Legal aspects of doing business in Poland 2010

This publication is made in co-operation with:

British Polish Chamber of Commerce

Invest in Poland

GLN

Gide Loyrette Nouel

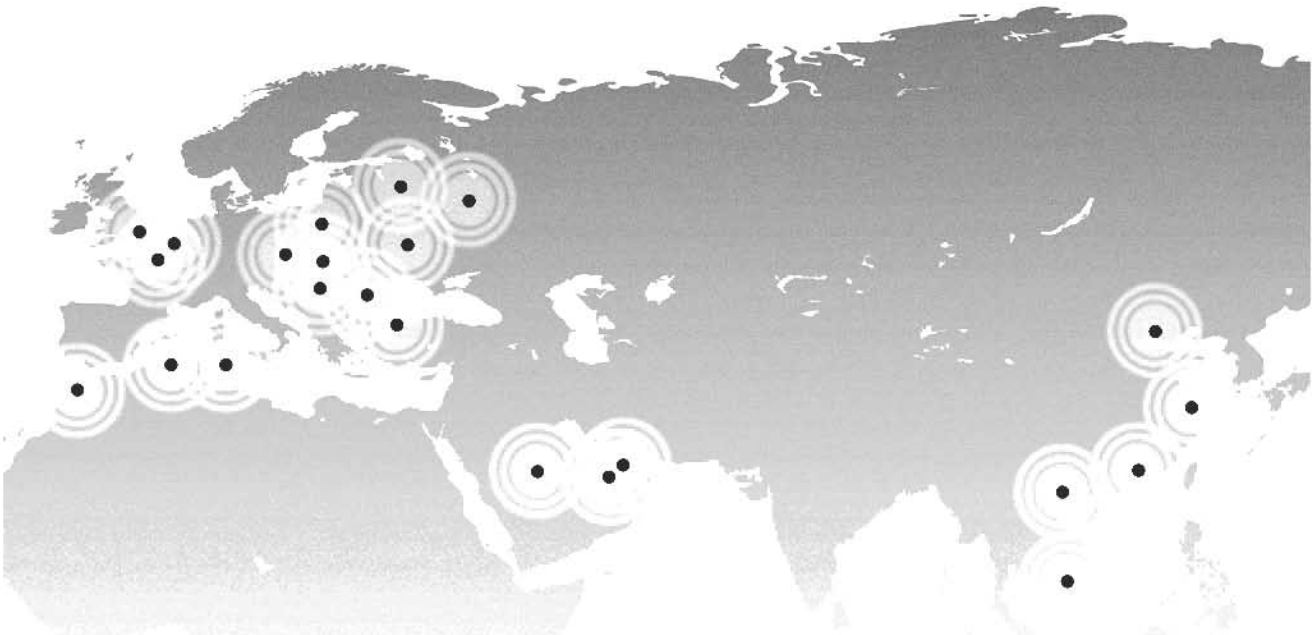
Table of Contents

GLN
Gide Loyrette Nouel

Table of Contents

GLN
Gide Loyrette Nouel

Information On Gide Loyrette Nouel



1.1 Gide Loyrette Nouel worldwide

Gide Loyrette Nouel has grown to be the largest law firm in France, and one of the leading, independent law firms in Europe. With 108 partners and over 700 professional staff, drawn from over 50 different nationalities, we employ some of the most highly-regarded experts on every aspect of finance and business law. We currently operate from 24 offices in 19 different countries.

For over 80 years, GLN has been providing a comprehensive legal service to companies, institutions and government agencies. We demand the highest standards from all our lawyers and therefore we are well-placed to advise clients on any business issues, no matter how complex or diverse.

Our teams in every office consist of local and foreign lawyers with a profound knowledge of law, as well as the necessary language skills to understand the needs of our clients and to provide them with legal assistance tailored to their individual requirements and preferences.

1.2 Gide Loyrette Nouel in Poland

GLN opened in Poland in October 1990. Today it is headed by partners Dariusz Tokarczuk and Robert Jędrzejczyk, who are supported by more than 40 Polish and French lawyers. GLN ranks as one of the largest and longest standing foreign law firms in Poland.

GLN Warsaw employs partners and associates who have extensive experience in all areas of business law, including corporate law (mergers and acquisitions, incorporation and registration of companies), privatisation and real estate law (acquisition of real property assets, construction and town planning), banking and finance law (project finance, guarantees and security interests, leasing), tax law (tax planning, day-to-day tax work, tax disputes), labour law (trade union negotiations, restructuring, group dismissals, status of seconded personnel). They also deal with issues relating to energy and infrastructure, environmental protection, competition and intellectual property. Last but not least, GLN Warsaw has been very successful in representing

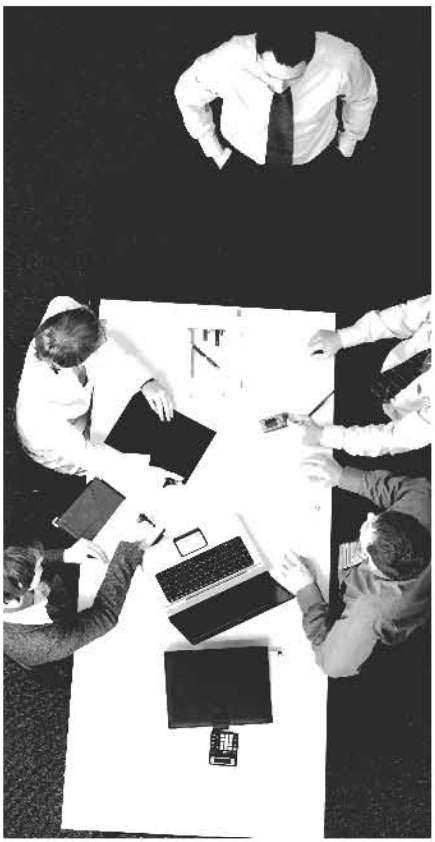
Information On Gide Loyrette Nouel

clients in mediation, arbitration and litigation proceedings.
Our lawyers at the Warsaw office of GLN hold university degrees and professional qualifications in law (such as "radca prawny" or "adwokat") and most have additionally studied or worked abroad, mainly in France, Great Britain and the United States of America. This combination of academic and professional experience arms our lawyers with extensive legal knowledge and with a highly developed sense of business awareness and acumen. It is upon these skills and assets that we build our understanding of our clients' commercial objectives and of the business environment from which they originate and within which they operate.

The Warsaw Office provides a wide range of legal services, including in particular:

- Mergers & Acquisitions
- Corporate Law
- Banking & Finance
- Private Equity
- Capital Markets and Securities
- Tax
- Restructuring and Insolvency Law
- Energy Law and Infrastructure Projects
- Public Procurement
- Environment Protection Law
- Real Estate
- Competition and Distribution Law
- EU Law
- Public Aid
- Litigation and Arbitration
- Intellectual Property and New Technologies
- Labour Law.

Setting up a business



Foreign investors can conduct business in Poland through a subsidiary – company or partnership (see section 2.1), or through other types of business entity such as a branch or a representative office (see section 2.2).

2.1 Companies and partnerships

The Commercial Companies Code dated 15 September 2000 ("**Commercial Companies Code**") provides for two types of company: limited liability company ("**LLC**"; Polish abbreviation -"**sp. z o.o.**") and joint-stock company ("**JSC**"; Polish abbreviation – "**S.A.**"), and for four types of partnership (i.e. registered partnership, professional partnership, limited partnership and limited joint stock partnership).

Type of company or partnership	Number of registered entities (as at 30 June 2009)
Joint-Stock Company	8,892
Limited Liability Company	229,558
Registered Partnership	30,850
Professional Partnership	1,266
Limited Partnership	4,347
Limited Joint-Stock Partnership	639

All these types of companies and partnerships can be formed by the following categories of investors:

- foreign investors from EU or EEA member states
- foreign investors from other countries who enjoy freedom of economic activity under agreements concluded with EU or EU Member States
- foreign investors from other countries than those mentioned above:
  - holding the following permits in Poland:
    - settlement permit

- residence permit for a long-term European Community resident
- residence permit for a definite period
- residence permit for a tolerated stay
- refugee residence permit
- consent for a tolerated stay
- permit to reside for a defined period and have been married to a Polish citizen residing in Poland

enjoying temporary protection in Poland

holding a valid "*Karta Polaka*" ("Polish Charter")

family members of foreign investors from the EU or EEA member states, as set out by relevant legislation.

Other categories of foreign investors can incorporate businesses in the form of (a) a joint-stock company, (b) a limited liability company, (c) a limited partnership, or (d) a limited joint-stock partnership, and can participate in such companies and subscribe or acquire shares in them, unless provided otherwise in international agreements. The following sections outline the main steps and procedures associated with incorporating and operating the various types of company and partnership.

2.1.1 Limited Liability and Joint-Stock Companies

In practice, LLCs are the most common form of business organisation for foreign and domestic investors engaging in business in Poland. The minimum share capital required to establish an LLC is PLN 5,000.

JSCs are most often used for specific types of business activity and for specific purposes (for certain types of business activity, e.g. banking, insurance, this legal form is compulsory). The structure and operation of JSCs is more complex than that of LLCs. For instance, in the case of the former, the presence of a notary public is required at all meetings of shareholders, and specific due diligence procedures must be complied with. The minimum share capital for a JSC is PLN 100,000. Please note that shareholders in a company (whether LLC or JSC) cannot be held liable for the obligations and liabilities of the company.

FORMATION AND REGISTRATION

A company is incorporated by executing its articles of association (LLC) or statute (JSC) in the form of a notarial deed and when all its shares are

subscribed for (JSC). Both types of company can be incorporated by an individual or a legal entity. The only exception is a sole-shareholder LLC, which cannot incorporate an LCC or JSC as the sole shareholder.

Once a company has executed its articles of association or statute, this company can:

- start operating under its registered name – with the additional designation 'company in organisation' – *spółka w organizacji*
- acquire real estate and other property rights
- assume obligations and have rights
- sue and be sued.

Please note, however, that a company only acquires the status of a legal entity upon entry in the companies register at the National Court Register.

Shareholder contributions towards the share capital can be made in cash or in-kind. In-kind contributions to a JSC should first be valued by a chartered accountant, though management boards may be release from this obligation in certain cases.

Contributions to the share capital of an LLC have to be made in full prior to its registration, whereas only 25% of the share capital of a JSC must be paid up before its registration. Shares in a JSC taken up in exchange of an in-kind contribution must be fully paid up within one year after the JSC's registration.[1]

The management board is obliged to file an application to enter the company in the National Court Register within six months from executing the articles of association or the statute, otherwise the company is dissolved.

---

[1] *As a general rule, in-kind contributions to a JSC have to be audited before their contribution towards the share capital. However, on 5 October 2008, an amendment of the CCC came into force setting out particular situations where an in-kind contribution to JSC does not need to be audited. According to Article 3121 § 1 of the CCC, no audit is necessary for non-cash contributions of (a) transferable securities or money-market instruments, if they were valued at the weighted average price at which they have been traded on the regulated marked over a six-month period preceding the day of making the contribution, (b) non-transferable securities or money-market instruments, as long as they were subject to a fair value opinion by the chartered auditor within six months of making the contribution, (c) non-transferable securities or money-market instruments, as long as their fair value results from the financial statement for the previous financial year examined by a chartered auditor.*

Setting up a business

No	Stage	Timeframe
1	Executing the articles of association or statute (in the form of a notarial deed)	
2	Executing a bank account and lease agreement for the company's registered office	
3	Paying contributions to the share capital (in the case of an LLC, the entire share capital must be paid up prior to the registration of the company)	
4	Registration in the National Court Register, the Statistical Office and the Tax Office[2]	The statutory period for the National Court Register to register a company is seven days, but in practice registration takes an average of three weeks. Within three days of registration in the companies register, the National Court Register send *ex officio* registration applications to the statistical and tax offices.

CORPORATE BODIES

The normal corporate bodies of an LLC or JSC are:

the meeting of shareholders
the supervisory board
the management board.

[2] *Since 31 March 2009, companies are registered with the statistical and tax offices through the National Court Register. Therefore, it is necessary to attach additional documents to the registration application required by the law for registration with the statistical and tax offices.*

The meeting of shareholders and management board are mandatory in both types of company. A supervisory board is only mandatory for JSCs (see below), whereas LLCs can choose not to establish a supervisory board (with some exceptions described below) or to establish an audit committee in addition or instead.

Meeting of shareholders

In any company, the meeting of shareholders is generally the ultimate decision-making body. There may be ordinary and extraordinary meetings of shareholders. The management board convenes an ordinary meeting of shareholders, which should be held within six months from the end of the company's financial year, in order to deal with the following matters:

- approving the annual financial report of the company
- approving the management board report on the company's activities
- acknowledging the performance of duties by members of the company's corporate bodies.

The meeting of shareholders is in particular responsible for the following matters:

- amending the articles of association or statute
- adopting a resolution about making and repaying additional payments (LLC)
- deciding on the merger, division or transformation of the company
- increasing or reducing the share capital
- deciding on the dissolution of the company.

Management Board

A management board consists of one or more members. As a rule, management board members are appointed and dismissed by a resolution of the meetings of shareholders (in LLCs) or by a resolution of the supervisory board (in JSCs). However, this rule can be modified and alternative methods of appointing and dismissing members can be provided for in the articles of association or the statute.

The management board is in charge of the day-to-day management and representation of the company. The powers of the management board are similar in both types of companies, except that in the case of LLCs, any individual member may conduct matters within the ordinary course of business.

Supervisory Board and Audit Committee

A supervisory board is mandatory in a JSC, whereas in an LLC it is only required if the share capital exceeds PLN 500,000 and there are more than 25 shareholders. If these criteria are not met then a supervisory board is optional.

As mentioned above, an audit committee may be created in an LLC instead of or in addition to a supervisory board, but in practice it is hardly ever the case.

Liability

The shareholders of an LLC and a JSC are not personally responsible for the obligations of the company.

However, legal regulations providing for management board members' civil, tax and criminal liability will also apply to any shareholders who are also management board members.

INCREASE/REDUCTION IN SHARE CAPITAL – MERGER/DEMERGER – TRANSFORMATION

Increases in a company's share capital normally require either:

- a resolution of shareholders modifying the company's articles of association or statute
- a resolution of the management board, where permitted by the JSC's statute.

However, where the articles of association of an LLC specify an authorised level of share capital, within a set deadline, then an increase of capital within that limit and deadline will not require the articles of association to be amended.

Reductions in a company's share capital normally require:

- a resolution of shareholders
- a notification to the company's creditors, who have three months in which to raise any objections.

Moreover, in the case of a JSC, certain statutory conditions must also be met.

A merger involves completing a three-stage process:

- a preparatory phase, involving the preparation of a merger plan
- a subsequent phase, in which the corporate bodies of both companies must accept the planned operation by a qualified majority of votes
- a registration phase, involving the registration and announcement of the merger.

The Commercial Companies Code also provides for a demerger of a company.

The demerger process involves three stages, just like a merger.

The Polish law also allows cross-border mergers.

Many forms of company transformation are possible, for instance:

- a partnership may be converted into a commercial company (either an LLC or a JSC)
- a commercial company may be converted into a partnership
- a commercial company of one type may be converted into a different type.

WINDING UP AND LIQUIDATION OF A COMPANY

A commercial company can be wound up in circumstances defined by its articles of association or statute, for any reason approved by the meeting of shareholders, where the company's registered office is moved abroad, or where the company is declared bankrupt.

2.1.2 Partnerships

The Commercial Companies Code provides for four types of partnership: (a) a registered partnership, (b) a professional partnership, (c) a limited partnership and (d) a limited joint-stock partnership.

Unlike companies, partnerships are not considered separate legal entities, but do have a quasi-legal personality, which means that they can enter into legal relationships with other entities. Thus, a partnership can acquire rights in its own name (including the ownership of real property), it can assume obligations, sue and be sued.

Partnerships are liable to their creditors for obligations assumed by the partnership. In addition, it is important to note that (unlike a company's shareholders) the partners in a partnership are, in general, personally liable for the partnership's debts. Accordingly, each of the partners bears joint and several liability, together with the other partners and with the partnership itself, for all obligations of the partnership.
In some cases, the extent of this personal liability may be limited (e.g. in the case of limited partners in a Limited Partnership). Moreover, a claim may only be enforced against a partner, if enforcement proceedings against the partnership itself have proved insufficient.
Please note that partnerships are transparent for the purpose of Polish income tax regulations. Consequently, all profits earned by a partnership will be allocated directly to its partners' individual tax base and taxed at the rate applicable to the partner concerned.

2.2 Other business entities

Apart from the right to establish or hold shares in commercial companies and partnerships, the Act on Freedom of Economic Activity dated 2 July 2004 gives all foreigners the right to conduct business in Poland through a branch or representative office.

