

Poland

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Introduction

Poland initiated its wide-ranging transformation from a socialist political and economic system to a democracy and a market economy in 1989. 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 everyone on an equal rights basis.

The achievements of Poland in terms of the transformation of its economy were recognized by its admission to the World Trade Organization (WTO) in 1995 and to the Organization for Economic Cooperation 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. On 1 May 2004, Poland became a member of the EU.

Polish law provides for the principle of freedom to establish and conduct a business activity for anyone on an equal rights basis, and this also applies to foreign investors that undertake business activity in Poland. Polish law provides for some exceptions from this general principle.

Foreign investors from the Member States of the EU, the European Free Trade Association (EFTA), and the European Economic Area (EEA), as well as investors from the states that have signed conventions with the European Community or its Member States, are granted freedom of economic activity and may start and conduct business activity in Poland in all the forms available for Polish business entities.

Foreign investors from third countries 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.

Foreign investors also may conduct a business activity in Poland through a branch.

In this chapter, a joint stock company is a company which is called a limited company (public or private) in the United Kingdom, *Société par actions* in

France, and *Aktiengesellschaft* in Germany; a limited liability company is a company which is called private limited company in the UK, *Société à responsabilité limitée* in France, and *Gesellschaft mit beschränkter Haftung* in Germany.

Establishment of Enterprises

In General

The legislation relevant to the establishment of enterprises are the Act of 15 September 2000 on the Commercial Companies Code (CCC), the Act of 2 July 2004 on the Freedom of Economic Activity, and the Act of 20 August 1997 on the National Court Register.

Companies, partnerships, and branches of foreign business entities are registered in the Register of Business Entities, which is a part of the National Court Register. Sole traders are registered in the Central Register and Information of Business Activity (CEIDG) held by the Minister of Economy. Representative offices of foreign business entities are registered in the Register of Representative Offices of Foreign Business Entities, held by the Minister of Economy.

A business entity may take one of the following forms: a sole trader, a legal person, including joint stock companies and limited liability companies, or an organizational unit without legal personality, including partnerships such as general partnerships, professional partnerships, limited partnerships, and partnerships limited by shares.

Partnerships are established by way of a partnership articles of association and registration with the Register of Business Entities in the National Court Register. Partnerships have several common characteristics: lack of legal personality, partners' subsidiary liability, no mandatory minimum capital, and transferability of partners' rights.

Partnerships have no legal personality separate from that of the individual partners. However, partnerships are able to acquire rights on their own behalf, including title to real estate as well as other proprietary rights, and to enter into contractual obligations, to sue, and to be sued.

A creditor of a partnership may recover the partnership's debts from the partner's personal assets, provided that execution proceedings against the partnership's assets have proved ineffective. However, this rule does not apply to a partnership's obligations which arose before it was registered in the Register of Business Entities in the National Court Register, which may be recovered against the partner's personal assets, regardless of the result of execution proceedings against the partnership's assets.

There is no minimum capital required to establish a partnership, as is the case for companies. The exception to this rule is a partnership limited by shares,

where the minimum share capital amount is PLN 50,000. The rights and obligations of a partner in the partnership are transferable to a third party if it is expressly provided in the partnership articles of association, and only if all the other partners consent, unless otherwise provided by the partnership articles of association.

As regards branches and representative offices of foreign business entities, a foreign business entity that establishes a branch may only conduct a business within the scope of the object of the foreign business entity's activity. The scope of activity of a representative office covers no pursuits other than promoting and advertising the foreign business entity.

Joint Stock Company

In General

The establishment of a joint stock company begins by drawing up the company's articles of association in the form of a notarial deed, followed by contribution of the initial share capital. Shares taken up for in-kind contributions must be fully paid up no later than one year after the registration of the company. At least one-fourth of the nominal value of shares taken up for cash contributions, as well as *agio*, must be paid for prior to registration of the company. When shares are taken up exclusively for in-kind contributions or for in-kind contributions and cash contributions, at least PLN 25,000 of the initial share capital must be paid up prior to the registration of the company.

The next step is the appointment of the members of the company's organs (management board and supervisory board), followed by registration in the Register of Business Entities in the National Court Register. The company acquires legal personality upon registration. A joint stock company may not be established solely by a limited liability company that has only one shareholder. The initial share capital of a joint stock company must be at least PLN 100,000, and the nominal value of a share cannot be less than 1 grosz (1 grosz is the equivalent of PLN 0.01).

Articles of association's provisions may implement the possibility to increase the share capital without necessity of articles of association's amendment. In the case of in-kind contributions, there are special procedures for checking the accuracy of the valuation of such contributions, performed by auditors appointed by courts. A joint stock company has an obligation to create supplementary capital against losses. No less than 8 per cent of a given financial year's profit must be transferred to the supplementary capital until this capital reserve has been built up to no less than one-third of the initial share capital.

General Meeting

Composition. This body consists of all the shareholders of the company. A shareholder may act by proxy or through its statutory representative.

Powers. The general meeting appoints and dismisses members of the supervisory board, unless otherwise provided by the articles of association of the company. It decides on the most important issues, *inter alia*, the examination and approval of the management board's report on the company's activities and of the financial statements for the preceding financial year, the approval of the company's bodies' members confirming that they have discharged their duties, and taking decisions in respect of claims for remedying the loss suffered through the formation of the company or the exercise of management or supervision.

The general meeting also decides on the transfer or lease of an enterprise or an organized part of an enterprise and the grant of a limited right *in rem* over them; the acquisition and transfer of immovable property, perpetual usufruct, or an interest in immovable property, unless the company's articles of association provide otherwise; the issue of convertible bonds or senior bonds; and the acquisition of own shares or authorization for acquisition of own shares in cases provided by law.

Liability. Shareholders are not liable for the obligations of the company or for the content of their resolutions. Should a resolution be contrary to the company's articles of association or good practice, prejudicial to the interests of the company, or intended to be detrimental to a shareholder, proceedings may be instigated against the company to withdraw the resolution.

Management Board

Composition. The management board may be composed of one or more members.

Powers. The management board manages the company's affairs and represents it. The management board members' right to represent the company encompasses all judicial and extra-judicial actions of the company. The management board members' right to conduct the company's affairs and represent the company cannot be subject to limitations that are binding on third parties.

Liability. If members of this body deliberately or through negligence misrepresent the fact that payments or contributions have been duly made or, in case of an increase of the share capital, the fact that contributions for shares have been made or promised, they are jointly and severally liable with the company to the company's creditors.

Moreover, a member is liable to the company for the loss suffered as a result of the breach or non-performance of statutory obligations or obligations under the articles of association, unless he is not at fault. Furthermore, a member is jointly and severally liable with the company for its tax obligations if execution proceedings from the company's assets turn out to be ineffective and unless he proves that he submitted, in the due time, the petition for bankruptcy

announcement of the company or initiated bankruptcy settlement proceedings or he proves that he is not in fault in non-submission of the petition for bankruptcy announcement or initiation of bankruptcy settlement proceedings, as well as unless he presents the company's assets which may satisfy the great part of the debt. Members of the management board also are liable under general provisions of Polish law.

Supervisory Board

Composition. The supervisory board is composed of no less than three members. In public companies, the supervisory board is composed of no less than five members.

Powers. Unless otherwise provided in the articles of association, the supervisory board appoints and dismisses members of the management board. The supervisory board exercises continuous supervision over all areas of the activities of the company. It does not have the right to give the management board any binding instructions with respect to management of the company's affairs. The supervisory board has the right to suspend from duty, for significant reasons, any or all members of the management board and to delegate supervisory board members as temporary substitutes for them.

The special duties of the supervisory board include evaluating the financial reports of the company, reporting on the company's activity with regard to its conformity with the books and records and with the actual state of affairs, examining proposals of the management board concerning the division of profits or the financing of losses, and submitting to the general meeting an annual written report on the results of this evaluation. The articles of association may widen the powers of the supervisory board; in particular, the articles of association may stipulate that the management board must obtain the consent of the supervisory board prior to carrying out actions specified in the articles of association.

Liability. A member of the supervisory board will be liable to the company for damage caused by acts or omissions in breach of the law or the provisions of the articles of association, unless such a member is not at fault.

Limited-Liability Company

The establishment of a limited-liability company requires the drawing up of the company's articles of association in the form of a notarial deed or in the form of the standard agreement indicated by the regulation of the Minister of Justice for the limited-liability company filed and provided with the electronic signature, followed by contribution of the entire initial share capital. In the case of subscribing shares at a price exceeding their nominal value, the contribution of the initial share capital must be made together with the payment of the premium.

