in writing. The employer should include additional written information about certain engagement terms to the employment contract. Labour Code provisions set out the regulations that should be included in the employment contract and in the additional written information.

## the civil code

Apart from the employment relationship regulated by the Labour Code, there are other forms of employment based on the Civil Code - known as civil law contracts. These contracts give more latitude in formulating the content of legal relationship between the parties without any minimal guarantees which result from the Labour Code. The parties may decide on such matters as the amount of remuneration or working time because these factors are not regulated by the Civil Code. The most common contracts under the Civil Code are as follows:

- Task contract - this kind of contract is also called as agreement of result. The employee receives defined tasks which must be carried out in order to achieve specified results and the employer is obliged to pay the salary for the realisation of tasks according to the provisions stipulated in the contract.
- Service contract - based on the contract, the employee receives defined tasks and activities which must be carried out for the employer. The employee performs the work by himself because there is no subordination or work performance under someone's management, which is characteristic of an employment contract.

## wages & holidays

In accordance with the Labour Code the employee has a right to receive the remuneration for his work, the financial conditions of which are defined in the employment agreement and the employer is obliged to pay it regularly to an employee. The employee may not earn less than the minimum monthly remuneration which in as of 1 January, 2016 is 1,850.00 PLN gross for full time work,

All employees are entitled to an annual unbroken paid vacation. An employee who is just starting his working life attains the right, in the calendar year in which he starts work, to vacation with every month that passes of 1/12 of the total vacation to which he is entitled after 1 year of work. An employee gains the right to the next vacation in each subsequent calendar year.

Vacation entitlement (with the same employer) are as follows:

- 20 days - if the employee has been working for less than 10 years
- 26 days - if the employee has been working for at least 10 years

The working period on which vacation entitlement depends includes time spent in education, depending on the type of school finished, e.g.:

- basic vocational school - length of course but not more than 3 years
- secondary vocational school - length of course but not more than 5 years
- secondary school of general education - 4 years
- vocational college - 6 years
- higher education institution - 8 years

The above periods cannot be added together.

## employment & residency of foreign individuals

### EU blue card

#### general

To work in Poland as a highly-qualified worker, you just obtain a residence permit (for non-EU citizens) for a fixed period for the purposes of highly qualified employment (the Blue Card), which is a single residence and work permit. To obtain this residence permit:

- sign at least one-year long employment contract/preliminary contract,
- have higher education qualifications,
- have health insurance.

#### procedure

Your employer must apply to the Voivode (Polish Province Governor) for a work permit.

A labour market test may be conducted to show that no suitably qualified settled worker can be found to fill the job vacancy. The employer must also satisfy the requirements set out by relevant legislative provisions.

If there is no unemployed worker with the necessary qualifications for the job available on the local labour market, the employer may proceed with the recruitment.

Once you have obtained a work permit, you may apply for the residence permit. You should submit your application to the embassy or consulate in the country of origin, or to your nearest Voivode.

# Polish social security system

## pillar I, II & III

In 1999 a reform of social insurance was carried out, which was based on the co-financing of premiums by the employer, the employee and three pillars - one repartition and two capital pillars.

The social security system in Poland is based on three pillars:

- 1st Pillar (ZUS) - obligatory and common. Premiums, deducted from salaries, are assigned to the individual account of an insured person. The institution which manages the 1st pillar is the Social Security Establishment. Pensions, received from the 1st pillar, are based on the repartition system, which has the characteristic of a generation contract. This means that payments of pensions are financed from the contribution of the people who currently work. The system functions efficiently only if the premiums of employees, which fund the system, are delivered in an amount sufficient for the payment of present pensioners. Thanks to obligatory premiums of 12.22% of gross salary, people acquire pensionable rights that are not inherited. Additionally an employee has an individually created sub-account in 1st Pillar to which are transferred an obligatory 4.38% of their premiums. Moreover an employee can decide that an additional 2.92% of deducted premiums are booked on this individual account in ZUS.
- 2nd Pillar (OFE) - is not an obligatory element of the social security system. Employees can choose once every 2 years whether they prefer to transfer 2.92% of their premiums to OFE or leave it in an individual sub-account in 1st Pillar (ZUS). Open pensionable funds belong to the 2nd pillar of the social insurance and are managed by private investment firms (Public Pensionable Associations) that invest premiums into financial markets.
- 3rd Pillar (IKE) - is a free capital pillar, which is organised as an investing fund. Insured people choose the insurance company (associations of mutual insurance, insurance associations). After reaching a

pensionable age the pensioners (from 2013 the pensionable age is for women born after 30 September, 1973 - 65 years, for man born after 30 September, 1953 - 67 years.) get pensions from the Social Security Institution (ZUS) and the Open Pensionable Fund (OFE) through an Agent Company, and eventual payment from the free 3rd pillar.

## **obligatory social insurance contributions paid by the employee and the employer**

According to the Act of 13 October, 1998 on the social security system social insurance in Poland includes:

- pensionable insurance,
- disability pension insurance,
- insurance in case of sickness leave or maternity leave, known as sickness insurance,
- insurance in case of accidents at work and occupational diseases, known as accident insurance.

According to the above mentioned Act regarding the social security system, obligatory pensionable and disability pension insurance concerns physical people, who in Poland are:

- employees,
- people running non-agricultural activities or people co-operating with them,
- people who perform casual work,
- people who perform a job on the basis of agency contracts, contractor contracts or another contract concerning the provision of services, to which, according to the Civil Code, are applied regulations about contractor contracts, or individuals who co-operate with these people,
- people on parental leave or who receive maternity benefits.

## sickness insurance

The social security system, obligatory sickness insurance concerns the following people:

- employees,
- members of agricultural production co-operatives and co-operatives of agricultural circles,
- people who perform substitutionary services.

Voluntary sickness insurance concerns the following people, covered by obligatory pensionable and disability pension insurance, on their own application:

- people who perform casual work,
- people who perform a job on the basis of agency contracts, contractor contracts or another contract concerning the provision

of services, to which, according to the Civil Code, are applied regulations about contractor contracts, or individuals who co-operate with these people,

- people running non-agricultural activities or individuals who co-operate with them.

In general, the yearly base for social insurance in the following calendar year cannot be higher than the amount of 30 times the proposed average monthly salary in the national economy for the given calendar year. As of 2016, this is 121,650.00 PLN.

The employer spends 9.76% (financed by the employer) of the gross salary on pensionable insurance. The other contributions for the social security institution (ZUS) are for the following insurance: disability, sickness, accident, health insurance, Labour Fund and the EAG Fund.

## sickness insurance

gross salary agreed in contract (PLN)	employee social contribution (PLN)	employee health care contribution (PLN)	income tax (PLN)	net to be paid (PLN)	employer social security (PLN)	total employer cost (PLN)
4,000.00	548.40	310.64	287.00	2,853.96	829.60	4,829.60
3,000.00	411.30	232.98	199.00	2,156.72	622.20	3,622.20

Social security contributions (13.71%), income tax and health insurance are also deducted from the gross salary.

The employer must also pay part of any social security contributions (19.21% - 22.31%)

## EU Regulation 1408/71 and 883/2004

Since 1 May, 2004, after Poland joined the European Union, regulations concerning the rules of liability for social insurance (included in EU Regulation 1408/71) have become obligatory. According to EU regulations, people moving across the European Union for the purpose of increased earnings are liable to legislation from only one of these countries.

The new EU regulations concerning the delegation of employees to work in other European countries came into force on 1 May, 2010.

They are the following orders: no 987/2009 from 16 September, 2009, which concerns the performance of the order (WE) no 883/2004 in the matter of co-ordinating systems of social

protection, and no 988/2009 from 16 September, 2009 as well as no A2 from 12 June, 2009 from the administrative board of social protection, which concerns the interpretation of article 12 of order no 883/2004.

The general rule has remained, however, according to which, employees are liable to social insurance only in the country in which their work was performed.

There are a couple of exceptions to this rule which anticipate insurance in the sending country, including: keeping the relation between employer and employee and not exceeding the maximum periods of assignment.

The employer must operate their activity in Poland. For this purpose, it is the object of the company's activities, such as the administration of the company, which is taken into consideration rather than its internal activities.

Order no 987/2009 introduced a rule that an employee is liable to the legislation of the assigned country just before the assignment itself. This means that the employee of a Polish

company might be temporarily posted according to EU regulations only if just before this time they were liable to Polish social insurance for a period of at least one month.

The temporarily posted employee (according to union regulations) is a person who is sent by their employer to another EU country and a direct relationship between the two parties still exists.

It is also acceptable to hire an employee in order to temporarily post them. The delegation period can last up to 24 months. The new regulations refer also to employees who began a period of delegation before 1 May, 2010.

Decision A2 stipulated that the next period of assignment cannot begin earlier than two months from the end of the previous period of delegation.

The documents which confirm the assignment/s of employee/s are E-101 form and A-1 form. Both can be found on the website [www.zus.pl](http://www.zus.pl).

According to the new rules, the right for paying for an employee's place of living depends on the performance of their work. If the person works for two foreign employers, neither of which has a head office in their place of living, their place of living will be adequate for working out the payment.

It is very important that since 1 May, 2010, any employees hired in two countries report this fact to the suitable jurisdiction for their place of living. The institution will then be obliged to point out the appropriate insurance system for this employee. Any temporary legislation passed on this matter will become final two months from the date that the appropriate institution was informed about the situation.

# *important regulations*

## **Polish trade regulations**

As a consequence of accession to the EU, Poland has been required to follow European trade regulations and to replace its domestic regime in regard to trade regulations.

### **import/export licensing**

The most common questions in reference to the import and export of goods to/from Poland are licences that might be required, if it is not a local import. For the purpose of this section, local import means import from within the European Union.

CAP (Common Agricultural Policy) import licenses are required for several products imported from non-EU countries into any country within the EU. Such import licences, often referred to as the AGRIM Certificates, are issued in Poland by the Agricultural Market Agency (Agencja Rynku Rolnego).

An example of another certificate is approvals that must be issued prior to the introduction of goods to the Polish market. This applies to the importers of products that are new to the Polish market, who must request product approval from the National Institute of Public Health - State Institute of Hygiene (Narodowy Instytut Zdrowia Publicznego - Państwowy Zakład Higieny).

Once approval has been granted, the goods may be imported to Poland. However, if a license has already been issued in another EU country, the document is valid in every state, that is a member of EU.

### **customs tariffs**

The Customs Service (Służba Celna) has an official Tariff Browser (a module of the Integrated Tariff System - ISZTAR), that provides information on tariffs of goods in international trade. The Browser contains data from the TARIC system (goods nomenclature, duty rates, restrictions, tariff quotas, tariff ceilings and suspensions) as well as national provisions (VAT, excise tax, restrictions and non-tariff measures). The Browser is maintained

by the Customs Department of the Ministry of Finances within the framework of the Integrated Customs Tariff Information System - ISZTAR3. The Browser provides also detailed information concerning the commodity turnover to Customs Administration and to all those concerning that issue.