2.2.1 Branch office

A branch office does not have legal personality. It is considered to be a constituent part of a foreign enterprise and may only conduct economic activity within the scope of the foreign company's permitted scope of business. Moreover, the branch may not enter into any legal relationships in its own name.
All acts of a branch are deemed to be those of the foreign company that established the branch. Accordingly, the branch's founder remains liable for any obligations contracted by the branch on its behalf. The branch is required to use the

foreign enterprise's official name together with a description of its legal form translated into Polish, as well as the words "*oddział w Polsce*" ("branch in Poland"). It may commence activity once it has been entered into the National Court Register.

2.2.2 Representative office

A representative office also does not have legal personality. The scope of activities permitted for a representative office under Polish law is quite limited, consisting only in advertising and promoting the foreign enterprise that established the representative office. In order to establish a representative office, a foreign company has to take a decision on establishing its representative office in Poland, and then register the representative office in register of foreign representative offices kept by the Minister of the Economy.

Banking and Finance

Any business activity in Poland can be financed from debt, either in the form of credit facilities extended by banks, or in the form of bonds issued by the company, which may also be guaranteed by banks. Even though the 2008/2009 crisis hit the credit market quite heavily, the market is now recovering and the banks are more willing to provide financing to companies.

While obtaining financing from banks in Poland, the borrower should be aware that, depending on the required type of finance, the bank will ask to secure the borrower's obligations with security interests. The higher the amount of credit, the more security interests the banks will require.

The most commonly applied security interests include:

- registered pledges over: (a) shares, (b) assets and (c) receivables, and in particular receivables from banks accounts
- mortgages
- bank guarantees
- security assignment of insurance policies and security assignment of receivables under commercial contracts.

Please note that, in the case of bond issues subscribed for and guaranteed by banks, usually the same security interests will be required.

3.1 Key legal acts

The activities of banks are regulated by the Banking Law of 29 August 1997 (uniform text, Official Journal 2002, no. 72, item 665) and bond issues are regulated by the Act on Bonds of 29 June 1995 (uniform text, Official Journal 2001 no. 120 item 1300) and the Commercial Companies Code of 15 September 2000 (Official Journal 2000 no. 94 item 1037). Furthermore, the establishment of various security interests is regulated by the applicable legal acts such as:

- The Act on Registered Pledges and the Register of Pledges of 6 December 1996 (uniform text, Official Journal 2009 no. 67 item 569– the "Pledge Act"
- The Act on Certain Forms of Financial Collateral of 2 April 2004 (Official Journal 2004 no. 91 item 871)
- The Act on Mortgages and Land and Mortgage Registers of 6 July 1982 (uniform text, Official

Journal 2001 no. 124 item 1361 – the "Mortgage Act"

The Civil Code of 23 April 1964 (Official Journal 1964 no.16 item 93).

At the same time, the effects of establishing various security interests should also be looked at from the perspective of bankruptcy and reorganisation proceedings, as well as the enforcement procedure. This is where the position of a secured creditor is of crucial importance.

3.1.1 Key issues

Establishing security interests requires the execution of relevant agreements. In the case of registered pledges and mortgages, entry into the pledge register and land and mortgage register respectively is necessary for these securities to be effective.

In the case of the registered pledge, it is important to remember that the registered pledge agreement should specify the methods of enforcement, unless the creditor intends to enforce this security only through court enforcement proceedings. The other methods available under the Pledge Act include:

seizure of the pledged assets (rights) by the pledgee

sale of the pledged assets (rights) in a public auction (this provision of law, however, is not really applicable as the relevant secondary legislation is still missing)

satisfaction of the secured claim from the proceeds of the enterprise containing the pledged assets.

A registered pledge may be established to secure more than one claim, and it can also secure the rights of various creditors, in which case a 'pledge administrator' should be appointed in the loan agreement.

Mortgage, by comparison, can only be satisfied through court enforcement proceedings and is established following a declaration made by the debtor (being the owner of the real estate, or by a third party securing the debtor's obligations) in the form of a notarial deed, or in simple written form if the mortgage is to secure banking claims. As stated above, a mortgage has to be registered in the land and mortgage register.

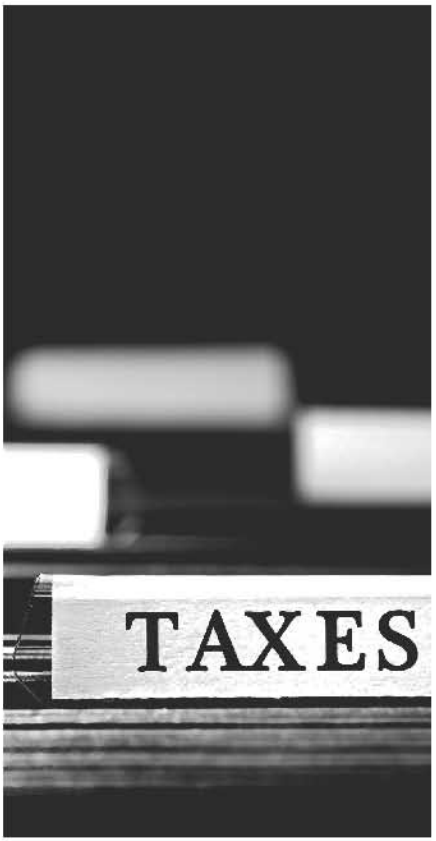
Unlike a registered pledge, a mortgage can only secure one claim of one creditor. This situation will change in 2011 once a major amendment

to the Mortgage Act enters into force, introducing mechanisms similar to those available under the Pledge Act.

A creditor secured with a pledge, registered pledge or a mortgage obtains the position of a secured creditor and benefits from a better position with respect to the ranking of satisfaction of claims in the case of enforcement proceedings. In addition, in the bankruptcy proceedings a creditor, if it holds a first ranking security, will have the right to secure its claims up to the highest possible amount from the proceeds of sale of the encumbered assets.

As for the security assignment of rights under insurance policies or commercial contracts, they constitute contractual obligations of the parties, and also provide the creditor with a better position than that of an unsecured creditor, although their enforcement, especially in the case of bankruptcy proceedings, will be slightly different.

Taxation



4.1 Corporate Income Tax (CIT)

4.1.1 Scope of taxation

The Corporate Income Tax Act dated 15 February 1992 ("CIT Act") governs the taxation of the following entities: legal entities, unincorporated organisational units (excluding partnerships), and collections of these entities treated as capital groups for tax purposes.

Foreign partnerships are subject to corporate income tax ("CIT") in Poland if they are treated as legal entities in their home state.

For the purpose of taxation, taxpayers are divided into two categories:

- Polish residents
- non-residents.

A company is considered resident if its principal place of business is in Poland. Residents are liable to pay tax on its entire income, regardless where it arises.

A company is considered non-resident if its principal place of business is outside Poland. In this case, the company is only subject to tax on income that it earns in Poland.

4.1.2 Assessment of tax

TAXABLE BASE

A company's taxable base for the purpose of CIT is usually its net income (or, exceptionally, its revenue – gross income). Taxable net income is calculated as the difference between revenue and tax deductible costs. A company's taxable income is calculated using data from the taxpayer's accounts (adjusted in accordance with tax law). Taxpayers are obliged to keep their books in a manner that allows their taxable base, and the amount of tax arising thereon, to be assessed.

TAX DEDUCTIBLE COSTS

Tax deductible costs are expenses incurred for the purpose of earning revenue or preserving/securing the source of the revenue. There is a list of certain types of expenditures and costs that are excluded from deduction by the CIT Act[3]

[3] *Specified in Article 16.*

Please note that Polish law does not impose other limits on the deduction of costs that have been incurred.[4] For instance, there is no limit to the amount of costs that can be deducted (with an exception for the purchase of passenger cars).

RATES

The standard rate of corporate income tax is 19%.

RETURNS AND PAYMENTS

An annual tax declaration must be submitted (on form CIT-8) and any tax due must be paid by the end of the third month in the subsequent tax year.[5] Taxpayers are also obliged to settle monthly advance payments (monthly returns are not required). It is sometimes possible for a company to take advantage of a simplified return procedure.

4.1.3 Dividends

Dividends and other revenue received by Polish resident shareholders, arising from the distribution of the profits of Polish companies, are subject to tax at 19%, unless the shareholder applies for exemption, as provided by the CIT Act.

Dividends received by Polish resident shareholders, arising from the distribution of the profits of their foreign subsidiaries, are subject to tax at 19%. The tax is charged unless the provisions of relevant double tax treaties exempt such profits from being taxed in Poland, or the shareholder applies for 'participation exemption' as provided by the CIT Act.

Dividends paid to foreign shareholders are subject to a 19% withholding tax, unless the provisions of a relevant tax treaty state otherwise, or unless the shareholder applies for 'participation exemption', as provided by the CIT Act.

In order to benefit from exemption or a reduced rate of withholding tax, the foreign shareholder must provide the Polish company with a certificate of tax residence.

[4] With the exception of the costs specified in Article 16 of the CIT Act.

[5] CIT payers are allowed to opt for a tax year other than the calendar year, lasting in general for 12 consecutive months.

4.1.4 Interest, royalties and services

Interest and royalties paid abroad are subject to a 20% withholding tax, unless the provisions of a relevant tax treaty state otherwise, or unless the beneficiary applies for exemption, as provided by the CIT Act.
In order to benefit from exemption or a reduced rate of withholding tax, the foreign company must provide the Polish company with a certificate of tax residence. Under the CIT Act, the 20% withholding tax also applies to fees paid for any of the following services: advisory, accounting, market research, legal assistance, advertising, management and control, data processing, search and selection, guarantees and pledges, and some others (unless the relevant tax treaty provides otherwise). Under most Polish tax treaties, such payments are treated as business income taxable in the taxpayer's country of residence. Consequently, remuneration for these services should not normally be subject to CIT in Poland.
Interest and royalties received by Polish resident taxpayers from abroad are subject to tax at 19%. If there is no double tax treaty, the tax credit method provided for in the CIT Act applies respectively.

4.1.5 Depreciation

According to the CIT Act, tangible and intangible fixed assets, where acquired for more than a year, are subject to depreciation. An exception is land, which is not subject to depreciation.
Tax depreciation differs from book depreciation in that tax depreciation rates are prescribed by law and cannot be exceeded.

Fixed assets	Rate (%)
Buildings	1.5 to 10
Computers	30
Vehicles	20
Know-how	20

There are two methods of tax depreciation:
- the straight-line method and
- the reducing balance method.

Where certain conditions are met, accelerated tax depreciation may be claimed.

4.1.6 Thin capitalisation

Where debt finance is three times greater than the value of the company's initial capital (i.e. debt / share capital ratio greater than 3:1), thin capitalisation rules apply with the result that not all of the interest paid on the related party's debt is deductible.

Thin capitalisation rules apply to loans granted by a shareholder or shareholders holding at least 25% of the share capital measured by voting power or a sister company held by the same parent company. Interest due on such loans is not recognised as a tax deductible cost in the portion in which the loan exceeds the debt / share capital ratio referred to above.

The regulations refer to both domestic and foreign loans.

Any amounts uncovered, or covered only by shareholders' debt claims on the company, are excluded when calculating the capital ratio.

For thin capitalisation purposes, a "loan" is deemed to be any kind of debt claim, including debt securities and certain deposits.

4.1.7 Relief for losses

The amount of any tax loss incurred in a given tax year may be deducted from taxable income assessed in any of the subsequent five tax years. Up to 50% of the original loss can be deducted in a single tax year, which means that a loss will take at least two years to relieve. Losses cannot be carried back.

4.1.8 Transfer pricing requirements

The CIT Act provides that open market terms should be used to assess transactions ("Arm's Length Principle"), particularly transactions between associated entities and between companies and their permanent establishments in Poland.

Under CIT regulations, where the terms of a transaction between related parties differ substantially from the terms of a comparable transaction between independent entities, and where those related parties do not report any income, or report income less than that could be

expected in a transaction between independent entities, the tax authorities are entitled to assess the income arising from the transaction without regard to the conditions under which it was carried out.

In such cases, the tax authorities may assess the taxable transaction price using one of the following methods:

- comparable uncontrolled price
  re-sale price
  reasonable margin (i.e. cost-plus) or
  transaction profit.

If the total value of a transaction carried out between related parties exceeds the PLN equivalent of EUR 30,000 (where services are provided or where intangible assets or legal rights are sold or made available), the taxpayers involved should prepare relevant transfer pricing documentation.

Such documentation must specify the obligations of the parties to the transaction (taking into account the assets and the risk involved), anticipated costs connected with the transaction, and the form and time of payment involved. The documentation must be presented to the tax authorities upon each request, within seven days.

If this obligation is not met, the tax authorities are obliged to apply a 50% CIT penalty rate to the assessed amount of underestimated income.

Since 1 January 2006, Advance Pricing Agreements ("APA") have been available in Poland. APAs are written agreements between business entities and the tax authorities that specify how transfer pricing issues will be resolved in advance of a return being made. Provided the terms of the agreement are followed, an APA provides assurance that the agreed treatment of transfer prices will be accepted for the period covered by the agreement, both by the authorities and by the business entities concerned.

The main advantage of obtaining an APA is that it confirms the methodology that will be used to calculate transfer prices and the way the tax authorities will apply it to the transaction concerned. Once an APA has been concluded for one transaction, the tax authorities are obliged to apply the same approved methodology when assessing subsequent transactions. APAs in Poland are granted for up to three years, with an optional extension for a further three years. They can regulate both future transactions and transactions in progress.

4.2 Personal Income Tax (PIT)

4.2.1 Scope of taxation

The Personal Income Tax Act dated 26 July 1991 ("PIT Act") applies to individuals.

For the purpose of the PIT Act, individuals are divided into two categories:

- Polish residents
- non-residents.

Since January 2007, individuals are deemed residents when they have their centre of personal interests in Poland or when they stay in Poland for longer than 183 days in a tax year. Residents are subject to PIT in Poland in respect of their total (worldwide) income.

Individuals not permanently residing in Poland (non-residents) are only subject to Polish taxation in respect of the income they derive in Poland.

4.2.2 Sources of income and rates

TAXATION OF INCOME FROM EMPLOYMENT

Personal income under an employment contract is subject to PIT at progressive rates of 18% and then 32%.

TAXATION OF SELF-EMPLOYMENT

Economic activity on the basis of self-employment may either be taxed:

- at a flat rate of 19%, or
- at progressive rates of 18% and then 32%, jointly with other personal income subject to these rates (in accordance with general rules provided in the PIT Act).

Since January 2007, the PIT Act has provided for a new definition of economic activity. From now on, taxpayers will not be considered entrepreneurs within the meaning of the applicable tax regulations, if the following three conditions are jointly met:

- liability towards third parties for the outcome or performance of certain activities (excluding liability for unlawful acts) rests with the commissioning party thereof

activities in question are performed under the supervision of, in the place and at the time determined by the commissioning party persons performing such activities do not bear any economic risk in connection therewith.

Taxpayers can elect which scheme to follow, but there are some restrictions on choosing the 19% flat rate where individuals provide services to an entity for which they previously worked under an employment contract.

DIVIDENDS, INTEREST, ROYALTIES, CAPITAL GAINS

Dividends and interest paid abroad are subject to a 19% withholding tax (royalties at 20%), unless the relevant tax treaty states otherwise. Capital gains related with the sale of shares are not combined with other types of income and are subject to 19% PIT rate.

TAXATION OF FOREIGN TAX RESIDENTS

The income of non-residents arising from certain management or freelance contracts is taxed at a flat rate of 20%.

4.2.3 Returns and payments of tax

INCOME FROM EMPLOYMENT

Polish employers are required to withhold advances of PIT from their employees' income and to remit them by the 20th day of the month following the month in which the relevant income was paid. Taxpayers are required to file an annual tax return by 30 April in each year for which they report either additional tax due or overpayments of tax.

From the tax settlement for 2010, under certain conditions, employers will be obliged to file and submit annual tax returns for their employees.

SELF-EMPLOYMENT

Self-employed individuals working in Poland are personally liable for settling monthly (or under certain conditions quarterly) advance tax payments (without having to submit monthly returns) by the 20th day of the following month (quarter). The advance payment for last month (quarter) is payable by the 20th day of January of the following year (as of 1 January 2010). An annual tax return must normally be filed (and any

tax due must be paid) by 30 April of the following year, stating all sources of income and showing any additional tax due.

OTHER

A separate annual return of income from capital gains (e.g. sale of shares) must be filed.

4.2.4 Deductions and exemptions

A deduction of around PLN 100 per month is available in respect of the cost of earning income from employment.

Individuals providing services under freelance contracts (save for non-residents with limited tax liability or those with management contracts) may deduct 20% of their revenue as a cost of earning income, irrespective of whether that cost was actually incurred. Certain activities, e.g. exploiting a copyright, attract a 50% deduction.

