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# DOING BUSINESS IN POLAND

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## Introduction

The information in this publication provides an overview of some of the fundamental legal considerations to be addressed when operating or establishing a business in Poland.

The content is intended to summarize some of the pertinent provisions which apply and is not intended as specific legal advice. Readers are advised to seek the counsel of lawyers in their home states to advise on compliance with the laws and identify the many planning opportunities.

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## Overview

Poland's legal system is based on continental European civil law principles. The vast majority of Polish laws are codified, including the laws that govern business and commerce, which are set forth in the Commercial Companies Code and the Civil Code. The supreme law in Poland is the Constitution of the Republic of Poland.

Polish public and private laws are divided into various areas, which include the following main areas:

- Civil law (prawo cywilne), much of which is contained in the Polish Civil Code;
- Commercial law, (prawo handlowe) notably the Polish Commercial Companies Code;
- Administrative law (prawo administracyjne);
- Constitutional law (prawo konstytucyjne);
- Private international law (prawo prywatne międzynarodowe);
- Tax law (prawo podatkowe);
- Criminal law (prawo karne);
- Family law (prawo rodzinne);
- Labor law (prawo pracy);
- Intellectual Property Law (prawo własności intelektualnej);
- Banking law (prawo bankowe).

## Forms of Entity

***Most typical forms of legal entities (LLC and Corporation)***

There are six basic types of legal forms for business operations. There are four partnerships: registered partnership (spółka jawna), professional partnership (spółka partnerska), limited partnership (spółka komandytowa) and limited joint-stock partnership (spółka komandytowo-akcyjna). The remaining two types of legal forms are a limited liability company (spółka z ograniczoną odpowiedzialnością) and joint-stock company (spółka akcyjna).

The most typical form of legal entity is the limited liability company (hereinafter referred as "LLC"). An LLC has legal personality and may, in its own name, acquire rights, incur obligations, sue and be sued. Such company is liable for its own obligations, i.e., none of the shareholders bear liability for the obligations of the company. The name of the company must contain, apart from its original name, the designation giving the information on its legal form, which is spółka z ograniczoną odpowiedzialnością or sp. z o.o.

***Role of Board of Managers***

A board of managers is called a management board. This body is compulsory for LLC and joint-stock companies. It is also possible to create management boards in professional partnerships.

The management board in the LLC is appointed at a shareholders meeting, unless the Articles of Association of the company states otherwise, and is composed of one or more members who may be appointed from among shareholders or from among outsiders. (In a joint-stock company the management board is appointed by a Supervisory Body unless the Articles of Association states otherwise and the general meeting of shareholders retains its right to dismiss or suspend the members of the management board.) This body is responsible for the management of daily activities of the company and for its representation in all company acts. Each member of the management board may, without the previous resolution of the management board, handle matters falling within the ordinary course of business of the company. The basic rule is that unless the Articles of Association of the company state otherwise, mandate of a member of the management board shall expire on the date of shareholders' meeting approving the financial statement for the first (or last – if a member is appointed for a period longer than one year) full financial year in which the person served on the management board. If the management board is comprised of more than one person, the Articles of Association of the company may set forth the manner of representation. If, however, the Articles of Association do not stipulate the manner of representation, two members of the management board acting jointly or one member acting together with commercial proxy shall be authorized to make statements on behalf of the company.

## Establishing A Business

To establish a business in the form of a limited liability or a joint stock company, one must provide minimal share capital and successfully complete a process of registration. The minimal share capital in all partnerships and companies amounts to:

- Civil partnership - no minimum;
- Registered partnership - no minimum;
- Professional partnership - no minimum;
- Limited partnership - no minimum;
- Joint-stock limited partnership - PLN 50,000;
- Limited liability company - at PLN 5,000;
- Joint stock company - at PLN 100,000.

Certain conditions must be fulfilled in order to establish a company in the form of a limited liability or a joint stock company.
First, the company's articles of association are required to be executed in the form of notarial deed and signed in the presence of a notary by either the shareholder(s) of the newly formed company or by a representative based upon a duly executed power of attorney. Such power of attorney needs to be signed by all shareholder(s), notarized and apostilled - if given by the foreign shareholder.

The notary may require evidence that each shareholder, being a legal entity, is properly formed and operating. Normally this is accomplished by presenting a copy of the shareholder's excerpt from the applicable local commercial register, which includes key corporate information regarding the shareholder, including the identity of its officers authorized to sign on behalf of the shareholder. If such document is issued by foreign authorities prior to registration, it needs to be apostilled and its sworn translation into Polish needs to be prepared in Poland. Once the above documents have been translated into Polish, they can be executed.

The notarial fee for the above depends on the share capital's amount. For the minimum LLC's share capital of PLN 5,000 the maximum fee is PLN 160; for the minimum joint-stock company's share capital of PLN 100,000 the maximum fee is PLN 1,170. The fee is also subject to 23% VAT. Tax on civil law action is calculated as 0.5% of the initial share capital value.

After signing the above document, the company will be deemed to be "in formation" ("spółka z ograniczoną odpowiedzialnością w organizacji" or respectively "spółka akcyjna w organizacji"), which is the first step toward full registration. A company in formation is able to enter into contracts with third parties and conduct business activity prior to final registration.

A second requirement is that the contributions for the share capital should be in full or partially (for joint stock company) made before the company's registration in National Court Register (Krajowy Rejestr Sądowy hereinafter referred as "KRS"). In practice, this means that the capital contribution needs to be wired into a bank account of the company prior to submitting the KRS registration application, which in turn means that the bank account must be opened between the time the company is in formation and the moment the final application to register the company is submitted to the commercial court. A company is obliged to open an account in PLN (in any bank, except the National Bank of Poland) and it may also open an account in foreign currencies in a bank authorized to conduct transactions in foreign currencies. The cost of opening the bank account depends on the regulations of a given bank.
Finally, the establishment of the company in Poland also requires its mandatory registration before Polish authorities such as: registry of entrepreneurs in KRS, Statistic Office (Główny Urząd Statystyczny hereinafter referred as "GUS") and the Tax Office.

To register the company in a registry of entrepreneurs in KRS, the newly appointed management board of the company submits the registration application to the relevant commercial court according to the company's seat.

Registration of the company in the entrepreneurs' register of KRS provided by registration court usually takes two to six weeks to process from the moment the complete application is filed. The company gains legal entity status upon registration by the commercial court in KRS.

The commercial court will charge a recording fee of PLN 500 to process the registration of the company and a fixed charge of PLN 100 (for the obligatory announcement on company's registration in the Official Journal "Monitor Sądowy i Gospodarczy").

Jointly with the motion to KRS, the company should submit an application to other registers. In practice, this means that the appropriate motions to GUS, and the Tax Office constitute the attachments to the KRS motion. Once the registration is completed, the court within three days transfers the appropriate applications to the respective offices.

The application to the Statistics Office is required in order to obtain the company's statistical number (hereinafter referred as "REGON"). Once the registration in the KRS is done, the court sends the attached application together with the court decision on the company registration to GUS. The issuance of REGON certificate is not charged and once issued is sent directly to the company's registered seat.

All entities conducting economic activity in Poland are obliged to possess a tax identification number- NIP (hereinafter referred as "NIP"). The company having its NIP is authorized to issue and receive invoices. Each company is obliged to put its NIP on all the letters and commercial orders issued by the company in paper and electronic form. If the company is to be a payer of VAT it needs to register as a VAT taxpayer.

Similarly to the GUS registration, once the KRS registration is completed, the court sends the application to the appropriate Tax Office jointly with the court decision on the company's registration.

There is no charge for NIP registration. The Tax Office will, however, charge a fee of PLN 170 for VAT registration and the whole process of the company's tax registration may take up to six weeks. Once the Tax Office issues NIP the company may issue and receive invoices.

The above registrations of the Company are obligatory for all the companies. However, there may be also some other types of registrations connected with running a business in Poland such as concessions required in some types of activities or employing people. There are also requirements as to the reporting on foreign investments in companies formed in Poland.

Sometimes, a business requires a concession granted by a Minister or other administrative body competent for a particular business sector. This requirement applies for both domestic and foreign companies.

The major fields of activity requiring concessions are defined in Law on Freedom of Economic Activity of July 2, 2004. Concessions are needed for:

- Exploration, identification of hydrocarbon deposits and solid minerals and excavation of minerals and mineral materials from deposits, bulk storage of substances and waste in mounds and underground mines;
- Manufacturing and trading in explosives, arms and ammunition and products and technology for military or police usage;
- Manufacturing, processing, storing, transmitting, distributing and trading in fuel and energy;
- Protecting persons and property;
- Broadcasting of radio and television programs;
- Air transport; and
- The operation of a casino.

The detailed provisions on the scope, terms and conditions of above mentioned concessions are specified in the separate acts. Fees depend on kind of concession. Some other business activities, not mentioned above, may also require permits, licenses or registration in the register of regulated activity.

If the company wishes to employ any non-EU nationals it will need to obtain appropriate work permits, fulfilling some exceptions provided under law. The registration with the Social Security Agency (Zakład Ubezpieczeń Społecznych - ZUS) is required within seven days from employing the first employee. It may be done together with KRS registration by attaching appropriate application if the company intends to engage the employees directly after its creation.
All partnerships (apart from civil partnership, which of each partner needs to be registered in register of personal entities conducting their own businesses) have to be registered in KRS. Generally, it is easier to establish and then register a partnership than to register the company. There are fewer formalities. Motions to KRS are similar and the court fee which amounts to PLN 500 plus fixed charge of PLN 100 for the obligatory announcement on the partnership's registration in the Official Journal "Monitor Sądowy i Gospodarczy." As to the registered partnership and professional partnership, the statute should be in writing, but the form of notarial deed is compulsory for limited partnerships and joint-stock limited partnerships companies.

***Branch versus Subsidiary in Poland***

The branch (Oddział) is an organizational entity, which does not possess legal personality. As a branch is not treated as a separate economic subject (except for the double taxation avoidance treaties) it cannot act in and under its own name. The founding foreign entrepreneur is liable for the branch's commitments with all its existing and future property, even if separate financial sources were transferred to the branch. The branch's scope of activity established in Poland is limited to the extent of the object of the foreign entrepreneur's activity and may be started only after the branch's registration in the National Court Register.