### **customs procedures**

The principal roles of the Customs Service include:

- exercising customs control on international commercial exchanges,
- calculating and collecting customs duties and taxes,
- undertaking steps against smuggling and counteracting customs fraud.

While performing these roles, the Customs Service must fulfil a series of duties, the most important, apart from the fiscal function, is the protection of:

- national industry - against goods which would adversely affect the conditions of competition in the country,
- natural environment - against entry of hazardous substances and micro-organisms,
- world fauna and flora - against illegal predatory circulation of endangered species,
- consumers - against the entry into the market, goods which are substandard with relation to Polish norms or whose period of use has expired,
- society - against the entry of goods, items or appliances which are hazardous to life, health and safety of citizens or would jeopardise the country's security (e.g. weapons, paralysing gases etc.),
- the State - against the loss of cultural heritage (primarily against the exportation of goods with cultural value),
- authors, artists, industrial and commercial rights owners - against infringement of intellectual property rights, trademark and patent rights etc.

and control the area of:

- the State's customs policy instruments, regulating the targets and volumes of international trade (e.g. monitoring the execution of customs quotas),
- the enforcement of national and international regulations relating to prohibitions and restrictions in international trade, the enforcement of regulations regarding permissible load of vehicles to ensure proper use of roads by carriers, and the enforcement of Polish customs agreements,
- foreign currency control, including combating so-called money laundering. In order to discharge the above-described roles and responsibilities, the Customs Service cooperates with other State's authorities, such as the Police, border control, general customs inspectorate and tax authorities. Also included in this are customs and investigation services from other countries, commercial organisations, research and scientific institutes, universities and similar organisations.

In case of doubts with regard to goods potentially violating intellectual property rights, Customs Authorities may decide on the suspension of the release or detention of such goods. Regulation (EU) No 608/2013 of the European Parliament and of the Council 12 June, 2013, provides the relevant procedures.

### **currency and exchange controls**

Foreign exchange regulations, which constitute part of financial legislation, are laid down in the Foreign Exchange Act of 27 July, 2002.

The main aim of the restriction is to protect the 'foreign exchange interest' of the State. Restrictions on foreign exchange turnover provided for by the Act refer to transactions with third-world countries, i.e. countries that are not EU Member States, and are not members of the EEA or the OECD. The restrictions concern the following areas:

- transfer of funds designated to finance economic activity, including real estate purchase,
- transactions in securities with a maturity up to one year,
- transactions in debt claims,
- opening of bank accounts.

It has to be noted that from 24 January, 2009, the conclusion of agreements and performance

of other acts of law which result or might result in settlements in foreign currencies between residents, and the execution of such settlements within the country do not require an individual foreign exchange permit.

### **competition law**

Competition law is based on the Act of 16 February, 2007 on competition and consumer protection. The most important actions forbidden by this law are:

- directly or indirectly fixing prices,
- limiting or controlling production or sales, sharing sales or purchase markets,
- applying burdensome or dissimilar terms and conditions in equivalent contracts with other trading parties, thereby differentiating the conditions of competition for these parties,
- making the conclusion of contracts conditional upon the acceptance or rendering by the other parties of supplementary performance, which has nothing to do with the subject of the contract and has no customary relation thereto,
- restricting access to, or eliminating from the market enterprises not covered by the agreement,
- agreeing terms and conditions of bids by enterprises entering the tender or by those enterprises and the party organising the tender, in particular with respect to the scope of the works or the price.

### **abusing a dominant market position (Art. 9), in particular by:**

- directly or indirectly imposing unfair (excessively high or unjustifiably low) prices,
- limiting production, sales or technical development,
- counteracting the formation of conditions necessary for the creation or development of competition,
- imposing burdensome terms and conditions of contracts, resulting in unjustified profits for the enterprise.

Competition law is enforced by the central administrative body - the President of the Office of Competition and Consumer Protection (Prezes Urzędu Ochrony Konkurencji i Konsumentów). The decisions and guidelines of the President, as well as courts' decisions issued pursuant to appeals against the decisions of the President, are published in the Official Journal of the Office.

The administrative decisions of the President of the Office related to competition law may be appealed against to a special court set up within the structures of the Regional Court of Warsaw (the Competition and Consumer Protection Court). Appeal applications must be filed within two weeks of the date of receipt of the relevant decision.

The Competition and Consumer Protection Court decisions may be further appealed to the Supreme Court, whatever the amount involved, but only for questions of law (in Polish, 'kasacja'). The appeal must be filed within 30 days following the date of receipt of the ruling of the Court.

A system of fines is imposed by the President of the Office for failure to comply with competition law.

The penalties are discretionary and may range from:

- up to 10% of the total annual revenues of an entity if this entity enters into agreements which aim to prevent, restrict or distort competition; abuses its dominant position; or proceeds with a merger before obtaining a clearance decision from the President of the Office,
- the PLN equivalent of up to 50 million EUR, if no information or incorrect information was provided during the merger or anti-monopoly inspection proceedings,
- the PLN equivalent of up to 10,000.00 EUR for each day of delay in compliance with a decision of the President of the Office or the ruling of the Competition and Consumer Protection Court.

As from 18 January, 2015 managers of a company breaching the prohibition on concluding agreements restricting competition may face a penalty of up to 2 million PLN. In addition, competition law provides for penalties which may be imposed by the President of the Office, on a natural person acting as a manager or being a member of a managing body of an entity or a group of entities (up to a maximum of 50 times the average remuneration), for breaching the law.

Fines imposed by the President of the Office may be appealed to the Competition and Consumer Protection Court. Such fines constitute revenues of the State and may be collected pursuant to executory administrative proceedings (these proceedings consist of a forced seizure of

assets, and measures related to bank accounts and other properties of the debtor).

Polish competition protection legislation is efficient and its enforcement mechanisms function in a satisfactory manner. EU regulations, which apply directly in Poland as from 1 May, 2004, should further strengthen the effectiveness of the Polish competition protection authorities. This is due to the fact that the President of the Office will closely cooperate with the Commission regarding the enforcement of competition law within Poland and the EU as a whole.

## **regulations for entering into contracts**

Contracts in Poland are based on the rules of the party's autonomy. This is the main regulation for contractual law in the Polish Civil Code. Contract law deals with promises which create legal rights and obligations. Polish law does not require the same consideration as common-law systems. In the Polish legal regime, all parties must agree the essential terms, including the price and the subject matter of the contract. Nevertheless, parties are used to have written agreements in order to avoid any future disputes and to protect their interests by searching for a 'golden middle solution'. Contracts in Poland may also be made by the word of mouth. However, there are exceptions to this rule, such as real estate sales or the sale of shares in a company, which requires acting in front of the notary in public.

## **other law sources**

There are also many private international law regulations that have been ratified and remain applicable in Poland, e.g. the Council Regulation No 44/2001 of 22 December, 2000 on Jurisdiction, Recognition and Enforcement of Judgments in Civil and Commercial Matters. The United Nations Convention on Contracts for the International Sale of Goods - CISG of 11 April, 1980 and the New York Convention of 1974 on the Limitation Period in the International Sale of Goods.

Contracts between Polish and foreign companies are covered by the Act on International Private Law of 12 November, 1965. However the Act, in regard to the law applicable, will probably redirect the parties to international regulations that Poland has ratified.

## CO2 emission allowances

As of April 2010, Carbon dioxide (CO<sub>2</sub>) had a concentration of 392.39 ppm (parts per million) within the Earth's atmosphere by volume. As a result of Directive 2003/87/EC of the European Parliament and Council, a greenhouse gas trading system was created in the European Union, whereby the goals set forth in the Kyoto Protocol could be more easily achieved. This was approved by the Council in 1997, following the conclusion of an intergovernmental agreement in the same year.

The Directive creates the legal means with which to fulfil the Kyoto Protocol's goal to decrease the emission of greenhouse gases, by implementing an effective European greenhouse gas allowance trading system.

The Polish parliament adopted a national greenhouse gas emission trading system (the 'GGETS') on 3 December, 2004. Currently, GGETS is operating on the basis of the act of 12 June, 2015 on greenhouse gas emission allowance trading system. The emission allowance trading system referred to covers all aspects of industry in the energy, thermal, petro-chemical and paper sector as well as flight operations. Pursuant to the GGETS, the affected entities are required to apply for a greenhouse gas emission permit, which will entitle each emitter to emit a defined amount of such greenhouse gases into the atmosphere.

The holder of the permit will be entitled to emit gases into the environment up to its assigned limit. If such a holder so chooses, they may also sell any unused gas emission allowances on the open market to other gas emitters likely to exceed their assigned allowances. A gas emission permit will be issued by either the county chief executive or provincial governor in response to receiving an applicant's motion. The Minister of Environment Protection will supervise the trading system, while the National Centre for Emissions Management (KOBIZE) will function as administrator.

Under the Kyoto Protocol, countries with unused emission allowances may sell their unused allowances. This right to sell may also serve as an incentive to private business to invest in modern, environmentally friendly technology. An entity which emits CO<sub>2</sub> into the atmosphere without having sufficient emission allowances has to pay a penalty amounting to EUR 100.00 for each allowance which it does not possess. The penalty is imposed by the Provincial Environmental Protection Inspector. Emission

allowances are valid only within a particular period of time. After its lapse, allowances are subject to annulment.

The European Union Emission Trading System (EU ETS) is the largest multi-national emissions trading scheme in the world, and is a major pillar of EU climate policy. The ETS currently covers more than 10,000 installations in the energy and industrial sectors, which are collectively responsible for close to half of the EU's CO<sub>2</sub> emissions and 40% of its total greenhouse gas emissions.

Under the EU ETS, large emitters of carbon dioxide within the EU must monitor and annually report their CO<sub>2</sub> emissions, and they are obliged every year to return an amount of emission allowances to the government, equivalent to their CO<sub>2</sub> emissions in that year. In order to neutralise annual irregularities in CO<sub>2</sub> - emission levels that may occur due to extreme weather events (such as harsh winters or very hot summers), emission allowances for any plant operator subject to the EU ETS are given out for a sequence of several years at once.

# *securing business*

## **property rights**

On 22 August, 2001, a new Industrial Property Law came into force. This replaced the four previous items of legislation (Laws on Inventive Activity, Trade Marks, and Integrated Circuit Patents and on the Patent Office). The new legislation does not significantly change the regulations applied to industrial and commercial intellectual property rights.

## **patent legislation**

Poland is a member of the Stockholm Text of the Paris Convention on the Protection of Industrial Property. Since 1990 Poland has also been a signatory to the Patent-Cooperation Treaty. The Industrial Property Law regulates the protection of inventions by patents and utility models. Applications are filed with the Polish Patent Office. Polish patent attorneys must represent foreign applicants.