The next step is the appointment of the members of the company's organs: the management board and, in cases indicated by law, members of the supervisory board or the audit commission. Upon registration with the Register of Business Entities in the National Court Register, the company acquires legal personality.

A limited-liability company may not be incorporated solely by another limited-liability company that has only one shareholder. The initial share capital of a limited-liability company must be at least PLN 5,000, and the nominal value of a share cannot be less than PLN 50. Articles of association's provisions may implement the possibility to increase the share capital without necessity of articles of association's amendment.

Corporate Organs

The corporate organs of a limited-liability company are the shareholders' meeting, the management board, and the supervisory board (or the audit commission).

The supervisory board or audit commission are generally optional in a limited-liability company. In limited-liability companies in which the value of the share capital exceeds PLN 500,000 and there are more than 25 shareholders, creation of either a supervisory board or an audit commission is obligatory.

Shareholders' Meeting

Composition. This body consists of all the shareholders of the company. A shareholder may act by proxy or through its statutory representative.

Powers. The shareholders' meeting decides on the most important issues, *inter alia*, appointing members of the management board, unless otherwise provided by the articles of association of the company; examination and approval of the management board's report on the company's activities and of the financial statement for the preceding financial year, and the approval of members of corporate organs confirming that they have discharged their duties; and the transfer and lease of an enterprise or an organized part of an enterprise and the grant of a limited right *in rem* over them.

The shareholders' meeting also decides on the acquisition and transfer of real estate, perpetual usufruct, or an interest in a real estate, unless articles of association provide otherwise; the refund of additional capital payments; any contract for acquisition for the company, concluded within two years from the date of the company's registration for a price greater than one-fourth of the share capital but not less than PLN 50,000, of real estate or a share in real estate, or fixed assets, unless such a contract was provided for in the company's articles of association; and the disposal of a right or undertaking of an obligation of a value twice that of the company's share capital, unless the company's articles of association provide otherwise.

Liability. Shareholders are not liable for the liabilities of the company or for the content of their resolutions. Should a resolution be contrary to the articles of association or good practice, prejudicial to interests of the company, or intended to be detrimental to a shareholder, proceedings may be instigated against the company to withdraw the resolution.

Management Board

Composition. The management board may be composed of one or more members, being the shareholders of the company or not.

Powers. The management board manages the company's affairs and represents it. The management board members' right to represent the company encompasses all judicial and extra-judicial actions of the company. The management board members' right to conduct the company's affairs and represent the company cannot be subject to limitations that are binding on third parties.

Liability. If members of the management board deliberately or through negligence misrepresent the fact that all contributions toward the initial share capital have been fully paid up by all shareholders or that contributions toward the increased share capital have been fully paid up, they are jointly and severally liable with the company to the company's creditors. Moreover, a member is liable to the company for loss suffered through an action or omission in breach of the law or provisions of the articles of association, unless he is not at fault.

The most important provision states that when enforcement against a company has proved ineffective, members of the management board are jointly and severally liable for the obligations of the company. In order to avoid this liability, a member has to prove that a petition for bankruptcy was filed in due time, or that he was not in fault in non-submission of the petition for bankruptcy, or that the creditor has not suffered any damage despite non-submission of the petition for bankruptcy.

Furthermore, a member is jointly and severally liable with the company for its tax obligations if execution proceedings from the company's assets turn out to be ineffective and unless he proves that he submitted, in the due time, the petition for bankruptcy announcement of the company or initiated bankruptcy settlement proceedings or he proves that he is not in fault in non-submission of the petition for bankruptcy announcement or initiation of bankruptcy settlement proceedings, as well as unless he presents the company's assets which may satisfy the great part of the debt. Members of the management board also are liable under general provisions of Polish law.

Supervisory Board

Composition. The supervisory board is composed of no less than three members.

Powers. The supervisory board exercises continuous supervision over all areas of the company's activities. It does not have the right to give the management board any binding instructions with respect to management of the company's affairs.

The special duties of the supervisory board include evaluating the financial reports of the company, reporting on the company's activity with regard to its conformity with the books and records and with the actual state of affairs, examining proposals of the management board concerning the allocation of profits or the financing of losses, and submitting to the general meeting an annual written report on the results of such evaluation.

The articles of association may widen the powers of the supervisory board. In particular, the articles of association may stipulate that the management board must obtain the consent of the supervisory board prior to carrying out actions specified in the articles of association and grant the supervisory board the right to suspend from their duties, for significant reasons, any or all members of the management board. Functions of an audit commission are generally the same as the supervisory board's. If a limited liability company does not have a supervisory board, the articles of association might widen the obligations of an audit commission.

Liability. A member of the supervisory board or the audit commission shall be liable to the company for damage caused by acts or omissions in breach of the law or the provisions of the articles of association, unless such a member is not at fault.

Acquisition of Enterprises

Share Deal

The acquisition of shares of companies is regulated by the CCC. The CCC also provides the regulations applicable to mergers.

Limited-Liability Company

Shares in a limited-liability company are transferable. The transfer of a share is executed in writing, with the signatures certified by a notary. In the case of a share capital increase, unless otherwise provided in the articles of association, the existing shareholders have a priority right to take up the new shares. Taking up of new shares is conducted in notarial deed form, with some exceptions stipulated in the CCC. The articles of association may make the transfer of a share contingent upon the consent of the company or impose other restrictions.

When a share has been transferred, the transferee is jointly and severally liable with the transferor to the company for outstanding performances due to the company in respect of the transferred share. The transfer of a share is notified by

the interested parties to the company, together with evidence of the transfer. The transfer is binding on the company from the time the company receives the notification. The transfer of a share is entered into a register of shares kept by the management board, which results in the management board's obligation to submit a new list of shareholders to the National Court Register.

Joint Stock Company

Shares in a joint stock company are transferable. The articles of association of the company may make the disposal of registered shares contingent upon the consent of the company or otherwise restrict the freedom to dispose of registered shares. The articles of association cannot make the transfer of bearer shares contingent upon consent or impose other restrictions.

Agreements providing for the right of preemption or other priority right to acquire a share are admissible. The transfer of a registered share is executed in writing, either made on the share title deed, or executed as a separate instrument, and requires the transfer of possession of the share. In the case of share capital increase, the CCC provides that shares may be taken up by means of private, closed, or open subscription. Shareholders have a priority right to take up new shares.

The provisions of the CCC relating to a so-called squeeze-out as well as a reverse squeeze-out have to be taken into account by transferees. Squeeze-outs and reverse squeeze-outs concerning public companies are not regulated by the CCC, but in the Act of 29 July 2005 on Public Offer, Conditions of Implementing Financial Instruments to Organized Trade System and on Public Companies. The above Act regulates, *inter alia*, the rights and obligations of participants in the trade of financial instruments. The acquisition of shares in public joint stock companies is governed by its provisions.

Partnerships

The rights and obligations of a partner in a partnership may only be transferred to another person if the partnership deed so provides. Moreover, the rights and obligations of a partner in a partnership may only be transferred to another person after procurement of the written consent of all the other partners, unless the partnership deed provides otherwise.

Asset Deal

The Polish Civil Code (PCC) provides regulations on enterprises in the material sense (enterprises). An enterprise is an organized complex of material and non-material components designed for conducting an economic activity. As for the enterprises of companies, there are certain requirements concerning their acquisition. The transfer of an enterprise of a limited liability company, a joint stock company, or a partnership limited by shares requires a resolution of the shareholders or a resolution of the general meeting.

Every legal transaction which object is an enterprise covers all the components of the enterprise, unless otherwise provided by the legal transaction or by other provisions of law. The acquirer of an enterprise is jointly and severally liable with the transferor for the obligations of the latter in relation to running the enterprise. The only exception is when, at the time of acquisition, the acquirer was not aware of those obligations despite performing due diligence. The liability of the acquirer is limited to the value of the acquired enterprise in its state at the time of the acquisition and according to prices at the time of satisfying the creditors. Such liability cannot be precluded or limited without the consent of the creditors.

Mergers

Mergers are also connected with the acquisition of enterprises and can be effected through the transfer of all the assets of a company or partnership (target company) to another company in exchange for shares, which are issued by the transferee company to the shareholders or partners of the target company (merger by takeover). The other method is the incorporation of a new company, to which the assets of all the merging companies or partnerships devolve in exchange for shares in the new company (merger by incorporation of a new company).

