

# Poland

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## Introduction

### History and Background

Poland initiated its wide-ranging transformation in 1989 from a socialist political and economic system to a democracy and a market economy. On 1 January 1989, the Act of 23 December 1988 on Business Activity came into force. It established the principle of freedom to undertake a business activity for everybody on an equal rights basis.

The achievements of Poland in the field of transformation of its economy were recognised by its admission to the World Trade Organisation (WTO) in 1995 and to the Organisation for Economic Co-operation and Development (OECD) in 1996.

On 16 December 1991, the Association Agreement between Poland and the European Union (EU) was signed. In 1994, Poland filed its application for membership of the EU. To become a member of the EU, Poland had to meet requirements as to its political and legal systems and its economy. On 1 May 2004, after six years of negotiations, Poland became a member of the EU.<sup>1</sup>

### Government Policy towards Foreign Investment

From the beginning of the 1990s, the Polish government made efforts to attract foreign investments to Poland. As a result, foreign investment totaling in excess of dozens of billions have been made. According to the National Bank of Poland information direct foreign

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<sup>1</sup> The aim of this chapter is to provide general information on the legal background to foreign investments in Poland. It cannot be treated as an exhaustive discussion, legal opinion, or advice on all aspects of foreign investments, but it describes the law as on the date of its publication.

investments in Poland in 2008 amounted to EUR 11,6 billions. In 2006 and 2007 there were respectively EUR 15,7 and EUR 16,6 billions of direct foreign investments.

To promote investment opportunities and encourage foreign companies to choose Poland as their preferred investment location, the Polish Agency for Foreign Investment (PAIZ) was set up in 1992. In 2003, it merged with the Polish Information Agency (PAI) and the Polish Information and Foreign Investment Agency (PAIiZ) was created. The Agency not only encourages foreign business entities to invest in Poland, but also offers them help in administrative procedures related to the investment process.

## **Admission of Foreign Investment**

### **Policy with Regard to Admission**

Polish law provides for the principle of freedom to establish and conduct a business activity for anyone on an equal rights basis, and this applies also to foreign investors which undertake business activity in Poland. Exclusions from this general principle are described below. Polish law provides for some limitations as to the legal forms in which foreign investors may operate a business in Poland (see text, below).

Citizens of the member states of the EU, citizens of the member states of European Economic Area (EEA) but not belonging to EU and also citizens of the countries not being members of EEA but entitled to benefit from freedom of conducting business activity on the basis of agreements concluded with European Community, as well as enterprises or firms having their registered offices in such state may start and conduct business activity in Poland in all forms available for Polish citizens. The aforementioned rule applies also to those foreigners who obtained permission for permanent residence in Poland, a residence permit for EU long - term residents, permission for a tolerated stay, refugee status granted by Poland, or who were given temporary protection within Poland or obtained a stay permit for a definite period in relation to certain particular circumstances.

Any other foreign person may establish and conduct a business activity in Poland only in the form of a limited partnership, a partnership limited by shares, a limited-liability company, or a joint-stock company, unless an international agreement provides

otherwise. Such foreign business entities also can join such partnerships or companies, and acquire or hold shares in them.

A foreign person also may conduct a business activity in Poland through a branch or representative office subject to the principle of reciprocity and provided that international ratified agreements do not provide otherwise; this requirement does not apply to business entities from EU member states, of the member states of EEA but not belonging to EU and citizens of the countries not being members of EEA but entitled to benefit from freedom of conducting business activity on the basis of agreements concluded with European Community.

The change of the Act Freedom of economic activity, which entered into force on 31<sup>st</sup> of March 2009 gives the possibility to register business activity (for natural persons and legal persons) by one application covering court, fiscal, insurance, and statistical registration.

## **Regulation of Admission**

### *Restriction on Foreign Investment*

**Fiscal Legislation.** Business entities with foreign participation are subject to taxation as other business entities in Poland.

Taxpayers in Poland are given a tax identification number (NIP) by the competent tax office on application by the taxpayer. In addition, taxpayers of value added tax are obliged to apply to the competent tax office for registration for the purposes of that tax.

Poland has legislation concerning transfer pricing. Business entities in Poland are obliged to inform the tax authorities about transactions with related entities when their value exceeds the minimum amount fixed by law. Moreover, business entities also may be requested by tax authorities to prepare and supply information on transactions with other entities under certain circumstances.

**Labour Legislation.** The law imposes limitations on foreigner's access to the Polish labour market.

The general rule is that permission is required for foreigners who wish to perform work in Poland

However, no work permit is required for foreigners being:

- citizens of countries being a members of European Union,
- citizens of countries being members of the European Economic Area not belonging to EU,
- citizens of countries not being a party of the agreement on the European Economic Area, but entitled to benefit from the liberty of the movement of persons on the basis of agreements concluded by those countries with European Communities and its members.
- members of families of foreigners mentioned above.

Furthermore, the following persons are released from the obligation of obtaining a work permit:

Foreigners who have obtained permission for settlement, a residence permit for European Communities long-term residents, approval for tolerated residence, or having "refugee" status in Poland, benefiting from temporary protection in Poland or holding a stay permit for a definite period of time which has been granted in relation to the holding of a residence permit for an EU long-term resident granted by another Member State.

Separate regulations determine different cases concerning the possibility of performing work by foreigners without a work permit.

The law does not require a fixed level of employment of local staff but, as a general rule, permissions for work for foreigners are granted after consideration of the situation on the local labour market.

The law also provides for some indirect obstacles in hiring foreign staff in Poland in that at least two members of the Management Board of a bank or insurance company should speak Polish.

**Requirements of Local Collaboration.** The law does not require foreign investors to collaborate with Polish citizens or business entities when establishing or carrying on a business activity; thus, there is no necessity to establish a joint venture with a Polish national or business entity.