Registered patents are valid for 20 years from the date of filing. The protection right of a utility model is valid for 10 years. To keep a patent or protection right in force annual fees have to be paid. Patents are granted after an examination as to whether an invention is new, involves original research and is commercially viable. A utility model is to be new and useful and to relate to the shape, construction, or arrangement of an object that has a durable form. Applications are published 18 months from the priority date.

The patent or protection right of a utility model gives the owner the exclusive right to exploit the invention on the territory of Poland while it is valid. This exclusive right cannot, however, be abused specifically by applying prohibited monopolistic practices. In particular, patent rights will not apply where its exploitation by a third party is necessary to satisfy a domestic market need. Also specifically, when the public interest requires so and supply and/or quality of the product concerned is insufficient, and/or its price is unduly inflated. This provision, however, does not apply in the first three years following patent registration.

Abusing patent rights as well as preventing or eliminating a state of national emergency may be reason enough to apply for a compulsory licence. There are no special terms on licences for this. The owner of a patent or exclusive licence has the right to sue for an injunction on account of profits and/or damages. Criminal penalties are foreseen for false marking and infringement. Marking products with a patent number are commonly used but not obligatory.

## **trademarks**

Poland is a member of the Madrid Agreement (Madrid Agreement Concerning the International Registration of Marks) on the registration of trademarks and the prevention of false or deceptive indications of a source of goods. Since 1991 Poland has also been a member of the Madrid Agreement on the international registration of trademarks. It became a member of the Protocol for this Agreement in the spring of 1997. The following kinds of mark may be registered:

- trademark,
- service mark,
- collective mark,
- mutual quality assurance trademark.

A registered trademark is valid for 10-years from the date of filing unless it is proved that the mark has not been used for five consecutive years. The registration may be renewed for the next 10-years period. In the case of infringement, the proprietor or licensee can take legal steps. Protection is extended to names of geographical places and regions, where the name refers to a specific locality or area associated with a particular product and where there is a particular characteristic of the product associated with the name. Foreign applicants have to be represented by a local patent agent in Poland.

## **copyrights**

Copyrights in Poland are protected by the Law on Copyrights and Rights in relation to 4 February, 1994, which was substantially revised in June 2000. The new law meets contemporary

international standards and corresponds to the principles of free trade in intellectual property.

The scope of copyright protection has been considerably broadened of late. The new law covers not only the protection of traditionally understood author's rights, but also related rights. The law provides for new rights and new owners of those rights. They are now able to decide how the outcome of their work is to be used and are able to derive financial benefits from this outcome. The new owners include producers of sound and video recordings, TV channels, radio stations and artist/performers. The new law provides the protection of intellectual property in the area of science, technology and manufacturing, including computer programs and industrial designs, etc. The protection mechanism of computer software is similar to that used in other EU countries.

The law also provides for a general compensation mechanism of losses incurred by authors, performers, and producers due to uncontrolled mass reproduction for personal use (at home). Producers and importers of VCRs, tape recorders, other audio and video equipment, as well as clean tapes, CDs, etc., must pay a surcharge to the artists, performers and manufacturers amounting to a maximum of 3% of the sales income generated by these products.

The new law gives ground for more efficient procedures for enforcing copyright protection. Illegally obtained benefits may be confiscated and returned to the true owner. The law also envisages penalties for infringement of intellectual property rights by fines and even prison sentences for up to 5 years. The new legislation has considerably strengthened copyright protection in Poland. It has also contributed to curtailing piracy. Meeting international standards in intellectual rights protection creates appropriate conditions for foreign investments making use of property rights.

### **bankruptcy and restructuring**

The 2003 Bankruptcy and Restructuring Act (as to the 1 January Bankruptcy Act) established rules concerning the bankruptcy of entrepreneurs as well as settlement and restructuring proceedings aimed at preventing bankruptcy. Due to amendments bankruptcy proceedings as well as restructuring proceedings will be greatly changed from 1 January, 2016.

### **bankruptcy**

There are two types of bankruptcy that may be declared. Firstly, liquidation proceedings which result in the sale of all assets and the deletion of the company from the National Court Register. Secondly, bankruptcy with the possibility of entering into a settlement agreement with creditors.

According to the Polish Bankruptcy and Restructuring Law Act, a declaration of bankruptcy should be issued in respect of a debtor who has become insolvent. A debtor is insolvent if he loses his ability to perform his due pecuniary obligations. It is presumed that the debtor has lost the ability to perform his due pecuniary obligations if the delay in the performance of pecuniary obligations exceeds three months. A debtor, which is a legal person, shall also be deemed insolvent when its obligations exceed the value of its assets, and that state lasts for a period exceeding 24-months. The court may dismiss a bankruptcy petition if there is no risk of losing the debtor's ability to perform his pecuniary obligations in a short time. The court dismisses the bankruptcy petition filed by the creditor if the debtor proves that the claim is entirely of a disputable character, and if a dispute arose between the parties before filing for bankruptcy. The court will also dismiss a bankruptcy petition in which the assets of the insolvent debtor are not sufficient to cover the costs of the court proceedings.

A bankruptcy petition may be filed by the debtor or by any of his creditors. A petition may also be filed in respect of a legal person, by the company's representative. The crucial thing is that a debtor shall file a bankruptcy petition to the court no later than 30 days from the day on which grounds for the declaration of bankruptcy arose. In the case of a debtor being a legal entity, the aforementioned duty shall be attached to whoever is entitled to represent the company (individually or jointly with other people). Those persons are liable for any damages that may arise through the failure to file the petition within the time limit indicated above.

The debtor attaches to the bankruptcy petition a written statement as to the accuracy of the data contained therein. If the statement is inaccurate, the debtor is liable for any damage caused by inaccurate data having been included in the bankruptcy petition.

The Bankruptcy Act also allows so called 'pre-packaged deals'. Under this procedure it will be possible to establish conditions of sale of

the debtor's company, in particular the buyer and the price. The sales price shall not be lower than the price estimated by an expert. The restructuring plan shall be prepared and presented to the court. Pre-packaged deals allows room to prevent bankruptcy proceedings from starting. Also the sale of the enterprise is possible on much more favourable terms and conditions than the sale during liquidation. Simultaneously, there is no degradation of the enterprise on the market and loss of the good name of the debtor, which in the long term would allow him to continue his business activity.

## **restructuring**

On 1 January, 2016, the new Restructuring Law Act will come into force. The main purpose of the new regulation regarding restructuring is the restructuring of the debtor's enterprise and allows his further activity instead of liquidating it. The Restructuring Law Act distinguishes 4 types of restructuring proceedings:

1. proceedings for pre-approval of an arrangement,
2. accelerated arrangement proceedings,
3. arrangement proceedings,
4. remedial proceedings which are the key new restructuring tool.

Any of the above mentioned proceedings is available to debtors who are already insolvent and those who are only threatened by insolvency at the moment. Each type of restructuring proceeding is intended to lead to an arrangement with creditors.

Proceedings regarding approval of the arrangement are available for debtors whose contested liabilities do not exceed 15% of their total debt and who can obtain (by themselves) approval of the creditors for terms of the arrangement (at least 2/3 of them). This type of proceeding allows for making an arrangement with some of the creditors (partial arrangement). Fast-track restructuring proceedings resembles the proceedings regarding approval of the arrangement with respect to the condition that consented liabilities shall not exceed 15% of the total debt of the debtor. The basic difference is that the creditors approves the terms of the arrangement during the creditors' meeting. This type of proceeding also allows for making a partial arrangement. The third type - restructuring proceedings - is basically the reflection of the arrangement proceedings

stipulated by the Bankruptcy Law Act in the wording before 1 January, 2016. The debtor is still entitled to manage the enterprise, however this management is controlled by the court as well as the creditors. The arrangement proposals shall already be included in the petition. Remedial proceedings allow for the conducting of advanced restructuring of the debtor's assets, obligations, and employment level. The debtor, however, will be deprived of his right to managing the enterprise. It is addressed to the debtors who are already insolvent, however, with a prospect of further business activity after restructuring.

## **renewable energy support system**

### **dependency of the sector**

The state of technology development and current energy market conditions does not guarantee the cost-efficiency of power plants based on renewable energy sources. To fulfil the National Overall Target for the share of energy from renewable sources in gross final consumption of energy in 2020 set by the EU, Poland implemented a Renewable Energy (RE) support system.

### **the current system**

Until 2015, the system of support for renewables in Poland was based upon the Energy Law and regulations of particular ministries. The national legislation introduced a quota system functioning on a basis of certificates of origin and different kinds of tradable renewable energy certificates (REC). The fundamental part of a quota system was a renewables obligation order (ROO) - an amount of energy from renewable sources which energy traders have been obliged to sell. In Poland, the path for ROO has been set in the EU approved National Action Plan and announced by the regulator. Certain entities have been obliged to buy the whole amount of renewable energy directly from any RE power plant or have been forced to pay a replacement fee - a type of penalty. Those entities also had to provide grid access for any plant using renewable technology.

Certificates of origin are used by the regulatory authority to monitor the fulfillment of obligations, especially the procurement of energy under the renewables obligation order by the obliged entities. Those certificates are not tradable but the property rights bound to every certificate of origin are tradable goods on the energy market - the Towarowa Gielda Energii (TGE).

Property rights are the central part of the whole support system. The financial aid for the renewables in Poland is generated by the sale prices of those rights, commonly known as certificates (REC). There are a couple of types of tradable REC for different technologies and fuels.

### **share of renewables in sale of electricity**

Poland still generates about 85% of its overall electricity from lignite and coal. Due to the EU regulations and the implemented support system for renewable energy sources the share of electricity from renewables constantly increases.

### **sales structure**

Every year the market regulator announces a renewables obligation order that arranges the energy sales structure. Three different types of REC Yellow, Red and Violet describe the share of electricity coming from cogeneration in certain chosen technologies. Electricity available due to the increased energy efficiency is included by the White RECs. Green RECs are the share of electricity from renewable sources. The rest of the electricity sales called 'Black energy' consists of conventional technologies and is been created by simple demand and support equilibrium on the energy market without any mandatory quotas.

### **RECs on the market**

Prices for REC's have been created on the market. Without a differentiation between all the available technologies and because of the lack of certain market stabilisation mechanisms, the current system generated volatile prices and endangered new investments. The experienced REC price fall showed an acute need for modern support system solutions.

### **the renewable energy sources act**

The answer to the above problems related to the prices of REC's is the Act on Renewable Energy Sources (RES) passed by the Sejm of the Republic of Poland on the 16 January, 2015. The act implements crucial changes to the system of support for the energy produced from renewable sources. The renewable energy sector obtained separate regulations and a new approach to the support of electricity produced from renewable energy sources.