The CCC provides some limitations to company mergers, such as the legal form of the company and company solvency. In accordance with the provisions of the CCC, companies in liquidation, in the process of asset division, and in bankruptcy may not merge.

Companies may merge with other companies or with partnerships. However, a partnership may not be a transferee or be newly formed as a result of the merger. Partnerships may merge with other partnerships only through the incorporation of a new company.

Companies and partnerships limited by shares may merge with a foreign company referred to in Article 2(1) of Directive 2005/56/EC of the European Parliament and the Council of 26 October 2005 on cross-border mergers of companies, implemented to the Polish Commercial Companies Code.

As of the date of the merger, the transferee company or the newly formed company takes over all the rights and obligations of the target company or partnership or of the companies or partnerships merging by way of the incorporation of a new company. As of this date, the shareholders or partners of the target company or the companies or partnerships merging by the incorporation of a new company become the shareholders of the transferee company or the newly formed company.

With respect to the rule that the transferee company takes over all the rights and obligations of the target company, there are notable exceptions, especially in the administrative sphere of the transfer. The rule is that, as of the date of the merger, all concessions, permits, and tax allowances are taken over by the

transferee company or by the newly formed company. Limitations on the transfer of permits may be regulated by a statute or by a decision granting a particular permit.

After the merger process, the complete transfer of rights concerns all the tangible and intangible property, including rights in real estate. Thus, any rights recorded in the land and mortgage registry and other registries should be recorded in the relevant registries by the transferee company or the newly formed company. Applications concerning these formalities may be submitted after the merger has been entered in the relevant register.

Acquisition of Realty

The acquisition of realty described in this section refers to acquisition by foreign nationals. The acquisition of real estate on Polish territory by foreign persons is subject to the limitations provided in the Acquisition of Real Estate by Foreign Persons Act of 24 March 1920 (the Acquisition Act). The acquisition of real estate by a foreign person in breach of the Acquisition Act is null and void.

If real estate is acquired in breach of the provisions of the Acquisition Act, the courts should hold the acquisition to be invalid, upon the request of the relevant village administrator (the mayor or the president of a city), *starost* (the head of a specific community), *voivodeship* marshal or *voivode* (governor of a province), or at the request of the Minister of Internal Affairs.

In principle, the acquisition of real estate in Poland by a foreign person requires the procurement of administrative authorization. This authorization is issued by the Minister of Internal Affairs, subject to the Minister of National Defense not raising any objection to it or — in the case of agricultural real estate — if the Minister of Agriculture also does not raise any objection. The acquisition of real estate within the meaning of the Acquisition Act is construed as the acquisition of the right of ownership or the right of perpetual usufruct in real estate for the application of any kind of legal action.

Definition of Foreign Person

The following are considered to be foreign persons:

- A natural person who does not have Polish nationality;
- A legal person with its registered office abroad;
- A company without legal personality comprised of natural persons who do not have Polish nationality or comprised of legal persons with their registered office abroad, which has been established in accordance with the legislation of the foreign country; and
- A legal person and a commercial company without legal personality that has its registered office in Poland, directly or indirectly controlled by persons or companies referred to in the three cases above.

Definition of Controlled Company

A controlled commercial company, referred to in the previous subsection, is a company where one or more foreign persons directly or indirectly hold more than 50 per cent of voting rights in the shareholders' meeting, including as a pledgee, as a usufruct, or in pursuance of agreements entered into with other persons, or by holding a dominant position within the meaning of the CCC.

Conditions for Obtaining Authorization

There are two conditions under which a foreign person may obtain authorization for the acquisition of real estate: first, that the acquisition of real estate by that foreign person is not a threat to defense, national security, or public order and is in compliance with social policy and public health regulations; and, second, that the foreign person must prove a connection with Poland. A foreign person's connection with Poland may be proved by:

- Having Polish nationality or being of Polish origin;
- Marriage to a Polish national;
- Holding a stay permit for a specified period, a residence permit, or an EU long-term residence permit;
- Being a member of the executive body of a legal person or commercial company without legal personality which has its registered office in Poland; or
- Running a business or engaging in agricultural activity in Poland, in compliance with Polish law.

Exemption from Authorization Requirement

The obligation for a foreign person to obtain an authorization does not apply to certain cases of acquisition of real estate. Authorization is not required, *inter alia*, for the acquisition of separate housing premises or for the acquisition of separate commercial premises for garage purposes or of a share in such premises, if connected with the housing requirements of the acquirer.

Authorization is not required for acquisition of real estate by a foreign person who has been residing in Poland for at least five years after having obtained a residence permit or an EU long-term residence permit. No authorization is required for the acquisition of real estate by a foreign person married to a Polish national and who has been residing in Poland for at least two years after having obtained a residence permit or an EU long-term residence permit. In this case, the acquisition will constitute the statutory joint property of the spouses.

The acquisition of real estate by a foreign person does not require authorization if on the day of acquisition that person is the statutory successor of the seller of the real estate, and the seller of the real estate has been the owner or perpetual usufruct of the property for at least five years. The acquisition of real estate by a foreign person that is a bank and also the mortgagor under the procedure for

taking ownership of real estate following an unsuccessful auction under enforcement proceedings does not require authorization. Moreover, the authorization is not required for acquisition of vacant lots, altogether of the complete surface not exceeding 0,4 hectare in Polish urban areas, by a legal person or a commercial company without legal personality that has its registered office in Poland, directly or indirectly controlled by persons mentioned in "Definition of a Foreign Person" above.

Acquisition of Interest in Companies with Title to or Perpetual Usufruct in Real Estate

The authorization of the Minister of the Internal Affairs is also required for the acquisition or taking up of shares by a foreign person and for any other legal operation related to a shareholding in a commercial company with a registered office in Poland which owns or is the perpetual usufruct of real estate if, as a result of such operations, the company becomes a controlled company within the meaning of the Acquisition Act. If the company which owns or is the perpetual usufruct of real estate is already a controlled company, authorization also is required for the acquisition or taking up of shares in the company by a foreign person who is not a shareholder of the company.

According to case law, authorization is not required for the acquisition or taking up by a foreign person of an interest of more than 50 per cent in a commercial company with a registered office in Poland and which does not have title to or a perpetual usufruct in real estate, even when this company has an interest of more than 50 per cent in another commercial company with a registered office in Poland which does have title to or a perpetual usufruct in real estate.

Acquisitions by Entities from European Economic Area or Swiss Confederation

Foreigners who are nationals or enterprises from an EEA Member State or the Swiss Confederation do not have to obtain authorization in order to acquire real estate. However, this exemption does not apply in the case of agricultural and forest real estate, for a period of 12 years from the accession of Poland into the EU. This 12-year term will expire 1 May 2016.

Consequently, a commercial company with a registered office in Poland, irrespective of the origin of its share capital, is not under the obligation, as an enterprise from an EEA Member State or the Swiss Confederation, to obtain authorization to acquire real estate other than agricultural or forest land. In certain cases, nationals of EEA Member States may acquire agricultural real estate without authorization, irrespective of the expiry of the specified 12-year period from the time of Poland's accession to the EU.

A national of an EEA Member State or the Swiss Confederation may acquire, without authorization, agricultural real estate situated in the western and northern provinces of Poland after seven years and in the southern and eastern

provinces of Poland after three years from the conclusion of a lease agreement for this category of real estate. The agreement must be in written form, with a certified date. The conditions required in these cases are the personal conduct of an agricultural activity on the real estate and legal residence in Poland, respectively for seven or three years.

Taxation

In General

The three major taxes that have the greatest impact on business activity in Poland are corporate income tax (CIT), personal income tax (PIT), and value-added tax (VAT).

In certain cases, business entities also may be liable for other taxes and charges, especially civil transactions tax and various local taxes, such as real estate tax in particular.

Corporate Income Tax

CIT is regulated by the Act of 15 February 1992 on Corporate Income Tax (the Act on CIT). Income should be considered as the surplus of total revenues gained over the total costs incurred for earning the revenue in the tax year, unless specific provisions of the Act on CIT provide otherwise; if the costs incurred in the earning of revenue exceed the amount of revenue, that difference should be considered a loss.

The rate of CIT is 19 per cent. CIT is paid by legal persons, including limited liability companies and joint stock companies and by partnerships limited by shares.

Taxpayers who have their registered office or management board office in Poland are liable for tax on their total income. Nevertheless, entities that have their registered office or management board office in Poland but receive income also abroad are exempt from CIT on the income obtained abroad, if an international agreement provides so.