Taxpayers may benefit, under certain conditions, from several forms of tax relief (including child relief, Internet relief, disabled relief etc.). Social security contributions are deductible from the taxable income, a significant percentage of health care contributions is also deductible from the due income tax. From the tax settlement for 2009, social and health security contributions paid abroad can also be deducted.

Taxpayers may decide to instruct the tax office to transfer 1% of their annual PIT for the benefit of selected charitable institution.

Except as provided in the tax law, any costs arising from self-employment business activity can be deducted in total, as long as they are incurred to generate revenue.

4.3 Value Added Tax (VAT)

4.3.1 Scope of VAT

According to the Polish Tax on Goods and Services Act ("VAT Act"), VAT applies to the following transactions:

- supply of goods and services for consideration in Poland
- export of goods outside the EU

import of goods from outside the EU
intra-Community acquisition of goods for consideration in Poland
intra-Community supply of goods.

The following transactions are outside the scope of VAT:

disposal of a business as a going concern, or organised part of it
acts that cannot be made on the basis of legally binding agreement.

TAXPAYERS

According to the VAT Act, taxpayers are defined as legal entities, organisational units or individuals independently carrying on any commercial activity, irrespective of the purpose or result of that activity.

The following entities are outside the scope of VAT:

employees under contracts of employment
persons providing services under 'ad-hoc' agreements, if that relationship is similar to employment, given the working conditions, remuneration and the employer's liability.

4.3.2 VAT registration

Entities should register for VAT before they first conduct any taxable activity. As a result of registration, an entity acquires active VAT payer status.

If the taxpayer plans to carry out intra-Community transactions, it is additionally required to register as an EU VAT payer.

Some taxpayers are exempt from the requirement to account for VAT. This exemption applies to taxpayers whose annual taxable sales do not exceed PLN 100,000 (PLN 150,000 from 2011).

VAT payers from outside the EU must appoint a fiscal representative, who is jointly liable with the entity.

4.3.3 Place of supply rules (services)

From 2010, new rules for identifying the place of supply for VAT purposes applies. In principle, the place of supply of services is the place where the purchaser of the service has established its business, another fixed place of business, or

place of residence. However, there are some special rules for identifying the place of supply including those that concern:

- services connected with immovable property – the place of supply is the location of property
- transportation services – the place of supply is the place where the transport takes place, having regard to distances covered
- artistic, sport, educational, science services rendered for VAT payers, services supporting transport services, services concerning movable property or evaluation of such property, catering and restaurant services – the place of supply is the place where the service is actually performed
- services provided for non-VAT payers – the place of residence / registered office of the supplier (with plenty of exceptions, i.e. concerning intangible services for non-VAT payers, which are taxed in the place of residence / registered office of a purchaser being a non-VAT payer).

4.3.4 VAT rates and taxable Base

The VAT Act prescribes the following rates of VAT:

- a standard rate of 22%
- a reduced rate of 7%
- a zero rate (with the right to deduct input VAT)
- a transitional reduced rate of 3% (valid until 2010 – applies mainly to food products).

The taxable base for VAT is calculated as turnover, net of output tax. This base must be increased by grants and subsidies received and decreased by rebates and documented and legally acceptable discounts.

On the import of goods, the taxable base is the customs value increased by all customs duties, including excise duties, where relevant.

The taxable base for intra-Community acquisition of goods is the amount the purchaser is obliged to pay.

4.3.5 Tax point

GENERAL RULES

The default rule provided by the VAT Act is that a tax point arises when goods are released or services are completed. In practice, this rule is rarely relevant as it only applies to transactions with natural persons acting in a non-commercial capacity.

In most cases, the tax point is the time when an invoice is issued, which may be no more than seven days after goods have been released or services completed. For some supplies the tax point is established by separate rules (e.g. electricity, telecommunications, construction, transport, leasing).
The tax point for an advance payment is the date on which payment is received.

INTRA-COMMUNITY TRANSACTIONS, EXPORT AND IMPORT OF GOODS

When goods are imported, tax is chargeable when customs liability is incurred.
From December 2008, in the case of export goods, the tax point is established according to general rule described above.
For the intra-Community supply and acquisition of goods, tax is chargeable on the 15th day of the month following the month in which the goods were supplied, unless the invoice documenting the transaction was issued before that moment.

4.3.6 Recover of input VAT

GENERAL RULES

A taxpayer is allowed to recover input tax charged on goods and services supplied to him, which he later uses in his taxable business. Generally, recovery is made by the deduction of input tax from output tax.
In some situations input tax is not recoverable (e.g. purchase of fuel) or it is only partially recoverable (e.g. purchase of a passenger car).
Since 2008, taxpayers have not been allowed to deduct input tax from invoices documenting transactions that are not subject to VAT, or are VAT exempt, even where the amount resulting from the invoice was paid.
Starting from December 2008, the deduction of input VAT is no longer dependent on the qualification of expenditures as tax deductible costs for the purpose of income tax.

REFUND OF VAT

The normal term for tax refunds is 60 days. In some situations this period may be reduced to 25 days. Under certain circumstances, an advance refund of VAT is possible.

Surplus input tax may also be credited against the taxpayer's future VAT liabilities.

VAT RETURNS AND TAX PAYMENT

VAT returns should be filed and any tax due should be paid by the 25th day of the month following the month in which the tax point arises. "Small taxpayers", i.e. those whose annual sales do not exceed the PLN equivalent of EUR 1,200,000 may file VAT returns and pay any tax due quarterly (by the 25th day of the first month in the following calendar quarter).

From 2009, all VAT payers are allowed to opt for quarterly VAT settlements. In this situation, taxpayers are obliged to file VAT returns by the 25th day of the first month of the following calendar quarter. However, they are still obliged (apart from "small taxpayers") to pay VAT monthly (i.e. advance tax payments generally calculated as 1/3 of the due amount from the previous quarterly settlement).

SPECIAL PROCEDURES

Under Polish VAT regulations, special rules apply to:

- small businesses
- flat-rate farmers
- suppliers of tourist services
- suppliers of second-hand goods, works of art, collectors' items and antiques
- investments gold
- tax refunds for tourists
- foreign entities supplying electronic services to non-tax payers within the EU.

4.4 Excise duty

4.4.1 Scope of application

In March 2009, a new Excise Act came into force. According to the new legislation, the following groups of goods are subject to excise tax: cigarettes and other tobacco products, alcohol, oils and energy (jointly considered as 'excise goods') and passengers cars.

The indicated excise goods form a special group of products taxed with excises according to common rules applying all over the EU. Cars are taxed on the basis of Polish legislative decisions.

Under Polish excise regulations, the following transactions are subject to tax:

production of excise goods
release of excise goods from a bonded warehouse
sale of excise goods in Poland
export and import of excise goods
intra-Community acquisition and supply of excise goods
imports or intra-Community acquisition of passenger car unregistered in Poland, or first sale of a passenger car in Poland.

There are certain specific institutions that unique to excise tax (such as bonded warehouses, registered traders, transfer of excise goods in the course of excise suspending procedure, excise securities etc.) Some excise products (e.g. wines and spirits, cigarettes etc.) are subject to a special procedure that involves sealing them with fiscal seals (special bands placed across the top of each package/container).

There are three methods of calculating excise tax rates:

value basis, i.e. a percentage of the value of goods (e.g. cars)
volume basis, i.e. a fixed rate per unit of product (e.g. oils, alcoholic beverages)
mixed method (a combination of the above methods, e.g. cigarettes). In the case of many goods subject to duty, tax constitutes the most significant element in their price.

4.5 Civil transaction tax

4.5.1 General information

Civil transaction tax ("CTT") is levied on agreements not related to commercial turnover. The following transactions and civil law actions fall within the scope of the tax (closed list):

sale (exchange) of goods and property rights
loan agreements
donation agreements (if they involve the acquisition of debts)
annuity contracts
agreements on the division of a deceased's estate
mortgage contracts
grant of usufruct for consideration
irregular deposit agreements
articles of association.

Please note that the following events are treated as changes to the articles of association:

- increase in a company's initial capital or the assets of a partnership
- additional contributions by shareholders
- loans granted by partners to a partnership
- transformation, merger or division of a company or companies, resulting in an increase in their initial capital
- the transfer to Poland from a country other than an EU Member State of:
  - an effective place of management if its registered office is not located within an EU Member State
  - the registered office of a company, if its effective place of management is not located in an EU Member State

even if such activities do not involve an increase in a share capital of a company.

4.5.2 Tax rates

The rate of CTT differs according to the type of transaction:

- sale (exchange) of goods and property rights connected with real estate (i.e. perpetual usufruct or ownership), loan agreements and irregular deposit agreements – 2%
- articles of association – 0.5%
- sale (exchange) of other property rights – 1%.

4.5.3 Exemptions

The CTT Act prescribes a long list of exemptions from tax, including:

- sale of foreign currency
- sale of movable property with a value below PLN 1,000
- sale of securities to or through brokerages or banks offering brokerage services
- certain types of loans (e.g. granted by foreign financial institutions or by shareholders to companies – loans granted by partners to partnerships are subject to 0.5% CTT)
- articles of association and amendments connected with transformation or merger of a company if the value if the increase in share capital was previously subject to civil

transactions tax or indirect taxes on the raising of capital levied in other EU Member States.

In principle, transactions where at least one of the parties acts as a VAT payer are not subject to CTT. This rule, however, does not apply to sale transactions of real property and articles of association, if the transaction is VAT exempt. Since 2009, contributions in-kind of enterprises or their organised parts, transfer of packages of shares giving a majority of voting power in a company (calculated jointly with shares already held by the purchaser), as well as share capital changes related with mergers of companies or transformations of companies into other types of company, are all out of the scope of CTT.
The CTT Act also prescribes some discretionary exemptions covering entities such as charities, disabled persons (to meet rehabilitation needs), foreign diplomats and public sector units.

4.5.4 Settlement of Tax

In principle, the obligation to pay CTT rests with the party that is considered the taxpayer under the provisions of the CTT Act. A declaration should be filed and tax should be paid to the relevant tax office within 14 days of the transaction. Where a transaction is made before a notary, he will remit CTT and is obliged to account for the tax.

Securities market

The Polish capital market is currently the largest in the region and, in spite of the worldwide financial market crisis, it could still be attractive to foreign investors. Despite the emergence of new institutions and the increased size and depth of the market, the range of financial instruments available is still relatively small in comparison with more developed countries, which could nowadays constitute additional value, and it offers great potential to all market players to invest money with a good return. What is more, it also helps them to raise finance in a cost effective manner.

5.1 Overview

5.1.1 Warsaw Stock Exchange

The basic institution of the Polish capital market is the Warsaw Stock Exchange ("WSE"). This is where shares, bonds, derivatives and other financial instruments (including futures contracts and European-style options) are traded.

In recent years, the number of companies listed on the regulated market operated by the WSE has increased to more than 370. Over the past year, the WSE has grown to become the largest stock exchange in the CEE/SEE region. According to the WSE data, the capitalisation of the WSE (domestic companies) is greater than that of the Wiener Borse or the Athens Exchange. These facts demonstrate the continuing dynamism of the Polish capital market, which is likely to develop further in the near future,[6] even given the condition of the worldwide financial market.

Two markets operate within the regulated market operated by the WSE, namely:

- the official market
- the parallel market.

Admitting a company to either of these markets depends primarily on its size and the liquidity of its shares. All the shares listed on the regulated market are divided into segments, depending on the total capitalisation of the company.

Apart from the regulated market operated by the WSE (Main List), in 2007 the WSE organised New Connect – the new market for new and/or small

[6] *A range of detailed information and statistics on the WSE can be found at: http://www.wse.com.pl*

companies with high growth potential. NewConnect is an equities market based on the Alternative Trading System (ATS) operated by the WSE. Created for start-ups and new companies, particularly those from the high-tech sector, the New Connect is also a new opportunity for investors willing to accept a higher risk in exchange for potentially higher returns. NewConnect follows the example of similar European platforms, notably the AIM in London, Alternext in Paris or First North within OMX. NewConnect offers more liberal formal criteria and disclosure requirements and could be treated as the first step to a flotation on the regulated market. There were 18 new listings on New Connect in 2009 (until 30 October) and the total number of companies increased to more than 100.

A new WSE bond market, called Catalyst, was launched on 30 September 2009. Catalyst comprises four trading platforms. Two platforms operated by the WSE (a regulated market and an alternative trading system) are dedicated to retail investors; two BondSpot markets (regulated market and ATS) are dedicated to wholesale investors. All platforms support trading in non-Treasury debt instruments: municipal bonds, corporate bonds, and mortgage bonds. The rules of trading on both the regulated markets and in the alternative trading systems differ only in respect of block trades. Transactions executed on all Catalyst markets are guaranteed by the National Depository for Securities. Issuers are obliged to meet certain reporting requirements including current and periodic reports.

5.1.2 Other institutions

The regulated over-the-counter ("OTC") market in Poland is relatively small. It is organised by a company called Bond Spot (formerly MTS-CeTO). Securities traded on the OTC market include debt securities, but above all T-bonds and T-bills, for which brokers negotiate prices directly. Additionally, Bond Spot operates part of the Catalyst market (see above).

The Polish Financial Supervision Authority (PFSA), established in September 2006, exercises general supervision over the financial market. This new institution replaced the Securities and Exchange Commission and the Insurance and Pension Funds Supervisory Commission. From 1 January 2008, the PFSA has also been exercising the tasks and

powers of the Commission for Banking Supervision. This development also reflects the growing sophistication of the Polish financial market. Another important player on the Polish financial market is the National Depository for Securities (KDPW), a joint-stock company providing depository, clearing and settlement services for all securities in public trading.

5.1.3 Legislation

The regulatory framework of the capital market in Poland underwent major changes in October 2005, when the following three legal acts came into effect:

- Act on Public Offerings, Conditions Governing the Introduction of Financial Instruments to Organised Trading, and Public Companies
- Act on Trading in Financial Instruments
- Act on Capital Market Supervision.

These new regulations transposed into Polish law the provisions of EC directives concerning financial markets. The changes brought by the new legislation were intended to make the capital market in Poland more transparent and flexible. This was to be achieved, among other things, by the introduction of certain new rules on the listing of securities and admission to trading, such as:

- introducing the EU standard issue prospectus requirement
- introducing new disclosure requirements
- removing the limitation on trade outside the regulated market
- liberalising the depository and settlement system.

5.2 IPOs and admission to trading

5.2.1 Regulated market

As a rule, companies intending to go public in Poland must publish an issue prospectus and thus provide complete and accurate information on the share issue. The form and content of the prospectus must comply with EU requirements in this scope. To begin with, a draft prospectus must

be filed with the PFSA for approval. Reference filings are admitted for issuers of securities holding a relevant approval granted by other EU regulators. To go ahead with the public offering once the prospectus has been approved, companies must execute an agreement with the National Depository for Securities on the dematerialisation of its shares. At this stage, companies gain the status of a public company.
Finally, companies file an application to the management board of the WSE to have their shares listed on the exchange. As soon as an official decision is known, company shares are admitted (or not) to trading on one of the WSE's regulated markets. The IPO procedure usually takes between six and nine months.

5.2.2 Alternative Trading System

The shares may be brought into trading via a private placement, targeted at less than 100 investors, institutional or private. In this case, consent on access to trading is granted by the WSE on the basis of a simplified information document, approved by an Authorised Adviser (regardless of the size of the issue). The other access path is via a public offering. In this case, the same access procedures as those applied on the regulated market are applicable, including the requirement to prepare a prospectus and submit it for approval to the PFSA. For offerings with a value of up to EUR 2.5 million, an information memorandum, overseen by the PFSA, may be considered as an information document. All the companies listed on New Connect have to have the status of a public company.

5.3 Statutory obligations

To ensure full transparency of the markets operated by the WSE, Polish law imposes a number of restrictions and obligations on public companies, as well as on owners of large blocks of shares.

5.3.1 Disclosure requirements

From the date on which an application for admission to regulated trading is filed, issuers are

subject to certain disclosure requirements. They are under an obligation to report any material change that affects the company's value[7] – first to the PFSA and the WSE, and then, 20 minutes later, to make it public via an information agency. Following the introduction of the ESPI, which is an electronic information system, the disclosure of information has been standardised and thus facilitated.

Disclosure obligations required on the alternative trading system are significantly reduced in comparison with those on the regulated market and are defined in the WSE management board resolution. Reporting is managed through the Electronic Information Base (EIB) – an electronic system developed and supervised by the WSE.

Moreover, rules governing the transparency of shareholdings require that the fact of achieving, exceeding or falling below certain thresholds, namely 5%, 10%, 15%, 20%, 25%, 33%, 33⅓%, 50%, 75% and 90% of the total vote, must be notified to the relevant authorities. The same rules apply to the companies listed on the New Connect.