One of the most important changes introduced by new laws pertaining actual legal framework

is the retreat from the system of certificates of origin to the auction system and implementing different regulations for micro-renewables in the form of ability to settle up for energy company owners under the rules of net-metering, which means to settle up in net terms. During voting of this law, members of parliament reckoned that the net-metering instrument would not guarantee the ability for the development of civic energy and decided on the enactment of the consumer amendment pertaining to the introduction of feed-in-tariffs for the smallest renewable energy producers - micro consumer exploiting the smallest systems with capacities below 10 kW for the first time in Poland.

Because of many objections to the new regulation, in particular the ambiguities and imprecision, the government has prepared recently an amendments to the Act taking into account many requests of the entrepreneurs and organisations dealing with renewable energy sources.

Generation structure, domestic balance of cross-border exchange and electricity consumption in 2013-2014 [GWh]

	2013 (GWh)	2014 (GWh)	Growth rate 2014/2013
<b>total electricity generation</b>	162,501	156,567	-3.65
<b>hard coal-fired power plants</b>	84,566	80,284	-5.06
<b>lignite-fired power plants</b>	56,959	54,212	-4.82
<b>gas-fired power plants</b>	3,149	3,274	3.98
<b>industrial power plants</b>	9,171	9,020	-1.64
<b>water utility power plants</b>	2,762	2,520	-8.76
<b>wind units</b>	5,823	7,184	23.38
<b>other renewable sources</b>	72	73	0.18
<b>cross-border exchange balance</b>	-4,521	2,167	-
<b>national electricity consumption</b>	157,980	158,734	0.49

Source: ERO, on the basis of data provided by PSE S.A.

# taxation

## general

The Polish tax system consists of the Tax Code and the Acts regulating particular types of taxes. Generally, taxes in Poland may be divided into direct and indirect. In direct taxation the taxpayer bears the cost of the tax. In this group in Poland there are the following taxes: income (PIT and CIT), inheritance and endowment, on civil law transactions, real estate, agricultural, forest, and means of transport. The second group are indirect taxes. In indirect taxation the tax is paid during the purchase of the good or service. These are: VAT

- Tax on Goods & Services, Excise Duty.

The Tax Code specifies the general definitions, rights and obligations of the taxpayers as well as the tax authorities and the tax procedures.

Since 1 May, 2004 - the date of Poland entering the European Community, Polish legislators are obliged to harmonise internal tax systems with EU regulations. A special stress has been put on harmonisation of Value Added Tax and Excise Tax. As a consequence in cases of the lack of implementation of the EU regulation to internal VAT and Excise regulations or discrepancies between the VAT and Excise taxation on the EU and internal level, the tax payer shall have the right to use the EU regulations directly and shall not be burdened with the negative consequences of such action.

The Polish tax system primarily differentiates between 'direct' and 'indirect' taxes.

These are:

### direct taxes

- Personal Income Tax (PIT)
- Corporate Income Tax (CIT)
- Tonnage Tax
- Social Security
- Inheritance & Gift Tax
- Civil Law Transaction Tax (PCC)
- Stamp Duty

- Market Fees
- Visitor's Tax
- Tax on certain financial institutions (so-called Bank Tax)
- Hydrocarbon Tax
- Agricultural Tax
- Forest Tax
- Real Property Tax
- Transport Vehicles Tax

### indirect taxes

- Value Added Tax (VAT)
- Excise duties
- Games Tax
- Tax on natural gas and several other types of gases
- Tax on solid fuels
- Tax on electricity

The most important taxes in the above lists are, in terms of tax collections value added tax, excise duties, personal and corporate income tax. Nevertheless, social and health security contributions are the biggest source of state revenues.

### collection of taxes in Poland

Governmental Administration (tax offices, customs offices)

### indirect Taxes:

- Goods & Services Tax (VAT), Excise & Games Tax

### direct Taxes:

- Person's & Corporate Income Tax (PIT & CIT)
- Tonnage Tax
- Inheritance & Gift Tax & Tax on civil law transactions

Self-government administration

**Local Taxes:**

- Agricultural Tax
- Forest Tax
- Real Property Tax
- Transport Vehicles Tax
- Charges: Market place charge, local charge, health resort charge and dog charge - optionally

Income tax is governed by the Corporate Income Tax Act, hereinafter referred to as 'CIT', and the Personal Income Tax Act, hereinafter referred to as 'PIT'. The regulation type that should be used in a particular case depends on the legal form of an entity. In consequence, either the income of the entity as a whole will be taxed (i.e. CIT for a limited company and joint stock company) or the incomes of particular shareholders (i.e. limited partnership or registered partnership). In the second case mentioned above (i.e. companies in the Polish legal system named as partnerships), in order to establish whether the taxation will be in accordance with PIT or CIT Act, the legal status of the shareholder of the partnership must be considered. If the partner is a natural person - he will be taxed directly from the incomes gained by the partnership, in accordance with PIT Act. If the partner is a limited liability company or a joint-stock company - the entity will be taxed directly from incomes gained by the partnership in accordance with CIT Act.

# *private income tax (PIT)*

## **entity of taxation**

- individual (natural person) that is a partner in a limited partnership or registered partnership,
- natural person conducting economic activity - the sole proprietor,
- an individual.

According to the Polish Personal Income Tax Act, all individuals are liable to tax their income by PIT, but depending on their residence status, the tax liability can be unlimited and limited. The first of these refers to the worldwide income of a resident - an individual who has his centre of economic or vital interest in Poland or stays in Poland for longer than 183 days in a calendar year. The second concerns a non-resident's income that arose or was sourced in Poland.

## **transfer pricing**

In the Polish Personal Income Tax Act there are analogous provisions relating to transfer pricing as in the Corporate Income tax Act.

Taxpayers performing transactions, including the fact of:

- concluding deeds of partnerships,
- contracts of joint undertaking,
- contracts of a similar character, with subjects linked with these taxpayers;
- transactions in relation to which the payment of sums due as a result of such transactions is made directly or indirectly for the benefit of a subject having the place of residence, seat or management office in a territory of or in a country applying harmful tax competition,
- concluding by those taxpayers of deeds of partnerships, contracts of joint undertaking, or contracts of a similar character, if one of the parties of such deed or contract is a subject having their place of residence, seat or management office in a territory of or in a country applying harmful tax competition, the said taxpayers shall be obliged to prepare tax documentation for such transaction or transactions.

However, since January 2015 a provision expanding the scope of application of these provisions on transfer pricing came into force. According to these provisions in the case of a partnership deed, the obligation to prepare tax documentation shall include such deeds in which the total value of the contributions made by the partners exceeds the equivalent of EUR 50,000.00. In the case of a contract of joint undertaking or another contract of a similar nature which has a limit referring to the value of the joint undertaking specified in this deed, and in the case of this value not being specified in the deed - to the value of jointly implemented undertaking envisaged for the day of concluding the deed.

## **subject of taxation**

Polish regulations define a lot of income sources. As a rule, profit from each source is calculated separately. Profit is an amount of surplus between revenues and tax-deductible costs, received in a fiscal year. If the amount of tax-deductible costs exceeds the amount of income, the difference is a loss. If a taxpayer incurs a loss, he can reduce the profit in next following five years by the amount of this loss, but the reduction cannot be higher than 50% of the loss in one year. It does not apply to losses arising on disposal of items, properties and rights connected to properties.

Polish legislation excluded some income and costs from taxation; therefore they cannot be taken into consideration in calculating a profit. Additionally, in some cases regulations of double tax treaties, to which Poland is a party, can change the status of an individual, and therefore the country of taxation of some income sources, or reduce tax rates, e.g. for dividends, interest or licence dues.

The definition of revenues includes, among other things, revenue due, even if not received, excluding payments in advance, and free and partially free benefits.

The deductible costs for people who do not run a business activity are strictly defined in the Act, e.g.:

- 50% of income for activities related to exploiting copyrights, however the total tax deductible costs in the fiscal year cannot exceed the amount of 42,764.00 PLN,
- an annual lump-sum cost, that in 2015 amounts to 1,335.00 PLN for employees,
- 20% of income under civil law contracts,
- social insurances,
- expenses for rehabilitation purposes.

## obligations

The tax year for all individuals is the calendar year. During the year, income tax payers are obliged to pay a tax advance before the 20th day in the month following the month in which the tax obligation arose or, in the case of 'small' taxpayers, before the 20th day of the month following the quarter in which the tax obligation arose. Additionally, a taxpayer is obliged to submit an annual tax declaration before April 30th following the year in which the tax obligation arose.

In the case of the remuneration of employees, an employer is obliged to calculate, deduct and pay the monthly tax advances to a competent tax office. Individuals who receive any income from abroad are obliged to calculate and pay monthly tax advances themselves.

## tax rates

Married couples and sole parents are entitled to tax their income individually or jointly, if certain conditions are met, except for a case in which one of them is taxed by the linear rate. ('Linear taxation' allows for taxing income at a single rate, instead of the most common progressive rates. Benefits being - Simplicity, Transparency and Efficiency)

The PIT Act allows a number of exemptions or lower tax rates for income/profit generated by non-residents in Poland. Therefore, a non-resident's place of residence and regulations of double tax treaties, to which Poland is a party, should be taken into consideration when settling the final tax rate.

Income source	Tax Rate
<ul style="list-style-type: none"> <li>• employment contracts,</li> <li>• civil law agreements,</li> <li>• activity performed personally (e.g. members of board of directors),</li> <li>• rental,</li> <li>• other.</li> </ul>	<ul style="list-style-type: none"> <li>• 18% up to 85,528.00 PLN and 14,839.02 PLN + 32% for the surplus over 85,528.00 PLN</li> <li>• the tax credit amounts 556.02 PLN</li> </ul>
<ul style="list-style-type: none"> <li>• business activity (self-employed) unless linear taxation is chosen</li> </ul>	<ul style="list-style-type: none"> <li>• 18% up to 85,528.00 PLN and 32% for the surplus over 85,528.00 PLN</li> <li>• the tax credit amounts 556.02 PLN</li> </ul>
<ul style="list-style-type: none"> <li>• business activity (self-employed) - after declaration of the linear taxation,</li> <li>• capital gains, interests.</li> </ul>	19%
<ul style="list-style-type: none"> <li>• non-residents' income due to licence fees (withholding tax) and intangible services.</li> </ul>	20%
<ul style="list-style-type: none"> <li>• examples of exempt income:</li> <li>• return of business trip costs, like per diem, travel and accommodation expenditures,</li> <li>• expenses paid by an employer for education and enhancement of qualifications of his/her employees,</li> <li>• the value of some benefits paid by an employer for accommodation of employees.</li> </ul>	exemption

# corporate income tax

## entity of taxation

Income tax is governed in the Corporate Income Tax Act, hereinafter referred to as 'CIT', and the Personal Income Tax Act, hereinafter referred to as 'PIT'. The regulation type that should be used in a particular case depends on the legal form of an entity. In consequence, either the income of the entity as a whole will be taxed (i.e. CIT for a limited company and joint stock company) or the incomes of particular shareholders (i.e. limited partnership or registered partnership). In the second case (i.e. companies in the Polish legal system named as partnerships), in order to establish if the taxation will be in accordance with PIT or CIT Act, the legal status of the shareholders of the partnership must be considered. If the partner is a natural person - he will be taxed directly from the incomes gained by the partnership, in accordance with PIT Act. If the partner is a limited liability company or a joint-stock company - the entity will be taxed directly from incomes gained by the partnership in accordance with CIT Act.