In case there is no international agreement on that matter, the income received in Poland and the income received abroad are totted up, the 19 per cent CIT is counted from the total income, and the CIT due to the Polish Internal Revenue Service is equal to the following sum: tax paid abroad subtracted from the 19 per cent CIT counted as above. Taxpayers who do not have their registered office or management board office in Poland are only liable for tax on income from Polish sources.

Dividends

The tax on dividends is at a fixed rate of 19 per cent. Income from dividends and other revenue from profits of a legal person are exempt from CIT (except for

income received by a general partner in partnership limited by shares from the partnership's profits, accordingly with his share) if they satisfy the following cumulative conditions:

- An entity paying dividends and other revenues from profits of a legal person is a company with a registered office or a management board office in Poland;
- An entity which receives income from dividends or other revenues from profits of legal persons determined in the first point, above, is an entity liable to tax on the total amount on its income in Poland, or in another EU Member State, or in another state belonging to the EEA, regardless of where the incomes are earned;
- Is an entity referred to in the second point, above, who directly holds not less than 10 per cent of shares in the capital of the company referred to in the first point, above; and
- The company referred to in the second point does not benefit from exemption on CIT from the total of its income regardless of where the incomes are earned.

In order to benefit from the above exemption, the entity referred to in point 3, above, should possess the shares ceaselessly for not less than two years.

In case of entities, including limited liability companies, which are not exempt from CIT, international conventions on the avoidance of double taxation may apply. Poland is party to 91 such conventions.

Personal Income Tax

PIT is regulated by the Act of 26 July 1991 on Personal Income Tax (the Act on PIT). Natural persons residing in Poland are liable for tax on their entire income from Polish or foreign sources (unlimited tax liability).

A person residing in Poland is a person who has his center of personal or economic interests (major place of life interest) or is present in Poland for more than 183 days in a tax year.

Natural persons not residing in Poland are liable to tax only on the income derived within the territory of Poland (limited tax liability). Such income includes income from work performed in Poland on the basis of a service or an employment relationship and from employment in a cottage industry, regardless of the place of payment of the remuneration; an activity conducted personally in Poland, regardless of the place of payment of the remuneration; a business activity conducted in Poland; and real property located in Poland, including the sale of the real property.

Members of the staff of diplomatic representation offices and consular offices and other persons who benefit from diplomatic or consular privileges or immunities, as well as members of their families living in the common household, are not obliged to pay income tax on income from sources located

abroad. The Act on PIT provides more than 100 different exemptions from the obligation to pay PIT. PIT is progressive, and the rates are presented in Table I.

Table I: Personal Income Tax Rates for 2015

Taxable Income		Tax
More than	Less than	
	PLN 85,528	18% of the taxable income less PLN 556.02*
PLN 85,528		PLN 14,839.02 + 32% of amount exceeding PLN 85,528

* corresponds to tax-exempt income.

Business entities or partners that are natural persons or members of a partnership have the option of being taxed at a fixed tax rate of 19 per cent.

Value-Added Tax

Value-added tax (VAT) is regulated by the Act of 11 March 2004 on Value-Added Tax (the Act on VAT). The subjects of VAT are payable supply of goods and services within the Polish territory, export of goods, import of goods on the Polish territory, intra-Community acquisition of goods for remuneration within the Polish territory, and intra-Community supply of goods.

The provisions of the Act on VAT do not apply to the sale of an enterprise or its part and to activities which may not be the subject of a legally effective agreement. Taxpayers of VAT are legal persons, organizational units without legal personality, and natural persons who individually conduct a business activity, regardless of the purpose or result of this activity.

The basic rate of VAT is 23 per cent. However, for certain transactions, the Act on VAT provides preferential rates of five per cent, eight per cent, or zero per cent. Before starting their first activity subject to VAT, taxpayers must apply to register with the competent tax authority. As a result of this application, the taxpayer obtains the status of active VAT taxpayer. Taxpayers also should be registered as EU VAT taxpayers prior to carrying out intra-Community transactions subject to VAT.

Civil Transaction Tax

Civil transaction tax is regulated by the Act of 9 September 2000 on Tax on Acts in Civil Law (the Act on Civil Tax). The following legal activities are subject to civil transaction tax:

- Sale agreements and the barter of objects and property;
- Loan agreements;
- Donations with respect to the part concerning takeover of the debts and encumbrances or liabilities of the donor by the gifted;

- Annuity contracts;
- Agreements on the division of an inherited estate and contract of dissolution of co-ownership with respect to the part concerning repayments or additional payments;
- Establishment of a mortgage;
- Establishment of a payable usufruct, including an improper usufruct and a payable easement;
- Improper deposit agreements; and
- Company or partnership deeds or their amendments.

The base for civil transaction tax for company or partnership deeds and their amendments is for:

- Making a partnership or company deed (the value of contributions made toward partnerships or the amount of the share capital);
- Increasing the contributions to partnerships or increasing the share capital (the value of contributions increasing the assets of the partnership or the value by which the share capital was increased);
- Additional payments (the value of the additional payments);
- Loans granted by a shareholder to the partnership (the amount or value of the loan);
- Assets or proprietary rights granted to a partnership or a company for gratuitous use (the annual value of the gratuitous use, which is assumed to be equal to 4 per cent of the market value of such assets or proprietary rights);
- Transformation or merger of a company or a partnership (the value of the assets contributed to the partnership established as a result of the transformation or the value of the share capital of the company established as a result of a transformation or merger); and
- Moving the real management center or registered office of the company to Polish territory (the value of the share capital).

The civil transaction tax rate for these legal actions is 0.5 per cent.

Company or partnership deeds and their amendments are liable for the civil transaction tax in two cases: first, if, at the time of executing a deed or its amendment, the real management center of the company or its registered office is located in the territory of Poland and when the real management center is not located in the territory of another member state; second, if, at the time of executing a deed or its amendment, a partnership's registered office is located in the territory of Poland.

In general, legal transactions other than company or partnership deeds and their amendments are excluded from civil transaction tax liability if any contracting

party to these legal transactions is liable to pay VAT. The Act on Civil Tax also provides other exemptions from the tax in question. Tax rates vary from 0.5 per cent to two per cent, depending on the legal transaction subject to civil transaction tax.

Stamp Duty

The Act of 16 November 2006 on Stamp Duty provides some duties which are chargeable on individual matters falling within the scope of a public administration, such as the execution of an official instrument; issuance of a certificate, permission, or concession; or submission of a power of attorney. Stamp duty rates are low and vary according to the nature of the operation subject to stamp duty.

Other Taxes and Charges

Other taxes and charges include excise taxes, real estate tax, health insurance, and social security insurance (ZUS). The rates are indicated in Table II.

Table II: Other Taxes and Charges

Excise taxes	The excise tax is regulated by the Act of 6 December 2008 (the Act on Excise Tax). Excise tax rates vary depending on the article subject to excise duty and are specified under the Act on Excise Tax. In accordance with the Act, the currently applicable rate of excise duty for certain products is: - for motor spirit/gasoline – PLN 1,565 / 1,000 liters - for diesel fuel – PLN 1,196 / 1,000 liter - for gas used for combustion engines: a) liquefied gas – PLN 670 / 1,000 kg b) in gaseous state – PLN 10.54 / 1 GJ - for lubricating oils – PLN 1,180 /1,000 liters - for electricity - PLN 20 / 1 MWh - for ethyl alcohol – PLN 5,704 /1 hectoliter 100% vol. - for cigarettes – PLN 206,76 per 1,000 pieces and 31.41% of the maximum retail price.
Real estate tax	Rates determined by local authorities for residential building or its part amount to PLN 0.75 per m2 and for constructions – 2% of their value.
Real estate tax related to business activity	Rates for real estate tax related to business activity vary from PLN 4.70 to PLN 23,13 per m2 maximum for buildings (depending on type of activity conducted) and PLN 0.90 per m2 maximum for land.
PCC (tax on civil law transactions)	Applicable tax rates depend on the type or object of transaction: - sales of other property rights (e.g., shares) – 1% of market value of transaction - loan agreement – 2% of loan value - establishment of a legal entity or increase of capital – 0.5 of value of share capital.