5.3.2 Tender offers

Certain transactions involving shares in public companies listed on the regulated market are only permissible when made by a public tender.

A public tender is mandatory when:

the thresholds of 33% and 66% of the total number of votes are exceeded

and

a block of shares increasing a previous shareholding by 5% or 10%, (depending on the number of votes held by given entity), is acquired.

Price bids in such tenders must be calculated in accordance with prescribed strict rules requiring that the bid not be lower than the average market price of shares from the last six months preceding the announcement of the tender.

7 See Chapter 3 of the Act on Public Offering and the Resolution of the Ministry of Finance dated 19 February 2009.

5.3.3 Squeeze-out/mandatory buyout and withdrawal from the market

There are two procedures aimed at preventing disputes in situations where one shareholder, alone or together with a group of entities, reaches the threshold of 90% of votes in a public company.

Majority shareholders have the right to "squeeze out" the remaining minority shareholders by paying them appropriate compensation for their shares. Investors can easily apply this procedure to withdraw a non-liquid company from the market.

Minority shareholders, on the other hand, can force an investor to buy their shares upon meeting certain conditions.[8] Such a "mandatory buy-out" is designed to protect minority shareholders against abusive majority behaviour.

The leading investor, especially after a mandatory buy-out or a squeeze-out, may want to withdraw a company from the regulated market.

For this purpose,[9] Polish law provides for a "rematerialisation" procedure, which requires a resolution adopted with a majority of 80% of votes and subsequent approval from the PFSA.

5.3.4 Penalties

Polish legislation prescribes three types of sanction: administrative, civil and criminal. Administrative sanctions for non-compliance with the law are most common. They generally take two forms:

- the suspension of securities from trade on the regulated market for a definite or indefinite period
- the imposition of a fine of up to PLN 1,000,000, depending on a given company's standpoint.

An infringement of the statutory information requirements, such as knowingly reporting false information or withholding certain information, results in the civil liability of the infringer.

[8] *See Article 83 of the Act on Public Offerings.*

[9] *"The rematerialisation" of shares is also required where a merger, company transformation or insolvency is concerned.*

The most glaring violations of capital market regulations are subject to criminal sanctions. The following violations fall in this category:

- offering securities to the public in breach of requirements concerning the publication of an issue prospectus or an information memorandum, obtaining necessary approvals and disclosing information to the public
- including false information or data in the issue prospectus, or withholding any material information from public disclosure.

5.4 Bonds

The sale and issue of bonds are regulated by the Act on Bonds dated 29 June 1995. In accordance with the provisions of this Act, a range of entities, such as: companies, local authorities, financial institutions, etc., can issue bonds.

The issue of bonds by the State Treasury and the National Bank of Poland is regulated by separate legislation.

The Act on Bonds deals with:

- interest-bearing bonds
- convertible bonds
- zero-coupon bonds
- revenue bonds
- bonds with pre-emptive rights.

Public offerings of bonds are governed by the Act on Public Offerings and require the same procedure as in the case of an IPO and the admission of shares to trading on the regulated market. In non-public trading, issuers of bonds must provide investors with an information memorandum enabling them to evaluate the financial condition of a given issuer, as well as the potential risk associated with the purchase of bonds.

The information memorandum must specify:

- the size of the issue
- the terms of repayment
- the interest borne
- key issuer information
- the estimated profit.

Treasury bonds are regulated by the Act on Public Finances. As a rule, T-bonds are bearer, redeemable bonds with maturity dates exceeding one year. Depending on demand, they can be sold at the issue price, above or below par value. Municipal bonds are issued by local authorities

to raise funds for public purposes. They may be issued as fixed-interest, variable-rate or zero-coupon bonds.
On 30 September 2009, the WSE launched a new bond market – Catalyst (see point 5.1 above).

Gide Loyrette Nouel Warsaw is a partner company of the Warsaw Stock Exchange (GPW) for SMEs

Real estate

This chapter provides a general overview of the legal framework for real estate operations in Poland.

6.1 Title to real estate

The Civil Code provides for various types of legal title to property. Real property is usually held on the basis of either perpetual usufruct or full ownership.

6.1.1 Full ownership

Full ownership (or co-ownership) provides the broadest scope of rights towards real estate and can be restricted only in exceptional circumstances (e.g. by zoning regulations). Real property owners enjoy:

- the right to possess property (*ius possidendi*)
- the right to make use of property (*ius utendi*)
- the right to appropriate the returns from property (*ius fruendi*)
- the right to change the form or substance of property (*ius abutendi*)
- the right to dispose of property (*ius disponendi*).

Owners are free to transfer ownership to another person, or to encumber it with other rights (e.g. perpetual usufruct, easements, etc.). However, the law provides for some exceptions in this respect, compelling the transferee to observe certain limitations (discussed later).

6.1.2 Perpetual usufruct

A substantial amount of land in Poland is owned by the State Treasury or local authorities, who can grant a right of perpetual usufruct of this land to third parties on the basis of a perpetual usufruct agreement.

In many ways perpetual usufruct is similar to full ownership. The right of perpetual usufruct entitles its beneficiary to use state-owned land for a period of 99 years. In exceptional cases, if the economic grounds for perpetual usufruct do not require the land to be let for so long, the land may be let for a shorter period of at least 40 years. Please note that an owner is entitled to terminate a usufruct agreement prematurely where the land is not used for the purpose specified in the agreement.

Buildings and other facilities purchased or erected by a usufructuary on the land subject to perpetual usufruct, belong to the usufructuary.

A usufructuary must pay the relevant public authority an initial fee when the agreement establishing perpetual usufruct is concluded, and an annual fee thereafter.
The fees are calculated as a percentage of the value of the land. The initial fee ranges from 15% to 25%, while the amount of annual fee depends on the purpose for which usufruct was granted and ranges from 0.3% to 3% of the value of the land.
The annual fee for perpetual usufruct can be reviewed, but no more than once per year (once every five years where land has been allocated for residential purposes) and only where the value of the land has changed.
Certain procedures allow for perpetual usufruct to be converted into full ownership.

6.1.3 Full ownership vs. perpetual usufruct

Concerning the right of perpetual usufruct, there is a distinction between usus and fructus, which are transferred to the holder, and abusus, which is retained by the State or local authority.

One fundamental difference between perpetual usufruct and ownership is that a transfer of rights to perpetual usufruct only becomes effective once it has been entered in the Land and Mortgage Register, whereas a deed executed and authenticated by a notary is sufficient to transfer ownership. Thus, a situation may arise where property cannot be sold to a new investor, or it is difficult to obtain finance or certain authorisations, because the usufruct has not been registered properly.

6.1.4 Two registers

Ownership and perpetual usufruct of land are both subject to compulsory registration in Land and Mortgage Registers kept by district courts. These registers provide information on the current status of real estate and record any changes, including the area of each plot, buildings located thereon, the names of owners and possessors, rights and claims to the property and mortgages encumbering it.
In addition, local authorities keep a Land Register that contains information on the area of each plot, the names of its owners and the use of the property.

If there is a discrepancy between the rights registered in the Land and Mortgage Register and the Land Register, the former will prevail. What is more, all rights registered in this register will be effective against and take precedence over:

- any unregistered rights and interests
- any rights or interests registered subsequently.

Claims and other interests related to real estate (e.g. rights of a lessee under a lease contract) may also be registered and thus become enforceable upon consecutive owners.

6.2 Acquisition

6.2.1 Contractual scheme

The acquisition of full ownership is principally governed by the provisions of the Civil Code dealing with ownership and sale.

Any contract for the transfer of real estate must be concluded in the form of a notarial deed. No act performed without observing this formal requirement can be deemed effective.

Notwithstanding the above, Polish law contains special provisions governing the sale of real estate belonging to the State Treasury, State-owned enterprises and local authorities.

Where the right of perpetual usufruct is concerned, a notarial deed is not sufficient. The transfer of perpetual usufruct only becomes effective when it is entered in the Land and Mortgage Register.

6.2.2 Preliminary agreement

For practical reasons (e.g. the need to obtain financing) or due to statutory requirements, the acquisition of real estate in Poland is usually carried out in two stages:

- conclusion of a preliminary sale agreement ("**PSA**")
- conclusion of a final sale agreement, once all conditions of the PSA have been met.

To be valid, a PSA must contain the essential elements of the final sale agreement, namely the subject of sale and the transfer price.

The primary intention of parties to a PSA should be the execution of a final agreement. However, the intentions of parties can change before a final agreement is signed.

If a buyer desires extra protection, the PSA should be executed in notarial form. It is also advisable

to stipulate in the PSA that the notary should make a provisional note of the transaction in the relevant Land and Mortgage Register. Once duly registered, this note will ensure that:

- third parties are deemed to be in bad faith if they buy the same property knowing that a promise of sale already exists
- the beneficiary can obtain a court order requiring that the final sale agreement be signed, even where the other party has become unwilling to conclude one.

The court order has the effect of transferring the property (judicial enforcement), which would not be the case, if the preliminary agreement had not been executed as a notarial deed. In such case, if one of the parties withdraws from the transaction, following a promise of sale, the other party may only claim compensation for damages.

Once the conditions of the preliminary agreement have been performed, one of the parties, whichever acts first, should notify the other accordingly. Thereafter, a final notarial deed will be drafted and signed in order to finalise the sale and in order to transfer the property to the buyer (unless a right of pre-emption has been exercised).

6.2.3 Right of pre-emption

The right of pre-emption may arise out of statutory or contractual provisions. Where real estate is subject to a right of pre-emption, it may only be sold to a third party on the condition that the beneficiary of that right does not exercise his right to buy.

Without delay, the seller must inform the beneficiary of the contents of the PSA concluded with a third party. The beneficiary then notifies the seller whether or not he wishes to exercise his right. A contractual right of pre-emption may be exercised within one month of receiving notice of the transaction, unless other time limits have been agreed. The beneficiary can exercise his right by making a declaration to the seller in the form of a notarial deed. The beneficiary and the seller then automatically become parties to an agreement with identical contents to that initially concluded between the seller and the third party.

Where the seller sells such property to a third party unconditionally, or where he fails to notify the beneficiary of the sale or its essential terms, he will be liable for damages to the beneficiary of the pre-emption right.

However, if the State Treasury, a unit of local government, a co-owner or a lessee enjoys a right of

pre-emption by virtue of the statute, a sale concluded unconditionally will be ineffective.

6.2.4 Acquisition of land by foreigners

The basic legal act regulating the acquisition of real estate by foreigners is the Act on the Acquisition of Real Estate by Foreigners of 24 March 1920. After Poland's accession to the European Union, extensive changes and amendments were introduced as a result of the need to harmonise Polish law with Community law, thus rendering its restrictions ever less relevant.

NON EU MEMBERS

The acquisition of real estate by foreigners normally requires a permit. A permit in the form of an administrative decision will be issued by the Minister for Internal Affairs, unless the Minister for National Defence or the Minister for Rural Development lodges an objection.

Foreigners are defined as: (a) individuals without Polish citizenship, (b) business entities with their principal place of business abroad, (c) a partnership of the entities described in points (a) or (b) without legal personality, with its principal place of business abroad and created in compliance with the applicable laws of the foreign state, (d) a business entity or a commercial partnership without legal personality with its principal place of business in Poland, directly or indirectly controlled by the entities mentioned in points (a) to (c).

A permit is required for the direct acquisitions of real estate (for acquisitions of both full ownership and perpetual usufruct), as well as for acquisitions or subscriptions by foreigners of shares in a company registered in Poland that owns real estate or holds it under perpetual usufructuary, where that transaction results in obtaining control over the Polish company and/or the company or partnership is a controlled one and the shares are to be acquired by a foreign person who is not a shareholder of the company or partnership.

EU MEMBERS

Following Poland's accession to the European Union, the acquisition of real estate in Poland by citizens and companies of the European Economic Area (the European Union plus Norway, Iceland, and Liechtenstein) and the Swiss Confederation no longer

requires any permits, except where the acquisition involves agricultural or forest land.

6.3 Town planning and construction

6.3.1 Land development

The Zoning Act of 27 March 2003 sets out principles according to which local government and public administration may develop spatial policy, as well as the procedures that apply when areas are allocated for particular purposes and when the principles for their development are determined.
Every municipality must adopt a zoning study. The study comprises a basic programme for the municipality's zoning, and contains considerable information of relevance to investors, including present land use, development and utility connections, needs and opportunities for the municipality's future development, the legal status of land, and details of buildings and areas under special protection. The study is binding only upon the authorities.

In order to determine the use of any plot and a method for its development, each local authority must approve a local zoning plan, which is an act of local legislation (i.e. effective also upon private parties). It is impossible to adopt a plan if no study exists. Moreover, any plan that is inconsistent with the study is deemed invalid.
The plan must cover the following issues:

- lines of development
- dimensions of structures
- intensity of development
- the use determined for each plot, e.g. large area commercial facilities or plots on which construction will be prohibited.

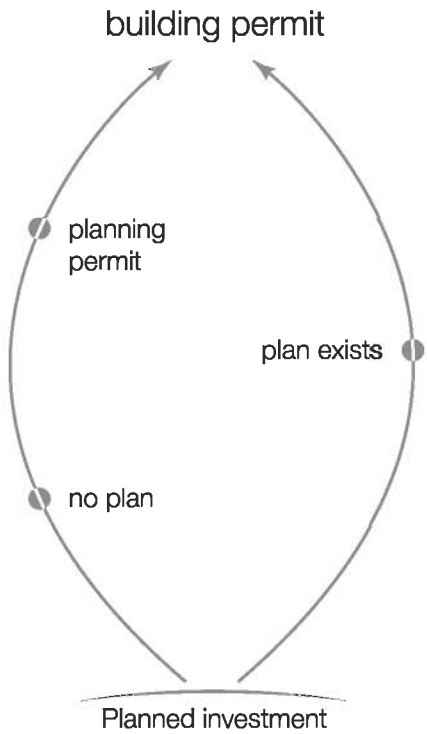
6.3.2 Modification of designated land use

If the designated use of a plot needs to be modified (e.g. from agricultural to industrial or commercial use), this will involve the modification of the plan, which is a relatively complex procedure (it involves a meeting of the municipal council, the publication of notices and the risk of legal challenges from third parties). If no plan exists, a planning permit must be obtained instead.

Last but not least, a decision to exclude the land from agricultural production must be obtained.
These restrictions do not apply to agricultural land within the administrative borders of cities (if not designated as such by local zoning plans).

6.3.3 Building permit

Under the Construction Act, construction may only commence once the final decision to grant a building permit has been obtained.
The method of obtaining a building permit depends on whether the municipality has adopted a local zoning plan. If a plan covering the property has been adopted, a building permit may be obtained on that basis. However, if the municipality has not adopted a plan, then proceedings become more complicated because an investor must obtain a special planning permit.
Since only a small part of Poland is covered by zoning plans, planning permits are still the rule rather than the exception. A planning permit defines objectively whether a particular investment project may be carried out on the plot concerned. The planning permit neither creates rights to the property nor infringes upon the ownership rights of third parties.



An application for a building permit must be accompanied by plans and architectural documentation and, above all, by approvals from local authorities (local security/police agencies and,

above all, authorities responsible for public roads, electricity, gas and sanitation) confirming that there are no obstacles to implementing the investment project. Also, as a result of implementing EU regulations, from 1 January 2009 the investor has had to obtain an energy performance certificate before applying for a building permit.
There are many minor improvements to structures that do not require a building permit (e.g. fences – except for those on public roads or in other public places, small architectural structures, parking lots for up to 10 vehicles, access ramps for disabled people and utility terminals in buildings for electric power, water supply, sewage, gas, heat and telecommunications). These may be erected upon notification to the relevant authorities, if there are no objections within 30 days.

6.3.4 Environmental proceedings

Under the Act on Access to Information on the Environment and its Protection, Public Participation in Environment Protection and Environmental Impact Assessment dated 3 October 2008, environmental impact assessment proceedings must be completed before an application for a planning permit or a building permit can be considered. An environmental impact assessment is required where the planned investment is likely to have a significant impact on the environment or Nature 2000 areas. It takes the form of a report prepared by the investor.
As a result of these proceedings, the competent authority will issue a decision on environmental conditions, which may impose certain obligations on the investor with regard to environmental protection. Its decision is binding on the authority, which issues the building permit. However, if the conditions of the planned investment change, the latter authority may demand that the environmental impact assessment be repeated.

6.3.5 Permit for use

Before releasing for use some of the structures that require a building permit, it is necessary to notify the competent authorities (the local agencies responsible for fire risk, employment, hygiene and environmental issues) that the work has been completed.
Notwithstanding the above, an investor is also obliged to obtain a permit for use in certain circumstances prescribed by the Construction Act.