The foreign entrepreneurs may also act on the Polish market by establishing the representative offices having their seat on the territory of Poland. As in the case of the branch office, the agency ("przedstawicielstwo") does not have legal personality and cannot act in and under its own name. The founding foreign entrepreneur is the only entity liable for the agency's commitments with all its existing and future property.

Establishing an agency in Poland does not require execution of any articles of association or contributing minimum share capital and may be managed directly from abroad except for the appointment of one representative at a branch or representative office, which is required by Polish law. The scope of the agency's activity is far more limited than the branch's, as it may only advertise and promote the activity of the founding foreign entrepreneur. Also the foreign persons established for purposes of promoting the economy of the country in which they have their seat may create agencies on the territory of Poland under the condition that their activity does not exceed the field of promotion and advertisement.

As far as the agency registration is concerned, its formation requires entry in the register of representatives' offices of foreign entrepreneurs maintained by the competent minister for the economy matters. Prior to registration, the Ministry examines if the activity planned by the agency to ensure it does not exceed the field of promotion and advertisement and, on such basis, the registration is allowed. Refusals are not very common. The business name of each agency shall include the original name of the foreign entrepreneur with addition "przedstawicielstwo w Polsce" (the representative office in Poland).

The choice between establishing a branch or a subsidiary depends on the goals of the entrepreneur including the purpose of such entity.

## Specific Form of Doing Business In Poland-Direct Sales

Direct sales of goods as a form of doing business in Poland can be a good choice. Poland joined the European Union in 2004, is a member of World Trade Organization (WTO) and the Organization for Economic Co-operation and Development (OECD). The U.S. and Poland also entered into a Treaty on trade and business relationships as of March 21, 1990 which grants non-discrimination treatment of sole proprietors and entities from both countries in respect to the sale of goods.

***Contract for sale of goods***

The international sale of goods in Poland is regulated by category, e.g. international agreements, bills and regulations, etc. In general, there are no special restrictions of such trade, however, the export of some goods to Poland may require notification to relevant office (e.g. chemicals) or even permission (e.g. medicine).

Due to the fact that Poland is part of the European Union, some legal aspects of international trade are subject to other European law, especially customs law. Contracts for the international sale of goods are usually concluded by acceptance of an offer or in the course of negotiations. The execution of the sale agreement can proceed by signing a letter of intent or heads of terms.

Even though the parties may choose Polish law to govern their contract, the United Nation Convention on contracts for the international sale of goods as of 1980 (hereinafter referred as "CISG") will apply to contracts of sale concluded by most foreign and Polish entrepreneurs unless it has been expressly excluded by the parties. CISG regulates all key aspects of sale agreement, but it can be freely modified by the parties. Under the CISG, the parties are bound by any usage to which they have agreed and by any practices which they have established between themselves. The parties are considered, unless otherwise agreed, to have impliedly made applicable to their contract or its formation a usage of which the parties knew or ought to have known and which in international trade is widely known to, and regularly observed by, parties to contracts of the type involved in the particular trade concerned. Under the CISG, a contract of sale need not be concluded in or evidenced by writing and is not subject to any

other requirement as to form. It may also be proved by any means, including witnesses.

Regardless of which law the parties choose, the legal capacity of trade partners should be also verified. Under Polish law, natural persons acquire full capacity to perform acts in law at the moment of becoming an adult (with few exceptions it's 18 years old) provided that they are not fully incapacitated. As companies and partnerships acquire legal personality after having made an entry in the proper register, they can be parties to contracts only upon such entry unless the law provides otherwise (e.g. limited liability company may enter into a contract prior to its registration.) Before signing a contract with a Polish entity, it is a good practice to ask for an excerpt from the register of entrepreneurs. The excerpt also helps establish who is entitled to represent the entity and the amount of the company's registered capital.

***General export laws***

As a consequence of the accession to the E.U., Poland transferred the right of Polish governmental administration to regulate trade relations with third countries to the relevant community bodies. Hence, Poland has a right to influence the common trade policy, mainly through its representatives contributing to the work of various E.U. bodies, however some aspects of customs law are still regulated by Polish law.

The customs union covers trade of all goods. Members of the union cannot apply import and export duties or any other charges having similar effects. Trade relations with third countries are subject to the Community Customs Code enacted by The Council of the European Communities as well as the Common Customs Tariff. The customs duty is paid only once at the moment of importing the goods to the territory of any member state.

Trade relations between the E.U. member states are carried out without any tariff or non-tariff barriers or any other barriers. After Poland and other new member states joined the Schengen Treaty in 2007 the free movement of goods between said States is conducted without any control on the borders.
The customs union has been strengthened in the trade exchange between the E.U. and third countries by acceptance of common trade instruments. Said rules are applied in line with the rules adopted at the international level, inter alia, under the auspices of the WTO.

## Dispute Resolution Mechanism

***Choosing governing law and jurisdiction***

Generally, parties have the freedom to select the governing law and jurisdiction to resolve disputes.

Parties to a specific legal relationship can execute a written agreement in order to submit matters which have arisen or may arise from a particular legal relationship to selected regulations.

Parties are capable of choosing the appropriate regulation for the entire contract or just a part of it. Moreover, they are entitled to change a chosen regulation during the performance of the agreement. Any changes to a proper law do not influence the validity of the contract.

According to general rules, if parties have not chosen a relevant regulation, the obligation is subject to the regulations of the country to which legal relationship is the most related or, in some cases, regulations of a country, where parties have seat or place of residence.

Parties are entitled to submit matters which have arisen or may arise from a particular legal relationship under the jurisdiction of either the Polish courts or foreign courts. Nevertheless, change of jurisdiction cannot contravene mandatory legal provisions, which describe the scope of matters which belong to the exclusive jurisdiction of Polish courts e.g. (property rights to a real estate and possession of real estate located in Poland).
District Courts (court of first instance) adjudicate all cases except those which are restricted to the jurisdiction of the Regional Court (court of higher instance). The jurisdiction of the Regional Court includes cases regarding :

- Non-proprietary rights (IP rights);
- Protection of copyright laws and related;
- Property rights, where value of dispute exceeds PLN 75,000 or PLN 100,000 in commercial matters (those which came into existence between entrepreneurs conducting business activity).

***Arbitration***

Arbitration is another method of dispute resolution. Arbitration proceedings are conducted before the arbitration court appointed by the parties. This court is usually composed of one or three judges, which may be chosen directly by the parties. Unlike proceedings before the state court, parties may

prescribe specific procedures regarding the proceeding, for example: choice of arbitrators, time and place of proceeding, rules of adjudication of dispute, language of the proceedings.

The validity of the decision of an arbitration court is similar to validity of the resolution of state court after recognition or declaration of its enforcement by the state court. Even though the parties agree on arbitration, if the plaintiff files a case to the state court and defendant does not object to it, the dispute can be settled by the state court.

Generally, submitting a dispute to arbitration court requires a written agreement. Parties may also conclude a compromise (when a dispute already exists) or an arbitration clause as a one of provisions of an agreement concluded by the parties.

Parties have the freedom of selecting the arbitration court. They may submit a dispute to one of the permanent arbitration courts or they may establish an ad hoc arbitration court. Parties may decide on many elements of the arbitration proceedings including the choice of arbitrators, choice of arbitration court, time and place of the arbitration proceedings, and the language of the proceedings.

It should be emphasized that the resolution or an agreement reached before the arbitration court has the same validity as the resolution or an agreement reached before the state court.

To have that validity, the resolution or the agreement should be recognized or their enforcement should be declared by the state court. Recognition ("uznanie") concerns judgments which may not be executed compulsorily, for example judgments which establish existence or non-existence of right or legal relation or judgments which form a right or legal relation. Declaration of enforcement ("stwierdzenie wykonalności") regards judgments which may be executed compulsorily, for example judgments awarding money. Then the arbitration judgment is effective and enforceable.

In case of a refusal of a recognition or declaration of enforcement of resolution or agreement reached before the arbitration court could not be regarded as equal to resolution or agreement reached before the state court. Then it means that the arbitration proceedings were in fact not enforceable.

***Enforcing a court judgments in Poland***

In regards to the enforcement of judgments of sentences in Poland, the following legal acts are applicable:

- Polish regulation - Civil Procedure Code;
- Community regulation: e.g. Council Regulation No 44/2001 of December 22, 2000 concerning jurisdiction and the recognition and enforcement of judgments in civil and commercial matters;
- International treaties and agreements.

According to the provisions of the Civil Procedure Code, enforcement is based on an enforceable document, i.e. enforcement title supplied with enforcement clause.

Examples of enforcement titles are: valid court judgments, invalid court judgments still subject to immediate enforceability (with order of immediate enforceability); settlement reached before state court; award of the arbitration court; settlement reached before arbitration court; notarial deed in which debtor submits to enforcement, and judgments of the courts of the European Union countries.

Enforcement is started in the following cases:

- Ex officio, on request of the court of first instance;
- On creditor's request filed to relevant district court or bailiff;
- On eligible authority's request (court or prosecutor).

Example of fees:

- Enforcement of pecuniary benefits - 15% of the value of the exercised claim;
- Security of a claim - 5% of the value of claim.

Enforcement may be carried out, for example, from:

- Movables;
- Salary;
- Bank accounts;
- Real estates.

Among the regulations of the European Community, the most important is the Council Regulation No. 44/2001 of December 22, 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

According to the provisions of the Regulation, a judgment given in a Member State and enforceable in that state shall be enforced, on the application of any interested party, in another Member State if in this state it is also declared to be enforceable.

A claim should be filed to the court of the first instance where the defendant is domiciled. Cases regarding recognition are ruled by the regional court, which could have been proper to hear the case, with a panel of three judges.

The local jurisdiction shall be determined by reference to the place of domicile of the party against whom enforcement is sought or to the place of enforcement.

According to the Regulation, the procedure for making the application shall be governed by the law of the Member State in which enforcement is sought.

When the resolution is partially unfeasible, feasibility may be ruled according to the part of the resolution, which may be performed.

After submission of the required documents, enforcement of the resolution is certified immediately. At this stage of the proceeding, the defendant can not file any statement. This protects the plaintiff against disadvantageous actions of the defendant, for example, proprietary reallocation. From the resolution ruling declaration on enforcement, each party may appeal.

***Payment of other party's fees, bond issues***

In accordance with fundamental principles, the party who lost a case shall be obliged, at the opponent party's request, to pay the costs indispensable for appropriate exercise of rights and appropriate defense.