**Capitalisation Requirements.** There are no special capitalisation requirements for foreign investments, but the general requirements as to the minimum share capital of a partnership or company apply and are:

- A limited liability company – PLN 5,000
- A partnerships limited by shares – PLN 50,000
- A join stock company – PLN 100,000

In addition, the law may provide for higher amounts of minimum capital for companies conducting some specific business activity, such as banking, insurance, pension, or investment funds.

**Environmental Protection Requirements.** A business entities duties with respect to environmental protection result from Polish national ecological policy, as well as the implementation of European law in that field. The most important laws are the Act of 27 April 2001, Law on Environmental Protection, the Act of 18 July 2001 on Water Law, the Act of 27 April 2001 on Waste and Act of 16 April 2004 on Preservation of Nature.

Polish environmental protection law has some general duties which also apply to business entities. Everyone who undertakes an activity which may have a harmful effect on the natural environment is obliged to prevent such effect. Those who cause harm to the natural environment will bear the costs of the eradication of such harm.

The developer must prepare and submit the environmental impact assessment report containing the relevant information before the competent authority issues the decision on environmental impact. An environmental impact assessment proceeding is a separate proceeding. It must be carried out before the developer applies for the decision concerning the intended investment.

Moreover, some types of business entities which impact the environment require permissions. Exploitation of installations causing emission of gas or dust into the air,

entry of sewage into water or soil and production of waste is subject to special permission, if required. The Law on Environmental protection provides for the following types of permissions:

- Emitting gas or dust into the air;
- Allowing sewage into water or soil; and
- Producing waste
- Integrated (permission that covers business activity that may cause significant pollution of the environment as a whole or its particular elements).

There also are two Acts of 11 May 2001 which deal with packaging and duties of business entities in that area, which have a significant influence on business activity in Poland. The Act on Packaging and Packaging Waste establishes return, collection, and recovery systems for packaging and defines various duties of producers, importers, and sellers of products in packaging itself.

The Act on Corporate Obligations in the Area of Managing of Certain Waste and on the Product and Deposit Charges introduces a system of product charges payable by producers and importers of products in packaging which have failed to reach the required levels of recovery and recycling of packaging waste. This system introduces producers' responsibilities and is designed to minimise the environmental impact of packaging.

**Export Target Requirements.** The law does not impose requirements concerning export targets of an intended investment with foreign participation.

All business entities operating in Poland, including those with foreign participation, enjoy equal rights in the field of international trade. They are subject to the same duties with regard to administrative procedures concerning the export of goods and services. However, the export of some goods (e.g., weapons or technology which can be used for military purposes) requires permissions.

**Local Equity Requirements.** As a general rule, foreign investors are allowed to participate in investment projects in Poland on the basis of 100 per cent foreign equity. No local equity is required.

Nonetheless, the law governing business activity in a specific field may provide that such activity can be run by an entity with its registered office in Poland, in which foreign participation does not exceed a prescribed level. For example a license for dissemination of radio and television programs may be granted only to an entity with its registered office in Poland, in which foreign participation does not exceed 49 %.

**Restrictions Based on Public Policy or Public Health.** Under article 22 of the Constitution, limitations on the freedom of business activity may be imposed only by an act of parliament and only because of vital public interest.

Under the Act of 2 July 2004 on Freedom of Economic Activity, freedom of business activity in fields which have particular importance because of safety of the state or its citizens or other vital public interest may be limited by the requirement to obtain a concession; authorisation; or registration in the register of regulated activity. At present, concessions are required for the following business activity:

- Prospecting for or exploration of mineral deposits, extracting minerals from deposits, bulk storage of substances, and storing waste in rock mass, including in underground mine workings;
- Manufacture of and trading in explosives, arms, and ammunition, and products and technology for military or police purposes;
- Manufacture, processing, storing, transmission, distribution, and trading in fuel and energy;
- Protection of persons and property;
- Dissemination of radio and television programmes; and
- Air carriage.

A business entity intending to start a business activity in a field subject to obtaining a concession may apply for a promise to issue such a concession ("*promesa*"). As a general rule, during the validity of such promise, granting of a concession for the performance of the business activity specified in the promise may not be refused.

The scope of regulated activity is far broader and covers i.e. activity in the field of telecommunication, production of alcoholic beverages, tourist services, post services and road transport.

If a business activity is performed by foreign business entities through their branches or representative offices in Poland which seriously infringes Polish law or threatens the security or defense of the state, protection of state secrets, or other vital public interest, the appropriate Minister can issue an administrative decision prohibiting the pursuit of that business activity.

#### *Incentives for Investment*

**Guarantees against Expropriation.** Under article 21 of the Constitution, expropriation is permitted only for public purposes and in exchange for fair compensation. This rule applies to any property located in Poland regardless of the state of origin of its proprietor.

In addition, Poland is a party to 61 bilateral agreements concerning protection of foreign investment providing that investments made by business entities from one contracting state will be treated fairly and on an equal basis as domestic investments in the other contracting state. The agreements provide for additional requirements which must be met to justify expropriation, including additional provisions concerning the currency in which compensation must be paid and its transfer (see text, below).

**Income Tax and Profits Relief.** The law does not provide for any general exemptions from income tax for investors except for those entities which invest in Special Economic Zones. Such entities may be eligible for the exemption from PIT or CIT on conditions determined in the Personal and Corporate Income Tax Act, as well as from the exemption from real estate tax. (more about other preferential conditions for entities investing in SEZ in chapter "Financial support for foreign investments")

**Depreciation Allowance.** Buildings, premises constituting separate real property, machinery, equipment, means of transport, and other assets intended for use exceeding one year which a taxpayer uses for purposes related to a business activity may be subject to depreciation allowance.