Health insurance and social security insurance (ZUS)	Compulsory contributions for: - retirement – 19.52%* (9.76% incurred by employer and 9.76% incurred by employee) - pension – 8%* (6.5% incurred by employer and 1.5% incurred by employee) - illness – 2.45% (incurred by employee) - accident – from 0.40 to 3.60% (according to the type of the employer’s activity) (incurred by employer) - Labour Fund – 2.45% (incurred by employer) - Employee Guaranteed Benefits Fund – 0.10% (incurred by employer) - health insurance – 9% (incurred by employee).
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* The annual basis for the calculation of contributions for retirement and pension insurance during the calendar year cannot exceed an amount equivalent to 30 times the average monthly salary anticipated in the national economy for the aforesaid calendar year as determined by the Polish government. This amount is published in the Polish Official Journal, *Monitor Polski*. In 2015, the maximum yearly basis for the calculation of contributions is PLN 118,770.

Customs Regulation

The principal legislation which regulates customs matters in Poland is the Act of 19 March 2004 on the Customs Law (the Customs Act). The Customs Act regulates, *inter alia*, the rules for the importation of goods into the customs territory of the European Community and the exportation of goods from that territory.

Since 1 May 2004, the European customs regulations have been applicable in Poland. This means that all European regulations, including the Community Customs Code and the European Customs Tariff, are binding and enforceable in Poland. The Polish Customs Act is applicable to the customs matters in areas outside the scope of the European regulations.

The Customs Service in Poland has been established to provide protection and safety to the European Community customs territory and to ensure compliance with the law on the import and export of goods in this area. The Customs Service also is obliged to perform duties specified in other laws, especially in the area of excise taxes and taxes on gaming. The Customs Service is regulated by the Act of 27 August 2009 on Customs Services.

Currency Regulations, Capital and Profit Transfer, and Investment Incentives

Currency Regulations

In General

The basic act concerning currency regulations is the Act of 27 July 2002 on Foreign Exchange (the Foreign Exchange Act).

The Foreign Exchange Act regulates crossborder foreign exchange dealings, dealings in foreign exchange values in Poland, as well as economic activity in the field of purchasing and selling foreign exchange values and intermediation in their purchase and sale.

Residents

A resident within the meaning of the Foreign Exchange Act is a natural person residing in Poland, a legal person with its registered office in Poland, and any other entity with its registered office in Poland that is capable of acquiring rights and contracting obligations on its own behalf; branches, representations, and enterprises established in Poland by non-residents; and a Polish diplomatic representation, consular office, or other Polish representative office enjoying diplomatic or consular immunities and privileges.

Non-Residents

A non-resident within the meaning of the Foreign Exchange Act is a natural person not residing in Poland, a legal person not having its registered office in Poland, and any other entity not having its registered office in Poland that is capable of acquiring rights and contracting obligations on its own behalf; branches, representations, and enterprises established by residents and located abroad; and foreign diplomatic representations, consular offices, special missions and international organizations, or other foreign representative offices enjoying diplomatic or consular immunities and privileges.

The situation of non-residents may vary depending on whether they have residence in the EU, a country belonging to the EEA (eg, Norway, Switzerland), or the OECD (eg, the United States, Canada), on the one hand, or any other country, on the other. In the case of the first group of subjects, there are relatively few limitations concerning foreign exchange dealings.

Authorization

The conduct of foreign exchange dealings is permitted within the limitations described in the Foreign Exchange Act. Authorization is required for transactions which are subject to the limitations set out in the Foreign Exchange Act. The Act provides two kinds of authorization: general authorization and individual authorization.

General authorization is granted by a regulation of the Minister of Finance, which is currently the Regulation of the Minister of Finance of 20 April 2009. Individual authorization may be granted by the president of the National Bank of Poland.

General authorization may apply to all entities or to their specified category and to all acts or to specified acts. Individual authorization applies to acts avoiding limitations for which no general authorization was granted or where such an authorization was granted, but on different terms than those on which individual

authorization is sought. The decision of the president of the National Bank of Poland will be final.

Transfer of Profits and Capital

Foreign investors are generally allowed to transfer abroad their entire profit gained from investment in Poland. There also are no general restrictions on transfers of capital. As a member of the EU, Poland benefits from the general rule of the free movement of capital and allows the flow of capital between EU Member States as well as between EU Member States and third countries.

However, the Foreign Exchange Act provides some restrictions on the transfer of capital, especially concerning transfers of capital with third countries. Such transfers may be executed subject to general or individual authorization.

Investment Incentives

Special Economic Zones

Special Economic Zones (SEZs) may be regarded as a real investment incentive for investors. The issue is subject to regulation of the Act of 20 October 1994 on Special Economic Zones (the SEZ Act).

The SEZ is an uninhabited part of Poland, separated in accordance with the provisions of the SEZ Act, on which business activity may be conducted under the rules determined by the Act. At present, there are 14 SEZs within the territory of Poland, each of them consisting of several subzones.

A business entity may conduct an economic activity in the SEZ upon receipt of a permit that is granted, withdrawn, or amended by the Minister of Economy. The Minister consults the administration governing the SEZ before granting, withdrawing, or amending the permit.

Permission for conducting a business activity in the SEZ should include the object of the business activity and conditions relating, in particular, to employment by the business entity of a determined number of the employees for a fixed period of time, making an investment of a value exceeding a certain amount, and the date of termination of the investment.

The Minister should determine the development plan of the SEZ. Such a plan should determine, *inter alia*, the objectives of establishing zones as well as the actions to achieve such objectives. Each SEZ has a separate development plan. The administrator of the SEZ may only be a joint stock company or a limited liability company, in which the State Treasury or *voivodeship* government holds a majority of votes in the shareholders' meeting or in the general meeting.

The administrator of the SEZ has several duties. A principal duty is to enable business entities that are involved in economic activity within a zone to use and utilize, under an agreement, individual assets located within the zone, the administrator of which is the owner or dependent user. It also is the SEZ

administrator's duty to facilitate economic activity within a zone by utilizing facilities of economic and technical infrastructure, as well as other assets administered by an owner or dependent user.

Other important duties of the administrator of the SEZ are to provide, under an agreement, business entities operating within a zone with services and conditions by which third parties may render services, and to undertake actions which promote economic activity within a zone. A business entity which decides to conduct a business activity in the SEZ may enjoy certain income tax exemptions in respect of the income generated by the business activity conducted in the zone, pursuant to the provisions of the tax law. A business entity in the SEZ also may enjoy exemption from real estate tax. However, the grant of this exemption depends on the specific regulations of each SEZ.

Support for Economically Beneficial Activities

Business entities that would like to invest in Poland may also benefit from support for investments of considerable importance for the Polish economy, pursuant to the resolution of the Polish Council of Ministers of 5 July 2011. The aid is intended to cover the costs associated with the creation of new jobs or the eligible costs of a new investment.

State aid offered under this resolution is in compliance with European legislation on grant of state aid. The state aid program is directed only to those business entities that wish to invest in one of the following priority sectors: the automobile sector, the electronic sector, aviation, biotechnology, agriculture and food sector, any production sector with minimum eligible costs of PLN 750 million and creation of minimum 200 new working posts or with minimum eligible costs of PLN 500 million and creation of minimum 500 new working posts and the modern services sector, and research and development.

Investment support is provided in the form of a grant under an agreement concluded between the Minister of Economy and the investor, pursuant to the Council of Ministers' resolution on the establishment of a multi-annual program of support for the completion of investment.

The maximum amount of a grant shall vary between PLN 3200 – 15600 for one working post in case the aid is dedicated to cover the eligible costs of creation of new jobs. If the aid is dedicated to cover the eligible costs of a new investment, it shall not exceed 7.5 per cent of those costs. The above-mentioned aid may increase or decrease in line with rules of the State aid program.

Tax Exemptions on Real Estate

Pursuant to the Act of 12 January 1991 on Local Charges and Taxes, local authorities have the right to establish an exemption from real estate tax for business entities by way of a regulation. Business entities also may apply for exemption from real estate tax and transport tax on the conditions specified in the regulation of the Council of Ministers of 9 January 2015 concerning

conditions of granting the exemptions from the real estate taxes and the means of transport taxes, concerned as a regional investment help, culture and cultural heritage help, sport infrastructure and multifunctional recreational infrastructure help and local infrastructure help.

Furthermore, tax exemptions, including real estate tax exemption, may be introduced by acts relating to the grant of *de minimis* aid within the meaning of Commission Regulation (EC) Number 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid. This Regulation provides the maximum amount of *de minimis* aid that may be granted to a business entity, which cannot exceed €200,000 in a period of three years. The amount of €100,000 applies to business entities engaged in the road transport sector.