Indispensable costs of process include:
- Costs of proceeding;
- Costs of arrivals to court;
- Equivalent of lost earnings.

The court is entitled to exempt the legal entity from the costs of proceedings if it proves that it does not have enough money to bear costs.

Costs of arrivals to court and equivalent of lost earnings cannot exceed the salary of an attorney employed in the court.

Examples of fees borne in judicial proceeding are: flat fee charge collected in cases regarding non-proprietary right; charges shall be not lower than 30 PLN and not higher than PLN 5,000; proportional charge collected in cases regarding property right; which amounts to 5% of the amount in litigation or subject of review, however not lower than 30 PLN and not higher than PLN 100,000.

Indispensable costs of process also include costs of mediation. In case of reaching a compromise, costs of proceedings are cancelled out mutually, unless parties decide otherwise.

Joint participant in litigation returns costs of proceedings in equal parts.

According to the general rule, one may demand creation of a collateral in the case tried by either state or arbitration court. The court will create the collateral when a party substantiates the grounds for the claim and proofs his/her legal interest in creation of the collateral.

In addition to the above mentioned situations, a plaintiff who does not have a place of residence, place of stay or seat in Poland or other European Union Member State, shall be obliged, on defendant's demand, to advance a bail bond in order to protect the costs of proceedings.

Examples where the plaintiff is not obliged to advance a bail:
- Plaintiff has property in Poland sufficient to cover costs of proceedings;
- Plaintiff has gained exemption from costs of proceedings;
- In cases, where parties agreed to submit to jurisdiction of Polish courts.

If, in the course of proceedings, it occurs that bail is not sufficient, defendant may demand additional security.

## Labor Matters and Employment

**Overview**

Under Polish law, employment relationships are formed by the Labour Code, as well as by the provisions of specified acts, e.g. group redundancies or trade unions. The employee's situation is also influenced by collective bargaining agreements if established in the workplace, by internal work regulations and obviously by the employment contract. In general, any provision of the labour law cannot worsen an employee's position in comparison to the regulation provided by the Labour Code. It should be noted, however, that the Labour

Code regulations do not apply to natural persons providing services on the ground of civil contracts.

It is not admissible for an employment contract to be replaced with a civil law contract if it includes the same Labour Code conditions regulating the employment relationship.

Polish Labour Code constitutes that an employment relationship can be created on the ground of one of the following legal events:

- Employment contract;
- Appointment;
- Election;
- Nomination; or
- Cooperative employment contract.

An employment contract is the most popular legal basis of employment relationship. It can be concluded for one of the following periods:

- For an indefinite period;
- For a definite term;
- For the time necessary to complete specific work;
- For the period of absence of another employee.

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

Once a third subsequent fixed – term contract is signed, it is deemed to have become an indefinite term contract.

An employment agreement is entered into writing and should be signed no later than on the day of the commencement of the work. If no agreement is signed, then the employee should be provided with written confirmation of the agreement conditions on the day of the commencement of the work at the latest. Any changes in the employment agreement conditions should also be made in writing. The employer should include additional written information about certain engagement terms to the employment contract. The employment agreement itself should specify parties
of the agreement, type of the agreement, date of its conclusion, as well as work and remuneration conditions, especially:

- Type of work;
- Place of performance of the work;
- Remuneration for the work corresponding the type of work, with indication of components of such remuneration;
- Working hours;
- Term of commencement of the work.

The rules are that employment agreement can be terminated in the following ways:

**1) By mutual agreement**

Any employment contract can be terminated by the mutual agreement of the parties at any time and on the initiative of either party, irrespective of the type of the agreement, special duration protection or even wording of the employment agreement. It should be noted, that termination of the employment relationship requires mutual agreement of both parties, which means, that it is impossible to force the second party to terminate the agreement in an objective way.

**2) Termination by notice**

Polish Labour Code provides detailed information on the period of notice in case of termination of the employment agreement by notice. It should be noted, that the length of the period of notice indicated in the Labour Code can be changed in the employment agreement or in the collective bargaining agreement, but only in favor of the employee.

The length of the notice period depends on the type of contract and the position held by the employee. During the notice period, the employee is entitled to receive his normal salary.

In particular, notice periods are:

- Employment agreement for a trial period:
  - (i) Three working days, if the agreement is concluded for not more than two weeks;
  - (ii) One week, if the agreement is concluded for more than two weeks but less than three months;
  - (iii) Two weeks, if the trial period is three month.

- Employment agreement for an indefinite term:
  - (i) Two weeks, if the employee has worked for the employer for not more than six months;
  - (ii) One month, if the employee has worked for the employer for
    at least six months but less than three years;
  - (iii) Three months, if the employee has worked for the employer for at least three years.

  · Replacement agreement - three working days;
- Employment agreement for an indicated period -two weeks, but on the condition that the agreement was concluded for at least six months and the parties stated clearly in the contract that it could be terminated with notice.

**3) Termination without notice**

The employer can terminate the employment contract without notice because of the reasons attributable to the employees in case of:

- Serious breach of basic employee duties;
- Commitment of a crime during the term of the employment agreement if the crime is obvious or has been confirmed by an final court sentence;
- Culpable loss of the rights required to work in the position held.

Moreover, the employer can terminate the employment contract with immediate effect due to circumstance not connected with the employees fault resulting in:

- Incapacity to work caused by an illness lasting for more than three months, if the employee has worked for the employer for less than six months;
- Incapacity to work caused by an illness lasting for more than the total period for which he has received a salary, sickness benefit or rehabilitation allowance for the first three months in accordance with the rules set out in the Labour Code and other provisions, if the employee has worked for the employer for more than six months or if the incapacity to work is due to an accident at work or a work-related illness;
- Absence justified on grounds other than those given above lasting for more than one month.

On the other hand, the employee is also entitled to terminate the employment agreement with immediate effect due to:

- Issuance of the medical certificate confirming negative impact of the performed worked on the employee's health if the employer does not transfer the employee to other work within the term indicated in such certificate;
- Serious breach of basic employer's duty.

**4) By lapse of time, for which the agreement was concluded or after completion of the work for which the agreement was concluded.**

In such case employment relationship expires without any other notice terms. The expiration or termination of the employment agreement might not be equivalent to the end of any obligation of the employer in reference to the employee. Especially, both parties can agree, that the employee shall not perform work for the competitive employer for the indicated period of time (noncompetitive clause). In such case, the employer will be obliged to pay the former employee the remuneration indicated in the agreement.

The Labor Code recognizes an additional situation, which can lead to the termination of the contract. Under special rules specified in the Labour Code, the employer can issue to the employee a notice concerning change of the work and remuneration conditions. The employee can accept new conditions proposed by the employer, which will bind both parties after the lapse of the notice term or refuse to accept new conditions, which will result in termination of the employment agreement with observation of termination notice period.

Under Polish labor law employers are prohibited from giving notice to certain employees and, in some cases, they are also prohibited from terminating an employment contract without notice. This special protection covers the following employees, among others:

- Employees on vacation or maternity leaves;
- Employees on sick leave with doctor's certificates;
- Employees approaching retirement age, i.e. who have less than four years before being entitled to a pension if the employment period allows them to attain this pension entitlement once they reach this age
- Pregnant employees;
- Union activists.

One of the essential issues relating to employment relationships is the time of performing work for the employer. As a principle, working hours cannot exceed eight hours in any 24 hours or an average of 40 hours in an average five-day working week in a reference period applied by the employer of not more than four months. However, the Labor Code provides an exception to this rule, e.g. relating to work which, due to production technology, cannot be stopped (so-called 24-hour shift work); in this case, the number of working hours in any 24 hours can be extended but only to 12 hours.

Working in time periods exceeding normal working hours is treated as overtime.

Overtime is permitted:

- If rescue action is required to protect human life or health, to safeguard property or the environment or to carry out emergency repair work;
- In case of employer's special needs.

In case of employer's special needs, overtime cannot exceed 150 hours in any one calendar year for each worker, unless a collective bargaining agreement, the employer's work regulations or the employment contract provide otherwise. In the case of overtime, the employee is entitled, apart from the normal salary, to a supplement ranging from 100% to 50% of the salary in specific situations.

The employees have the right to undisturbed rest - at least 11 hours undisturbed rest in every 24 hours and at least 35-hour rest each week.

Night work covers the eight hours between 21:00 - 07:00. Employees performing night work are entitled to days off or the additional salary depending on the situations.

All employees are entitled to annual continuous paid vacations. Vacation entitlement is as follows:

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

***Trade Unions***

Under conditions specified in certain legal regulations, employees can organize themselves in trade unions which are voluntary and self-governing workers' organizations 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 co-operatives, people working under agency agreements or the unemployed).

A trade union can be set up by 10 or more people authorized to do so, who adopt a resolution to form the union, adopt its statutes and elect a founding committee of three to seven members.
A trade union must be registered in KRS. If the founding committee fails to apply for registration within 30 days of the union formation date, the formation resolution expires. Trade union obtains legal personality with the moment of registration in KRS.

In principle, an employer cannot terminate or alter a trade unionist's employment contract with notice without the consent of the company's trade union management board.

Moreover, employers engaging over 50 employees are obliged to inform employers about the possibility of establishing a workers council. Employers are obliged to provide the workers council with certain information concerning the enterprise, such as:

1) employer's operations and economic situation,
2) the employment structure and anticipated employment changes, as well as activities aimed at maintaining the level of employment,
3) any actions that could lead to significant changes in work organization or employment bases.

Moreover, the employer must conduct consultation with the workers council in issues described above.

## Taxes

The Polish tax system imposes 12 types of taxes, including:

- Nine direct taxes:
  - corporate income tax (CIT),
  - personal income tax (PIT),
  - tax on civil law transactions,
  - real estate tax,
  - tax on means of transport,
  - inheritance and donations tax,
  - agricultural tax,
  - forestry tax,
  - tonnage tax
- Three indirect taxes:
  - tax on goods and services (VAT),
  - excise duty,
  - game tax.

## Corporate Income Tax (CIT)

**Overview**

The corporate income tax (hereinafter referred as "CIT") is a flat-rate tax, generally imposed on income. The basic corporate income tax rate is 19% of the tax base. In special cases the CIT Act provides for other tax rates.

A 19% tax rate is also applicable to income from **dividends** and other income (revenues) from the participation in profits of legal persons having their seat in Poland.