Depreciation allowance applies only to assets owned or leased by the taxpayer. The tax law provides also that some rights, especially intellectual property rights, may be subject to depreciation allowance.

To take advantage of the depreciation allowance, the relevant assets need to be listed in a separate schedule of fixed assets for inspection by the tax authorities.

**Customs Duties Relief.** After Poland's accession to the EU, there are no customs duties at internal EU borders, and Poland exercises a uniform EU system for taxing imports.

**Revaluation of Assets.** The Act of 29 September 1994 on Accounting permits the revaluation of assets, and it defines the requirements for and consequences of such operation.

**Tax-Free Interest on Loans.** Interest on loans paid to an entity which does not have a residence or registered office in Poland is subject to taxation in Poland at 20 per cent income tax rate unless a double-taxation avoidance treaty provides otherwise. The entity paying the interest is liable for the deduction and remittance of the tax.

**Income Tax-Free Salary for Technicians.** Natural persons residing in Poland are liable to tax on their entire income coming from Polish or foreign sources (unlimited tax liability).

Other natural persons are liable to tax only on the income derived within Poland (limited tax liability) as the income from:

- a) work performed within Poland on the basis of a service contract, employment and co-operative employment contract or activity executed carried on personally, regardless of the place of payment of remuneration
- b) business activity conducted within Poland
- c) real property located in Poland incl. sale of this real property.

Polish tax law does not exclude any categories of employees from taxation under natural persons' income tax.

**Remittance of Profits.** Foreign investors are generally allowed to transfer abroad the whole profit gained from investment in Poland.

No permission is required. Obviously, the general requirements of Polish law, like those concerning remittance of dividends by Polish commercial companies or tax duties, will apply.

**Financial support for foreign investments.** The rules and the procedure for the awarding the State aid are determined in the Act on Proceedings in the cases concerning State aid of 30 April 2004 upon which business entities may benefit from State aid. The aid granted to business entity constitutes State aid as defined in the Treaty establishing the European Community (EC Treaty) if the following conditions are met:

- it is granted by the State or from the State's funds
- it is granted on more attractive terms than market terms
- it is selective in nature (it privileges a selected business entity or entities or production of specific goods)
- it threatens or distorts competition and affects trade between EU Member States.

If any of the aforementioned conditions is not met, we are not entitled to State aid as defined in Article 87 par. 1 of the EC Treaty.

The European Commission is the sole competent authority to determine compliance of granted under Community law. Any type of aid granted to business entities by central and local government agencies on the basis of individual applications or aid schemes must be notified to the EC. Until the Commission's approval the aid may not be granted. De minimis aid, i.e. support of up to EUR 100.000 granted to the business entities within three consecutive years and aid granted on the basis of group exemptions - is an exception.

The financial support for the investments is based on the Structural funds of the EU. The aim of the funds is to support the restructuring and modernisation of the EU Member States, thus closing the development gap between different regions of the EU. Structural funds are used in the way specified in the operational programs.

Between 2007 and 2013 Poland will receive a great injection of investment. EU granted Poland over 67 billions EUR. Poland is the biggest beneficiary in EU. Operational Programmes available in Poland are also the biggest in the history of EU.

In 2007-2013 business entities may obtain a support from the following operational programmes:

5 national operational programmes

16 regional operational programmes

European Territorial Co – operation programmes

- Operational Programme (OP) Infrastructure and environment with the total funds in amount of 27,9 billions EUR
- OP Innovative Economy with the total funds in amount of 8,3 billions EUR
- OP Human Capital with the total funds in amount of 9,3 billions EUR
- OP Development of Eastern Poland with the total funds in amount of 2,3 billions EUR
- PO Technical Assistance with the total funds in amount of 0,5 billions EUR
- 16 Regional OP with the total funds in amount of 16,6 billions EUR
- European Territorial Co – operation programmes with the total funds in amount of 0,7 billions EUR.

SEZ are also an example of a real support for foreign investments. The issue is subject to regulation of the Act on Special Economic Zones of 20<sup>th</sup> October 1994

SEZ are uninhabited parts of Polish territory within which a business activity may be conducted.

At present there are 14 SEZ within the territory of Poland, each of them consisting of several sub-zones.

An business entity may conduct an economic activity in SEZ upon the receipt of a permit which is granted, withdrew or amended by a minister proper for industry matters

The minister proper for economic matters consults the person governing the SEZ before granting, withdrawing or amending such permission.

Business entities who conduct their business activity in SEZ may be eligible i.e. for the following incentives (except of tax incentives which were described above):

- ability to benefit from using and managing the assets, placed within the territory of the zone of which the administrator of the SEZ is an owner or a dependent possessor;
- ability to manage the production devices, equipment and assets, of which the manager of the SEZ is an owner or a dependent possessor, in a manner facilitating conducting of business activity within the territory of the SEZ;
- Promotional activities concerning initiating and running a business activity performed by administrator of the SEZ.

Business entities may apply for the regional aid on conditions specified in the regulation of the Council of Ministers of 13th October 2006 concerning establishment of the regional aid map (Journal of Law No. 190/06, Item 1402). Depending on the region, the share of the regional aid in qualified cost are maximum 30%, 40% or 50%. This share can be increased for the medium sized business entities by 10% and for the small ones by 20%. Moreover, business entities may also apply for exemption from the real estate taxes and the means of transport taxes on conditions specified in the regulation of the Council of Ministers of 5th August 2008 concerning conditions of granting the exemptions from the real estate taxes and

the means of transport taxes (Journal of Law Nr 146/08, Item 927).