Other Incentives

Business entities may apply for regional aid on the conditions set out in the Ordinance of the Council of Ministers of 30 June 2014 relating to the establishment of the regional aid map for the years 2014–2020. Depending on the region, the proportion of regional aid for qualified costs is a maximum of 50 per cent and a minimum of 15 per cent (from 1 January 2018 – 10 per cent). This proportion can be increased for medium-sized business entities by 10 per cent and for small entities by 20 per cent.

Competition Law

The basic legislative measure concerning competition and the protection of consumer rights is the Act of 16 February 2007 on the Protection of Competition and Consumers (the Competition Act).

The Competition Act governs the conditions and procedures for counteracting practices restricting competition, practices infringing collective consumer interests, and anti-competitive concentrations of business entities and their associations, if such practices or concentrations have or may have an impact on Polish territory.

Anti-Competitive Agreements

The Competition Act prohibits agreements that are aimed at or result in eliminating, limiting, or otherwise infringing competition in a relevant market, in particular by:

- Directly or indirectly fixing prices or other conditions for the purchase or sale of goods;
- Limiting or controlling production or sales, as well as technical development or investments;
- Sharing markets for sales or purchase;

- Applying burdensome or inconsistent clauses in similar contracts with third parties, causing these parties to be subject to diversified conditions of competition;
- Making a contract subject to prior execution by the other contracting party of certain services which have no connection with the subject of the agreement;
- Limiting or eliminating access to the market to business entities which are not parties to a certain agreement; and
- Negotiating the terms and conditions of bids to be proposed, in particular the scope of works and price between business entities entering into tender or by these entities and an entity being a tender organizer.

Within the meaning of the Competition Act, a ‘relevant market’ should be considered as a market for goods which, as a result of their purpose, price, or characteristics, including quality, are regarded as interchangeable by a buyer and are offered in an area where conditions of competition are sufficiently homogeneous. The Competition Act provides some exemptions from the general prohibition of anti-competitive agreements.

Some agreements, even when they satisfy the criteria of so-called abusive agreements, are not prohibited because they do not have significant impact on the market. It is not prohibited for competing business entities to enter into an agreement if their joint share in the relevant market in the year preceding such agreement does not exceed five per cent. Such agreements also are allowed if the relevant market share of any of non-competing business entities in the year preceding such agreement does not exceed 10 per cent.

The Competition Act also provides other exemptions allowing anti-competitive agreements to be concluded. Such agreements must satisfy the following cumulative criteria: first, they must lead to an improvement in the production or distribution of goods or to economic and technological progress; second, they must ensure that the purchaser or the user enjoys a fair share of the benefits resulting from such agreement; third, they may not impose on business entities restrictions which are not necessary to achieve the purpose of the agreement; and, fourth, they may not constitute a real possibility for the contracting business entities of eliminating competition in the relevant market in respect of a substantial range of the products. The burden of proof with respect to these conditions lies on the business entities which enter into an anti-competitive agreement of this nature.

Block Exemptions

The Council of Ministers may, in certain cases, issue a regulation and exclude some types of agreement from the general prohibition, even if they may be regarded as anti-competitive agreements that meet the qualifying criteria taking in consideration the benefits resulting from such types of agreements. Such a regulation should, at a minimum, set out the conditions that have to be met to exclude an agreement from the general prohibition.

The Council of Ministers has issued such ordinances concerning the prohibition of some types of vertical agreements, research and development agreements, insurance agreements, and agreements on transfer of technology.

Dominant Position

The Competition Act also imposes a general prohibition on abuse of a dominant position of business entities in the relevant market. Within the meaning of the Act, abuse of a dominant position particularly includes:

- Directly or indirectly imposing unfair prices, including prices which are manifestly excessive or low, remote payment deadlines, or other purchase or sale terms;
- Limiting production, sale, or technical progress to the prejudice of business partners or consumers;
- Applying burdensome or inconsistent clauses in similar contracts with third parties, thereby creating for these parties diversified conditions of competition;
- Making a contract subject to the prior execution by the other contracting party of certain services which have no connection with the subject of the contract;
- Preventing the conditions required for competition to arise or develop;
- Imposing burdensome clauses that provide the business entity with an unfair advantage; and
- Sharing the market on the basis of territorial, product line, or subjective criteria.

A dominant position should be regarded as allowing the business unit to prevent effective competition in the relevant market by the creation of conditions, thus enabling it to act in a significant degree, independently of competitors, contracting parties, and consumers. A dominant position is presumed when the share of a given business entity in the relevant market exceeds 40 per cent. Legal actions that are the result of the abuse of a dominant position will be null and void in full or with respect to the relevant part.

Concentration of Business Entities

The Competition Act also combats the anti-competitive concentration of business entities. The control of anti-competitive concentration is done *ex ante* (i.e., before the concentration and pursuant to a positive decision of the President of the Protection of Competition and Consumers Office). An intended concentration is subject to notification to the Protection of Competition and Consumers Office if:

- The combined global turnover of the business entities involved in the concentration process exceeds €1,000,000,000 in the financial year preceding the year of the notification; or

- The combined turnover in the territory of Poland of the business entities involved in the concentration process exceeds €50,000,000 in the financial year preceding the year of the notification.

The obligation to notify an intended concentration arises on:

- The merger of two or more independent business entities;
- The direct or indirect takeover of control of one or more business entities by the acquisition of shares, other securities, or by any other manner by one or more business entities;
- The creation of a joint business entity by business entities; and
- The acquisition by a business entity of part of the assets of another business entity (whole or a part of an enterprise), if the turnover realized by these assets in the territory of Poland exceeded €10,000,000 in either of the two years preceding the concentration notification.

Infringement of Collective Consumer Rights

The Competition Act also prohibits practices which infringe collective consumer rights. The Act is applicable if certain practices may infringe the rights of numerous potential consumers. Practices infringing the collective interests of consumers will be regarded as unlawful activities of business entities, particularly practices such as:

- The application of the model forms of contract clauses that have been entered in the specific register of prohibited clauses, described fully in the Polish Code of Civil Proceedings;
- Infringement of the obligation to provide consumers with reliable and full information; and
- Unfair market practices or acts of unfair competition.

The protection provided by the Competition Act is without prejudice to the protection of the Act of 16 April 1993 on Combating Unfair Competition (the Unfair Competition Act) and by the Act on Combating Unfair Market Practices.

Protection of Individual Interests

The Unfair Competition Act protects the individual interests of business entities or customers. The Act defines unfair competition that may cause potential civil claims based on this Act. According to the Unfair Competition Act, unfair competition should be regarded, *inter alia*, as:

- The misleading designation of a business entity;
- The false or fraudulent designation of the geographical origin of goods or services;

- The misleading designation of goods and services;
- Breach of a business entity's secrets;
- Encouraging non-performance or improper performance of an agreement;
- Imitating products;
- Slandering or dishonest promotion;
- Limiting access to the market;
- Bribing a person executing a public function;
- Performing unfair or prohibited advertising;
- Organizing pyramid-scheme selling systems; and
- Conducting or organizing activities in a consortium system (also called "Argentinean system" with the meaning of organizing self-financing groups of consumers).

Foreign natural and legal persons benefit from the protection against unfair competition determined by the Unfair Competition Act on the basis of international conventions, EU treaties, or the rule of reciprocity. The Unfair Competition Act provides for both civil liability and criminal liability for certain acts of unfair competition.

The other statute that relates to competition is the Act of 23 August 2007 on Unfair Market Practices (Unfair Market Practices Act). The Unfair Market Practices Act implements Directive 2005/29/EC of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market.

Combating Unfair Market Practices

Misleading and aggressive market practices, in particular, are considered unfair. Examples of misleading market practices are the dissemination of untrue information or dissemination of true information that could be misleading for a consumer. Aggressive market practices consist in pressurizing the consumer and resulting in the limitation or possible limitation of the consumer's freedom of choice.

Conducting an activity in the form of a consortium system or as an organized group with the participation of consumers in order to finance a purchase in a consortium system also is deemed to be an unfair market practice.

The Unfair Market Practices Act includes a 'black list' of unfair market practices, being a list of practices that are considered to be unfair under any circumstances. The Unfair Market Practices Act entitles the consumer to bring individual claims in connection with unfair market practices and provides for criminal liability for certain of these practices.

Intellectual Property

In General

Poland is a party to all the major international treaties concerning intellectual property protection (copyrights and industrial property protection) and has implemented all European legislation in this area, including the EU trade mark regulations.

Copyright

The protection of copyright in Poland is governed by the Act of 4 February 1994 on Copyright and Neighboring Rights (the Copyright Act). The subject of a copyright is a work defined as a manifestation of creative activity of an individual nature, determined in any form, irrespective of its value, designation, or manner of expression.