For taxpayers with unlimited tax liability in an E.U. Member State, an exemption from withholding tax on dividends paid by Polish companies is provided (participation exemption). The application of the exemption is possible if the foreign shareholder holds or will hold a minimum of 10% of shares in the Polish company during the period of at least 2 years.

The entities subject to the corporate income tax are as follows:

- Legal persons (in particular: limited liability companies, joint-stock companies, capital companies in organization);
- Partners being legal persons;
- Foreign partnerships, if in the state where their seat is located they are treated as legal persons and are subject to unlimited tax liability there;
- Tax capital groups.

Generally, the corporate income tax is imposed on income, irrespective of the source of revenue from which the income has been earned.

**The following items are among those considered as revenue:**

- Money and monetary values received, including foreign exchange rate gains or losses;
- Value of non-monetary benefits and revenues received in-kind;
- Value of debts which were redeemed or prescribed;
- Value of the paid-off debts, which were previously written off as irretrievable or redeemed and recognized as tax deductible costs, or
- In case of VAT reduction or refund - input VAT in its part corresponding to the amount previously recognized as a tax deductible cost.

In case of business activity, revenue ic considered as due even if not yet actually received, i.e., accruals, generally constitutes taxable income after exclusion of the value of goods returned as well as rebates and discounts granted.

The list below presents examples of items which are **not considered revenue for tax purposes:**

- Advance payments received or amounts accounted for the future provision of goods and services which are to be performed in the next reporting periods,
- Revenue received for establishment or increase of share capital,
- Principal of Loans (credits) received or returned,
- Output VAT,
- Returned, redeemed or desisted taxes and charges, which onstitute revenues of the State Treasury or budgets of territorial self-governments units, if they had not been treated as tax deductible costs before,
- Refunded difference in VAT,
- Other returned expenses not being recognized as tax deductible costs.

Revenues in foreign currencies shall be expressed in PLN on the basis of the Polish National Bank's average rate of exchange from the last working day preceding the day of receiving the revenue.

***Collection of tax***

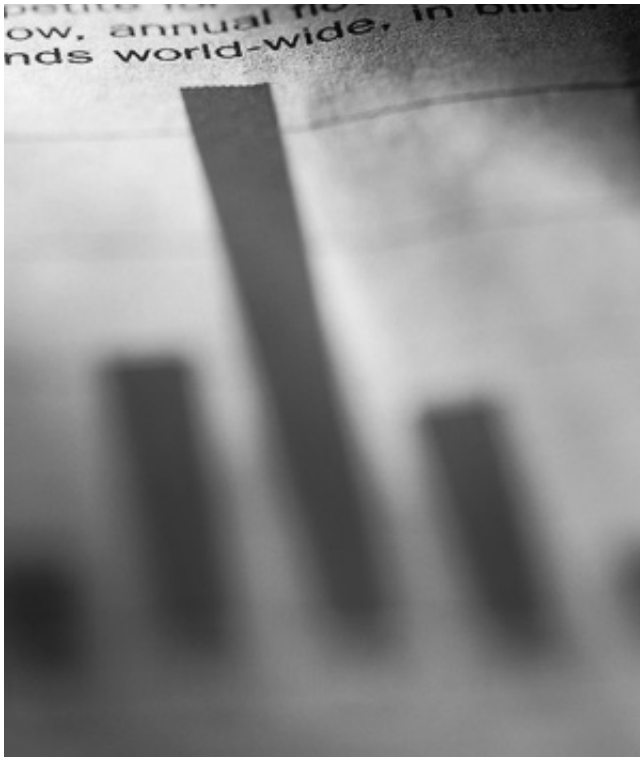
In the course of the year, taxpayers are obliged on a monthly basis to transfer to the bank account of the tax office advance payments in an amount of the difference between the tax due on the income earned from the beginning of the tax year and total advance payments due in preceding months. Monthly tax advance payments shall be remitted by taxpayers

by the 20th day of each month for the preceding month. There is no obligation to submit monthly tax returns.

A final settlement of tax is deemed to be finalized on the day a yearly tax return is submitted by a taxpayer to the tax office and the tax due is paid. This should be done at the end of the third month of the year following the tax year at the latest.

The CIT Act provides for a simplified form of calculation and payment of the tax advance payments. Taxpayers are entitled to make monthly advance payments in the amount of 1/12 of the tax due, as calculated in the yearly tax statement for the year preceding given tax year. If there was no tax due in the statement, taxpayers are entitled to make monthly advance payments in the amount of 1/12 of the tax due, as shown in the yearly tax statement for the year preceding by two years a given tax year.

So-called "small entrepreneurs" who launch their business activities may benefit from a tax credit, which consists of a deferral of tax on income generated in the second or third tax year. The taxpayer is also relieved from filing a tax return for that year. The tax due with reference to such income shall be paid by taxpayers in installments within the next 5 consecutive years.




## Personal Income Tax (PIT)

**Overview**

As a rule, natural persons in Poland are subject to income tax calculated in compliance with a progressive tax scale, with rates from 18% to 32%.

However, there are exceptions to this rule. Under certain conditions natural persons conducting business activity can use a flat 19% tax rate, or pay a lump-sum tax.

Natural persons subject to personal income tax (hereinafter referred as "PIT") are considered to be taxpayers with reference to their income, including income from participation in partnerships, i.e.:

- partnership in the meaning of the Polish Civil Code,
- registered partnership,
- professional partnership,
- limited partnership,
- limited joint-stock partnership.

Income earned from the above partnerships, as well as income from joint ownership, joint enterprise, joint possession or joint use of things or property rights, are taxed separately by each taxpayer in proportion to his/her share in the partnership. The PIT Act is also applicable to natural persons being shareholders in the companies having legal personality, i.e., limited liability companies or joint stock companies, with reference to income from the participation in the companies profit.

Personal income tax is levied on all kinds of income, except for income exempt from taxation under provisions of the PIT Act and income on which collection of taxes has been abandoned under provisions of the Tax Ordinance Act.

**According to the PIT Act provisions, income can be derived from several specific sources**. Such an assignment of income to a source results in application of a specific method of its taxation.

**Income from a given source of revenue** is defined as the excess of total revenue from that source over its tax deductible costs, generated in a given tax year. If a taxpayer receives income from more than one source, subject to certain exceptions, the sum of the income from all sources is subject to taxation. The exceptions refer to the following:

- Revenue (income), which is subject to lump-sum taxation,
- Income which is subject to flat-rate tax.

These kinds of income are not accumulated with income earned by taxpayers from other sources (taxed pursuant to the tax scale). Furthermore, income subject to the flat-rate tax is reported in separate tax returns on income from capital gains and income from business activity respectively.

Provisions of the PIT Act do not apply to the following:

- Revenues from agricultural activities (except for revenue from so-called "special branches of agricultural production") and from forestry;
- Revenues from forestry;
- Revenues falling under the provisions of the Act on Inheritance and Donation Tax;
- Revenues resulting from activities which cannot be subject to legally effective contract (e.g. theft or drug dealing); it should be stressed that it does not refer to actions made without observing of legal standards provided by law (e.g. sale of real estate made in other form than a notary deed),
- Shipowner's revenues taxed with a tonnage tax,
- Revenues resulting from division of a property co-owned by spouses due to the cessation or limitation of their property co-owned,
- Allowances for satisfying family's needs within framework of property co-owned by spouses.

***Scope of tax liability (unlimited and limited tax liability)***

A "global" nature of the personal income tax means that this tax is imposed on income of all natural persons provided that they earn income from sources located in Poland. The scope of tax liability for these persons determines whether income from sources located abroad is subject to taxation in Poland as well.

Taxpayers are subject to tax liability in Poland if they have a residence in Poland, which means:

- Stay on the territory of Poland longer than 183 days during a tax year, or
- Have a center of personal or economic interests here (center of vital interests).

If a person has residence in another country, the conflict between tax jurisdictions shall be settled in accordance with the regulations of the appropriate double taxation avoidance treaty.

Taxpayers with tax liability in Poland (Polish tax residents) are subject to taxation on their world-wide income. Natural persons without a place of residence for tax purposes, thereby with a limited tax liability, in Poland are subject to taxation in Poland only with respect to the Polish-sourced income.

**Sources of revenue**

Sources of revenue are:

1) service relationship and employment relationship (including co-operative employment relationship),
2) activity carried on personally,
3) non-agricultural commercial activities,
4) special branches of agricultural production,
5) lease, sublease, tenancy, subtenancy and other contracts of a similar character,
6) capital gains and property rights,
7) selling of e.g. real property, parts thereof and shares in immovable property,

***Tax base and calculation of the tax pursuant to the scale***

Generally, income calculated as the excess of revenue over deductible costs constitutes the tax base for PIT purposes.

The income may be then reduced by the taxpayer by:

- The amount of social security premiums paid during the tax year,
- The expenses incurred for the use of internet,
- The expenses incurred for the purpose of the public utility, for religious purposes and the expenses incurred for the purpose of rehabilitation of disabled persons,
- The expenses borne by the taxpayer with regard to the purchase of new technologies.

As a rule, taxpayers who carry out business activity are obliged to calculate their income on the basis of accounting books. If it is not possible to calculate income on the basis of accounting books kept by the taxpayer, the income should be assessed.

**Tax computed pursuant to the scale**

Income is subject to income tax calculated in compliance with the following progressive scale, using tax rates amounting to 18% and 32% depending on income thresholds. When calculating income, a tax-free amount is taken into account (in 2015 - PLN 3,091.00).

| Tax Base in PLN | | Tax |
|---|---|---|
| Over | Up To | |
| | PLN 85.528 | 18% minus amount decreasing the tax PLN 556,02 |
| PLN 85.528 | | PLN 14.839,02 + 32% of surplus over PLN 85.528 |

The tax calculated in compliance with the tax scale may be reduced by payments to the national health insurance premiums. Taxpayers may reduce their tax by payments made to the account of public utility organizations. The reduction of the tax, however, cannot exceed 1% of the tax as shown in the annual tax return.

***Collection of tax***

During a tax year the taxpayers are obliged to make **monthly advance tax payments** (by the 20th day of the following month for the preceding month) and, after the end of a given tax year, pay the tax due in a final amount (i.e., not later than April 30 of the following year). This rule does not apply to **the lump-sum tax**, calculated and collected with reference to certain categories of revenue earned during the tax year and not accumulated with income earned from other sources after the end of the given year.