Furthermore, micro, small and medium sized business entities may apply to the crediting bank for a technological credit for development of their innovative activities consisting in creation and introduction of a new technology to production of goods and services. This credit is granted on conditions specified in the Act on some forms of support for the investment activities of 30th Mai 2008 (Journal of Law Nr 116/08, Item 730). The share of the business entity in the investment must be minimum 25%. This credit is to some extent repaid by the Technological Credit Fund in form of a technological bonus. This entity is then obliged to maintain for minimum 3 years the production or render services in this region, in which the investment was made. Otherwise it may lose the technological bonus and be forced to repay the credit.

### *Exclusions*

**National Security.** Foreign investors may face some limitations in conducting their business in Poland in the interest of national security, defence of the state, protection of state secrets, and other matters of vital public interest.

Circumstances may allow the Minister of the Economy to issue an administrative decision prohibiting the pursuit of a business activity by a foreign business entity through its branch or representative office in Poland.

National security interest may require the need to obtain permission for some activities or involve a ban on trading some goods with certain countries for both Polish nationals and foreign investors.

**Sectors Reserved for Nationals.** There are various posts for which only Polish nationals may be employed or appointed (judges, prosecutors, notaries, civil servants), but this does not extend to business activities by foreigners. The freedom principle also applies to foreign investors which undertake business activity in Poland.

Nevertheless, the law provides for some exceptions from that general principle. The Act of 29 July 1992 on Games of Chance and Mutual Wagering provides that the activity in the area of cylindrical games, card games, dice games, cash bingo, mutual wagering, slot machine games, or slot machine games with low prizes can be

conducted exclusively by a company with its registered office in Poland and that shares in such company can be purchased or taken over by an entity with its registered office in a member state of the EEA or by a natural person who is a citizen of such member state.

The Broadcasting Act of 29 December 1992 imposes some limits on foreign participation in the broadcasting of television or radio programmes. Broadcasting licences may be granted to natural persons of Polish nationality who have a permanent residence in Poland or to legal persons or partnerships having their permanent registered office in Poland.

Companies having foreign shareholders may be awarded a broadcasting licence if the stake held by foreign persons in the share capital of the company does not exceed 49 per cent, provided that some additional requirements are met.

## **Treatment of Foreign Investment**

### **Standard of Treatment**

As stated above, the law provides for the principle of freedom, including foreign investors which undertake business activity in Poland.

### **Regulations**

#### *Protection and Security of Persons and Property Rights and Interests*

With the exceptions provided for in Acts of Parliament, anyone, regardless of their nationality or citizenship, being under the authority of the Polish State, will enjoy the freedoms and rights assured by the Constitution.

The Polish Constitution guarantees protection of human lives, as well as personal inviolability and security. Everyone has the right to ownership, other property rights, and the right of succession.

#### *Granting Permits and Import and Export Licences*

Permits, as well as import and export licences, are administrative decisions made by administrative bodies in individual cases.

The procedure for granting permits is governed by the Act of 14 June 1960 on the Code of Administrative Proceedings. There may be additional rules regulating the grant of such permits.

### *Authorisation to Employ*

As a general rule, business entities in Poland may employ persons without any need for authorisation, but permission may sometimes be needed for the employment of foreign nationals.

Employee rights are protected in Poland, and the freedom to amend mutual rights and duties of parties to an employment contract is limited. Moreover, the basic principles of the law, as to working time, minimum salary, and holiday leaves, also apply to employees who were posted to Poland by an employer having its registered office or residence abroad, regardless of the law which governs the employment contract.

The rules on the permissions for foreigners to enter and reside in Poland are set out in the Act on Foreigners of 13 June 2003. Foreigners who wish to undertake a salaried activity in Poland and do not have a permission for permanent residence, approval for tolerated residence, 'refugee' status, a residence permit for EU long-term residents, a stay permit for a definite time granted in relation to or a residence permit for an EU long-term resident granted by another member state and on condition of meeting other additional requirements or who do not benefit from temporary protection in Poland need one of the following documents:

- Visa to perform work, issued for a specified period no longer than one year; and
- Permission for residence for a definite period of time, granted for a specified period no longer than two years if the circumstance giving rise to the application for permission justifies the need to reside in Poland for more than three months.

### *Discrimination against Foreign Investors*

Since accession to the EU, Poland became part of a common market in which business entities enjoy freedom of business activity.

Consequently, most limitations on business activity applicable to foreign investors in Poland do not apply to business entities from other EU or EFTA member states.

## **Customs Union and Free-Trade Agreements**

### *European Union*

Poland became a member state of the EU on 1 May 2004.

### *European Free Trade Association*

Three European Free Trade Association (EFTA) members states (Iceland, Liechtenstein and Norway), together with the 25 European Community member states, including Poland, constitute the European Economic Area (EEA). Currently Bulgaria and Romania await for the ratification of legal texts of the EEA Enlargement Agreement by the parliaments of all 30 EEA States, after which they will become members of the EEA.

### *General Agreement on Trade and Tariffs*

Poland has been a party to the General Agreement on Trade and Tariffs Agreement (GATT) since 1967.

### *World Trade Organisation*

Poland has been a member of the World Trade Organisation, the successor of the GATT forum, since its establishment on 1 January 1995.

## **Transfer of Funds**

### *In General*

The Foreign Exchange Law, which came into force on 1 October 2002, introduced a distinction between non-residents from EU member states and non-residents from third countries.

In the case of transactions with non-residents from EU member states, as well as non-residents from countries being members of the OECD or EEA, restrictions are more lenient than in the case of transactions with non-residents from third countries.

### *Salaries and Wages of Foreign Personnel*

Salaries and wages of foreign personnel can be paid in Polish currency (zloty) or in foreign currency.

### *Net Revenues from Foreign Investment*

Foreign investors in Poland enjoy freedom of repatriation of profits gained from their investment in Poland.