Subject to income tax are:

### 1. According to CIT:

- a legal person,
- an organisational entity without corporate personality except partnerships (but not all types of partnerships),
- limited joint-stock partnership,
- a company without corporate personality that has its place of residence or board of directors in an other country, where, according to the law of this country, it is treated as a legal person and all its income is taxed in that country regardless of the place of generating the income.

### 2. According to PIT:

- a partner in a limited partnership or registered partnership, if he/she is a natural person.

Taxpayers that have their place of residence or board of directors in Poland (residents) are liable to a tax on total profits regardless of the country generating those profits. Taxpayers that

do not have their place of residence or board of directors in Poland (non-residents) are liable to a tax only on profits generated in Poland.

## taxation of partnerships

Incomes and costs generated by a partnership are taxed separately on each partner according to the proportion of possessed shares and with the appropriate tax rate from PIT or CIT Act, depending from the legal status of each partner.

## branches of foreign companies

Foreign investors may choose a legal form for their activity in Poland. This could be a partnership, a capital company or a branch.

The branch is, in general, treated for tax purposes as a Polish company, with the consideration of the legal form of its head office. Only Polish-generated incomes and costs are subject to Polish taxes.

From the legal point of view a branch is not a separate entity, but a unit of a foreign company. Therefore, there is no withholding tax on profits transferred to its head office.

## tax group

It is possible to optimise corporate income tax (CIT) obligations by forming a tax group. The main advantage of this solution is the calculation of a taxable profit by adding the profits and losses of all the companies in the group. However, the conditions that have to be fulfilled are highly restrictive.

A group can be formed only by at least two limited liability and/or joint-stock companies, having their registered office within the territory of Poland, if:

- the average share capital of each company in the group amounts to at least 1,000,000.00 PLN,
- one of companies in the group, referred to as the holding company, owns 95% of shares directly in the share capital of other

companies, called subsidiaries,

- there are no other relations in the group and also with companies outside the group,
- all companies in the group have no tax arrears,
- the ratio of profit to revenue generated by the group in every tax year amounts to at least 3%.

The legal basis for a tax group is an agreement for three years, in the form of a notary deed that has to be registered at a tax office. Companies from the group cannot use any tax exemptions.

## transfer pricing

All transactions carried out between related individuals and/or corporate entities are under the special supervision of tax authorities. The reason for this is protection against the transfer of profits of the related entity to a country where more favourable tax rates are found.

According to Polish regulations, a relationship exists when:

- an entity participates directly or indirectly in the management or control of another entity or holds at least 5% of shares in another entity (capital relationship),
- there is a familiar relation or other relation resulting from an employment between individuals who act as a manager or a supervisor in different corporate entities and/or the same individuals act as a manager or a supervisor in the same time in different entities.

If a relationship exists, each one of the related entities are obliged to prepare a document called: Transfer Pricing Policy, which should describe all transactions between the related entities and include amongst others things a calculation of prices and point out the risks inherent to each party. The aim of such documentation is to show that the conditions of the transactions are the same as those between non-related entities. The documentation has to be presented within seven days of the date of request by the tax authorities.

If prices do not comply with the arm's length principle, the tax authorities are entitled to estimate the value of transactions using one of the following methods:

- comparable uncontrolled price method,
- resale price method,
- reasonable margin (cost plus) method,
- transaction profit method.

If a profit or a loss calculated by the tax authorities is respectively higher or lower than that given by an entity, a 50% penalty tax rate is applied.

Since 2006, Polish taxpayers may apply to the Minister of Finance to conclude an agreement regarding the confirmation of the Transfer Pricing Policy used. This is known as an Advanced Pricing Agreement (APA) and is related not only to transactions between Polish taxpayers, but also between Polish and foreign entities.

The main advantage of the APA is the formal confirmation by the tax authorities that the calculation and application of transfer prices chosen by a taxpayer are correct. The APA obliges tax authorities to accept the methodology presented.

The APA concerns transactions concluded after the submission of an application for the APA or those that started before and are currently in progress. It does not refer to transactions which were started before the submission of an application and on the APA completion date were subject to any tax review or proceedings.

## controlled foreign company (CFC) provisions

New legal provisions concerning Controlled Foreign Company (CFC) came into force at the beginning of 2015 and imposed a 19% corporate income tax at Polish taxpayer's level on income generated by the taxpayer's CFCs.

The aim of the Controlled Foreign Company (CFC) provisions is to discourage Polish parent companies from tax planning with the use of non-Polish entities. The Polish taxpayers will be subject to Polish tax on income earned by their controlled foreign companies even if income is not distributed from the non-Polish company. Subsidiaries subject to CFC rules are those, which have passive income taxed with a rate lower than 14.25% and the Polish parent company holds at least 25% of shares either directly or indirectly.

Subsidiaries seated in tax havens are also treated as CFC. CFC provisions will not apply if the foreign corporation conducts real business activities.

The objective of the CFC rules is to penalise transactions that are artificial and whose key objective is to obtain a substantial tax benefit. Transactions will be considered artificial, if they are excessively and unnecessary complex or have no economic substance. Tax authorities

may assess additional tax liability, which disregards artificial constructions if they prove that a taxpayer gained a substantial tax benefit in comparison to a standard transaction and the taxpayer is not able to provide grounds for the business reasons of that transaction.

## subject of taxation

The subject of taxation is the profit regardless of the income source it was received from. Profit is the amount of surplus between revenues and tax-deductible costs received in a fiscal year. If the amount of tax-deductible costs exceeds the amount of income, the difference is a loss. If a taxpayer incurs a loss, he can reduce profit in following five years by the amount of this loss, but the reduction cannot be higher than 50% of the loss in one year.

However, in some cases pure revenue is to be taxed. These are: dividends, licence fees (i.e. interest from loans, royalties) as well as provisions of intangible services (such as management and advisory services or market research). It is important that taxation of the above should be done with consideration of double taxation avoidance agreements. Additionally in case of related entities within EU and EEA, there is the tax exemption for dividends and for licence fees.

Polish legislation excludes some incomes and costs from taxation; therefore they cannot be taken into consideration when calculating the profit.

This regulation applies, for example, in cases of loan and credit interest paid by a Polish corporate entity to its affiliates. If all the liabilities of a Polish corporate entity from different sources (such as loans, credits and invoices), due to its affiliates who hold no less than 25% of shares, exceed three times the share capital value of the Polish corporate entity, the loan or credit interest are not recognised as a tax-deductible cost in the amount in which a loan or credit exceeds a triple share capital value. This limitation was put into force to avoid so-called 'thin capitalisation', which refers to the financing of a current business activity via loans and credits. This can easily be paid back to the borrower instead of capital that can be paid back to shareholders only in case of the dissolution of the capital company.

Examples of other non-deductible costs:

- written-off, lapsed accounts receivable (the liability of the entity does not extinguish by the mere passing of time),

- entertainment costs,
- accrued, but unpaid interest,
- accounting services and comparable provisions,
- tax penalties and penalty interest,
- expenditure on a car over determined limits,
- representation expenses.

The definition of revenues includes, amongst others things, revenues due, even if they are not received, excluding payments in advance, free and partially free benefits.

## obligations

According to the general rule, a payer of income tax is obliged to pay a tax advance before the 20th day of the month that follows the month in which the tax obligation arose or in case of 'small' taxpayers: before the 20th day of the month that follows the quarter in which the tax obligation arose. Additionally, a taxpayer has an obligation to submit an annual tax declaration within three months following the year in which tax obligation arose.

In case of dividends, licence fees and intangible services paid to affiliates, and taxed with withholding tax (only if the tax exemption described above is not applicable), the tax has to be paid within seven days following the month in which the tax obligation arose. This rule is however applicable only to those foreign affiliates/shareholders that are legal persons. In case of the affiliates/shareholders (taxpayers of WHT) that are the natural persons the term is 20 days following the month in which the tax obligation arose.

## tax rates

The special exemption concerns licence fees and interest and dividends paid by a Polish capital company to another capital company outside Poland or the EU. Regarding licence fees, and interest, the exemption came into force on 1 July, 2013 and applies if the conditions below are fulfilled:

- an EU capital company holds directly no less than 25% shares in a Polish capital company,
- a Polish capital company holds directly no less than 25% shares in a capital company from an EU country,
- other capital companies, whose income is taxed in an EU country, directly holds no less than 25% shares of both aforementioned capital companies.

With respect to dividends, the exemption applies when a company from an EU country directly holds no less than 10% of shares of a Polish company for a continuous period of at least two years. Both acts (CIT and PIT) allow a number of exemptions or lower tax rates for the income profit generated by non-residents in Poland.

Therefore a non-resident's place of residence and regulations regarding double tax treaties, to which Poland is a party, should be taken into consideration when settling the final tax rate.

In particular, 31 December, 2015 sees an amendment to the CIT Act coming into force, which introduces Article 22c into the CIT Act. The new limits the scope of application of the Parent - Subsidiary Directive 2011/96/UE implemented

to the domestic tax law which provides for a tax exemption for dividends paid between related companies.

According to the adopted Article 22c the participation exemption will not apply to arrangements between related parties that are artificial and the main driving force behind the arrangements is to obtain a tax advantage.

Under the new rules, an arrangement or contract shall be deemed artificial if it is carried out without justifiable business or economic reasons, in particular when shares of the company paying dividends are transferred or the company generates income which is further transferred through a dividend distribution or another method of profit distribution.

income source	tax rate
<ul style="list-style-type: none"> <li>• incomes of companies and limited joint stock company,</li> <li>• share in companies profits, i.e. dividends (withholding tax),</li> <li>• business activity (self-employed) - after the declaration of the linear taxation</li> </ul>	19%
<ul style="list-style-type: none"> <li>• non-residents' income due to licence dues (withholding tax) and intangible services.</li> </ul>	20%
some incomes: <ul style="list-style-type: none"> <li>• donations,</li> <li>• incomes of some entities.</li> </ul>	exemption

# *inheritance, donation, vehicle, forest, agricultural, property, company car tax and stamp duty*

## **inheritance & donation tax**

### **subject of taxation**

Acquisition by individuals of ownership of items located in Poland or of property rights exercised in Poland due to:

- inheritance, legacy,
- donations,
- the gratuitous cancellation of joint ownership.

### **tax base**

Value after the deduction of debts and burdens calculated according to the condition of an item or a property right on the acquisition date and market prices on the tax obligation date.