The competent authority will issue a decision to grant a permit for use of the structure once a mandatory inspection of the structure has been carried out. This inspection should ascertain whether the construction has been completed in accordance with the conditions of the building permit.

6.3.6 Construction works contract

Under the Civil Code, a contractor is obliged to construct the building specified in the construction contract in accordance with the architectural plan and technological principles. The investor is obliged to make the building site and the architectural plan available to the contractor and, once completion has been certified, to pay the agreed remuneration.
Article 647[1] of the Civil Code governs the respective legal relationships between an investor, the general contractor and sub-contractors involved in the construction process and establishes the investor's and the main contractor's joint and several liability for payment of sub-contractors' remuneration. International FIDIC standards are accepted in Poland.

6.4 Lease vs. tenancy

Polish law provides for the use of real property on the basis of certain legal instruments. These are limited tangible rights (i.e. usufruct and easements) and obligations (two types of lease: *najem/dzierżawa* and lending for use).
Lease ("*najem*") and tenancy ("*dzierżawa*") are principally governed by the provisions of the Civil Code.
Both Polish and foreign individuals and business entities may lease real estate. There is no requirement to obtain a permit from the Minister for Internal Affairs. The main distinction between the two is that, under a lease agreement, a lessee is only entitled to use the property whereas, under a tenancy agreement, the tenant is entitled both to use the property and to reap the benefits therefrom. For this reason, tenancy is common in agriculture and industry.
Lease and tenancy agreements may be concluded for definite or indefinite periods. The terms of lease and tenancy agreements can be freely established by the parties, subject to certain mandatory provisions of the Civil Code concerning termination periods and duration.

6.5 Reprivatisation claims

Before acquiring a plot, it is advisable to review the Land and Mortgage Register, the Cadastral Register and any other documents pertaining to the legal status of the property.

The purpose of this review is to establish whether there is any litigation pending with respect to the land, whether any easements or mortgages encumber the land, whether any other rights have been granted in favour of third parties, or whether there is any other obstacle to its acquisition.

There is no established procedure in Poland for dealing with reprivatisation claims. Thus, it is always important to ensure that a given property is not affected by the rights of third parties by inspecting historical archives and consulting the local authority ("*starosta*").

6.6 Taxes and fees

6.6.1 Taxes on turnover (VAT, CTT)

The supply of real property is, in principle, subject to VAT calculated on the value of land and buildings alike.

The standard rate of VAT for such transactions is 22%, though a preferential rate of 7% applies to some transactions.

The supply of residential developments, or parts thereof (but not commercial premises), will be taxed at 7%, if the usable area of residential premises does not exceed 150 square metres, or 300 square metres with respect to houses.

The supply of buildings and structures after their "first domiciliation" (understood as giving for use of buildings, structures or their parts in the course of their VAT supply to their first purchaser or user after their construction or their improvement exceeding 30% of their value established for tax depreciation purposes), is VAT exempt if the period between the first domiciliation and subsequent supply exceeded at least two years. If these conditions are not met, the supply of buildings and structures can be also

exempted from VAT assuming that the seller had no right to deduct VAT on the purchase of such building/structure and the improvements to such building/structure do not exceed 30% of the value established for tax depreciation purposes (unless the improvements were used for at least five years). However, parties to the transaction may opt for taxation in VAT of such supply if both parties are registered VAT payers and notice their intention to the proper tax authority.

If one of the parties to a transaction concerning the sale of real estate is acting as VAT payer, the transaction will be exempted from the Civil Transaction Tax (CTT). However, if the transaction is exempt from VAT, it will be subject to CTT.

Transactions between individuals, acting in a non-commercial capacity, will be subject to CTT, at 2% of the transaction value.

Starting from 1 December 2008, in-kind contributions of real properties are, in principle, subject to VAT as a supply of goods at the VAT rate applicable for contributed real property (this does not concern the situation where contributed real property is VAT exempt under VAT regulations).

6.6.2 Income tax

In the majority of cases, income derived from the disposal of real property will be subject to income tax. Depending on the circumstances, the tax liability on the disposal of real property will be calculated on one of the following bases:

- the general rule is that the disposal of real property will be taxed at 19%
- where an individual, acting in a non-commercial capacity, sells property:
  - after five years from the end of calendar year in which the real property was purchased or developed – no tax
  - purchased or developed before 31 December 2006 (if the rule from the point above cannot yet be applied), in the case of re-investing funds from the sale for the taxpayer's "residential purposes" (indicated in the PIT Act) – no or reduced tax (proportional to the percentage of re-invested funds from the sale)
  - purchased or developed between 1 January 2007 and 31 December 2008, in which he has been registered for administrative purposes as resident for more than 12 months before the sale – no tax

purchased or developed after 31 December 2008, in the case of re-investing funds from the sale for the taxpayer's own "residential purposes" (indicated in the PIT Act) – no or reduced tax (proportional to the percentage of re-invested funds from the sale)

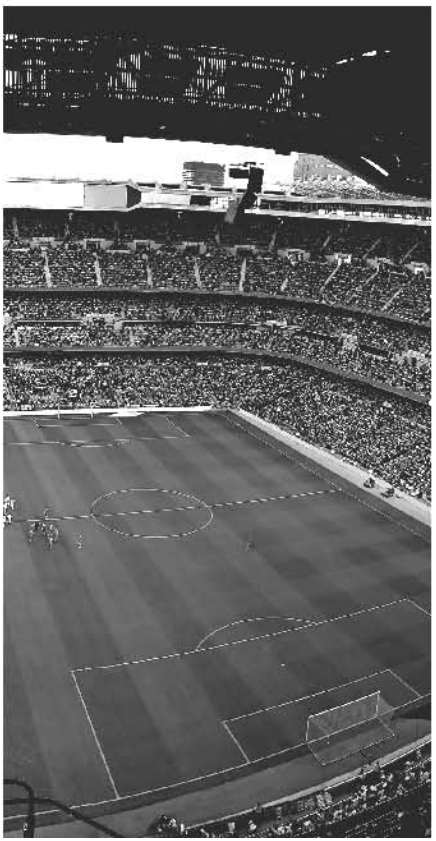
where an individual sells property acquired for business purposes – flat tax at 19% or progressive tax at rates of 18%, 32% (depending upon which scheme the taxpayer has elected to follow).

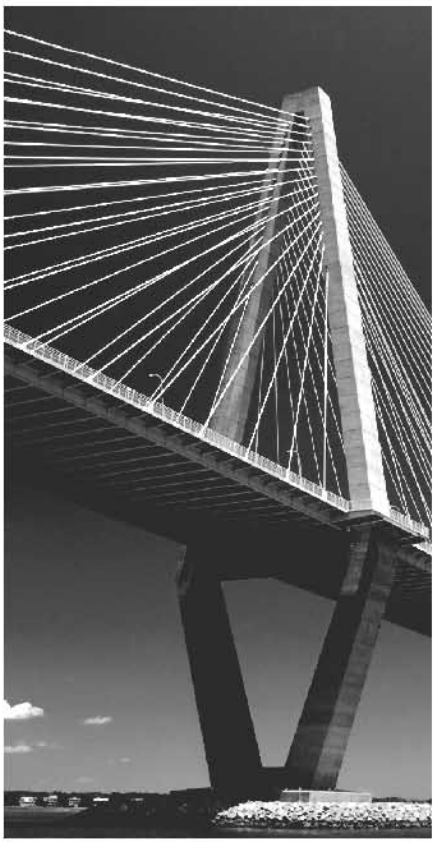
For the entities subject to corporate income tax, the disposal of real property will be taxed at 19%. Buildings and structures are entitled to claim tax depreciation. The standard rate of amortisation for buildings is 2.5% per year, over a period of 40 years. Where residential buildings/premises were used prior to their acquisition by a taxpayer for more than five years, a taxpayer is entitled to claim an accelerated rate of amortisation of 10% per year, over a period of 10 years. In the case of commercial buildings/premises, a 40-year tax depreciation period may be reduced by each full year from the year in which they were first entered into the fixed assets register, but it cannot be shorter than 10 years.

6.6.3 Real estate tax

Real estate tax is levied on land, buildings, structures and construction equipment. The rate of tax for a given locality is determined by the municipal authority, up to a maximum imposed by the Local Taxes Act, which regulates this tax. When setting the rate of real estate tax, a municipal authority is obliged to consider the following aspects of the property: its location, the activity carried out there, the type of development, its designated use and the method of exploiting the land. The authority has the power to grant some exemptions from real estate tax (where they are not provided by the Local Taxes Act).

Public Procurement





7.1 General overview

The Public Procurement Law is the central act regulating public procurement in Poland. It was adopted in 2004 as an adjustment of Polish law to two EU directives, No 2004/17/WE and No 2004/18/WE, and therefore it is a part of the unified European public procurement rules.
The act specifies the rules and procedures for awarding public contracts, law enforcement measures, checking the award of public contracts and the relevant authorities with respect to matters addressed in this act.
In addition to this act, there are two more regulations in the Polish system of public procurement: the Private Public Partnership Act and the Construction Works and Services Concession Act.
The term public contract covers contracts for pecuniary interest concluded between an awarding entity and a contractor, concerning services, supplies or works.
The Public Procurement Law sets out some general rules concerning performing the procedures. Most importantly, awarding entities should prepare and conduct contract award procedures in a manner ensuring fair competition and equal treatment of contractors. Actions connected with the preparation and conduct of contract award procedures shall be performed by persons ensuring impartiality and objectivity.

7.2 Procedures-general

The Public Procurement Law provides a closed list of eight different procedures for the award of public contract:

Open tendering – means contract award procedures in which, following a public contract notice, all interested contractors may submit their tenders.

Restricted tendering – means contract award procedures in which, following a public contract notice, contractors submit requests to participate in a contract award procedure, and tenders may be submitted by contractors invited to submit their tenders.

Negotiated procedure with publication – means contract award procedures in which, following a public notice, the awarding entity will negotiate the terms of the public contract with contractors of his choice, and will subsequently invite them to submit tenders.

Competitive dialogue – means contract award procedures in which, following a public contract notice, the awarding entity conducts a dialogue with selected economic operators, and then invites them to a tender.

Negotiated procedure without publication – means contract award procedures in which the awarding entity negotiates the terms of the contract with contractors of his choice and subsequently invites them to submit their tenders.

Single source procurement – means contract award procedures in which the awarding entity awards a contract after having negotiated with only one contractor.

Request for quotations – means contract award procedures in which the awarding entity sends a request-for-quotations to contractors of his choice and invites them to submit tenders.

Electronic auction – means contract award procedures in which using a form available on the website allowing to enter the necessary data on-line, contractors submit successively more advantageous tenders (bid increments), subject to automatic classification. The awarding entity may award a contract under the electronic auction procedure, where the object of the contract includes generally available supplies of fixed quality standards and the contract value does not exceed the equivalent in PLN of EUR 60,000.

The open tendering and restricted tendering are the two primary procedures, which means that they could be applied in every case. Other procedures can be applied only in the circumstances provided for in the Public Procurement Law.

There are the special exceptions for sectoral contracts. A contract is sectoral when it is awarded for the purposes of performing of one of the types of activites enumerated in Article 132 of the Public procurement law, such as: exploration, prospecting for or extracting gas, oil and its natural derivatives, brown coal, hard coal and other solid fuels or the management of airports, maritime or inland ports, or rendering public services connected with the production, transport,

distribution or supply of electricity, gas, heat drinking water or supply of drinking water to such networks or management of such networks, the operation of networks providing public services in the field of transport by bus, railway, tramway, trolley bus, cable or automatic systems as well as the provision of postal services.
The awarding entity for a sectoral contract may apply an open tendering procedure, restricted tendering procedure and negotiations with publication in every case.

7.3 The course of action

In all of the proceedings it is possible to separate three different phases: pre-qualifications, the submission of tender proposals and the selection of the best tender.
During the pre-qualifications, the awarding entity sets out his requirements in a contract notice or terms of reference of the contract. Such requirements are fulfilled by submitting the relevant documents.

Several problems can occur when it comes to submitting documents from foreign contractors. Some rules concerning this are set out in Prime Minister's ordinance on types of document that can be requested by an awarding entity from a contractor, and the form in which they should be submitted. According to this ordinance, if a contractor resides or is registered outside of Poland, he could be asked to submit documents confirming that:

- the contractor has not initiated any liquidation proceedings and has not been declared bankrupt
- the contractor is not in arrears with the payment of taxes, charges, social contributions, or that he has acquired the right to an exemption or payment in installments of any such overdue payments
- the contractor has not been prohibited from competing in tenders.

When submitting tender proposals, misunderstandings are often caused by misprints and errors in the text of the tender. According to the Public Procurement Law, the awarding entity must correct the text of the tender in terms of any obvious misprints and computational errors

made in the calculation of prices with regard to its consequences, and other errors, such as differences between the offers and the terms of reference, not causing and significant changes in the contents of the offer, and must immediately notify all contractors who have submitted their tenders.

7.4 Review procedures

Anyone whose legal interest in obtaining a contract has been or might have been prejudiced or had or might have suffered damage as a result of the infringement by the awarding entity of the provisions of the Public Procurement Law is entitled to law certain enforcement measures: the appeal to the National Chamber of Appeals (KIO) and subsequently the claim to the regional court.

Contractors are authorised to appeal against the awarding entity's decision directly to KIO which is ruling by a one-person panel, or a three-person panel in very complicated matters. What is more important, lodging an appeal to the KIO results in a "standstill" period. It means that the public procurement agreement can only be concluded after the appeal has been considered by the KIO. KIO rulings can be challenged to the regional court, but this will not lead to a "standstill" period. The claim to the court may be lodged against the judgment or the final decision of the KIO. The claim is are lodged through the President of KIO within seven days of the delivery of the KIO decision, sending at the same time a copy to the opposing party of the claim. Lodging the claim to the court does not result in a "standstill" period. Consequently the tender authority is entitled to execute the public procurement agreement and the decision of the court does not have any direct impact to this agreement. However the tender authority is obliged to redress a damage suffered by a participant as a result of the execution of the agreement with another participant.

Infrastructure

8.1 Motorways

National roads and motorways are owned by the State Treasury and administered by the General Director of Roads and Motorways (GDDKiA) which is responsible for national roads and motorways. The rules concerning building and operating motorways are set out in the Toll Motorways and National Road Fund Act. The construction of motorways is financed from the concessionaire's own resources if the construction of such motorway is executed by granting a concession for the construction and operation of the motorway, or from public sources (national budget funds or National Road Fund funds) if GDDKiA is not willing to grant any concession for the operation of the motorway.

GDDKiA chooses the concessionaire during three-phase tender proceedings. The first phase is a preliminary qualification open to joint stock companies and limited liability companies from Poland or another EU member country, whose sole business is building or operating roads. The second phase is a limited tender where bidders are evaluated according to economic and financial balance, credibility, technical and organisational preparation, financial plan and programme of building and operating motorways. The third phase is negotiating the agreement. When all the proceedings are finished, the minister in charge of transport matters concludes an agreement with the selected company. Any motorway operating fees are collected by the concessionaire that concludes a building and operating, or just an operating agreement, on the conditions set out in that agreement.

Once selected, motorway operators can apply for financial aid from the National Road Fund, and receive warranties and guarantees from the State Treasury.

8.2 Railways

The regulations concerning the use, administration and maintenance of railway infrastructure are set out in the Railway Transport Act.

The administration of infrastructure and the performance of transport services are separated.

Currently, a large part of the Polish railway infrastructure is being repaired or modernised. At the same time, international and European

standards are being introduced, due to the harmonisation of Polish and European railway infrastructure.
Poland is implementing the European Railway Traffic Management System (ERTMS). This system consists of a unified European radio communication GSM-R (Global System for Mobile Communications- Railway) and a unified European safety control system ETCS (European Train Control System). Public procurement rules will apply in this case.
From 1 January 2010, due to the liberalisation of railway transport law, carriers throughout the EU will be able to operate on the Polish passenger railway transport market. It opens up a great opportunity for carriers to set up business in Poland and compete with national railway companies.

8.3 Airports

Rules for building and operating airports are set out in the Aviation Law and the Act on Specific Rules for Preparing and Performing the Investment Concerning Public Airports.

An airport can be built with a permit from the President of the Office of Civil Aviation.
This permit can be granted to: state and local government bodies, companies in the meaning of Polish Commercial Companies Code, and co-operatives registered in Poland, associations and individuals residing in Poland.
To build an airport and perform the investment in a given area, the relevant regional governor has to grant permission. In this decision, the local governor will set out the location of the airport, divide the real property and grant a building permit.
Currently there are various plans to build regional and local airports with the participation of foreign capital, for example in Modlin, Lublin, Białystok, Opole or Koszalin. These investments are part of preparations for EURO 2012 in Poland and could be performed with aid from EU funds.
In addition, there are plans for a central airport hub, which will be a key element for Eastern-European multimodal transport system.
Possible locations are: Radom, Sochaczew and Mszczonów. This investment will be one of the largest in recent years.