"Small entrepreneurs" and taxpayers who launch their business activity may pay tax advances **quarterly**.

As a rule, a PIT taxpayer is obliged to calculate and transfer both tax advance payments and the tax. There are some exceptions to this rule, according to which, with respect to certain categories of revenue, the monthly tax advance payments and the tax are collected by tax remitters. First and foremost, the remitters calculate and collect the tax advance payments with reference to income from service relationship, employment relationship and similar relationships, retirement and disability pensions, and social security allowances. Furthermore, tax remitters calculate and collect the lump-sum taxes in most cases.

Taxpayers who receive income from business activity, lease and tenancy, employment relationships received from abroad, retirement and disability pensions received from abroad and other income with respect to which the remitters are not obliged to calculate the advance payments for income tax, are obliged to calculate and pay tax advances without summons during the year.

A self-calculation of tax applies also in case of establishing the income tax due for the entire tax year, provided that the remitter of tax has not been designated to calculate the tax. When submitting annual tax statements, taxpayers who keep accounting books are obliged to attach financial statements which should include at least the balance sheet and the profit and loss account.

Taxpayers who decided to apply a flat-rate tax (19%) to their income from business activity are subject to the general rules concerning submission of the annual tax statements.

However, for purposes of calculating the tax, these taxpayers are not entitled to aggregate their income subject to the flat-rate tax with the income subject to taxation according to the general rules.

Furthermore, the PIT Act provides for a **simplified form of calculation** and payment of tax advances, i.e. in the amount of 1/12 of the tax amount shown in the tax return submitted to the tax office in the tax year preceding a given tax year or in the tax year preceding a given tax year by two years.

## Tax On Goods and Services (VAT)

**Overview**

VAT was introduced in Poland in 1993. Since May 1, 2004, it has been harmonized with the common system of VAT binding in the Member States of the European Community. VAT is a turnover tax. Its main features are:

- Neutrality - the actual burden of tax rests upon final consumer;
- Universality - resulting in, on the one hand, charging VAT upon each stage of turnover and, on the other hand, levying VAT upon relatively wide range of goods and services;
- Double taxation avoidance rule - which is to prevent from double taxation of the same stage of turnover; and
- Observation of competitiveness rule - which is to ensure the same taxation rules for all taxpayers in the Member States.

Legal provisions governing VAT issues may be divided into two groups:

1. Community law
2. National law

**Community law** - in particular, Council Directive 2006/112/EC of November 28, 2006 on the common system of value added tax.

**National law** - the act on Value Added Tax of March 11, 2004 (Journal of Laws No 54, item 535, with amendments) and over 30 executive decrees.

***Objective scope of taxation***

Of key importance is the objective scope of taxation, which determines chargeable events. Each entity who professionally carries out the below stated activities is subject to taxation:

- Supply of goods (meant as transfer of right to dispose of tangible property as owner) affected for consideration;
- Supply of services for consideration (meant as any transaction which does not constitute a supply of goods);
- Export of goods;
- Importation of goods;
- Intra-Community supply of goods; and
- Intra-Community acquisition of goods.

**Taxable persons**

In principle, entities conducting taxable activities within the framework of their economic activity, whatever the purpose or result of that activity, are considered taxable persons. The term "taxable persons" embraces natural and legal persons and, organizational units having no legal personality (e.g. civil, general partnerships, etc.).

Additionally, under certain circumstances, entities purchasing services or goods may be considered taxpayers.

***Reverse – Charge***

A reverse - charge mechanism, which is to facilitate VAT collection, generally applies if a supplier of goods or services does not have a seat, a permanent establishment or does not reside in Poland.

However, according to the Polish VAT provisions, in case of some services rendered by entities without a seat, a permanent establishment or a residence in Poland, VAT shall always be levied upon a Polish customer. The above mentioned services include in particular:

- Transfer and assignment of rights, licenses, patents, copyrights, trademarks and similar rights,
- Advertising services,
- Services of experts, engineers, lawyers, accountants and similar services; market and public opinion research services; business advisors and consultants; research and technical analysis,
- Data processing and the supplying of information, translations,
- Banking, financial and insurance transactions including reinsurance, with the exception of the hire of safes,
- Supply of staff,
- Hiring out of movable tangible property, with the exception of means of transport,
- Telecommunication services,
- Broadcasting (radio and television) services,
- Electronic services,
- Obligation to refrain from the above mentioned activities,
- Services of agents and intermediaries who acts on behalf and for the benefit of another person, if they procure for their principal the services mentioned above.

With regard to other cases and supplies of goods performed by foreign entities, the Polish purchaser will be liable to taxation unless the tax had been settled by the foreign contracting party - the Polish VAT provisions provide the foreign contracting party with an entitlement to register for the Polish VAT purposes resulting in a possibility of VAT settlement in Poland.

***Tax rates***

Polish tax law provides for 4 VAT rates. The basic rate is 23%, which is applied to majority of goods and services. Other rates:

- 8% - applies to specific goods and services, e.g. goods related to health protection, groceries, services of hotels, folk art articles,
- 5% - applies to supply of some farm produce.

The rate of a special significance is a 0% rate. It is mainly applicable to export, intra-Community supply of goods and international transport services. Taxpayers enjoying 0% rate are not deprived of the right to deduct input VAT incurred upon purchases related to the activities subject to this rate.

Polish tax provisions provide also for some exemptions from VAT. Among the activities subject to such exemptions are financial, educational, health and cultural services. The exemption excludes, however, deduction of input VAT related to the exempt transactions.

***Taxable amount***

The taxable amount (tax base), along with VAT rate, determines the value of output VAT. However, the amount of VAT payable to the tax office corresponds to the surplus of output VAT over input VAT.

In respect of importation of goods, the taxable amount constitutes the value of goods determined for the customs purposes, increased by customs duties due. If the imported goods are subject to excise tax, the taxable amount is additionally increased by the excise tax.

***Tax liability (chargeability of tax)***

As a rule, tax liability arises at the moment the goods are delivered and services are performed.
Polish VAT law provides for a number of exceptions to the above rule. Tax liability may therefore arise:

- at the moment of receipt of payment, including partial one,
- at the moment of receipt of a grant or subsidy, or another benefit of a similar kind, payment, including partial one,
- at the moment of issuing invoice, or – if the invoice was not issued or was issued with delay – upon the lapse of the time limit for issuing the invoice, and if such time limit is not stipulated by law – upon the lapse of the time limit for payment,
- if a part of the payable amount, in particular a prepayment, advance payment on account or installment is collected before the goods are handed over or the service is rendered - on the day of such collection in this part (with few exceptions, like lease services, telecommunication services or transactions of similar nature).
- in respect of importation of goods - when the customs debt arises.

With regard to ISG and IAG, tax liability arises at the moment of issuing the invoice, not later than on the 15th day of the month after the month of supply.

***Payment of tax***

As a rule, VAT is settled on a monthly basis. However, it is possible to elect to settle VAT on a quarterly basis in some cases.

Tax returns shall be submitted to the relevant tax office up to the 25th day of the month following each month (quarter). Up to this date a payment of tax for a given settlement period shall be executed into the account of the tax office.

## Intellectual Property

The main laws concerning copyrights and their protection are the Polish Copyright Act of 1994, the Berne Convention on the Protection of Literary and Artistic Works and European Union law. Definition of "Work" protected under Polish law is as follows: Work means "**any manifestation of creative activity of an individual nature that is established in any form, irrespective of its value, designation or manner of expression."**

Works in the following areas of intellectual property are protected:

- Expressed in words
- Mathematical symbols, graphic signs (literary, journalistic, scientific and cartographic as well as computer programs);
- Graphic, photographic, industrial design;
- Architectural and urban planning;
- Musical and textual, as well as purely musical stage, stage and musical, choreography and pantomime;
- Films.

The general rule is that the copyrights to works belong to the author. The author acquires proprietary and moral rights to the work (copyrights). Only proprietary rights to a work can be transferred, assigned or licensed. In turn, moral rights always remain with the author.

An author's moral rights include the right to:

- Claim the authorship of the work;
- Have the work appear under the author's name or pseudonym, or to make anonymous work available to the public;
- Decide on the integrity of the form and content of work and to the fair use of work;
- Decide to make the work available to the public for the first time;
- Oversee the manner in which the work is used.

It should be noted that proprietary copyrights can be transferred in two different ways - by purchase (full rights) or by license (the right to use a specific work).

It is important that a contract of transfer of copyrights must be in writing and must precisely define whether the rights are fully transferred or that only the license to specific works is

being granted. Moreover, it shall also indicate the area(s) of commercial use of the copyrights. Generally, the transfer of the copyrights is against payment due to the author. However, the parties can reserve the right to transfer copyrights for no consideration.

In general, an author's proprietary copyrights expire after 70 years from the defined moment (e.g. from the author's death).

The author can require the infringer of the author's proprietary rights to:

- Cease the infringement and or eliminate the consequences thereof;
- Compensate the incurred loss;
- Relinquish the illegally obtained benefits.

Apart from the claims mentioned above, the owner of rights can request the infringer:

- To publish a single or multiple announcement in the press;
- To pay an appropriate sum of money into a special fund ("Fundusz Pomocy Twórczości") which cannot be less than twice the amount of the probable profits achieved by the infringer.

## Competition Law

**Overview**

Polish law establishes development and protection of competition, as well as it protects the interests of consumers. The rules of fair competition are described in the Protection of Competition and Consumers Act of February 16, 2007.

The mentioned Act provides definition of practices restricting competition which are prohibited and include in particular:

1) entering into an agreement (with a competitor or a supplier/distributor) that results in:

- Signing of an agreement subject to the acceptance or fulfillment of another duty by the other party, which is neither substantially nor customarily related to the subject of the agreement;
- Direct or indirect fixing of prices or other terms of purchase or sale of products;
- Restriction or control of production or supply, as well as technical development or investments;
- Dividing up supply or purchase markets;
- Application of burdensome or non-homogeneous contractual terms in similar transactions with third parties, creating therefore different conditions of competition for these parties;
- Limiting access to the market or eliminating from the market enterprises not covered by the agreement;
- Collusion between enterprises entering the tender or by those enterprises and entrepreneur who is the organizer of the tender conditions of the offers.