### **tax rate**

Depends on the personal relation of a recipient to a person, from whose items or property rights were acquired. As a rule, the further the relationship between these, the higher the applicable tax rate. This ranges between 3% and 20%. The tax is calculated as the surplus in taxable base over the tax allowance amount, with the use of the above tax rates from the scale.

The legislation foresees some exemption from inheritance and donation tax, e.g.:

- the acquisition of property or property rights by the members of the closest family: spouse, parents or grandparents, children

and their children, stepchildren, siblings, stepfather, stepmother and after fulfillment of additional conditions, otherwise the taxation should be in accordance with the general rules mentioned above,

- the acquisition of a flat or a block of flats - of upto 110 m<sup>2</sup>, but only after the fulfilment of certain conditions,
- the acquisition of an item or a property rights from one person during the last five years - up to total amount of 9,637.00 PLN, depending on the personal relation between a recipient and the person from whom items or property rights were acquired.

The following examples of tax are exemptions from previously mentioned taxes.

## **vehicle tax**

- vintage vehicles,
- as a reciprocity rule vehicles possessed by foreign embassies, consulates and other missions, that have diplomatic privileges and immunity upon acts, agreements or customs.

## **forest tax**

- forests with woods no older than 40 years,
- forests registered individually in the register of historical monuments.

## **agricultural tax**

- arable land of the lowest quality,

- land for a new farm up to the area of 100 hectares - on certain conditions.

### property tax

- real estate used by associations to conduct a

- statutory activity for children and youth,
- land and buildings registered individually in the register of historical monuments - on certain conditions,
- non-arable land, ecological arable land, excluding that used for business activity.

For entrepreneurs, the most important local taxes are:

Kind of tax	Scope	Tax base
vehicle tax	<ul style="list-style-type: none"> <li>lorries over 3.5 tonnes,</li> <li>trailers,</li> <li>buses.</li> </ul>	<ul style="list-style-type: none"> <li>admissible total weight of a vehicle for lorries and trailers,</li> <li>number of seats - for buses</li> </ul>
forest tax	<ul style="list-style-type: none"> <li>activity conducted with using a forest</li> </ul>	<ul style="list-style-type: none"> <li>number of hectares resulting from the register of land and buildings.</li> </ul>
agricultural tax	<ul style="list-style-type: none"> <li>arable land,</li> <li>wood and bush covered land on arable land,</li> <li>excluding lands used for business activity other than agricultural.</li> </ul>	<ul style="list-style-type: none"> <li>for farms - amount of hectares taken for calculation purposes, depending on the quality of land,</li> <li>for other lands - amount of hectares resulting from the register of land and buildings.</li> </ul>
property tax	<ul style="list-style-type: none"> <li>land used for business activity purposes,</li> <li>a building or its parts,</li> <li>structure of its parts used to conduct a business activity.</li> </ul>	<ul style="list-style-type: none"> <li>For land and buildings - area</li> <li>For structures - value.</li> </ul>

### company car tax

Starting with 2015, new rules will apply for the use of company cars by employees. The main reason for the change is the simplification of the calculation method for the taxable benefit-in-kind that arises from the personal use of a car by an employee. Company cars in Poland are offered by many types of companies and business owners as well as employees are concerned with this change. Our Polish law firm can offer you special advice and help with the income tax rules for company cars in Poland.

#### using a company car in Poland

The private use of company cars by employees in Poland is taxed and starting with 1 January, 2015, new income tax rules have entered into force for this purpose. The changes are implemented as a result of an Amendment brought to the Act on the facilitation of business

activities. The manner in which employees are taxed for the benefit of using a company car is the main reason for the legislative and fiscal changes included in the Act.

Until the recent changes, no specific calculation method was in force. Companies used a series of measures of their choice, based on rough interpretations of the tax law, to calculate how employees would have to reimburse the employer for using the company car for private purposes.

#### the new regulations for the income tax rules for company cars

The new regulations for using company cars stipulate that the benefit-in-kind for using such a car will have a fixed value per month: 250.00 PLN for cars that have an engine capacity of up to 1600 cm<sup>3</sup> and 400.00 PLN for cars that have an engine capacity of over 1600 cm<sup>3</sup>. If

the employee uses the company car for personal purposes only for a few days or weeks and not an entire month, the amount will be calculated using a different method.

### **stamp duty**

Stamp duty is collected from state administration agencies' activities that are specified in regulations, i.e.:

- registration for VAT: as a rule registration for VAT is not liable to stamp duties, 170.00 PLN applies only to confirm the registration, which shall be issued at the request of the taxpayer,
- giving a 'Power of Attorney': 17.00 PLN,
- certificate that an entity has no overdue tax liabilities: 21.00 PLN

# *international tax issues*

## **double tax treaties**

Poland has a broad double tax treaty network; currently 92 double tax treaties are in force following the OECD model. The purpose of these treaties is the avoidance of double taxation on income earned in those countries. The OECD Commentary and the OECD Model Tax Convention on Income and on Capital are not binding on Polish tax and judicial authorities, but are often used as guidance.

## **tax information exchange**

Poland participates in the international tax information exchange based on OECD double tax treaties, bilateral memorandums and any EU regulation, which has been implemented in Polish tax law. The Polish government has already signed memorandums of understanding with more than 15 countries.

## **source of incomes for non-residents**

### **dividends**

Dividends paid by a Polish resident company to a non-resident company are subject to a 19% withholding tax rate, unless the rate is reduced under a tax treaty, or the dividends qualify for an exemption under the EU parent-subsidiary directive, provided the dividend is not paid in relation to a transaction (or a set of transactions) undertaken to benefit from a tax exemption that does not reflect economic reality.

### **interest**

Interest paid to a non-resident is subject to a 20% withholding tax, unless the rate is reduced under a tax treaty or the EU interest and royalties directive.

### **royalties**

Royalties paid to a non-resident are subject to a 20% withholding tax, unless the rate is reduced under a tax treaty or the EU interest and royalties directive.

## **other**

Fees for specified intangible services (e.g. advisory accounting, legal, technical, advertising, data processing, market research, recruiting, management, control services, guarantees, etc.) are subject to a 20% withholding tax (subject to the provisions of an applicable tax treaty).

## **taxation of permanent establishments**

Branches of foreign entities operating in Poland constitute a permanent establishment of a foreign entrepreneur within the meaning of tax regulations. Profits attributable to the operations of a permanent establishment are taxed in Poland.

A permanent establishment of a legal person will pay 19% corporate income tax (CIT) on income taxable in Poland. A natural person establishing a branch in Poland will pay income tax in accordance with the tax scale (15% and 32%), or a flat rate tax in the amount of 19% on income if he/she notifies the intention to use this form of taxation to the tax office in a timely manner.

In most cases, branches are obliged to pay the Polish goods and services tax (VAT) and collect as withholding agent's personal income tax (PIT) and social security contributions if they employ personnel in Poland.

## **standard legal obligations and formalities for a branch**

The law requires the foreign entrepreneur to appoint his/her representative in Poland.

# value added tax (VAT)

## entity of taxation

The Value Added Tax Act (hereinafter referred to as 'VAT') uses the following terms:

- output tax - when resulting from a sale, a seller is obliged to prepare an invoice and to pay to a tax office,
- input tax - a tax that a buyer of goods or services has to pay to a vendor, but may deduct it from its own output tax or to receive it back from a tax office.

## subject of taxation

- payable delivery of goods and payable providing of services in Poland,
- export of goods,
- import of goods,
- intra-community acquisition of goods with payment in Poland,
- intra-community delivery of goods.

## taxable person

- a legal person,
- an organisational entity without corporate personality,
- individuals that carry out an independent business activity (VAT has its own definition of business activity, therefore every case should be analysed separately).

VAT payers are also entities which:

- perform intra-community delivery of new transport means,
- perform intra-community acquisition of goods in Poland,
- are recipients of services provided or goods delivered by taxpayers having their registered seat, fixed place of business activity or place of residence outside Poland.

Entities having their registered seat, fixed place of business activity or place of residence outside the EU and which are subject to registration as a VAT payer in Poland are obliged to appoint a tax representative. This obligation does not concern

entities from any EU member state, however they may optionally appoint a tax representative.

Entities that perform activities mentioned in the 'Subject of taxation' are obliged to register as an active VAT payer before undertaking their first taxable activity. From the first activity they have to issue invoices with the proper VAT rate, according to special regulations.

There is the possibility of not registering for VAT if an entity foresees that the total annual turnover will be lower than 150,000.00 PLN. In this case, an entity is not obliged to tax its turnover, but is also not eligible to deduct input tax on purchases.

An intra-community acquisition and delivery are allowed only for entities that are registered as an EU VAT payer.

## consignment stock

A consignment stock is stock in a warehouse where raw materials moved by a supplier - who is a VAT payer in another EU state - from its warehouse in another EU state other than Poland are stored. The consignment stock is located in Poland and managed by a Polish VAT payer.

This procedure is a simplification that allows suppliers not to register for VAT in Poland, because all formalities connected with taxation and tax reports are completed by a Polish VAT payer.

## obligations

A VAT payer has an obligation to submit a monthly tax declaration by the 25th day of the month following the month in which the VAT obligation arose or, in the case of 'small' VAT payers, before the 25th day of the month following the quarter in which the VAT obligation arose. In a VAT-declaration, a VAT payer has to show the difference between output tax resulting from sales, and input tax resulting from purchases. In case of a surplus of output tax, a VAT payer is obliged to pay this surplus to a tax office within

a time limit set forth for tax declarations. In case of a surplus of input tax the taxpayer can apply for VAT to be repaid to his bank account or assign it to the next settlement period. In the case of importing goods VAT shown in a customs declaration should be paid within 10-days from the date of customs clearance. There are some opportunities of avoiding the VAT obligation in case of the import of equipment or factory facilities.

## tax rates

Activity	Tax Rate
All besides those mentioned below:	23%
<ul style="list-style-type: none"> <li>Some goods and services specified in the Act</li> </ul>	5% and 8%
<ul style="list-style-type: none"> <li>export of goods</li> <li>intra-community delivery of goods</li> <li>international transport</li> </ul>	0%
<ul style="list-style-type: none"> <li>supply of goods used only for activity exempted from VAT</li> <li>financial services</li> </ul>	exemption

## VAT returns from tax office

VAT may be recovered by two methods - indirect and direct.

The indirect return of input tax is the most common method for companies which have monthly sales and expenses on a constant level. A VAT payer may recover the input tax via deduction from output tax. The direct tax return means the refund of VAT by money transfer from the tax office in the amount of VAT paid during the purchasing process. This method is common for the start-up phase, like industrialisation or purchasing of assets, when input VAT is accumulated. The return of VAT is generally made within 60 days under the condition that Tax Office will not suspend this period because of a check on a VAT payer company. The VAT act also governs the shorter term of 25 days for refund, but only on certain conditions. All the above mentioned deadlines may be easily extended by the tax office during a tax check.