8.4 Water management infrastructure

The Act on Collective Water Supply and Collective Disposal of Sewage sets out rules and conditions about collective water supplies intended for use by people and the collective disposal of sewage. It also regulates the activities of water-sewage enterprises.
Collective water supply and collective disposal of sewage is the responsibility of the local authorities. However, it can be commissioned to a private entity in a tender organised under the public procurement law or by granting a licence. Currently the licensing system is becoming more and more popular, as it is an easier way to repair and modernise the water management infrastructure.
Tariffs of the services are fixed by water-sewage enterprises and approved by the local council.

8.5 Telecommunications infrastructure

Regulations concerning telecommunications infrastructure and services are set out in the Telecommunication Law.
In the case of ground telephony, the company TP S.A., owned by France Telecom, has a dominant position on the Polish market. There have been recent attempts to open the system up to competitors by letting them use TP S.A. infrastructure. It is achieved by imposing on TP S.A. certain duties and obligations in specific of sharing network facilities. Such duties are imposed by the President of the Electronic Communications Office.
In the case of mobile telephony there are four competing operators acting on the Polish market, of which one of them, Polkomtel, is state-owned. The telecommunications market in Poland is a regulated market. It means that, due to its special importance for state and society, the regulations are stricter and further reaching than in other business areas.

Infrastructure

The President of the Electronic Communications Office is the administrative organ responsible for the regulation and development of telecommunications market in Poland. One of the most important goals currently is to introduce a project of high-speed Internet, which will be one of the largest infrastructure investments in incoming years.

Environment protection

There are over 400 legislative acts and regulations governing environment protection in Poland. The most important are: the Act on Environmental Protection from 27 April 2001, the Act on Waste and the Water Law of 18 July 2001. These acts, along with the legal acts described below, were adopted in order to bring Polish law into line with community requirements.

9.1 Environmental Permits

Facilities posing a particular environment threat are required to hold an integrated permit. This permit covers all the issues concerning the facilities' impact on the environment.
Facilities requiring an integrated licence are submitted to more restrictive environmental requirements (the Best Available Techniques – BAT).
For facilities that do not require an integrated licence, a sector licence is usually required. This licence governs particular forms of environmental impact, such as:

- a licence for emitting gases or dust into the air
- a licence for the specific use of inland waters (for the intake of underground or surface waters, for the release of sewage into the water or the soil, for the release to sewage systems of substances that are particularly hazardous to the water environment, etc.)
- a licence to produce waste
- a licence for the emission of noise to the environment.

According to the applicable regulations, certain facilities posing an insignificant impact on environment do not require these licences. It is sufficient to submit the relevant notification to the administrative authorities

9.2 Waste management

Waste is managed under "waste management plans" adopted at a national and local government level. Companies conducting specialised activity in the scope of waste management must have a separate administrative licence.

All waste management and waste production licences must be consistent with the waste management plans.
The current Polish law is relatively liberal regarding corporate liability concerning waste management. The main obligation of companies is to transfer waste to entities holding required permits for waste management.
By transferring waste to specialised and entitled entities, the company also transfers liability for the production of waste.
There are no taxes in Poland on the production of waste. Fees are only incurred by entities storing waste on landfills. Companies producing waste incur only the costs of transferring it to another entity, or its own costs of waste management.
In the near future, the waste management regulations are expected to change, as the current system does not guarantee the full compliance of Polish obligations towards the EU regarding limiting the amount of waste stored in landfills.

9.3 Recovery and recycling of products and packaging

The applicable regulations impose an obligation on companies marking packaging, products in packaging and certain specified products to provide recovery and recycling of some of the products. In addition to packaging, the obligation covers tyres, batteries, lubrication oils, and electric and electronic devices.
There are also special obligations on companies producing or importing vehicles. The obligations are limited to the need to provide a nation-wide recovery network for used vehicles (without the need to indicate particular recovery or recycling levels).
Required recovery and recycling levels are varied – and regarding packaging can be as much as 60% (this level should be achieved by 2014, with lower but steadily increasing levels in force before then).
Companies can transfer their recovery and recycling obligations to specialised "recovery organisations", where the payment for such

services is considered to meet the company's obligations in that scope.
If companies fail to meet their obligations of recovery and recycling (independently or by conducting an appropriate agreement with a recovery organisation), then the company will be charged a "product fee".

9.4 Air protection

Air protection is mostly achieved through the requirement to obtain an integrated permit, a licence to emit gas or dust into the air, or by submitting the relevant notification.
Applicable regulations set out precise emission standards for particular installations, which are the basis for issuing such licences.
Any emission of gas or dust to the air leads to the payment of relevant fees.
Regardless of this, there are particular regulations governing:

- the protection of the ozone layer
- the emission of greenhouse gases.

The greenhouse gases reduction system concerns companies operating medium and large installations in the energy, metallurgical and iron and steel, mineral and paper sector. In order to be covered by the system, an individual licence for participation in the emission trade system is necessary. The permitted greenhouse emission level is defined in a personal allocation on the basis of a regulation by the Council of Ministers. Exceeding this level leads to an additional fine. Entitlements for greenhouse gas emission can be freely traded and sold.

9.5 Water protection

Water protection is ensured by the requirement to obtain an integrated permit or licence for the particular use of inland waters. Licences are not generally required if a company is connected to the public water supply and drains sewage to the public sewage system (with the exception of draining harmful substances to the water environment through the sewage system.)
Taking water from another source, or disposing of sewage to the water system or the ground, leads to separate fees. Entities using waterworks and sewage companies do not pay this tax, but incur only the costs of the company's services.

Environment protection

9.6 Flora protection

An indication of flora protection can be seen by the requirement to obtain licences for cutting down trees. Tree removal also leads to additional taxes, though payment can be postponed and amortised if the company that wishes to cut down trees replants the appropriate trees elsewhere.

9.7 Soil pollution

Polish law concerning land reclamation and the need to protect acquired rights has been amended many times and is very complex.
In general, there are some precise standards in force concerning soil and land, which, if exceeded, results in the soil being deemed polluted and where reclamation measures are necessary.
It is crucial to know precisely when the soil became polluted. All land polluted before 30 April 2007 should be reclaimed by the current owners. For pollution made after that time the polluter bears liability.

Reclamation consists in restoring the soil quality to within the quality standards. There are some exceptions for land polluted before 1980, for which the reclamation obligation is very limited.

9.8 Protected areas

Part of Poland is covered by additional protection. The protection covers:

- national parks
- wildlife reserves
- landscape parks
- protected landscape areas
- areas covered by the "Natura 2000" programme
- ecological land
- natural landscapes.

Depending on the kind of protection, there are various prohibitions on environmental or landscaping interference valid for specific areas, including a ban on commencing new business activity.
Particularly significant are prohibitions concerning "Natura 2000" areas. These areas will finally cover over 1/5 of the country. Performing any investments in these areas comes with

a number of conditions: additional administrative permits, lack of alternative solutions, providing compensation for any disturbance to nature. These limitations also concern areas adjacent to "Natura 2000" areas.
Particularly restrictive conditions for investments concern "Natura 2000" areas, which have been created with the aim of protecting priority species.

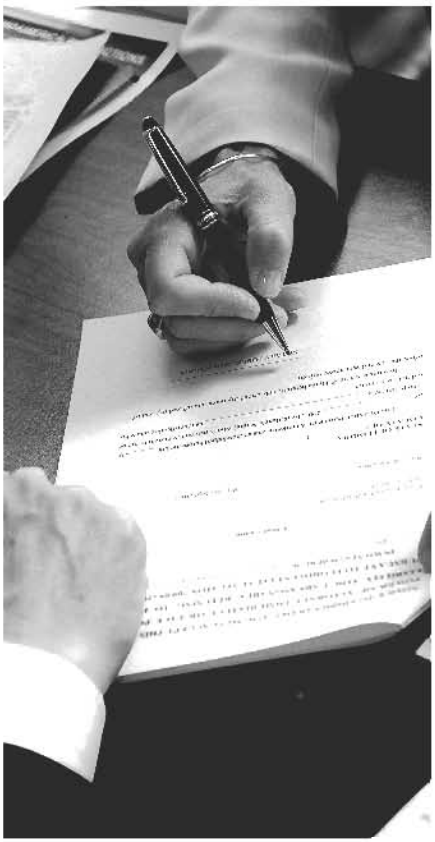
9.9 Sanctions and liability for a violation of rules

Sanctions for violations are varied. They can include:

- additional fees ('increased fees') for using the environment without the necessary licences
- administrative fees for violating the conditions of licences
- fines (of up to PLN 5,000), arrest (for up to 30 days) or the restriction of liberty – inflicted only on individuals for minor offences
- imprisonment – inflicted only on individuals for significant violations
- administrative decisions on the discontinuation of a company's business activity.

In addition to these sanctions, the administrative authorities are entitled to demand that all consequences of any violation of the provisions of the Act on Environmental Protection be remedied.

Consumer protection



Most regulations on consumer protection result from the adoption of the acquis communautaire following Poland's accession to the European Union. The relevant EC Directives have been transposed into the Civil Code as well as into separate acts of Parliament.

10.1 Product safety

Producers and sellers of goods purchased by consumers bear special responsibilities. Generally, they must ensure that their products are as safe as possible and that they comply with all required standards.
A safe product is one that, under normal or reasonably foreseeable conditions of use (including length of use), presents only minimal risks to human health and safety. A dangerous product is defined as one that fails to meet this criterion. Consumers have the right of access to full information about a given product, to be able to assess any potential risks associated with its use. The General Product Safety Act dated 12 December 2003 ("GPSA") applies to the supply of all brand new and used products to consumers. Where industry-specific legislation sets out certain product safety requirements, such requirements always prevail over the corresponding GPSA requirements. However, the GPSA may place additional requirements that affect the actions of the supplier. Consumers are also protected against damage caused by dangerous products. In such cases, liability is borne by producers, importers, and, in certain circumstances, by sellers. A manufacturer that generates hazardous products is responsible for any potential injury caused by such products. In addition, manufacturers of materials and producers of end products bear the same liability, unless the injury results exclusively from the defective construction of a given product or the instructions provided by the manufacturer. Compensation is only due where such damage exceeds EUR 500.

10.2 Consumer interests

10.2.1 Abusive contract clauses

All contracts with consumers are subject to special rules. These rules apply mainly

to "standard agreements", the terms of which are set unilaterally by sellers and suppliers. One disadvantage is that standard agreements cannot be negotiated, although they largely facilitate the commercial exchange. To protect consumers, the Civil Code prohibits the use of "abusive clauses" that infringe consumer rights or go against the generally accepted good practices. If entered in a contract, such abusive clauses are not binding. The Civil Code lists clauses deemed abusive. Where there is any doubt, a clause will be deemed unlawful if:

- it excludes or substantially limits the performance liability to the consumer's disadvantage
- it contains terms that the consumer could not have known before the contract was concluded
- it requires that the consumer enters into further similar contracts in the future.

The Civil Code also provides that contractual terms must be drafted in plain, intelligible language, and states that any ambiguities should be resolved in favour of consumers.

It should be noted that the President of the Office for Competition and Consumer Protection ("President of the OCCP") maintains a Register of Abusive Clauses. New terms are added to this Register if they are declared abusive by the Court for Competition and Consumer Protection in Warsaw. All such terms become effective towards all, and their application constitutes a criminal offence subject to a fine. What is more, the use of abusive clauses infringes collective consumer interests, as defined by the Act on Competition and Consumer Protection of 16 February 2007 ("Competition Act").

10.2.2 Consumer sale

Special importance is attached to sale and purchase agreements with consumers. Polish law imposes stringent requirements on business sellers, including an obligation to display clear and accurate product information and to guarantee that products comply with the terms of sale. Under the Consumer Sales Act of 27 July 2002, the seller has to guarantee that the goods he sells satisfy the requirements provided for in the contract for a period of two years following their delivery. If such goods do not meet the contractual requirements, consumers are entitled

to request that the goods be repaired or replaced. If it is impossible, consumers have right to request a price discount or their contract to be rescinded. A seller who is liable towards a consumer can in turn hold the producer liable, under the terms of their commercial relationship.
The legislation also provides that consumer guarantees must be drafted clearly and they must state what rights they confer.
Stricter rules apply to distance selling, i.e. sales by internet, telephone or post. Consumers are entitled to withdraw from a contract within 10 days from the delivery of a product or the conclusion of a service contract.

10.2.3 Consumer credit

The Consumer Credit Act of 20 July 2001 regulates agreements by which businesses grant or promise to grant credit to a consumer.
The most common forms of consumer credit facility are:

- loan agreements
- credit agreements (as defined in the Banking Law)
- agreements on postponing the payment by the consumer.

When entering into a credit agreement, consumers enjoy certain rights, such as:

- the right to redeem a loan before it matures
- the right to rescind an agreement under certain circumstances.

Lenders, on the other hand, have certain duties, such as:

- a duty to notify the consumer of the current interest rate
- a duty to pay all costs in connection with the loan, including interest, commission, etc.

10.2.4 Timeshare

The Timeshare Act of 13 July 2000 regulates the right to use a holiday property for a certain period of time (one week or more) every year under a timeshare agreement. The term of the agreement is at least three years, during which the right holder is obliged to make an annual flat rate payment.
The act provides for the following protection to timeshare buyers:

the right to a 10-day cooling off period in which consumers can withdraw from the agreement without any reason and without any liability towards the timeshare provider (apart from having to pay the cost of the contract)
a strict prohibition on the timeshare provider soliciting money from consumers during the cooling off period

- the timeshare providers' obligation to provide consumers with a brochure, which forms part of the timeshare contract, drafted in their own language, as long as it is an official language
- the timeshare providers' obligation to provide consumers with a translation of the contract into an official language of the country where the timeshare accommodation is located
- any credit agreement concluded on the basis or in relation with the timeshare contract is rescinded automatically together with the timeshare contract.

Moreover, a typical timeshare contract must include all the information required by the act, for example:

- names and addresses of the parties and of the owner of accommodation
- accurate description of the property

amount of the flat rate annual charge, plus other charges relating to the facility.

10.2.5 Unfair commercial practices

Some commercial practices are regulated by the 1993 Unfair Competition Act (see chapter 11.5 below). Pursuant to the Unfair Competition Act, an "a*ct of unfair competition" means any "act contrary to the law or good practice, which threatens or infringes the interests of other enterprises or customers.*"
Practices prohibited by the act include:

naming an enterprise with the intent to mislead clients as to its identity
misleading a client as to the key attributes of products or services
inciting to the non-performance or improper performance of a contract
counterfeiting products and misleading a client as to their identity
selling products or services to clients tied with a premium of products or services of a different kind

- engaging in unfair or prohibited advertising

bribing a person performing a public function.
Please note that the Unfair Competition Act does not provide to consumers a direct right of action, which means that they cannot take a case to court. Proceedings against unfair commercial practices may be initiated by consumer organisations or the undertakings threatened by such practices.
Commercial practices that harm consumer's interests are also regulated by the 2007 Unfair Commercial Practices Art. The act defines and prohibits any unfair, misleading and aggressive commercial practices, which may in particular consist of:

misleading a consumer as to the key attributes of products or services
spreading false information about the product or service
claiming to be a signatory of a code of conduct when a trader is not
falsely stating that a product will only be available for a very limited time
creating an impression that the consumer cannot leave the premises until a contract is concluded
explicitly informing a consumer the trader's job or life depends on the conclusion of the contract.

The Unfair Commercial Practices Act grants consumers a direct right of action.

10.3 Consumer information

Polish Law requires that consumers are provided with easy access to clear information in business-to-consumer transactions. Consumer information must always be correct and complete in all respects, such as price, quantity, maintenance and associated risks.
In accordance with the provisions of the Competition Act, a failure to impart fair, truthful and complete information to consumers constitutes a practice infringing the consumers' collective interest, i.e. one which may potentially affect an unlimited number of people.

10.4 Enforcement

In Poland, consumer protection regulations can be enforced under either private or public law

provisions. In the first case, it is mostly private actors (i.e. individual consumers and businesses) that resort to the mechanisms of private law to have various disputes resolved. Public authorities mainly rely on public law remedies such as investigative powers, injunctions and fines.

The key procedures that may be used against enterprises suspected of infringing consumer rights are set out in the 1993 Unfair Competition Act, the 2007 Competition Act and the 2007 Unfair Commercial Practices Act.

As mentioned above, consumers cannot bring action in their own name, except under the provisions of the Unfair Commercial Practices Act. Claims under the Unfair Competition Act can be brought by consumer associations or the undertakings threatened by unfair practices.