2) abuse of a dominant position, in particular, by:

- Dividing up the market by territorial, product or entity-related criteria;
- Limiting production, supply or technical development to the detriment of contractors or consumers;
- Directly or indirectly imposing unfair prices, including excessive or significantly low prices;
- Making the conclusion of an agreement subject to the acceptance or fulfillment of another activity by the other party, which is neither substantially nor customarily related to the subject of the agreement;
- Significantly delayed payment terms or other conditions of purchase or sale of products;
- Imposing burdensome or non-homogeneous contractual terms in similar transactions with third parties, creating therefore diversified conditions of competition for these parties;
- Imposition by the entrepreneur onerous contract terms, result in unfair benefits.

Under the Act, there is a presumption that an enterprise has a dominant position when it holds a market share exceeding 40% of the relevant market.

The Chairman of the Office for Competition and Consumer Protection (Prezes Urzędu Ochrony Konkurencji i Konsumentów) is the body responsible for promoting and protecting competition in Poland. The Chairman of the Office is able to prevent practices restricting competition that take place in Poland or have an impact on the Polish market by taking necessary actions described in the abovementioned Act. In particular the Chairman is authorized to order the cessation of such practices and the introduction of new clauses or amendments to existing contracts as well as impose a fine on the enterprise (the general rule is that the fine cannot exceed 10% of the annual revenue generated in preceding calendar year).

In general, transactions including mergers; takeovers of the whole or part of the assets of another company or the acquisition of direct or indirect control over a company must be reported to the Chairman of the Office before the transaction is executed. In each case the transaction has to be accepted by the Chairman of the Office in the form of decision.

However, the above applies only to the transactions in which the aggregate worldwide turnover of the enterprises taking part in the planned transaction (and their groups) exceed the equivalent of EUR 1,000,000,000 or their aggregate turnover achieved in Poland exceeds the equivalent of EUR 50,000,000 in the year preceding the notification.

The Chairman of the Office may prohibit a transaction if it may result in a significant restriction of competition in the market, in particular, by the creation or strengthening of a dominant position.

Foreign investors acquiring shares in existing companies or acquiring companies through privatization (see below) should ensure these transactions are reported pursuant to the requirements of the Act or not.

***Prevention of unfair competition***

The rules of fair competition are also established by the Prevention of Unfair Competition Act of April 16, 1993. In particular, the following activities are recognized as acts of unfair competition:

- Violation of business secrets;
- Misleading name of an enterprise;
- Impeding market access;
- Bribery of a public official;
- Misleading marking of goods or services.

An enterprise whose interest is threatened or infringed by an act of unfair competition can request:

- To rectify damages, in accordance with the general regulations;
- To handover the unjustified benefits, in accordance with the general regulations;
- To eliminate the effects of prohibited practices;
- To publicize a single or repeated statement of appropriate content and form;
- To cease prohibited practices;
- To award an appropriate sum of money for a defined social purpose related to support of Polish culture or related to protection of national heritage.

## Capital Markets

Capital market regulations are provided by the following legal acts:

- Polish Commercial Companies Code;
- Act on Trading in Financial Instruments dated July 29, 2005;
- Act on Public Offering, Conditions Governing the Introduction of Financial Instruments to Organized Trading, and Public Companies dated July 29, 2005;
- Act on Capital Market Supervision dated July 29, 2005;
- The Warsaw Stock Exchange Statutes;
- The Rules of the Warsaw Stock Exchange;
- The Rules of the Stock Exchange Court.

After a break, it began operating again on April 16, 1991. The Warsaw Stock Exchange (hereinafter referred as the "WSE") is a joint-stock company founded by the State Treasury, whose stake is currently 35%. The trading system of the WSE is order-driven. WSE trades including the following instruments:

- Shares
- Bonds
- Subscription rights
- Allotment certificates
- Investment certificates
- Derivative instruments: futures, options and index participation units.

There exist two different markets at the WSE (but see section regarding CATALYST below):

1) The WSE Main List operates since the WSE began trading on April 16, 1991. The market is supervised by the Polish Financial Supervision Authority and notified to the European Commission as a regulated market;
2) NewConnect is an alternative market organized and operated by the WSE.

The Polish Financial Supervision Authority ("PFSA") acts on the grounds of the Act on Financial Market Supervision of July 21, 2006. This institution concentrates on ensuring regular operation of the financial market, its stability, security and transparency and confidence in the financial market. Moreover, it ensures that the interests of the market actors are protected. The main tasks of the PFSA cover supervision of banking, capital markets, insurance, pension scheme and electronic money institutions. In addition, the tasks of the PFSA include:

- Undertaking measures aimed at ensuring regular operation of the financial market and its development, as well as competitiveness;
- Undertaking educational and information measures related to financial market operation; participating in the drafting of legal acts related to financial market supervision;
- Creating opportunities for amicable and conciliatory settlement of disputes which may arise between financial market actors;
- Carrying out other activities provided for by the acts of law.

***WSE Listing Requirements***

The most important issue is that only a joint-stock company may be an issuer of shares listed on the WSE (the joint-stock partnership may also theoretically be an issuer of shares listed on the WSE but this has not happened yet). This does not bar entities operating under any other legal form from listing, but their owners need to transform them into joint-stock companies or establish joint-stock companies and transfer the entities assets thereto.

To be listed in the WSE the company has to fulfill certain requirements:

- The General Shareholders' Assembly must adopt a resolution approving a public offer of shares, dematerialization of the shares, and an application for admission of the shares;
- The decision to apply for admission to trading in the regulated market may require the submission of an adequate information such as prospectus or information memorandum;
- The company shall submit the draft of the prospectus to the PFSA who may indicate its comments;
- Before opening the public offer, the issuer will need to execute an agreement with the National Depository of Securities whereby the securities subject to the public offer will be registered by the Depository;
- When the offer is closed, the company shall submit an application for the admission of shares (and possibly also allotment certificates) to stock exchange trading on the main or the parallel market that is further examined by the WSE Management Board;
- When all shares introduced to trading are deposited with the National Depository of Securities, the public offer is closed, and the shares of the new issue registered by the court, the company will file with the WSE Management Board an application for the introduction of shares to trading on the main or the parallel market. The WSE Management Board will indicate the trading system and the date of the first trading session.

***Main Market***

There are certain conditions for admitting the shares to trading on the main market. Rules and the Regulation of the Finance Minister dated May 12, 2010 describe the conditions to be fulfilled by the official stock exchange listing market and the issuers of securities admitted to trading on the market and include:

(i) preparation of an applicable information document (prospectus, memorandum) and its approval by the competent supervisory authority, unless the preparation and approval of the information document are not required;
(ii) no bankruptcy or liquidation proceedings are pending against the issuer;
(iii) the unlimited transferability of shares;
(iv) all issued shares of the same class are subject to an application for the admission to trading on the stock exchange;
(v) the value of shares subject to the application or the value of the issuer's equity is the PLN equivalent of at least EUR 1,000,000;
(vi) shares subject to the application held by shareholders holding not more than 5% of all votes at the General Meeting each, representing at least 25% of all shares of the company subject to the application, or the shareholders holding not more than 5% of all votes at the General Meeting each, jointly holding at least 500,000 shares of the company whose total value is the PLN equivalent of at least EUR 17,000,000;
(vii) the issuer has published financial statements with the opinion of an auditor for at least 3 consecutive financial years prior to the submission of the application for admission, or the company has published, in a manner laid down in separate regulations, information which enables investors to evaluate the financial and economic position of the company as well as the risk related to the acquisition of shares subject to application where the admission to

trading on the official listing market is justified by a reasonable interest of the company or investors.

***NewConnect Market***

NewConnect was established on August 30, 2007 as an alternative market in the meaning of the E.U. law and Polish legislation. It is aimed at start-up, growing companies, especially in the high-tech sector.

NewConnect has the status of an organized market; it is operated by the WSE but outside the regulated market as an alternative trading system.

NewConnect offers more liberal formal obligations and information requirements, which reduces the cost of capital.

NewConnect was conceived as the first step on the exchange market for listed companies.

NewConnect is a market for companies:

(i) with a large growth potential;
(ii) established not more than 3-4 years ago and start-ups building a track record;
(iii) with projected capitalization up to ca. PLN 20 million;
(iv) looking for equity between several hundred thousand and several million PLN;
(v) operating in innovative sectors, mainly with intangible assets (e.g., IT, electronic media, telecommunication, biotechnology, environmental protection, alternative energy, modern services);
(vi) with a vision and likelihood of an IPO in the exchange market in near future.

***CATALYST***

On September 30, 2009, the Warsaw stock exchange launched CATALYST - the first organized market in debt securities in Poland and a unique market in Central and Eastern Europe.

The new system shall facilitate and optimize corporate and municipal bonds issuance. Secondary trading in these instruments will be conducted on quotation systems operated by the Warsaw Stock Exchange and BondSpot SA (formerly: MTS CeTO). As of September 30, 2009 issuers and investors have gained access to new regulated markets as well as issuance mechanisms and procedures for authorizing (registering) the securities in WSE information systems. Until the end of 2009, the WSE and BondSpot will additionally launch alternative trading systems. These markets, similar to NewConnect in terms of regulations, will offer small and large entities the possibility to issue publicly traded bonds. CATALYST trading segments provide access to the market equally well for qualified and individual investors connecting them through a wide range of intermediaries - banks and investment companies. As it is planned the CATALYST project shall result in a retail-wholesale market in debt securities that will provide a financing tool for corporations as well as local governments (municipalities) and expand possibilities of investing in financial instruments traded on a transparent, efficient, safe and supervised public market.

## Investment Opportunities

***Special Economic Zones***

Special Economic Zones ("SEZ") are geographical areas administratively distinguished by the Council of Ministers as providing special conditions to conduct business activity. They are created by means of the Council of Ministers regulations, which precise kinds of business activities allowed to operate within the zone, maximum amount of public aid possible to be granted to each entrepreneur and detailed terms and conditions of conducting business activity within the zone.

SEZ are established for indicated periods of time. After the lapse of periods, for which SEZ were established, the entrepreneurs shall conduct business activity on the ground of general regulation. Originally, SEZ were established for 20-year period, so they would expire in 2016-2017 (according to the time of creation of specific zones). However, at the 2013 the Council of Ministers decided to extend the existence of the zones up to the end of 2026.

As a principle, SEZ are established on the territory owned by the State Treasury or territorial government unit. Such territory is prepared for further investment and can be acquired by the entrepreneur in order to conduct business activity.