# customs and excise tax

## custom tax

From 1 May, 2004, Polish territory is part of a Customs Union, a fact which has caused significant changes in customs clearance regarding import and export goods to and from Polish territory. Any existing customs barriers between Poland and EU member states disappeared. The transfer of goods between EU member states is realised by intra-community acquisition and supply of goods as well as services. Additionally on 1 January, 2008 Poland joined the Schengen zone, which resulted in the abolition of border check points between Poland and its EU neighbour countries.

The transfer of goods between Poland and non-EU countries is still governed by the Customs Code and is classified as import-export. All regulations related to customs clearance, customs rates and obligations are governed on the EU level, although the local country practice is still important and is recognised as binding and valid (i.e. the technical and procedural aspects).

The import of goods, such as raw materials from a non-EU country into the EU and eventually to Polish territory, creates an obligation to pay customs and VAT in the country of customs clearance or country of destination for supply. The procedure depends on the obligations of the supplier and the delivery procedure.

## excise tax

The Excise Tax law regulates the production and trading of excise-duty goods such as: electrical products, electricity, alcohol, tobacco products (including dried tobacco), and motor fuel, heating oil and gas and passenger cars.

## taxable person

- a legal person,
- an organisational entity without corporate personality,
- individuals that carry out transactions taxed by excise tax.

## subject to taxation

- production of excise-duty goods,
- taking out excise-duty goods from a tax warehouse,
- sale of excise-duty goods in Poland,
- import of excise-duty goods,
- intra-community acquisition of excise-duty goods.

Tax rates are expressed as percentage of the value of goods or on a volume basis (fixed rate per product unit).

## customs bonded warehouse

A customs bonded warehouse is a building or other secured area in which dutiable goods (other than from EU or EEA) may be stored, manipulated or undergo manufacturing operations without payment of duty under bond and in the joint custody of the importer, or his agent, and the customs officers. It may be established and managed by the state or by private enterprise. In the latter case a customs bond must be posted with the government.

The main advantage of a customs bonded warehouse is that all payments connected with a goods import (import duties, excise tax and VAT) are postponed until the moment of their withdrawal for consumption within Poland.

## duty-free zones

A duty-free zone (DFZ) is a separate entity not part of a larger customs area, which is treated as a foreign territory and for which a uniform customs system applies. All entries and exits within DFZ are under customs supervision.

The advantage of a DFZ is that foreign merchandise (other than from EU or EEA) brought in are sold without import duties, excise tax and VAT.

The duty-free zones in Poland are located on the main communication routes (airports, harbours, border crossings):

## Map of duty - free zones in Poland



Source: PAIIZ

# mergers & acquisitions (M&A)

## Polish M&A market

One of the natural methods of implementing projects in Poland is to take over existing business entities. Nowadays, the following reasons for transactions in Poland can be identified:

- good business opportunities resulting from the:
  - (a) market size
  - (b) well educated personnel
  - (c) low labour costs
- taking over businesses in order to obtain preferences resulting from operations in Special Economic Zones,
- the privatisation of state-owned companies,
- looking for strategic partners to enable further growth while financial markets are frozen.

The Polish market is large enough to be interesting for global players and the economy suffered least during the last crisis. Moreover, a company based in Poland could be a good platform to reach the whole CEE market. One of the biggest advantages about investing in Poland is that there is still easy access to qualified personnel, people are well educated and labour costs are very competitive.

A definite advantage of takeovers in Poland is the use of entities enjoying preferences related to operations in Special Economic Zones. After certain requirements are met, it is possible to take over an entity operating within the Special Economic Zone, which may relate to a further reduction in operating costs.

Privatisation processes, which still involve a relatively significant percentage of Polish state-owned companies make it possible to find interesting targets for takeovers. Nowadays all

the biggest entities have been sold. But there is still a great deal of small and medium companies to be sold. The reasons why they could be a good targets:

- not so many buyers are interested,
- good price can be achieved,
- profitability can be increased very easily.

It should be noted that the intention of selling a company via such a process includes taking part in public tendering procedures organised by the Ministry of State Treasury. It is crucial to prepare the appropriate documentation professionally as indicated in the freely available, detailed tender specifications.

Undoubtedly, the initial signs of market improvement will cause investors to return to standard transactions between intact companies in conditions which justify a company's purchase or sale.

In the case of a takeover, it is necessary to plan the whole process in an appropriate way, which usually consists of the following elements:

- the choice of an investment adviser/partner looking for entities to be potentially taken over,
- initial negotiations,
- due diligence - extensive legal, tax and business analysis of the entity concerned,
- final negotiations, according to results of due diligence,
- closing the transaction - executing a contract.

What makes the transaction easier, and sometimes determines its success, is the choice of the right advisers/partners that will find the right entity to be taken over and will obtain an appraisal beneficial for the buyer.

A crucial element of a successful transaction is the appropriate performance of due

diligence, which requires cooperation with highly competent legal advisers, tax advisers and business consultants. These people will conduct the necessary analyses and describe all circumstances crucial to the analysed company in a final report. The above actions are necessary to identify the legal and tax hazards in the company's operations and to validate future business plans.

The representation of the parties constitutes part of the investment contract (Share Purchase Agreement), which includes the basic agreements of the parties, representations and promises of the present owners, contractual penalties and conditions precedent.

Entities which perform the most takeovers in Poland include:

- private equity funds,
- companies based in the EU,
- companies based outside the EU, which are expanding into the EU market,
- Polish business entities which wish to increase the scale of their operations.

The most commonly encountered barriers for investors during company takeovers, which often prevent the implementation of expansion plans, include:

- insufficient knowledge about the local market, its structure and entities operating in it (difficulties in finding potential entities to be taken over/partners for co-operation),
- insufficient knowledge of the legal and tax realities in the target investment country,
- insufficient knowledge of solutions which allow more profitable acquisitions of business entities with the use of companies already operating in the Special Economic Zones,
- ignorance of the specific negotiation process and local business culture resulting from cultural differences.

## regulations governing M&A

The rules for mergers and acquisitions of companies have been included in the Polish code for commercial companies. Companies may merge with other companies or partnerships; however, a partnership may not be the bidding party or a newly formed one. Partnerships may merge with other partnerships only through the formation of a company.

A merger may be effected through the:

transfer of all assets of a company or partnership to another company in exchange for the shares that the bidding company issues to the shareholders or partners of the target company or partnership (merger by takeover),

- formation of a company to which the assets of all merging companies or partnerships devolve in exchange for shares of the new company (merger by formation of a new company).

The target company, partnership or companies or partnerships merging by the formation of a new company will be dissolved, without conducting liquidation proceedings, on the day in which they are removed from the register. It should be noted that a plan for the merger of companies requires a written accord between those merging companies.

As of the day of merger, the bidding company or the newly formed company takes all rights and duties of the Target Company or partnership merging by formation of a new company. In particular, the bidding company or the newly formed company will take over any permits, concessions and reliefs granted to the target company or partnership or any of the companies or partnerships merging by formation of a new company (unless otherwise provided in the commercial companies code or the decision on granting the permit, given consent or relief).

Mergers which have an effect on the territory of Poland, and the turnover of the enterprises involved that exceeds a certain amount are considered by an initial review/examination by the President of the Office of Competition and Consumer Protection.

# audit

## what is the purpose of auditing financial statements in Poland?

The purpose of the audit of financial statements has been defined in Article 65(1) of the Polish Accounting Act of 29 September, 1994. The auditor has to express a written opinion (together with a supplementary report) on whether the financial statements audited by him comply with the accounting principles and give a true presentation of the net worth, the financial position and the profit (loss) of the audited entity.

Therefore, in each audit of the financial statements, the auditor has to assess, firstly, whether the financial statements and the books of account on which they are based are free from irregularities resulting from the omission or distortion of significant information, and, secondly, whether the information included in these financial statements can be considered true and fair.

The audit of financial statements is, therefore, a process whose task is to make credible the information (mainly financial information) contained in the financial statements. Thus, its purpose is to ensure the security of business trading.

## who is obliged to commission the auditing of financial statements in Poland?

According to the applicable regulations (Article 64(1) of the Accounting Act), the consolidated financial statements of groups and the financial statements of the following entities shall be subject to statutory audit:

- banks, insurers and insurance companies;
- co-operative savings and credit unions;
- entities which operate on the basis of regulations on trading in securities and regulations on investment funds;
- entities which operate on the basis of regulations of the organisation and operations of pension funds;
- domestic payment institutions and electronic money institutions;
- joint-stock companies, except for companies in organisation as at the balance sheet date;
- all other entities which in the prior financial year for which the financial statements were prepared, met at least two of the following conditions:
  - the annual average number of employees in full-time equivalents amounted to at least 50;
  - the total assets as at the end of the financial year were at least the Polish zloty equivalent of EUR 2.5 million;
  - the net revenue from the sales of merchandise and finished goods and the financial transactions for the financial year was at least the Polish zloty equivalent of EUR 5 million;

Financial statements prepared in accordance with IAS are subject to audit as are those of acquiring companies and newly formed companies for the year in which a business combination takes place.

Annual joint financial statements of investment funds with separated sub-funds, as well as individual annual financial statements of sub-funds are also subject to audit.

More restrictive regulations are applied to the statutory audit of public interest entities. According to Article 2 of the Act on Statutory Auditors, their self-governing organisation, on entities authorised to audit financial statements and on public oversight, public interest entities (PIEs) include issuers of securities, domestic banks, co-operative savings and credit unions, insurance and reinsurance companies, electronic money institutions, open pension funds and general pension societies, open investment funds, specialist open investment funds and closed-end investment funds whose public investment certificates were not admitted to trading at the regulated market, entities conducting brokerage activity excluding entities conducting operation solely within the scope of accepting and transferring instructions for purchase or sale of financial instruments, or within the scope of investment counselling.

Some of above mentioned entities are obliged to appoint an audit committee which is responsible for monitoring the financial reporting process, monitoring efficiency of internal control systems, internal audit and risk management, monitoring performance of audit activities and monitoring the independency of statutory auditor and the entity authorised to audit financial statements.

### **who should commission the auditing of financial statements in Poland?**

Each entity may commission the audit of its financial statements. The essence of the audit should not lie in the search for those guilty of errors but in the opportunity to improve the operations of an entity. The auditor checks the compliance of the documentation with the facts and examines the entity's accounting and reporting procedures. Next, before issuing the opinion, he recommends the necessary changes and helps to find solutions to the problems he has identified. Therefore, it pays to commission an audit of financial statements. Firstly, the audit confirms the correctness of the reported data (prepared both internally and externally). Secondly, the activities of the auditor aim to verify the internal control procedures implemented in an entity. The list of detected errors and irregularities of the accounting system increasing the risk of conducting business and recommendations included in each professional audit of the financial statements are valuable information that can be effectively used by the entity managers. Thirdly, a positive opinion issued by an auditor confirms the credibility of the company and works to the company's advantage when the company is trying to obtain external finance.