### *Transfer of Funds for Payment of Debts or Discharge of Other Contractual Obligations*

Moreover, the Foreign Exchange Law provides for some limitations on the acquisition by Polish residents of shares in companies having their registered office in third countries, and units of participation in collective investment funds having their registered offices in third countries. Residents, as well as third-country non-residents making financial transactions in the performance of the above acts, need permission for such transactions.

The Foreign Exchange Law provides for some general permission for the foreign exchange dealings indicated above, especially with respect to countries which are a party to agreements with Poland on protecting foreign investments. Consequently, individual permissions will not be needed.

### *Liquidation or Sale of Investment*

Foreign investors are entitled to repatriate funds remaining from the liquidation or sale of investment in Poland in Polish currency or any other currency.

### *Transfer Currency*

The Foreign Exchange Law imposes no restrictions as to currency in which the transfer may be made.

### *Interest Payments*

Interest payments are freely transferable.

### *Transfer of Compensation for Loss*

There are no restrictions on the transfer of compensation for losses due to war, armed conflict, revolution, or insurrection.

### **Reinvestment of Funds**

Profits gained from investment in Poland may be reinvested there without any restrictions.

### **Unfair Business Practices**

The law provides protection of business entities from unfair competition. The most important legislation is the Act of 16 April 1993 on Combating of Unfair Competition (the 'Unfair Competition Act').

The Unfair Competition Act defines unfair competition as any activity in violation of law or good practice if it threatens or impairs the interest of another business entity or customer. In addition to the general definition, the act provides a list of activities which will be deemed as acts of unfair competition, including misleading identification of the enterprise, false or fraudulent identification of the geographical origin of goods or services, misleading identification of goods or services, violation of business secrets of an enterprise, encouraging the termination or non-performance of a contract, imitating products, making allegations or praising dishonestly, obstructing market access, bribery of a person fulfilling a public function, dishonest or prohibited advertising, organising pyramid selling schemes, and conducting or organising the activity within group-financed schemes.

Foreign natural and legal persons may benefit from protection granted by the Unfair Competition Act under international agreements binding Poland, as the Paris Convention on Protection of Industrial Property, or based on the principle of

reciprocity. Obviously, a company with foreign participation which has its registered office in Poland will be deemed a Polish entity.

The Act of 16 February 2007 on the Protection of Competition and Consumers provides for conditions and proceedings aimed at counteracting competition-restraining practices, practices infringing collective consumer interests, as well as anticompetitive concentration of business entities, where such practices or concentrations produce or may produce consequences in Poland. The President of the Office for Competition and Consumer Protection has jurisdiction in issues related to protection of competition and consumers.

The Act to Combat Unfair Market Practices of 23 August 2007 has the aim to protect consumers, to assure them of real possibilities of defending their rights and to combat and prevent unfair practices.

## **Taxation**

Three major taxes that have the greatest impact on business activity in Poland are personal income tax, corporate income tax, and value added tax.

Personal income tax is a progressive tax. The taxation rates vary from 18 per cent to 32 per cent. Since 2004, the law has introduced, for persons receiving income from non-agricultural business activity, the option to be taxed at a fixed tax rate of 19 per cent, with no right to benefit from tax relief and deductions.

Corporate income taxpayers are legal persons including limited liability companies, companies in formation, and other organisational units, except for commercial partnerships. Taxpayers with their registered office or management board in Poland are subject to taxation on all income, regardless of its origin. Taxpayers who do not have their registered office or management board in Poland are subject to taxation only on their income earned in Poland. The corporate income tax rate is 19 per cent.

Poland is a party to double-taxation avoidance treaties with 81 countries. The treaties bring modifications of the rules on taxation, especially in the field of income tax. The attached table lists countries with which Poland concluded double-taxation avoidance treaties.

The basic value added tax rate is 22 per cent. However, the value added tax Act provides for exceptions in which preferential 7 per cent or 3 per cent or 0 per cent rates will apply.

Generally, business entities are obliged to file tax returns and make tax payments on a monthly basis. In the case of income tax, those payments are advance payments as the final amount of tax is calculated at the end of the financial year.

## **Protection of Foreign Investment**

### **Property Protection**

#### *State Responsibility for Injury to Aliens*

The general basis for state responsibility for damage to any third person is under article 417 of the Civil Code, which provides that the State Treasury, territorial self-government unit, or another legal person exercising public authority by virtue of law will be liable for damage inflicted by unlawful activity or cessation thereof which occurred in the exercise of such authority.

The Civil Code also creates responsibility for damage arising from the issue of a legislative instrument or failure to issue such instrument. Moreover, the state will be liable for damage inflicted by the issue of an invalid final judgement or decision as well as by the failure to issue such decision.

#### *Expropriation*

**Conditions and Legislation.** Property rights are protected by the Constitution. It also provides general conditions on which expropriation is permitted, i.e. only for public purposes and in exchange for fair compensation.

More detailed conditions as well as procedures for expropriation are contained in specific acts of parliament. The most relevant is the Act of 21 August 1997 on Administration of Real Estate. There are no specific provisions concerning nationalisation and so only general rules regarding expropriation apply.

**Compensation.** Expropriation may be effected only in exchange for fair compensation. Such compensation shall correspond to the market value of the property the subject of expropriation having regard to its state, purpose, location, and facilities.

Payment of compensation cannot be withheld. It may only be deposited in court if the owner of the real estate being expropriated refuses to accept such compensation or if the legal status of a property is doubtful. The amount of compensation is determined in an administrative decision based on an evaluation made by an independent expert and may be challenged.

### **Investment Insurance**

Investment insurance provided by the state to foreign investors is not applicable in Poland, but it is possible to conclude an agreement with an insurance company.

There are some mandatory insurances, including insurance of civil liability of possessors of motor vehicles, civil liability of farmers with respect to the conduct of farms, and insurance of buildings which constitute part of an agricultural farm from fire and other danger. In these cases, insurance is compulsory, but there is a freedom of choice as to the insurance company.