The president of the OCCP is the only authority empowered to issue decisions prohibiting certain practices on the grounds that they are detrimental to consumer interests and requesting that infringements be remedied. The president of the OCCP can also fine the infringing party up to 10% of its total annual turnover. The president of the OCCP is also responsible for screening standard consumer agreements and ensuring product safety.

In cases concerning the use of unfair contractual terms the procedure is different. Claims may be brought by anyone exposed to such unfair terms, as well as by any of the above-mentioned consumer protection entities. The court that considers such claims is the Court for Competition and Consumer Protection in Warsaw. A decision barring the use of a given abusive clause is published in the official judicial and economic journal, "*Monitor Sądowy i Gospodarczy*", and sent to the president of the OCCP who introduces it to the Register of Abusive Clauses.

Cases that do not qualify for any of the above procedures can be brought:

- before a common court, on the basis of standard civil procedure provided for in the Code of Civil Procedure or
- before a consumer settlement court, on the basis of an arbitration procedure, though the enterprise concerned must consent to the proceedings.

Competition law

The Act on Competition and Consumer Protection, dated 16 February 2007 ("Competition Act"), is the principal vehicle for controlling mergers and anti-competitive agreements between undertakings and abuses of a dominant position. It sets out the main objectives of Polish competition policy, which include:

- a prohibition on concerted practices, agreements and associations between undertakings that may prevent, restrict or distort competition, and a prohibition on the abuse of a dominant position
- the preventive supervision of any mergers that may significantly impede effective competition in a given market, by approving or prohibiting the envisaged alliances.

Other aspects of Polish competition law include the supervision of aid granted by the State, or from State resources in any form, if it threatens to distort competition by favouring certain undertakings or the production of certain goods.

11.1 Anti-trust regulations

In the Polish context, the rules governing anti-competitive agreements and practices (cartels and other forms of collusion) and the rules prohibiting abuses of dominant position can both be described as anti-trust rules.

11.1.1 Anti-competitive agreements and practices

The most familiar example of an anti-competitive arrangement is an agreement on prices, where undertakings jointly fix price levels, as a result of which consumers are unable to take advantage of competition between suppliers to obtain competitive prices.

Other types of prohibited agreements are those that:

- limit or control production, markets, technical development or investment
- share markets or sources of supply
- apply dissimilar conditions to equivalent transactions with different trading partners,

thereby placing one partner at a competitive disadvantage

make the conclusion of a contract subject to the trading partner accepting supplementary obligations that, by their nature or according to commercial usage, have no connection with the subject of the contract.

Such agreements are prohibited in Poland under Article 6 of the Competition Act. The Polish competition authorities have been empowered to enforce this prohibition.

It should be noted, however, that the implementing regulations render this prohibition inapplicable to an agreement that generates enough benefits to outweigh its anti-competitive effects. Such agreements are said to be exempt from the prohibition on restrictive agreements prescribed in Article 6 of the Competition Act.

The most important rules in this respect are provided by a number of regulations issued by the Council of Ministers under Article 8 §3 of the Competition Act ("Block Exemption Regulations"). Block exemption regulations exist, for instance, for vertical agreements, R&D agreements, specialisation agreements, insurance agreements, technology transfer agreements and car distribution agreements. Where an agreement meets the conditions set out in a block exemption regulation, it is deemed to be valid and enforceable, even though it may have appreciable anti-competitive effects.

Another important exemption is called the "de minimis" exemption based on the assumption that the impact of certain agreements or practices on competition can be considered to be non-appreciable. This applies where the total market share of the undertakings involved remains below specified thresholds: 5% with respect to agreements between competitors and 10% with respect to agreements between undertakings that do not compete with each other.

Finally, even where an anti-competitive agreement does not fall within any of the above exemptions, it may be still allowed on the basis of an individual assessment under Article 8 §1 of the Competition Act, also called "the rule of reason". To benefit from this "individual exemption", the undertakings concerned must prove that the benefits of their agreement to general welfare (product improvement, technical or economic progress, benefits to consumers) outweigh their restrictive effects on competition.

It should be noted that some agreements and business practices restricting competition are

deemed particularly serious as they do not normally produce any beneficial effects. They therefore almost always infringe competition law. Under Polish law, the most important examples on the horizontal level include agreements between competitors that fix prices, allocate markets or restrict the quantity of goods or services to be produced, bought or supplied. Examples of such hardcore restrictions in vertical relationships are resale price maintenance and certain territorial restrictions. Such restrictions are known as blacklisted clauses and prevent an agreement from qualifying for a block exemption or the de minimis exemption. Furthermore, agreements containing blacklisted clauses are unlikely to be exempted on the basis of an individual assessment. The most important cases for horizontal and vertical agreements in Poland concerned the construction materials and fuels sector.

11.1.2 Abuse of market power

The Competition Act also prohibits any abuse of market power, often referred to as "market dominance". An undertaking is said to hold a dominant position if its economic power enables it to operate in a market without considering the reaction of its competitors or intermediate or final customers. There is a presumption that a market share of 40% is significant and hence indicative of a dominant position. However, there may be factors permitting the conclusion that an undertaking with 40% of the market is not dominant.

Examples of the abuse of a dominant position include:

- the direct or indirect imposition of unfair prices, including excessively high or low prices, significantly deferred payment terms or other unfair conditions of purchase or sale
- the restriction of production, supply or technical development to the detriment of customers
- the application of dissimilar or burdensome conditions to equivalent transactions
- making the conclusion of an agreement subject to acceptance or performance of another service that has no substantial or customary relation to the subject of the agreement
- hindering the creation and development of competition.

Market behaviour that constitutes abuse of a dominant position generally lacks legal effect.

Competition law

In Poland, rules on a dominant position have been used most frequently to control the exercise of monopoly power in the liberalised energy market, and in the telecommunication, waste disposal and water supply sectors.

11.2 Merger control

The control of mergers and acquisitions is an important component of competition policy. In general, only mergers that would significantly impede effective competition, in particular through creating or strengthening a dominant market position, are prohibited in Poland. The system for monitoring merger transactions is also governed by the Competition Act. It imposes on firms an obligation to seek clearance for certain large-scale mergers.

11.2.1 General obligation to notify

The Competition Act contains a two-fold test to establish whether the Polish competition authority, namely the president of the Office for Competition and Consumer Protection ("OCCP"), has jurisdiction.

The first test is that the transaction must be a "concentration", defined as:

- the intended merger of two or more undertakings
- an intended takeover – whether by acquiring or taking up shares or by obtaining direct or indirect control of the undertaking in some other way
- the intended creation of a joint undertaking by one or more undertakings
- the intended acquisition of a part of the assets of the undertaking (all or part of the undertaking's business), if the turnover generated by such assets in Poland in either of the two years preceding the notification exceeded the equivalent of EUR 10,000,000.

As a rule, the notification requirement only applies to transactions concluded in Poland. However, the OCCP extends its jurisdiction to include transactions concluded anywhere in the world where: (a) they are considered a concentration under Polish law and (b) they have, or may have, effects in Poland.

It should be noted that extra-territorial concentrations are deemed to have effects in Poland if at least two of the parties directly involved in the concentration belong to capital groups with subsidiaries in Poland.
The second test of the OCCP's jurisdiction involves a turnover threshold which is designed to identify those transactions that may have an impact in Poland.
The obligation to notify the concentration to the OCCP concerns transactions in which the combined worldwide turnover of both parties to the transaction exceeds the equivalent of EUR 1,000,000,000 in the year preceding the year of notification. In this respect, the combined worldwide turnover of both parties to the transaction is intended as a measure of the general scale of the undertakings concerned. Note that turnover as defined here includes the turnover both of undertakings participating directly in the concentration and of other undertakings belonging to the same capital groups.
A concentration that does not meet the above threshold of EUR 1,000,000,000 is still notifiable if the combined Polish turnover of both parties to the transaction exceeds the equivalent of EUR 50,000,000 in the year preceding the year of notification.

11.2.2 Exemptions from the notification obligation

There are a number of exemptions from the notification obligation. The most important of them is commonly referred to as the "turnover exemption" or the "de minimis exemption".
If the target's Polish turnover did not exceed the equivalent of EUR 10,000,000 in each of the two years preceding the year in which notification would otherwise have to be made, the transaction does not fall within the scope of the Polish merger control rules. Please note that this exemption only applies to transactions that involve a takeover of control.
In general, the relevant turnover will be calculated as all amounts received by the target and its subsidiaries from the sale of products and the provision of services derived from transactions entered into with undertakings whose registered office is in Poland or with individuals domiciled in Poland.

In addition to the de minimis exemption described above, there are four other exemptions. These apply when:

- a financial institution, whose normal activities include investing in the stocks and shares of other undertakings, either as principal or as agent, makes temporary purchases of stocks and shares with a view to reselling them, provided that resale takes place within one year of the date of purchase and provided that:
  - the institution does not exercise any rights attaching to these stocks or shares, save for the right to a dividend, or
  - the institution exercises those rights solely in order to facilitate the resale of all or part of an undertaking, its property, or the stocks and shares themselves
- an undertaking makes temporary purchases of stocks and shares for the purpose of securing debts, provided this undertaking does not exercise the rights attached to these stocks or shares, save for the right to sell them
- the concentration occurs in the course of insolvency proceedings, save for cases where the party intending to take control is a competitor of the undertaking taken over or belongs to a capital group to which competitors of the undertaking belong
- the concentration concerns undertakings from the same capital group.

11.2.3 Investigation procedure

Merger control notification is to be made on an official form, which is strictly prescribed by a Regulation of the Council of Ministers dated 17 July 2007 regarding notification of an intention to concentrate.

Clearance is a condition precedent to completing a transaction, which means that the transaction cannot be completed without obtaining approval from the OCCP.

11.2.4 Time constraints and fees

As a rule, the OCCP has two months from the date of filing the notification to examine any merger and to issue either clearance or prohibition. The absence of any response within

this period is deemed to be tacit acceptance of the notified transaction.
Please note, however, that this statutory period is suspended in the event of an official request for additional data or information to be submitted by the parties. Therefore, if notification is incomplete or if the OCCP takes a particular interest in the transaction, the procedure could take longer to complete.
In practice, if the transaction does not give rise to any specific competition concerns, clearance is usually granted within the statutory investigation period. The procedure may even be accelerated where comprehensive market information is provided. The official fee payable on filing the notification is PLN 5,000.

11.3 Enforcement

The Competition Act is enforced by the president of the OCCP, which is the central administrative body. The decisions and guidelines of the OCCP, as well as court rulings issued pursuant to appeals against decisions of the OCCP, may be published in the Official Journal of the Office.

Administrative decisions of the OCCP related to competition law may be appealed against to a special court set up within the Warsaw Regional Court (the "Competition and Consumer Protection Court"). Appeal applications against a Competition and Consumer Protection Court ruling may be filed to an appeal court. Appellate proceedings are governed by the provisions on commercial matters in the Code on Civil Proceedings.
A second instance ruling may be further appealed to the Supreme Court, whatever the amount involved, but only on questions of law. The appeal must be filed within two months of the date the relevant ruling is received.
There is a system of fines that may be imposed by the OCCP for a failure to comply with competition law. The penalties are discretionary and may range:

- up to 10% of the total annual revenue of an entity where that entity enters into an agreement aimed at preventing, restricting or distorting competition, or it abuses its dominant position, or it proceeds with a merger before obtaining a clearance decision from the President of the OCCP

- the PLN equivalent of up to EUR 50,000,000 where no information, or incorrect or false information, was provided during merger or antimonopoly inspection proceedings
- the PLN equivalent of up to EUR 10,000 for each day of delay in complying with a decision of the president of the OCCP or with a ruling of the Competition and Consumer Protection Court.

In addition, the Competition Act sets out penalties that may be imposed by the OCCP on an individual acting as a manager or member of a governing body of an entity or group of entities (up to a maximum of 50 times the average remuneration) for breaching the law. Fines imposed by the OCCP may be appealed to the Competition and Consumer Protection Court. Such fines constitute revenue of the State budget and may be collected pursuant to executory administrative proceedings (involving forced seizure of assets and measures related to bank accounts and other property of a debtor).

The Competition Act provides for a possibility to apply for leniency. Pursuant to Article 109, participants to a prohibited agreement may apply for full or partial immunity from fine if their co-operation with OCCP serves to sanction the practice.

It should be noted that the average amount of fines is increasing and a stricter fining policy is being seen. The OCCP has taken steps to improve their transparency though.

11.4 State aid

On Poland's accession to the European Union, EU rules on state aid became directly applicable in Poland. The EC Treaty prohibits any aid granted by the state, or from state resources in any form whatsoever, if it distorts or threatens to distort competition by favouring certain firms or the production of certain goods. By giving certain firms or products favoured treatment to the detriment of other firms or products, state aid seriously disrupts normal competitive forces.

The aid in question can take a variety of forms such as, for instance:

- state grants
- interest relief
- tax relief
- state guarantees

provision of goods and services belonging to the state on preferential terms.

11.5 Unfair competition

Since the over-riding principle of the provisions described above is to combat agreements and practices threatening the "public interest", they should not affect market behaviour that is only harmful to the individual interests of companies or consumers.

However, such market behaviour can be considered "unfair competition" and come under the 1993 Unfair Competition Act (see chapter 10.2 above). Acts of unfair competition do not in principle constitute a criminal offence under Polish law, and therefore they are not prosecuted through the criminal courts. Claims arising from unfair competition regulations are enforced through the civil courts, as they are similar to claims in tort. Nevertheless, there are some acts of unfair competition that may constitute a criminal offence and thus give rise to criminal liability.

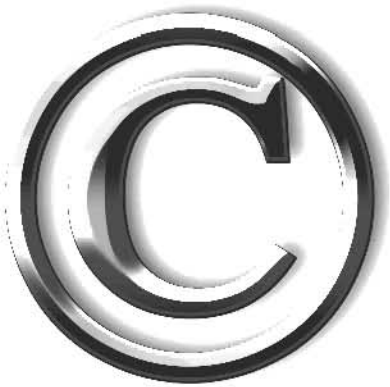
Companies whose interests have been violated or threatened by acts prohibited in the act may raise claims on the basis of the unfair competition regulations. Where an act of unfair competition violates or threatens the interests of consumers, organisations with relevant statutory powers may raise claims.

A claimant claiming under the unfair competition regulations may request that the court:

- order the defendant to cease the unlawful acts
- order the defendant to remove the effects of unlawful acts
- order the defendant to make a statement at its own expense with relevant contents and form, for example by publishing the decision in the dispute in one or more journals
- award damages for the loss suffered
- order the defendant to surrender benefits obtained improperly
- order the defendant to pay a sum for specific social purposes related to supporting Polish culture or protecting national heritage.

At the request of the indemnified party, the court may also order the disposal of products, packaging, advertising materials and other articles directly related to the infringement. In particular, the court may order their destruction or their application in satisfaction of damages.

Intellectual Property



Intellectual property rights often constitute a significant part of a company's market value. Trade marks, inventions, patents and industrial designs not only generate revenue, but they also foster trade flow, innovation and development. Therefore, high standards of IP protection are crucial for the promotion and facilitation of investments.

Polish law distinguishes between industrial property rights, copyrights, neighbouring rights and unfair competition.

12.1 Key legislation

Intellectual property in Poland is protected by international and Community regulations, as well as relevant national legislation.

Poland is a party to a number of international treaties, such as:

- the Paris Convention for the Protection of Industrial Property (1883) – Stockholm Act (1975)
- the Treaty on Patent Co-operation (1970)
- the Madrid Agreement on the International Registration of Trade marks (1891) and the related Protocol (1989)
- the Berne Convention on the Protection of Literary and Artistic Creations (1886) – Paris Act (1971), as well as
- the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (1961).

Since 2004, Poland adheres to the European Patent Organisation and is a part to the European Patent Treaty (1973). Since 2005, Poland also adheres to the World Trade Organisation (WTO) and is bound by Annex 1C of the Marrakesh Agreement Establishing the WTO – Trade Related Aspects of Intellectually Property Rights (TRIPS).

Upon Poland's accession to the European Union in 2004, the Community Trade Mark and Community Registered Design regulations became applicable in Poland. Polish national legislation implements a number of Community directives, such as the codified version of the Council Directive 89/104/EEC of 21 December 1988 (known as the "First Directive") – Directive 2008/95/EC of the European Parliament and of the Council of 22 October 2008 to approximate the laws of the Member States relating to trade marks, as well as Directive 2004/48/EC of the European Parliament and of the Council of 29

April 2004 on the enforcement of intellectual property rights (also known as "IPR"). Intellectual property protection at a national level is secured under:

- the Industrial Property Act of 30 June 2000, which covers rights to trade marks, geographical indications, inventions, industrial designs, utility models, integrated circuits and rationalisation projects
- the Act on Copyright and Associated Rights of 4 February 1994, which covers rights to creative works (including literary, musical, photographic and audiovisual works and computer software) and neighbouring rights (including rights to artistic performances, phonograms, videograms, broadcasts, first editions and scientific editions)
- the Act on Combating Unfair Competition of 16 April 1993, which sets out definitions of fair competition, including certain elements of intellectual property (such as enterprise and product identity)
- the Civil Code of 23 April 1964, which provides the basis for claims relating to the infringement of a business name, and the violation of a company's personal rights and interests.