The aim of the audit is the expression by a statutory auditor of a written opinion. The audit contains a written opinion and report on whether the financial statement truly and fairly present the financial position of and the financial result of the audited entity in accordance with the applicable provisions of the Act and accepted accounting principles (policies).

Some entities that maintain their accounting records and undergo a mandatory audit of annual financial statements are required to publish their financial statements.

Polish Accounting Law is often changing, due to the application of International Financial Reporting Standards and EU accounting regulations.

The aim of the implementation of these international regulations is to equalise the competitiveness of enterprises. The harmonisation of accounting regulations should have the effect of improving the quality and comparability of information disclosed by the companies. It also effects improvements in the reliability of financial data for business partners and financial institutions.

# consolidation

The Act of 29 September, 1994 on Accounting (further referred to as 'AA') specifies accounting principles, as well as procedures for auditing financial statements by statutory (chartered) auditors.

Under AA, financial statements should be prepared as at the date of closing not later than 3 months after the balance sheet date (generally, the last day of a financial year), and approved not later than within 6 months since that date. They consist of a balance sheet, a profit and loss account and additional information, including introduction to the financial statements as well notes to the financial statements, including additional notes and explanations. Financial statements which are subject to obligatory annual audits, also include a statement of changes in equity (in the case of investment funds - a statement of changes in net assets), and cash flow statements.

Parent companies of groups should prepare annual consolidated financial statements which include data of the parent company and its subsidiaries at all levels, compiled in such a manner as if the group were one entity.

Consolidated financial statements include a consolidated balance sheet, a consolidated profit and loss account, a consolidated cash flow statement, a statement of changes in consolidated equity and notes to the consolidated financial statements, including an introduction to the consolidated financial statements, as well as additional notes and explanation. Consolidated financial statements should be accompanied by an annual report of the group.

A parent company is not obliged to prepare consolidated financial statements, if, as at the balance sheet date of the financial year and as at the balance sheet day of the prior financial year two of three of the following thresholds eliminations are met, before consolidation eliminations:

- an annual average number of employees in full-time equivalents did not exceed 250 people;
- the total assets did not exceed 38,400,00.00 PLN;

- the net revenue from sales of finished goods, goods for resale and the financial transactions did not exceed 76,800,00.00 PLN.

And after consolidation eliminations:

- an annual average number of employees in full-time equivalents did not exceed 250 people;
- the total assets did not exceed 32,000,000.00 PLN;
- the net revenue from sales of finished goods, goods for resale and the financial transactions did not exceed 64,000,000.00 PLN.

Entities which prepare their financial statements in accordance with International Accounting Standards (further referred to as 'IAS') must comply with AA in matters not regulated by the Standards. Application of IAS is obligatory in respect of consolidated financial statements of issuers of securities traded on a stock exchange and banks. Voluntarily IAS may be utilised for consolidated financial statements by issuers of securities intending to apply for or pending admission to trading on one of the regulated markets of the EEA and members of a group if a parent company prepares consolidated financial statements in compliance with IAS. The same categories of entities, may optionally utilise IAS to their own (stand-alone) financial statements.

# accounting

## general

Polish accounting regulations are very similar to other systems and are constantly being synchronised with the International Accounting Standards and EU regulations, to make them comparable.

A pre-requisite under which entities can efficiently perform business transactions is a proper (in all aspects) finance and accounting system which will be used as a basic source of information about all processes running within a company. In the age of the information society, an efficient system of recording business activity plays a key role for both external recipients (contractors, investors, analysts) and internal recipients (owners, shareholders, management board, managers, heads of departments accountable for performance, inspectors, accountants, tax advisers). Accounting processes and the accounting law are particularly instrumental in providing companies with confidence of legal compliance. Successful application of the relevant regulations inherently involves appropriate implementation of pertinent provisions of the accounting law.

## principles of maintaining the accounting records

The Act sets forth the principles of keeping accounting records to ensure correct operation of the accounting and internal control systems, including correct circulation and review of accounting documents (vouchers). The Act requires that the accounting records be maintained in Polish and in Polish currency.

## tax books

Balance sheet records are to provide the base for assessment of tax liabilities. It is vital for the company to review at all times, while selecting certain solutions for balance sheet recording and valuation, whether such solutions conform to the tax regulations, and if they do not - to keep parallel records or at least to have the ability to demonstrate the differences for the purpose of determining the proper amount of tax due.

Only those tax records that are kept in a reliable and faultless manner substantiate the figures resulting from the records contained therein. If the profit (loss) cannot be determined on the basis of the accounting records, the Polish legislation allows the possibility to assess the revenue/loss.

Natural persons, civil law partnerships, registered partnerships and professional partnerships of natural persons that conduct business activities without an obligation to keep accounting records, record their economic operations by means of a tax book of revenues and expenditures.

## international accounting standards

The world has become a global village. That is why the Polish accounting regulations yield to internationalisation, provide for comparability of figures as well as ensure transparency of the information intended for financial analyses. Most European countries allow the preparation of consolidated financial statements of company groups according to the standards set forth in IAS or US GAAP.

Furthermore, Art. 10 item 3 of the Accounting Act stipulates that for matters not provided for under the Act, while adopting the accounting rules (policy), an entity may apply national accounting standards issued by the Accounting Standards Committee. If no relevant national standard exists, it is possible to apply International Accounting Standards.

## integrated finance & accounting systems

The Accounting Act keeps up with technological progress in electronic data processing systems (computerised finance and accounting systems). In the case of computerised accounting records, accounting information sets organised in the form of separate electronic data files, databases or their individual separate components are regarded as equivalent to the book of account, irrespective of the place of their origin and storage.

In the case of computerised accounting records, it is required to ensure automatic control over the consistency of entries, as well as over the transfer of transactions and balances. An entity may keep its accounting system information sets on condition that it uses software enabling the entity to obtain readable information as regards the entries made in the accounting records, through printout or transfer to another electronic data carrier, whereas the data recording should meet the following requirements:

- permanently readable form of the data, consistent with the content of the accounting document;
- the data source is determinable;
- entries are identical and complete;
- entries are stored in a due manner and in a pre-determined order;
- data protection measures exclude the ability to change the data.

## accounting legislation & principles

Polish accountancy law is constituted by the Accountancy Act of 29 September, 1994 and the Polish Generally Accepted Accounting Principles - GAAP (which so far include ten standards). The provisions of the Accounting Law apply to the entities whose registered offices or place of executive management are located in Poland. The Act covers foreigners or, foreign companies operating through branch offices or registered subsidiaries, obliging them to maintain full accounting records in compliance with Polish law.

Since coming into effect on 1 January, 1995, the Act has been repeatedly amended and is still subject to continuous alterations as a result of adjusting the Act to changing international accounting standards (IAS/IFRS). In addition, there are dozens of regulations of the Council of Ministers and the Minister of Finance as regards detailed accounting principles as well as several executive amendments to the Accounting Act itself.

The Accounting Act does not differ considerably from International Financial Reporting Standards, which were adopted by the EU and are harmonised with regulations resulting from EU Directives. The amendment dated March 2008 implemented regulations from the 2006/46/WE EU Directive. Amongst others things, it is concerned with consolidating financial statements and extends to the scope of obligatory disclosures presented in statements.

It also placed on the management of entities the responsibility to prepare and publish their financial results.

In situations which are not regulated by the Accounting Law, proper standards can be used.

Also there is an allowance, for a specified group of companies, to do so according to International Financial Reporting Standards. Companies listed on the Warsaw Stock Exchange are obliged to prepare consolidated financial statements in accordance with International Financial Reporting Standards. Furthermore, the subsidiaries of such companies may choose financial statements in accordance with EU and International Financial Reporting Standards if they prefer.

## accounting facts

Accounting records must be maintained in both the Polish language and currency. Amounts denominated in foreign currencies are converted into Polish currency at the average exchange rate set by the National Bank of Poland. In general, all accounting documents should be in Polish apart from source documents, though it should be remembered that these should be translated into Polish at the behest of the controlling bodies and auditors.

The accounting period lasts 12-months, and is usually the same as a full calendar year. Of course, a company may choose different dates, but the Tax Authorities must be informed about this change. Bookkeeping can be done internally by a qualified employee or externally by an accounting office. Documents and accounting records must be kept in the company's head office, as well as in an accounting office. Documents for each year must be kept for five years, payroll documentations for longer period and financial statements permanently.

The responsibility for fulfilling these obligations in the field of accounting falls entirely on the Manager of a company. The scope of this responsibility was extended and emphasised in the management regulations of the 2006/46/WE EU Directive.

Entities are required to apply all accounting principles included in the Accounting Law, to truly and fairly present their financial position and financial results. The economic substance of transaction is a base for recognising events, including business transactions, in the books of accounts and a presentation in the financial

statements. The company can apply some simplifications within its accounting principles, provided that it has no significant negative impact on the presentation of their financial position and its financial results.

## **financial statements**

Entities shall prepare the financial statement on the last day of the financial year referred to in article 12, paragraph 2 of the Accounting Law. Principles for the measurement of assets, liabilities and equity and the determination of the financial result should be applied respectively as specified in chapter 4 of the Accounting Law.

Issuers of securities admitted to or intending to file for admission to or issuers of securities pending admission to trading in one of the regulated markets of the European Economic Area may prepare their financial statements in accordance with International Financial Reporting Standards.

Another group of companies allowed to use the International Financial Reporting Standards regulations are entities which are members of groups, in which a parent company prepares consolidated financial statements under International Financial Reporting Standards.

These decisions can be made only by the relevant body of such companies.

For financial statements, an annual report of company activity should be included. The report covers information about events having significant influence on a company's activity, and also presents the company's achievements and projections. All documents must be prepared in the Polish language and currency.

Some entities which operate in the extractive industry or are individually engaged in primary logging will prepare a report on the payments to the public administration at the balance sheets date, together with its annual financial statements, report on the payments to the public administration.

The entity's management and the members of the supervisory board or other body supervising the entity have to ensure that the financial statements, the consolidated financial statements, report on the activities of entity and report on the activities of the group meet the requirements of the Accounting Act. The entity's management then ensures the preparation of the financial statements within 3-months from

the date of the balance sheet as well as its presentation to the relevant authorities.

The entity's management is obliged to submit the financial statement to the registry within 15 days from the date of approval, together with the auditor's opinion and a copy of the resolution or decision approving the financial statements and the distribution of profit or covering of loss. The entity's management is also obliged to submit the financial statement to the tax office within 10 days from the date of approval, together with the auditor's opinion and a copy of the resolution or decision approving the financial statements and the distribution of profit or covering of loss.

The approval of the statements shall take place within six months after the date of the balance sheet.

# *HLB in Poland*

## *how to contact us*

An international contact partner has been identified for each HLB member firm and this partner is the individual to be initially contacted with questions or requests for information for a particular country.

The international contact partner is responsible for the co-ordination of all international client work in their country.

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# *Notes*