A creative work is protected by copyright even if it is incomplete, irrespective of complying with any formalities. Copyrights are not registerable in Poland. Translation, alteration, or adaptation of a work, such as a work derived from another author's work, also is subject to copyright protection. Discoveries, ideas, methods, principles, operations, or mathematical concepts are not covered by copyright protection. The provisions of the Copyright Act are applicable to the following:

- Works whose author or co-author is a Polish citizen;
- Works whose author is a citizen of an EU Member State or a country that is a signatory to the European Free Trade Agreement (ie, parties to the EEA Agreement);
- Works that were published for the first time on the territory of Poland or at the same time on Poland's and another country's territory;
- Works that were published for the first time in the Polish language; or
- Works that are protected by international agreements and within the scope of the protection provided by them.

An author's rights over his work may be moral or economic. An author's moral rights protect the unlimited and non-waiverable connection of an author to his work, particularly the right to be regarded as the author of the work, to sign the work with his last name, nickname, or to make it available anonymously, to require the inviolability of the work's content and form and its just use, to make the work accessible for the first time to the public, and to control the manner of using the work.

An author's moral rights are not transferable. The essence of an author's economic rights is the exclusive right to use the work and to dispose of it throughout all the fields of exploitation and to receive remuneration for the use of the work, unless the Copyright Act provides otherwise.

In general, the author's economic rights expire after 70 years have elapsed from the time of occurrence of various events indicated in the Copyright Act. An agreement for the transfer of an author's economic rights should be made in writing, failing which it is null and void.

Exclusive license agreements also should be made in writing, failing which they will be null and void. Non-exclusive license agreements can be made in any form, including orally. If not provided otherwise in the license agreement, a licensee is authorized to use the work on the territory of his registered office during a five-year term.

A copyright transfer agreement or a license covers the scope of use expressly specified in the contract. Any contract stipulation concerning all works or all works of a specific kind by the same author to be created in the future are invalid. A contract may cover only such fields of exploitation as are known at the time of its conclusion.

The protection offered by the Copyright Act also covers, by specific rules, neighboring rights. These are rights in artistic performances, rights in phonograms and videos, rights to a program broadcast, rights to first editions, and rights to scientific and critical publications.

Industrial Property Rights Protection

In General

The Act of 30 June 2000 on Industrial Property regulates matters related to inventions, industrial patterns, utility modes, trade marks, geographical identifications, and the topography of integrated circuits.

Inventions

Patents are granted for inventions that are regarded as new, represent a level of innovation, and can be used in industry. The Polish Patent Office grants a patent by way of an administrative decision after examining whether the invention may be subject to patent protection.

A patent entitles its holder to exclusive use of the innovation for commercial or professional purposes within the territory of Poland for 20 years, starting from the date a valid patent application is submitted to the Polish Patent Office. A patent may be transferred or licensed by a contract, which should be concluded in writing, failing which it is null and void.

The holder of a patent right may grant so-called 'open licenses', which entitle anyone to use his innovation. The Polish Patent Office also may, after satisfying several statutory requirements, independently grant so-called 'compulsory licenses', which give permission to use certain innovations, even without the consent of the entitled entity.

Utility Models

A utility model is a new and useful technical solution concerning the shape, configuration, or composition of an object of a constant form. A utility model will be regarded as a technical solution that is new and useful if it furthers the aim of manufacturing or use of the product.

A utility model is subject to the right of protection issued by the Polish Patent Office. This right, granted for a period of 10 years, gives its holder the exclusive right to use the utility model in a commercial or professional manner within the territory of Poland.

Industrial Design

An industrial design is any new and having individual character form of a product or its components, attributed thereto, in particular resulting from the features of lines, colors, shape, structure, texture, decoration, or materials of the product.

An industrial design is protected from the time of its registration and entitles its holder to use the industrial design for commercial or professional purposes within the territory of Poland exclusively. Industrial design rights are granted for 25 years, starting from the day on which a valid application is filed with the Polish Patent Office

Geographical Designations

Geographical designations are word identifications relating directly or indirectly to the name of a place, village, region, or country, which identify certain goods as originating from that territory if a special quality, good reputation, or other product's features are assigned to it, particularly as a result of the geographical origin of such goods.

It is possible to obtain protection in Poland for foreign geographical designations on the condition that the designation is protected in the place of its origin. A right of protection is granted by the Polish Patent Office for an unlimited period of time and is enforceable from the moment of registration for protection in the register of geographical designations.

Trade Marks

A trade mark is a designation of any kind that may be presented graphically and if such designation allows to differentiate the goods of one business entity from the goods of another business entity. A trade mark may be in particular in the form of words, a picture, ornament, color composition, or three-dimensional shape (including product or its packaging form), and includes melodies and sound signals.

In order to grant the right of protection for a trade mark, the Polish Patent Office examines, *inter alia*, absolute grounds for refusal. Any owner of an earlier right

may file an objection to the Polish Patent Office as relative grounds for refusal. The Polish Patent Office grants trade mark rights for a period of 10 years, which may be extended for subsequent 10-year periods. A trade mark right is transferable, including by way of inheritance.

Trade mark rights may be infringed, *inter alia*, by the unlawful commercial use of a trade mark identical to the registered one and relating to identical goods. The right also may be infringed by the unlawful commercial use of a trade mark that is identical or similar to the registered one and relating to identical or similar goods, if there is a risk of misleading the customers, particularly the risk of associating the trade mark with the registered one.

Infringement of trade mark rights also applies to the unlawful use of a trade mark that is identical or similar to a reputable, registered trade mark relating to any kind of goods, if such use may give the user an unjust benefit or have a detrimental effect on the reputation of the legally registered trade mark.

Liabilities for Infringement

The infringement of copyrights or industrial property rights may cause the infringing party to incur civil and criminal liability pursuant to the laws governing the particular rights.

Employment Law

In General

The principal legislative measure governing employment matters in Poland is the Labor Code of 26 June 1974 (the Labor Code).

In general, stipulations in employment contracts as well as any other instruments resulting in the establishment of an employment relationship may not be less advantageous to employees than the regulations of the Labor Code.

Creation and Termination of an Employment Relationship

An employment contract may be entered into for an unspecified term, a fixed term, or for the time required to execute a specific work. Each of these agreements may be preceded by an agreement on a trial period, which cannot exceed three months.

An employment agreement should, at least, stipulate the contracting parties, type of employment agreement, date of its execution, work and remuneration conditions, type of work, place of work, work remuneration with indications of the components of the remuneration, time of work, and date of commencement of work. An employment agreement must be in written form.

An employment contract can be terminated by mutual agreement of the parties, or unilaterally on notification by either party, with or without a notice period.

A contract for a specified term or to execute specific work is terminated on the expiry of the specified period or the performance of the specific work. If the employment contract for the specified period is concluded for more than six months, parties can introduce a clause enabling termination of the agreement with a two-week notice period.

Employee Protection

As a general rule, an employee should be at least 18 years of age. However, the Labor Code provides some exceptions and allows the employment of persons who are below 18 years old. Certain regulations also allow the employment of employees who are below 16 years old (which will be decreased to 15 years from 1 September 2018), although an agreement may only be entered into with such persons for the purposes of vocational training or to perform mild jobs.

According to a general rule, work time should not exceed eight hours a day and 40 hours a week. Employees are entitled to at least 35 hours of uninterrupted rest per week and 11 hours of uninterrupted rest in every 24 hours. If a working day lasts more than six hours, the employee is entitled to 15 minutes' break in the course of the workday, included in the working time.

Sundays and public holidays are days free of work. However, working on Sundays or on public holidays is allowed, *inter alia*, for shift work, for work in transport or communications, and for work that is indispensable for social purposes or the daily requirements of the general public, such as work in medical health centers, hotels, and in cultural, educational, tourist, or entertainment institutions. An employee who works on Sundays or on public holidays is entitled to another day off work.

An employee is entitled to uninterrupted vacations. The scope of vacation leave generally depends on the duration of the employee's employment in the company, the duration of his general employment period and his education (some periods of education are regarded as the employment period necessary to be entitled to longer vacation leave) and in most cases is either 20 or 26 working days a year. An employee may not renounce his right to vacation leave.

An employee who has caused his employer to suffer losses by not performing his duties or performing them improperly is liable to financial sanctions. The Labor Code distinguishes between two major types of such employee's liability, depending on the nature of the fault. If the breach of employment duties is intentional, an employee will be liable for the resulting loss in full. In other cases, especially when the loss was not caused intentionally, an employee will be liable for the resulting loss up to the value of the damage, if it does not exceed the equivalent of three months' salary.