### **Third-Party Guarantee**

In the case of certain investment projects, a guarantee by the State Treasury or Bank of National Economy (Bank Gospodarstwa Krajowego) may be granted. Such guarantee may secure obligations resulting from credit agreements or bonds issued to finance investments aimed at the development and maintenance of infrastructure, promotion of export of goods and services, environmental protection, creation of new jobs, implementation of new technologies, or restructuring of enterprises.

The principles for granting such guarantees are governed by the Act of 8 May 1997 on Guarantees Granted by State Treasury as well as some other legal persons. Poland is a party to the Convention of 11 October 1985 on Establishing a Multilateral Investment Guarantee Agency.

## **Protection of Investment by Mortgage, Pledge, or Registered Pledge**

### *Mortgage*

A mortgage is a right encumbering real estate to secure a specified receivable. The creditor may seek satisfaction of his receivable from the encumbered real estate regardless of the fact whose property it has become. Such creditor enjoys priority before other creditors of the owner of the real estate. The mortgage must be entered into the land and mortgage register.

### *Pledge*

A pledge is a right encumbering movable goods to secure a specified receivable. The creditor may seek satisfaction of his receivable from the encumbered goods regardless of the fact whose property it has become.

Such creditor enjoys priority before other creditors of the owner of those goods, save as the law provides otherwise. To create a pledge it is necessary to hand over the encumbered goods to the creditor. A pledge also may encumber transferable rights.

### *Registered Pledge*

A registered pledge is a right which may be established to secure receivables of business entities and other persons and it may encumber movable goods, as well as transferable rights. The main difference between an ordinary pledge and a registered pledge is that, in the case of the latter, the assets encumbered may remain in the pledgor's possession. To create a registered pledge, it is necessary to execute an agreement between pledgee and pledgor and to enter the registered pledge into the pledge register.

The creditor may seek satisfaction of his receivable from the encumbered goods or rights regardless of whose property it has become. Such creditor enjoys priority before other creditors when seeking satisfaction from the object encumbered with the registered pledge. The pledge agreement also may provide for other forms of satisfaction of the pledgee's receivable, i.e. by acquisition of ownership of the

encumbered goods or rights and sale of encumbered goods or rights executed by a public notary or court bailiff, as well as from the income which the pledgor's business entity earns.

A registered pledge cannot be established in favour of an entity which does not conduct business activity in Poland (with the exception of a foreign bank).

### *Other Securities*

In addition to the in rem securities listed above which are subject to detailed regulation in Polish law, there are other securities which have developed in business transactions such as transfer of ownership of goods to a creditor as security for their receivables, which gives the creditor a right to acquire ownership of such goods definitively if the debtor fails to perform the obligations. Securities other than those in rem are suretyship and bank or insurance guarantees.

## **Treaty Protection of Foreign Investment**

### **Bilateral Treaties**

#### *In General*

The countries with which Poland has concluded investment protection and double-taxation treaties include:

<u>Country</u> _____	<u>Investment Protection Treaty</u>	<u>Double-Taxation Treaty</u>
Albania	5 March 1993	5 March 1993
Algeria	—	31 January 2000
Argentina	31 July 1991	—
Armenia	—	14 July 1999
Australia	7 May 1991	7 May 1991

Country	Investment Protection Treaty	Double- Taxation Treaty
Austria	24 November 1988	13 January 2004
Azerbaijan	26 August 1997	26 August 1997
Bangladesh	8 July 1997	8 July 1997
Belarus	24 April 1992	18 November 1992
Belgium	19 May 1987	20 August 2001
Bulgaria	11 April 1994	11 April 1994
Canada	6 April 1990	4 May 1987
Chile	5 July 1995	10 March 2000
China	7 June 1995	7 June 1988
Croatia	21 February 1995	19 October 1994
Cyprus	4 June 1992	4 June 1992
Czech Republic	16 July 1993	24 June 1993
Denmark	1 May 1990	6 December 2001
Egypt	1 July 1995	24 June 1996
Estonia	6 May 1993	9 May 1994
Finland	25 November 1996	26 October 1977
France	14 February 1989	20 June 1975
Georgia	—	5 November 1999
Germany	10 November 1989	14 May 2003
Great Britain	8 December 1987	20 July 2006
Greece	14 October 1992	20 November 1987
Hungary	23 September 1992	23 September 1992
Iceland	—	19 June 1998
India	7 October 1996	21 June 1989
Indonesia	6 October 1992	6 October 1992
Iran	2 October 1998	2 October 1998
Ireland	—	13 November 1995
Israel	22 May 1991	22 May 1991
Italy	10 May 1989	21 June 1985
Japan	—	20 February 1980
Jordan	4 October 1997	4 October 1997
Kazakhstan	21 September 1994	21 September 1995

South Korea	1 November 1989	21 June 1991
Ku wait	5 March 1990	16 November 1996
Kyrgyzstan	—	19 November 1998
Latvia	26 April 1993	17 November 1993
Libyan	—	26 July 1999
Lithuania	28 September 1992	20 January 1994
Luxembourg	19 May 1987	14 June 1995
Macedonia	28 November 1996	28 November 1996
Malaysia	21 April 1993	16 September 1977
Malta	—	7 January 1994
Mexico	—	30 November 1998
Moldova	16 November 1994	16 November 1994
Mongolia	8 November 1995	18 April 1997
Morocco	24 October 1994	24 October 1994
New Zealand	—	21 April 2005
The Netherlands	7 September 1992	13 February 2002
Nigeria	—	12 February 1999
Norway	5 June 1990	24 May 1977
Pakistan	—	25 October 1974
Portugal	11 March 1993	9 May 1995
Philippines	—	9 September 1992
Romania	23 June 1994	23 June 1994
Russia	—	22 May 1992
Saudi Arabia	11 October 2003	—
Singapore	3 June 1993	23 April 1993
Slovakia	18 August 1994	18 August 1994
Slovenia	28 June 1996	28 June 1996
South Africa	—	10 November 1993
Spain	30 July 1992	15 November 1979
Sri Lanka	—	25 April 1980
Sweden	13 October 1989	19 November 2004
Switzerland	8 November 1989	2 September 1991
Syria	—	15 August 2001