The entrepreneurs can conduct business activity within a specific SEZ with the permission granted by the Minister appropriate for the Economy. This permission determines the kind of business activity which will be conducted by the entrepreneur and different conditions under which such activity may be conducted. These conditions may concern employment of a set number of employees for indicated period of time to perform activity conducted within the zone, performance of the investment on the territory of the zone exceeding specified for the investments amount, the term of accomplishment of the investment or maximum amount of qualified costs of the investment and two-years qualified costs of work. The Ministry of Economy grants permissions to operate within the special economic zone to the winner of the tender or negotiations undertaken on the ground of public invitation.

Operation within the SEZ is advantageous for the entrepreneur, as it gives the possibility to acquire land fully prepared for development. Moreover, any income obtained from the business activity conducted on the territory of the SEZ is exempted from income taxes. Finally, the administrators of the zones, which are capital companies created and controlled by the State Treasury or the voivode self-government, can provide the entrepreneurs with assistance in dealing with formalities connected with the investment. In addition, some of the communes situated on the territory of SEZ exercise their right to establish also a property tax exemption to additionally attract potential investors.

It should be noted that benefits obtained by the entrepreneur operating within the SEZ are classified as state aid. As Poland is bound by European Community law requirements concerning public aid, total support for entrepreneurs cannot exceed limits imposed by EU law. European regulations distinguish three main types of public aid: regional, horizontal and sectoral aid. Incentives for entrepreneurs connected with SEZ are treated as a regional aid. Regional aid can be granted to cover only qualified costs borne by the entrepreneur, which consist of cost of the new investment or cost of work of newly employed employees.

The European Commission accepted a regional aid map for Poland for the years 2014-2020, in which maximum aid intensity, understood as a percentage of costs eligible for i.e. founding the investment or job creation posts, was established for each voivodship. It should be noted that the entrepreneur can obtain financial aid both for the new investment and for the new posts created, however, the overall amount of state's support cannot exceed the maximum level indicated by the European Commission.

Below is the permissible public aid by regions:

- 50% - in following voivodships: Warmińsko-Mazurskie, Podlaskie, Lubelskie, Podkarpackie;
- 35% - in following voivodships: Zachodniopomorskie, Pomorskie, Lubuskie, Kujawsko-Pomorskiej, Ciechanowsko-Płacki, Ostrołęcko-Siedlecki, Warszawski Wschodni, Łódzkie, Opolskie, Radomskie, świętokrzyskie, Małopolskie;
- 25% - in in following voivodships Wielkopolskie, Dolnośląskie, Śląskie;
- 20% - Warszawski Zachodni;
- Warszawa - 15% (till 31 December, 2017); 10% (since 1 January, 2018).

The above maximum limits of state aid can be, under special requirements, increased for investments realized by small and medium entrepreneurs in the meaning of European Union legislation.

It should be noted, that the minimum level of investment enabling an entrepreneur to obtain public aid under a specific SEZ is EUR 100,000. However, not every entrepreneur can obtain financial aid. Regional aid cannot be granted for conducting business activity in the sector of ferrous, steel and synthetic fiber metallurgy in the meaning of European Union regulation, in coal mining sector, in fishery sector, in agriculture sector connected with the production of primeval products specified in European Union legislation and in the activity connected with production and turnover of the products imitating milk and milk preserves.

Moreover, special regulations are established for granting state aid for large investment, understood as new investment, undertaken over a period of three years by one or more investors, in the case where fixed assets are linked together, which are economically indivisible and where the qualified costs for aid are jointly valued at over 50 million EUR, as calculated according to the prices and exchange rates on the day permission is granted.

***EU funds***

As partly mentioned above, entrepreneurs operating in Poland can apply for European Union funds. European funds are present in Poland in form of regional programs (per one program for each voivodeship) and in the form of sectoral programs, which include:

- Infrastructure and Environment;
- Intelligent Development;
- Knowledge Education Development;
- Digital Poland;
- Eastern Poland;
- European Territorial Cooperation Programs;
- Technical Support.

As a principle, the entrepreneur who wishes to obtain grants from one of above funds, shall submit a motion within the term established separately for each of these programs to the public institution managing the appropriate program and go through the procedure of verification of fulfillment of the requirements. Subsidy from one of the above funds shall be granted to perform these investments, which best meets the goals and requirements of the program. However, some of the investments can be treated as special importance for realization of indicated program. In such situation, special funds will be reserved for performance of this investment. It does not mean, however, that the subsidy will be granted automatically, as the entrepreneur must meet special requirements provided by the chosen program. It significantly improves entrepreneur's position in comparison to other competitors.

Moreover, it should be emphasized, that Polish law provides special incentives not only for large investments. Especially, small and medium entrepreneurs can obtain, under specified conditions, a credit on special advantageous terms for realization of the investments resulting in the creation and implementation of a new technology in scope of production or providing services. Among other requirements, the entrepreneur has to have a personal investment of at least of 25% .

Additionally, Polish law provides special tax incentives for certain categories of entrepreneurs. For example, the entrepreneurs who obtain the status of a research-development unit, can receive a property tax exemption in reference to the properties utilized in connection with the research and development plan.

***Acquisition of land***

An entrepreneur who wishes to purchase real property should check the legal state of the land. One of the most important documents to be verified is the extract from the Land & Mortgage Register ("księga wieczysta") kept for real property by the district court. This document contains fundamental information concerning the legal status of the real property, including information about the owner and any liabilities and encumbrances on the real property. The purchaser who acquired the real property in good faith relying on the information revealed thereon acquires the real property, as a principle, without unrevealed encumbrances and liens, subject to some exceptions. Some encumbrances are established ex lege and are not usually revealed in the Land & Mortgage Register but they still bind the purchaser of the property. Moreover, the purchaser has to examine the extract from the Land Registry ("rejestr/ewidencja gruntów") to ensure which property it acquires and where such property is situated. Excerpts from the Land and Mortgage Register and from the Land Registry are two essential documents, which should be verified during each sale agreement concerning the real properties. The list of documents to be verified shall be extended according to specific factual situation.

According to Polish law, the sale agreement of the real property must be concluded in the form of notarial deed in order to be valid and enforceable. After conclusion of the sale agreement, the public notary submits the motion to the district court maintaining the Land & Mortgage register for the real property in order to reveal the new owner of the real property in the register.

Polish law provides for several limitations for the foreigners to acquire real property in Poland. Acquisition of real property by a foreigner not being citizen of an EU-Member State shall be preceded by an administrative decision issued by the Ministry of Internal Affairs. The obligation shall also apply to the citizens of the EU-Member States in case of forest and agricultural real property. In addition, acquiring shares in the commercial company registered in Poland also requires such permission if the company is an owner or a holder of perpetual usufruct of the real property situated in Poland. Polish legislation consider the foreigner as a natural person who does not possess Polish citizenship, a legal entity with registered seat abroad, the entity without legal personality established by natural person who does not possess Polish citizenship and/or legal entity with the registered seat abroad, established according to foreign legal regulations, as well as the legal person and commercial company without legal personality controlled directly or indirectly by the person or entities mentioned above. The obligation to obtain administrative decision arises in case of acquisition of the real property by the foreigner on the ground of any title. However, there are some exceptions to this rule.

Polish law sometimes provides a right of first refusal reserved for a third party, especially a public authority. In such cases, the parties cannot instantly conclude a definite sale agreement, but must conclude a conditional agreement with reservation, that the definite agreement will be concluded after notification of the benefit of the right of first refusal and after ineffective lapse of time for exercising of objective right. If the entitled authority wants to exercise its right, definite agreement will be concluded between the seller and the entitled authority. If the entitled authority withdraw its right or does not announce the decision to exercise the right within indicated period of time, the contracting parties will be able to conclude the definitive agreement.

***Privatization of national entities***

Due to the central-planned model of economic administration during the communist era, many companies were owned by the State. Due to their ineffectiveness and requirements of free market rules, the State constantly disposes of those assets in favour of private investors. Despite the fact that the process of privatization started at the beginning of post-communist era, many valuable assets are still owned by the State. Recently announced government's plans to privatize many of those companies should be regarded as bold intentions and potential business opportunities.

The Act of August 30, 1996 on Commercialization and Privatization is an act of law which governs commercialization and privatization rules and procedures.

***Commercialization***

According to the mentioned Act, commercialization ("Komercjalizacja") shall consist of transformation of State-owned enterprise ("przedsiębiorstwo państwowe") into a company which shall become a legal successor to all legal relations of which the State-owned enterprise has been a subject. State-owned enterprise is a very specific form of conducting business activity, reserved only for the State. According to Act of September 25, 1981 on State Enterprises, State-owned enterprise is an independent, self-governing and self-financing entrepreneur having legal personality. As private entities may not own assets of State-owned enterprise nor be its shareholder, the State-owned enterprise shall be commercialized and transformed into a regular company governed by the rules of Commercial Companies Code. If such action is performed, the State-owned enterprise transforms into limited liability company or joint stock company having the state as a share/stockholder. Such company may be subject to privatization process.

***Forms of privatization***

There are two forms of privatization - indirect and direct. According to Polish law indirect privatization is:

- taking up shares in increased initial capital of sole shareholder companies of the State Treasury, established as a result of commercialization;
- transferring shares held by the State Treasury in companies.

However, State enterprises which were not commercialized may be privatized only in the form of direct privatization which is a disposal of tangible and non-tangible assets of a State-owned enterprise or a company established as a result of commercialization in the form of:

(i) sale of the enterprise;
(ii) contributing an enterprise to the company;
(iii) giving an enterprise to be used for consideration.

The most common form of privatization is indirect privatization - transferring shares held by the State Treasury in companies and taking up shares in increased initial capital of sole shareholder companies of the State Treasury. Therefore, the core of privatization is the transfer of shares - ownership from the State to the private entity. The origin of shares, already existing or issued during increase of initial capital is a matter of minor importance.

***Indirect privatization modes***

Shares owned by the State Treasury shall be transferred in the following manner:

- By an offer announced in public;
- By public tender;
- As a result of negotiations undertaken on the basis of public invitation;
- By accepting an offer in response to invitation announced by virtue of Act of Public Offer and introducing financial instruments to organized trading system and public companies;
- As a result of auction announced publicly;
- As a result of sale of shares at a regulated market.

Generally, no other ways of transfer of shares are permitted, as a transfer of shares owned by the State Treasury, except for the additional possibilities that may be provided by the Council of Ministers in particular situations.