The Polish Labor Code provides for certain types of work which are *ex lege* prohibited for women and pregnant women. These categories of work are listed in the Ordinance of the Council of Ministers of 10 September 1996 as work which is onerous or harmful to women's health.

An employer cannot terminate an employment agreement with a woman who is pregnant or on maternity leave, unless there are grounds to justify the termination of the employment agreement without notice as a result of the employee's misconduct. An employee who is pregnant may not be asked to work night shifts or overtime. As stipulated in the Labor Code, a female employee is entitled to maternity leave of 20 weeks for the first single birth. Employees also are protected by specific provisions of the Civil Procedural Code regarding the resolution of disputes between an employer and an employee.

Non-Employment Working Relations

Work also can be carried out on the basis of civil law contracts, such as, *inter alia*, service agreements, specific task agreements, or agency agreements. A person performing work under these contracts does not enjoy the rights of an employee as set out in the Labor Code.

Trade Unions

The Act of 23 May 1991 on Trade Unions states that a trade union is a voluntary and self-governing workers' organization formed to represent and defend workers' rights and their social and professional interests.

Trade unions can be formed and joined by all employees and sometimes by other individuals, such as members of agricultural production cooperatives, people working under agency agreements, or the unemployed. The fundamental rights of trade unions include:

- The right to negotiate and execute collective bargaining agreements and other statute-based agreements;
- The power to agree on rules of employment, especially work and pay rules;
- The right to express opinions and other initiatives in the legislative process with respect to certain employment matters; and
- The right to give an opinion or approval or to object in individual employment matters, particularly in the case of termination of an employment contract, with or without notice.

Workers' Councils

The Act of 7 April 2006 on Information and Consulting of Employees (the Employees Act) came into force on 25 May 2006. The provisions of the Employees Act implement Directive 2002/14/EC of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community. The Employees Act provides for rules of establishing workers' councils, which primary function is to be informed by the employer about:

- The business activity and the financial situation of the employer and predicted changes in these areas;

- The state, structure, and predicted changes in employment and actions for the purpose of maintaining the level of employment; and
- Actions that may cause essential modifications to the work organization or the basis of employment.

In the matters listed in the last two points, the employer is obliged to consult the workers' council. The Employees Act defines consulting as sharing opinions and conducting a dialog between an employer and the workers' council. In addition to providing for consultation, the Employees Act provides the workers' council with the right to submit opinions on the three matters listed above.

Work Permit

Permission is required for foreign persons who wish to work in Poland, with the following exceptions. No work permit is required for foreign persons who are, *inter alia*:

- Citizens of EU Member States;
- Citizens of states which are members of the EEA but do not belong to the EU;
- Citizens of countries which are not members of the EEA, but are entitled to benefit from the freedom of movement of persons on the basis of conventions concluded by those countries with the European Community and its members; and
- Family members of these foreign persons.

Furthermore, foreign persons who have obtained permission to settle in Poland, obtained an EU long-term residence permit in Poland, obtained approval for tolerated residence in Poland, or have 'refugee' status in Poland or are benefiting from temporary protection in Poland do not require a work permit.

Citizens of countries neighboring the Republic of Poland that are not from EU Member States (citizens of the Republic of Belarus, the Republic of Georgia, the Republic of Moldova, the Russian Federation, and Ukraine) are allowed to work in Poland without a work permit for six months within a period of 12 consecutive months on the basis of employer's statement registered in the Employment Agency.

Moreover, a regulation of the Minister of Labor and Social Policy of 20 July 2011 on the performance of work by foreigners without the requirement of a work permit provides a list of numerous exemptions from the general obligation to obtain a work permit. These exceptions, *inter alia*, are:

- Persons running training sessions, participating in vocational internships, or supervising the performance of EU programs or other international aid programs;

- Foreign language teachers conducting classes in kindergartens, schools, educational centers, teachers' training centers, and colleges;
- Members of armed forces or civilian personnel who work in international military structures located in the territory of Poland;
- Permanent correspondents of foreign media who benefit from Polish Minister of Foreign Affairs' accreditation;
- Persons giving occasional lectures or presentations for not more than 30 days in a calendar year;
- Sportsmen working for an entity having its registered office in Poland in relation to sporting events, for not more than 30 days in a calendar year; and
- Full-time students of Polish universities during the period covering July to September.

Banking Law

In General

The principal legislative measure governing banking activities in Poland is the Banking Act of 29 August 1997. The Banking Act determines, *inter alia*, banking operations; forms of conducting banking activity; and methods of founding and the organization of banks, branches, and representative offices of foreign banks and the branches of credit institutions.

The Banking Act defines a bank as a legal person, established pursuant to the provisions of law, operating on the basis of authorization to perform banking operations that cause funds entrusted to the bank to be exposed to risk and which are in any way repayable.

Banking Operations

Activities that constitute banking operations are:

- Acceptance of a deposit payable on demand or on a specified maturity date and operations of deposit accounts;
- Operation of other bank accounts;
- Granting of credit;
- Issue and confirmation of bank guarantees and letters of credit;
- Issue of bank securities;
- Performance of bank monetary settlements; and
- Performance of other operations reserved for banks only under separate legislation.

Banks should maintain adequate payment liquidity in relation to the scope and type of business activity conducted and in a manner which ensures that all cash

obligations are fulfilled on their maturity dates. Banks must implement a management system consisting of a set of rules and mechanisms relating to the decision-making process and the evaluation of banking activity. Such a system must, at a minimum, provide a system of risk management and internal control.

A bank may be founded as a state bank, a cooperative bank, or as a joint stock company. A bank established in the form of a joint stock company may be founded by legal or natural persons, provided that there are at least three founders of the bank. Banks incorporated as joint stock companies will be governed by the provisions of the CCC, unless the Banking Act provides otherwise.

A state bank may be founded by way of a regulation of the Council of Ministers at the request of the Minister for the State Treasury, taking into account the opinion of the Polish Financial Supervision Authority. A state bank may be transformed into a bank acting in the form of a joint stock company.

A cooperative bank is a bank that is a cooperative, to which the provisions of the Cooperative Law apply, unless certain matters are regulated under the Act of 7 December 2000 on the Operations of Cooperative Banks, their Affiliation, and Affiliating Banks or under the Banking Act.

Deposits accumulated in all banks operating within the territory of Poland are guaranteed by the Banking Guarantee Fund. This means that if a bank should become insolvent, this fund would repay the deposits up to the amount indicated in the Act of 14 December 1994 on the Banking Guarantee Fund (the Banking Guarantee Fund Act).

Pursuant to the Banking Guarantee Fund Act, if the amount of deposits does not exceed the equivalent of €100,000 in Polish zlotys, the deposit is paid back in full. A depositor retains a right to lodge claims against a bank as to the amount exceeding €100,000.

National Bank of Poland

The National Bank of Poland (NBP) is the central bank of the Republic of Poland. Its tasks are determined in the Constitution of the Republic of Poland of 2 April 1997 and the Act on the National Bank of Poland of 29 August 1997. The fundamental objective of the NBP's activity is to maintain price stability. The most important areas of activity of the NBP are monetary policy, issue of currency, development of a payment system, management of foreign exchange reserves, regulating the liquidation of banks, providing them with refinancing facilities, and rendering services to the state treasury.

In the coming years, the European integration process, including efforts aimed at Poland's entry into the Eurozone, will have the largest impact on the execution of the NBP's tasks. In fulfilling its constitutional obligation, the NBP develops and implements the monetary policy strategy and the annual monetary policy guidelines. Through the management of the foreign exchange reserves, the NBP

ensures the requisite level of the state's financial security. As an issuer of currency, the NBP maintains the liquidity of cash payments.

An important objective of the NBP is guarding the stability of the financial system. As part of its supervisory and regulatory functions, the NBP oversees the liquidity, efficiency, and security of the payment system. It also contributes to the development of a secure infrastructure of the financial market.

Moreover, the NBP undertakes activities aimed at disseminating knowledge about economics through mechanisms such as publishing information on its website¹ and operating the NBPortal — Economics Education Portal.² The NBP will strive to achieve the position of a significant economic research center, both domestically and operating within the European System of Central Banks.

1 At <http://www.nbp.pl/> (an English version also is available).

2 Additional information on the NBPortal is available at <http://www.nbp.pl/homen.aspx?f=/en/education/nbportal.html>.