Tajikistan	—	27 May 2003
Thailand	18 December 1992	8 December 1978
Tunisia	29 March 1994	29 March 1993
Turkey	11 August 1991	3 November 1993
Ukraine	12 January 1993	12 January 1993
United Arab Emirates	31 January 1993	31 January 1993
United States	21 March 1990	8 October 1974
Uruguay	2 August 1991	2 August 1991
Uzbekistan	11 January 1995	11 January 1995
Vietnam	31 August 1994	31 August 1994
Yugoslavia	3 September 1996	12 June 1997
Zambia	—	19 May 1995
Zimbabwe	—	9 July 1993

### *Purpose of the Investment Protection Treaties*

The aim of the treaties is to regulate principles concerning the treatment of investments made by business entities from one contracting state in another contracting state.

The contracting states guarantee that such investments will be treated fairly and protected to facilitate economic co-operation between the signatory countries.

### *Definitions*

The term 'investment' used in the treaties refers to any kind of assets, including movable and immovable property, as well as any other rights in rem, shares in companies and other kinds of interest in companies, bonds, receivables, and any rights to any performance having an economic value and intellectual property rights. In addition, in some treaties, business concessions are treated as an investment.

### *Corporate Nationality and Protection of Shareholders*

The treaties apply to natural persons being citizens of any of the contracting parties. They also apply to legal persons established under the laws of any of the contracting parties. Some of the said treaties apply also to the other legal persons, regardless of where their registered office is located, which are controlled directly or indirectly by investors of any contracting party.

### *Standard of Treatment*

The treaties guarantee investors from the other contracting party treatment no less favourable than it accords to investments of its own nationals or companies or to investments of nationals or companies of any third state, with the exception of advantages offered within free trade areas, economic unions, or organisations of mutual aid.

### *Repatriation of Profits*

Generally, the treaties guarantee investors of the other states freedom of transfer of payments made in connection with the investment.

### *Nationalisation and Compensation*

Most of the treaties include provisions concerning nationalisation. Generally, the parties declare that investments of nationals or companies of the other state will not be subject to nationalisation or any other means which will result in expropriation of investors of the other party. None the less, such means may be used in the public interest provided that they will not be discriminatory or contrary to specific provisions.

Expropriation may be executed only on payment of fair compensation reflecting the real value of property being subject to expropriation. Such compensation will be paid without delay and the recipient will be free to transfer it abroad. The amount as well as the terms of its payment will be determined on or before the date of the expropriation.

### *Compensation for Destruction during War and National Emergency*

The treaties guarantee that, with respect to compensation for damage caused to foreign investment as a result of war, revolution, or state of emergency, foreign investors will be treated in a non-discriminatory manner. Some treaties, like those with France and the United Kingdom, guarantee payment of compensation which can be transferred without any limitations.

### *Protection of Commitments*

Any disputes concerning interpretation or implementation of provisions of the treaties between the states being parties to those treaties will be settled through diplomatic channels. As a general rule, if such method fails, arbitration proceeding will be initiated.

### *Settlement of Investment Disputes*

As a general rule, any disputes between the state and an investor from another state will be settled amicably or, when this fails, by means provided for by Poland's legal system.

Notwithstanding the above-mentioned principles, disputes concerning expropriation, if not settled amicably as a general, will be settled by international arbitration.

### *Subrogation*

If a contracting state or its agency makes a payment to its national or a business entity which invested in another contracting state under guarantee, insurance, or other form of indemnification granted with respect to such investment, the contracting state in which the investment was made must recognise the take-over by the state which made payment of all of the rights and receivables of such indemnified national or business entity.

## **Multilateral Treaties**

Since Poland's accession to the EU, foreign investors in Poland enjoy protection granted by Community law.

## **Settlement of Investment Disputes Good**

### **Mediation**

Mediation is voluntary. Mediation may be proceeded to in pursuance of mediation agreement or upon reference of the case by a court. Even when the case has been referred by a court, a party may refuse to accept mediation.

In a mediation agreement, the parties must determine the subject matter of the mediation and the mediator (or the procedure for electing a mediator). The mediator may not be a judge, except for a judge in retirement. The contractual mediation may be initiated by any of the parties by motion. A settlement concluded through a mediator has binding legal force.

## **Judicial Tribunals for Investment Disputes**

### *Courts*

The Polish ordinary court system consists of the Courts of Appeal, the District Courts, and the Regional Courts.

Apart from the ordinary courts, there are two Supreme Court and two levels of administrative courts, i.e. the Supreme Administrative Court and the Administrative Courts, which deal with complaints against administrative decisions.

Unless otherwise provided by law, Regional Courts are competent to hear all kinds of cases. District Courts are courts of first instance in cases of disputes concerning high monetary value or other specific cases for which they are given jurisdiction. They also function as an appeal court from Regional Courts' decisions. Courts of Appeal are appeal courts from District Courts' decisions.

The Supreme Court acts mainly as a court of cassation. The main duty of the Supreme Court is to ensure the uniformity of judicial decisions. The Polish legal system does not, however,

vest the Supreme Court with the competence to issue guidelines or rules of conduct that would be directly binding on other courts.

There are no separate courts to hear commercial cases (civil cases between business entities), which are dealt with in special divisions within the structure of Regional and District Courts.