Below are presented examples of indirect privatization:

***Offer announced in public***

Transfer of shares as a result of a publicly announced offer takes place in accordance with the terms set forth in the Civil Code. An offer compliant with that provision should comprise material provisions of the share transfer agreement and enable its conclusion without the need to conduct prolonged negotiations as regards the terms and conditions of the agreement.

***Public Tender***

Public tender consists of a public invitation of potential buyers to submit bids for the purchase of State Treasury shares. In the mentioned invitation to the tender, the Minister of the State Treasury specifies, inter alia, the number and type of shares which are the subject of the tender, the minimum sales price, minimal requirements as regards investment and social commitments, the amount of the bid bond, the date, place and form of the bid bond contribution, the manner in which the bids are submitted along with the scope of information made available by the bidder.

After the bid submission deadline expires, a committee appointed by the Minister of the State Treasury, in an open procedure, opens all the bids submitted by potential buyers and evaluates them. Subsequently, in a closed procedure, it evaluates the merits of the submitted bids and either selects the most advantageous bid or withdraws from the tender without making a selection. In the process of selecting the most advantageous bid, the committee follows the criteria specified in the tender announcement, in particular the price, as well as the manner and the date of purchase price payment.

***Negotiations undertaken on the basis of a public invitation*** This privatization path is generally applied in the privatization of medium-sized and large companies, whose controlling stakes are sold to strategic investors. Negotiations undertaken on the basis of a public invitation consist of negotiations regarding acquisition of shares in that company. The negotiations are conducted in accordance with the procedure set forth in the Civil Code. When parties arrive at an understanding as regards all the material provisions concerning the transfer of the company's shares, the agreement is concluded. The requirement for the procedure to be "public" only concerns the fact of the public invitation to negotiations. The negotiation process is not of the open nature.

In the case when negotiations are conducted with more than one entity, the seller, unless it withdraws from the negotiations, may conclude an agreement only with that entity which offers the seller the most advantageous terms and conditions of the agreement, in particular as regards the share price, other criteria specified in the subject of the negotiations, as well as credibility and financial capacity of the entities with which the negotiations are conducted. After completion of negotiations, the entity participating in the negotiations submits in writing the binding terms and conditions of the agreement which it proposes. The seller is under obligation to inform all the entities admitted to the negotiations that one entity was granted an exclusivity period for negotiations and also about the fact that an agreement to transfer shares was concluded.

***By accepting an offer in response to invitation to purchase shares on stock market***

Minister of the State Treasury, acting on behalf of the State Treasury, may sell shares of public companies on the basis of a call announced on the basis of the Act on the Public Offer and Terms and Conditions of Trading of Financial Instruments and Public Companies. That procedure applies exclusively to companies listed on the stock exchange.

***Publicly announced auction***

Potential investors are invited to participate in an auction on the basis of announcements of Minister of the State Treasury published in a daily newspaper of a nationwide circulation. The auction may be conducted if the starting price is not lower than the book value of shares.

In the announcement the Minister of the State Treasury specifies, inter alia, the number and type of shares which are the subject of auction and their share in the initial capital of the company; the face value of one share; starting price; the manner of purchase price payment; the amount of the bid bond; the date, place and form of the bid bond contribution; specification of detailed conditions that must be met by the application for participation in the auction; the venue; the date and the hour of the beginning of the auction; the contents of the agreement for the sale of shares.

Application for participation in the auction should be submitted in a written form and include: name, surname and address or the business name and the registered seat of the entity which is interested in participation in the auction; correspondence address; other data required by the seller, and set forth in the invitation to participate in the auction. The application should be accompanied with the receipt confirming that the bid bond has been contributed.

The volume of the bid bond the seller specifies within the 1% and 10% of the starting price. The bid bond may be contributed in one or more forms specified by the seller: in cash; in a bank- certified cheque; in a bank surety; in a bank guarantee; in an insurance guarantee.

The winning bid is made when the seller and the relevant auction participant sign the agreement for the sale of shares, whose contents are specified in the invitation to participate in the auction.

***Sale of shares on the regulated market***

The regulated market is the most prestigious segment of the securities market, where individual and institutional investors can buy and sell securities. The regulated market allows the entities to acquire the capital necessary for implementation of investments, find a strategic investor and create a positive corporate image among their clients and contractors.

Privatization may take place in a manner of the sale of shares admitted for sale on the regulated market. To this manner shall apply the provisions regulating the securities trade, and in particular the provisions of the Financial Instruments Trade Act of July 29, 2005 and the Act on the Public Offer and Terms and Conditions of Trading of Financial Instruments and Public Companies of July 29, 2005.

***Privatization opportunities***

The variety of indirect privatization methods as well as their flexibility are the reasons why the privatization is in fact a good opportunity for the investors to obtain shares of valuable companies. Privatization via stock exchange market provides that purchase price of single share shall be evaluated by market together with mechanisms of demand and supply.

***Medical sector***

Poland's public health care system is commonly described as inefficient and expensive. In order to meet expectations of thousands of Polish citizens demanding proper healthcare, few private healthcare facilities were established, mainly by doctors who noticed the poor condition of public healthcare and had courage to start their own business. This was 1990 and during almost twenty years some of those private initiatives transformed into country-wide medical service companies that are capable of providing wide range of medical services.

Due to inefficiency of public health care system and a growing number of private health care facilities, it is easy to assume that there is a huge demand for easy accessible health services and number of clients of private health services providers will grow. Although, the private health sector was dominated by few key players, this market has still extreme potential and millions of
middle-class Poles as potential clients. Therefore, potential investors shall consider medical services as potentially very profitable business opportunities.

Below is provided basic information concerning medical services in the territory of Republic of Poland with special attention drawn to providing medical services by private entities.

Providing a medical service is governed by the Act as of April 15, 2011 on medical activity. The Act determines that medical services are provided by medical establishments. According to mentioned Act, medical establishments are in general:

1) entrepreneurs in any of the forms provided for the exercise of economic activities;
2) independent public health care posts;
3) budget units;
4) research institutes dealing with research and development in medical science;
5) foundations and associations whose statutory purpose is to perform the activities in the fields of health and whose statute allows performing health activities..

To commence health activity, above mentioned must have been registered into register of health units. **Health activities may be conducted in form of:**

(i) Business activity conducted by a natural person;
(ii) Civil partnership;
(iii) Companies;
(iv) Budget units.

***Venture Capital***

Poland shall be considered a good opportunity for venture capital fund investment. According to recent surveys, Poles are among those who are very likely to start their own businesses. Moreover, even the biggest Polish companies are not nearly as big as their foreign competitors. Additionally, the Polish economy was not as affected by the world financial crisis as other European countries. In other words, Polish companies are eager to expand.

## European Union Data Privacy Regulations

Nearly all companies doing business in the EEA (European Union plus Norway, Switzerland and Liechtenstein) are covered by the EU Data Privacy Regulations. Companies that maintain databases with retail customers (consumers) data are under special obligations. All EU-based companies that transfer personal data to the US are subject to EU Data Privacy rules.

***EU Data Protection Directive***

In the European Union, the right to privacy is considered as fundamental human right and therefore enjoys special protection. In order to harmonize the legal provisions in the European Union, an EU Data Protection Directive has been adopted. This Directive has been implemented in the legal

systems of all 27 Member States of the European Union. This means that each European country has a piece of legislation devoted specially to personal data protection.

Legislation across the European Union is based on the EU Data Protection Directive — but it is not identical in all EU Member States. There are important differences. Based on a common denominator, some countries have adopted more liberal approach while others are more formalistic. A compliance assessment should be done on a country-by-country basis.

***Data Privacy Regulators***

In each of the European Union Member States an independent regulator has been appointed for issues related to data privacy. The regulators usually enjoy wide competencies in relation to the control of compliance with Data Privacy Regulations and play an important role in the enforcement of these provisions.

***Data Covered***

Generally speaking, **all information relating to an identifiable individual is considered personal data.** However, some differences across the European Union remain as to the protection of data regarding legal persons (in most countries such data are excluded from protection) and business contact data. Data regarding retail customers and data regarding personnel are definitely regarded as personal data.

***Controller vs Processor***

An important distinction is made between the role of controller and processor of personal data. A controller is the entity that decides on the scope of data processing, the purposes of data processing and generally manages the data processing operations. A processor is an entity that provides specific services to the controller involving the processing of personal data but doesn't make strategic decisions. The distinction is important since the controller is legally responsible for fulfilling a considerable number of statutory obligations in relation to data processing while the processor is not.

***Processing Data in the EU***

Processing of personal data is only possible on limited grounds in the European Union. The broadest and safest is the **consent of the individual concerned, i.e. an opt-in system.** Nevertheless, consent is not always required. The processing of personal data is based on the principle of proportionality, i.e. processors are only authorized to process data that is objectively necessary for the purposes of fulfilling their goals. In most EU countries, each database needs to be notified to the Data Privacy regulators (certain exceptions apply).

Special attention needs to be paid in relation to processing personnel data. Some EU Member States have adopted a position whereby the employer is only authorized to process a limited number of information regarding personal data, as defined in specific regulations. Usually companies apply Employee Consent Forms to obtain consent from the employees concerned for various data processing operations — although in some EU Member States, such as Poland, the validity of an employee's consent is presently questioned.

***Sensitive Data***

The notion of sensitive data is broad and covers such information as racial or ethnic origin, religious or ideological beliefs, health status and health information, trade union membership, political preferences, sexual preferences, data regarding criminal record etc. Generally, under EU regulations, it is prohibited to process such data unless specific limited grounds apply. Hence, certain information processed in the US can not be processed in the same manner in Europe.

***Transferring personal data to the United States***

Under European Union regulations, the United States is not regarded as a country "ensuring an adequate level of protection" from the point of view of EU Data Privacy regulations. Hence, transfers of data to the US are subject to special regulations. If the importer of the data (the company in the US) is not covered by the Safe Harbor Program operated by the US Federal Trade Commission, the company involved usually needs to seek an authorization from the Data Privacy Regulator or the explicit consent of the individual concerned.

***Model Clauses***

In order to facilitate transfers of personal data between the EU and such countries as the US, the European Commission adopted a set of contractual model clauses to for the purposes of transfers of data. Such clauses are recognized as providing adequate safeguards although they do not always exclude the necessity to apply for an authorization to transfer data.

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