District Court in Warsaw – Court in charge of Protection of Competition and Consumers is a specialized Court, examining *inter alia* the cases referring to unfair competition and appeals from the administrative decisions of different regulatory authorities.

Many matters important for business entities are settled by administrative bodies by administrative decisions. The judicial control of such decisions is exercised within the administrative courts system.

The Administrative Courts deal with complaints against administrative decisions, after the administrative means of appeal have been exhausted. The Supreme Administrative Court acts as an appeal court from the Administrative Courts.

### *International Judicial Tribunals*

Poland ratified the European Convention on Human Rights in 1993. Since then, any persons, after all domestic remedies have been exhausted, may file complaints with the European Court of Human Rights at the Council of Europe.

Since 1 May 2004 (Poland's accession to the EU), it is possible to bring complaints before the European Court of Justice. Polish citizens also are subject to the jurisdiction of the International Criminal Court. In case of disputes between countries, Poland may apply to the International Court of Justice at the United Nations.

### *Arbitration*

Types of Arbitration. The general rules concerning arbitration are laid down in the Code of Civil Procedure. It provides that parties may, by written agreement, decide that arbitrators will resolve a dispute that will or has arisen between them on the grounds of a specified range of their contractual relations, and this prevents resort to

the courts if any of the parties object thereto. The arbitration court may be permanent or ad hoc.

An arbitration clause which concerns disputes arising from the company and which has been included in the articles of association of a commercial company is binding on the company and its shareholders. Similar rules apply to arbitration clauses included in the articles of a co-operative or association.

**Permanent Court of Arbitration.** There are several courts of that type in Poland. The most popular one is the Court of Arbitration attached to the Polish Chamber of Commerce in Warsaw, which has been functioning continuously from 1950. The court has its own procedural rules that are mostly based on United Nations International Trade Law Commission (UNCITRAL) arbitration rules.

**Arbitration of Investment Disputes.** The Code of Civil Procedure lays down basic principles of arbitration which apply if the parties do not otherwise agree. To be valid, the choice of arbitration must be in writing. The Court of Arbitration will proceed according to the rules of procedure agreed by the parties.

If the parties do not choose the procedure, the court may proceed according to the rules it considers appropriate, but it must thoroughly examine the circumstances necessary to resolve the given case. Most permanent courts of arbitration have their own, specific rules of procedure.

An arbitration award cannot be appealed (unless the parties agree) and is enforceable in Poland as any other ordinary court decision. A party may, however, apply to the ordinary court to have the award declared void. Such application may only be based on circumstances such as failure to observe requirements concerning the composition of the arbitration court, infringement of arbitration procedure, absence or invalidity of an arbitration clause, and earlier settlement of the case between the same parties in a final court decision.

**Enforcement of Judgements and Arbitration Awards.** Judgements issued in member states of the EU (in Denmark under special conditions) are enforced in conformity with Council Regulation 44/2001/EC on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters. Parties seeking enforcement of judgement issued in another EU member state should apply to the court competent in their own country. The court, without reviewing it as to its substance, declares the judgement enforceable. The court's decision on the application for a declaration of enforceability may be appealed by either party. Judgements issued in countries not belonging to the EU may be enforced according to the provisions of bilateral or multilateral treaties (e.g. the Cuba-Poland Treaty of 1982, the Belarus-Poland Treaty of 1994, the Russia-Poland Treaty of 1996, and the Lugano Convention). In the absence of such, the provisions of the Code of Civil Procedure apply, providing that a judgement may be enforced if:

- Reciprocity exists between the foreign country and Poland;
- The judgement is final;
- The case does not fall under exclusive jurisdiction of the Polish courts or courts of third countries;
- No party was deprived of the right to a proper defence or participation in the trial and, in case of the party having no legal procedural capacity, of proper legal representation;
- The subject matter of the case had not been finally decided as to its substance by a Polish court;
- No court proceedings concerning the same subject matter are pending in Poland between the parties which had been initiated before the foreign judgement became final;
- The judgement does not violate the basic principles of Polish law; and
- Polish law was appropriately applied, unless the applied foreign law does not differ significantly from Polish law.

Poland is a party to the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitration Awards; consequently, arbitration awards made in countries parties to the Convention are enforced in conformity with the rules provided

thereby. Enforcement of arbitration awards from countries not being parties to the Convention is enforced according to the provisions of the Code of Civil Procedure.

A reciprocity clause is not obligatory if the case, in accordance with Polish law, falls under the exclusive jurisdiction of the country where the judgement was issued.

## **Sanctions for Injury to Investments**

### **Unilateral State Action for the Protection of Private Investment Abroad**

#### *Freezing of Foreign-Owned Assets*

Freezing of foreign-owned assets through unilateral state action is not permitted by Polish law and would require adoption of a specific regulation.

However, the Constitution provides for protection of private property, and it enumerates the situations in which this civil liberty can be limited. In consequence, a law introducing measures related to freezing foreign-owned assets would have to comply with the Constitutional provisions protecting private property.

#### *Complaints to International Organisations*

The filing of complaints with international organisations is not provided for by Polish law, except for rules provided by *acquis communautaire*, which is a part of Poland's internal legal order.

However, Poland may file complaints with organisations it belongs to according to the procedure laid down by such organisations. The most important international organisations to which Poland belongs are:

- The European Union;
- The World Trade Organisation;
- The United Nations;
- The Organisation for Economic Co-operation and Development;
- The North Atlantic Treaty Organisation;
- The Organisation for Security and Co-operation in Europe; and
- The Council of Europe.

### *Boycotts*

Boycotting is not regulated by Polish law; no state authority is responsible for these kinds of actions.

### **Multilateral Action**

This issue is a matter of Polish foreign policy and the rights and obligations resulting from membership in international organisations.