12.2 Industrial property rights

12.2.1 Trade marks

National trade marks are protected under the Industrial Property Act by virtue of their registration with the Polish Patent Office (foreign non-community trade marks "CTM" benefit from protection as the national trade marks upon the extension of their protection in Poland through the international registration system administered by International Bureau of the World Intellectual Property Organisation in Genève). Where a trade mark is infringed, its holder may demand that infringement be ceased and prohibited in future, that the results of the infringement be remedied, that any unlawful profits be surrendered, and that all losses be compensated for (also in form of a lump-sum compensation equal to the amount due for the licence of the trade mark infringed, which facilitates claiming damages regarding the burden of proof). The holder can also demand that the products bearing counterfeit trade marks

are destroyed and that the judgement be made public.
Even before filing the law suit, the trade mark holder can be granted an injunction in order to cease the illegal traffic for the time of the proceedings; an injunction can also be claimed in order to preserve the evidence, as well as to obtain the relevant information, including from third parties, about the channels of distribution and storage of the counterfeit products (all of these claims apply in general to other industrial property rights).
The extent of protection depends on whether a given trade mark qualifies as a "renowned trade mark". Normally, a trade mark is only protected if its use in connection with an identical or similar product creates a risk of association between the two products. However, in the case of renowned trade marks, it is not necessary to establish a risk of association in order to invalidate identical or similar trade marks. Protection extends further, as it is possible to prevent a renowned trade mark from being used in connection with any kind of product, especially if such use might be detrimental to the image of the renowned trade mark, or if it would give to the user a non-justified benefit.

The entry on the market of a product bearing a trade mark gives exclusive rights to this particular trade mark (for a given product), as long as the product was lawfully entered for the first time in the European Economic Area (the same rule applies for patents).
A trade mark is protected for a period of 10 years from the date when an application for protection is filed with the Patent Office. After that, it is possible to apply for extensions. However, a trade mark may also be cancelled, for example in the case of genuine non-use for five consecutive years without justification, or if it is established that a trade mark has lost its distinctive character. Trade mark protection may also be invalidated if the conditions to grant the exclusive right were not met (for example a similar trade mark with superior seniority was not taken into consideration when registering the trade mark in question).

12.2.2 Geographical indications

A geographical indication is a designation that, implicitly or explicitly, relates to the name of a town, place, region or country, and which

identifies certain goods as originating from that location. However, a geographical indication can only be protected where the goods' quality, reputation, or other characteristics are primarily associated with their geographical origin.
Under Polish law, foreign geographical indications will only be protected if they enjoy similar protection in their country of origin. National geographical indications are not granted for the goods referred to in Council Regulation (EC) No 510/2006 of 20 March 2006 on the protection of geographical indications and designations of origin for agricultural products and foodstuffs and in Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labeling and the protection of geographical indications of spirit drinks.
Geographical indications are protected for an unlimited period beginning on the date they are entered in the Register of Geographical Indications kept by the Patent Office.

12.2.3 Patents and inventions

Patents are granted to inventions that display the required level of innovation compared with other inventions, and which are suitable for commercial exploitation. They are protected for 20 years from the date when applications for protection are filed with the Patent Office.
Recent legislative changes to the Industrial Property Act have brought Polish law into line with European Patent Organisation requirements. Poland has been a member of the EPO since 1 March 2004.
The owner of a patent enjoys the exclusive right to exploit the patented invention throughout Poland. He may transfer that right to a company for an agreed price or free of charge, or he may license it for exploitation by that entity. He might also declare before the Patent Office his intention to grant a licence to anyone (the "open licence") – in this case the commencement of industrial exploitation of the invention equals entering into an open licence agreement on the conditions set out by the owner of a patent (in particular an obligation to pay remuneration amounting at most to 10% of profits generated by the licensee in line with the exploitation of the invention).

An invention (including industrial designs and utility models) created by an employee or a contractor as part of their duties is owned by the employer or ordering party. If, however, the invention was created outside of the scope of duties, but with the assistance of any undertaking in the invention process, then that undertaking enjoys the right to exploit the invention for its business purposes, against fair remuneration paid for up to five years (unless the agreement provides otherwise).

12.2.4 Industrial designs

According to the Industrial Property Act, an industrial design is a new form of product or its part. It is essential that the design has a unique character. This can result from its lines, colour, shape or texture, or from the materials a product is made from. It may even result from the decoration of a product. Protection is granted for up to 25 years, in five-year sub-periods, from when an application for protection is filed with the Patent Office.
In addition to Polish protection, under the Community Designs and Models legislation, designs and models enjoy from protection even if they have not been registered, within three years from their public diffusion. However, national industrial designs have to be registered. The public announcement of a design by its author or his legal successor, or made with their consent, or made illegally by a third party against their will, does not prevent registration, as long as registration is completed within 12 month from the design being revealed to the public.
Exclusive protection does not cover the characteristics of a product incorporating a design determined exclusively by its technical function, and does not cover designs that have to be recreated in a form and shape enabling a mechanic conjunction or interaction with an other product (such as non-original spare parts).

12.2.5 Utility models

A utility model is a new and useful solution of a technical nature affecting the shape, structure, or arrangement of an object with a durable form. Utility models may also be protected legally. Protection is granted for 10 years from when an application for protection is filed. It grants

the beneficiary the exclusive right to exploit the utility model for profit or professional purposes in Poland. The scope of protection is specified in the description of the utility model.

12.2.6 Integrated circuits

An integrated circuit may be protected where it consists of a three-dimensional arrangement of interconnections and different elements, expressed in any form, where at least one of the elements is active. The topography of the circuit may be exploited exclusively by its owner for profit or professional purposes in Poland.
A registered topography will be protected for 10 years from the end of the calendar year in which it was first marketed, or for 10 years from the end of the calendar year in which the application for registration was filed with the Patent Office, if earlier.

12.3 Copyright and Neighbouring Rights

The Act on Copyright and Associated Rights distinguishes moral (i.e. personal) and economic copyrights. In broad terms, moral rights are aimed at protecting the author's relationship with the work and include:

- the right to be credited as the author of the work
- the right to have the work published in the author's name, anonymously or pseudonymously
- the right to the integrity of the work (not to have the work altered or destroyed without consent)
- the right to decide on the first publication of the work
- the right to supervise the use of the work.

In practice, the scope of protection granted by personal rights depends to a considerable extent on the circumstances of the case, including the character of the work, its artistic or scientific value, the degree of creativity involved, as well as the accepted and approved practices of a given industry or artistic circle. This reflects the fact that the relationship between the author and the work

differs depending on the character of the work. In Poland, it is not possible for an author to waive or assign his personal rights. It is, however, recognised that the author can undertake not to perform its moral copyright,

On the other hand, economic copyright is transferable. Economic copyright allows its author to exploit the work or to license its use in all fields of exploitation and to receive remuneration for its use. As an exception to the general rule, the copyrights to a work created by an employee or contractor are transferred to the employer or ordering party, as long as the creation of the work was covered by the employment/civil contract (this exception is even wider for computer software, where the employer or ordering party becomes primarily the holder of the copyright from the moment it is established).

An author's economic copyright normally expires 70 years after his death, or, where copyright belongs to another person, 70 years after the work was first disseminated. Claims related to a violation of copyrights correspond to those of industrial property rights. Additionally, the copyright holder can demand that the infringer publishes an apology; the amount of lump-sum compensation is equal to double (or triple if the infringement is faulty) the remuneration due for the exploitation of the copyrights.

One important exception to the general rule that an author enjoys the exclusive right to use his work and to profit from it is the freedom of anybody to exploit, for personal use, a work that has already been disseminated free of charge. However, it must be stressed that the definition of "personal use" is very narrow (and that it is further reduced concerning computer software). Producers and importers of blank devices and carriers that may be used for recording works and the subject of neighbouring rights (within the scope of personal use) are obliged to pay collective administration fees up to 3% of the sales value of those devices and carriers. The fees are payable to organisations, which distribute them for the benefit of authors in general.

Neighbouring Rights are a priori protected in the same way as copyrights, and subject to certain modifications resulting from their specific nature. For example, artistic performances rights expire 50 years after they were first was established or diffused.

12.4 Unfair Competition

The Paris Convention for the Protection of Industrial Property of 1883 considers protection against unfair competition as a part of the industrial property.

Undertakings are protected against various acts of unfair competition, such as: infringements of a commercial name or goods and services designations, the misuse of confidential information, commercial defamation, unlawful advertising (including unauthorised comparative advertising), copying of product labeling or creating barriers to access to the market (such as imposing dumping prices etc.).

The claims related to committing acts of unfair competition correspond to those of industrial property rights and copyrights, with the exception for claiming damages (no lump-sum compensation provided) and injunction in order to preserve the evidence and obtain relevant information.

Employment law

13.1 The employment relationship

13.1.1 Key employment legislation

The key act governing individual and collective relationships between employers and employees is the Labour Code dated 26 June 1974.
The Labour Code, together with certain related regulations and a range of other legislation, forms the basis of Polish employment law.

13.1.2 Establishing an employment relationship

Polish law sets out several methods for establishing an employment relationship.
Employment contracts are most frequently used.
The Labour Code distinguishes the following basic types of employment contracts:

- for a trial period
- for a fixed term
- for the duration of a specific task
- for an unlimited period.

In addition, the Labour Code provides for fixed-term contracts securing cover for the justifiable absence of an employee.

13.1.3 Employment contract

To establish an employment relationship, both the employer and the employee must express their mutual consent.
An employment contract should be prepared in writing and must contain the following information: (a) names of the parties, (b) type of contract, (c) date of conclusion and (d) terms of employment and remuneration. In particular, it should specify:

- the type of work to be performed under a given contract
- the place where it will be performed
- the remuneration for work, together with an indication of its components
- the full-time/part-time status
- the date on which the work is to begin.

Where no written employment contract has been drafted, the employer must confirm to the employee, in writing and not later than on the day of commencing work, the following terms:

the parties to the contract
the type of contract
the conditions of employment and remuneration.

In addition, the employer must communicate to the employee, in writing, the basic conditions of employment. This must be provided within seven days of concluding the employment contract, and following any change thereto.

13.1.4 Remuneration

The amount of remuneration to which the employee is entitled should be agreed between the employer and the employee directly, in compliance with the remuneration by-laws of the employer.

It should be emphasised that remuneration is subject to special protection under the Labour Code. Therefore, the employee cannot waive his right to remuneration or transfer the right to remuneration to any other person.

13.1.5 Non-competition agreement

The Labour Code allows contracts restricting the employee's ability to directly or indirectly engage in any business competitive with the employer's business. Such a contract must be executed in writing.

The Labour Code distinguishes:

non-competition agreements concluded for the duration of an employment contract and
non-competition agreements binding the parties following the end of employment.

The first of these is concluded for as long as the employee is employed. Depending on the terms of the agreement, such an arrangement can either be paid or unpaid.

The second must always be paid. The minimum payment that can be agreed in consideration of the arrangement not to compete is 25% of the remuneration received by the employee during the period preceding the end of the employment relationship, corresponding in length to the period of the non-competition obligation.

13.1.6 Work time

Work time cannot exceed eight hours per day, or an average of 40 hours in a five-day working week over a four-month reference period. Weekly work time, including overtime, cannot exceed an average of 48 hours over the course of the established reference period.

The Labour Code provides for various methods of organising work time. It is possible to be flexible to meet the needs of the employer (e.g. work only at weekends, work up to 12 hours a day, work in three shifts, taking a long break, etc.).

Work undertaken outside standard work time counts as overtime. Under the Labour Code, employees are entitled to a supplement of 100% or 50% of their remuneration in respect of overtime worked, in addition to their normal remuneration. Obviously the employer is free to apply terms that are more favourable to the employee. The Labour Code also provides that the employer may grant employee an equivalent period of leave for time worked as overtime. Where this is the case, the employee is not entitled to additional remuneration for the overtime worked.

The Labour Code specifically regulates work undertaken at night and on Sundays or public holidays.

13.1.7 Leave

The Labour Code distinguishes the following types of leave to which employees are entitled:

- annual leave
- unpaid leave
- maternity leave
- child care leave.

Each employee is entitled to uninterrupted paid annual leave.

The amount of leave depends on the employee's length of service as follows:

- 20 days – if the employee has been employed for less than 10 years
- 26 days – if the employee has been employed for 10 years or more.

The Labour Code sets out detailed rules for calculating the amount of leave applicable.

13.1.8 Health and safety at work

Employers are obliged to ensure safe and hygienic working conditions, and to check and duly document them.
The Labour Code and other relevant legislation regulate in detail the employer's duties connected with health and safety at work. In particular, the labour law provisions provide special protection for pregnant employees, minors and disabled employees.

13.1.9 Internal employment regulations

The organisation of work and the terms of remunerating employees must be specified in internal employment regulations consisting of:

- employment by-laws
- remuneration by-laws
- social benefit fund by-laws.

Any employer with at least 20 employees is obliged to establish such by-laws.
These issues may be regulated further by collective work agreements, and other agreements concluded as a result of negotiations between employers and trade unions.
It should be emphasised that collective agreements and by-laws may not determine employees' rights and obligations in such a way that they are less favourable than those provided by the Labour Code.
The additional benefits concerning conditions of employment and remuneration may be also granted by social packages negotiated between the employer or future employer and the trade unions. Social packages govern the rights and obligations of employees and the employer, and frequently contain guarantees with regard to employment.

13.2 Termination of employment

13.2.1 Termination of an individual employment relationship

The employment relationship may cease as a result of:

the expiry of the employment contract (e.g. upon the employee's death or in other defined circumstances)
the termination of the employment contract.

The Labour Code sets out the following methods for terminating the employment contract:

mutual agreement of the parties
statement by one of the parties, observing a notice period – 'termination with notice'
statement by one of the parties, without observing a notice period – 'termination without notice'
the expiry of the period for which it was concluded
the completion of the task for which it was concluded.

Where an agreement is terminated by mutual consent, the parties will settle all issues connected with termination between themselves.
Termination of the employment contract with notice is the basic and most common method of termination. The notice period depends on the type of agreement and the employee's length of service.
Employment contracts may be terminated without notice (a) due to the fault of the employee, e.g. where the employee substantially fails to perform his basic duties or where the employee, through his own fault, loses the qualifications required to perform the work, and (b) in certain cases defined by the Labour Code, where the employee is not at fault, e.g. due to the long-term absence due to the illness of the employee.
It should be emphasised that an employee whose employment contract is terminated, either with or without notice, has the right of appeal to the Labour Court. If the court determines that the termination of the agreement was unjustified or unlawful, then the employee may claim either re-instatement at work or compensation.

13.2.2 Collective dismissals

The rules for making collective dismissals are outlined in the Act on Specific Conditions for Terminating Employees' Employment for Reasons not Attributable to Employees of 13 March 2003, which applies to employers employing at least 20 employees.
A collective dismissal takes place where, within a period of 30 days and for reasons not

attributable to the employees, the employment relationship is terminated with at least:

- 10 employees, where the employer employs fewer than 100 employees
- 10% of employees, where the employer employs at least 100 but no more than 300 employees
- 30 employees, where the employer employs 300 or more employees.

An employer making collective dismissals must follow the procedure provided by the act, part of which involves negotiations with trade unions, or consultations with employee representatives where trade unions are not present in the workplace. The aim of these is to define rules for making redundancies. On the termination of the employment relationship as part of a collective dismissal, employees are entitled to a severance pay of one, two or three months' gross remuneration, depending on their length of service with the employer.

The guaranteed minimum severance pay is the lower of the severance pay by length of service, as set out above, and an amount 15 times the minimum wage. Employers may not pay less than the guaranteed minimum, but can pay more at their discretion.

13.3 Works councils

The Act on Information and Consultation of Employees of 7 April 2006 requires employers to appoint a works council. This council plays a role in consultation and communicating information.

The terms of the act apply to employers employing at least 50 employees.

13.4 Trade unions

The establishment and operation of trade unions is regulated by the Trade Union Act of 31 May 2001. This act guarantees trade unions the right to act both in individual and collective employment issues and, in particular, to:

- express an opinion on individual cases where an employment contract is terminated
- approve the workplace, remuneration and social benefit fund by-laws
- conduct negotiations on the terms of social packages, collective agreements
- conduct negotiations on the terms of collective dismissals, collective grievances as well as

- represent employees transferred to another employer.

13.5 Act on Mitigating the Impact of the Economic Crisis on Employees and Companies

The Act on Mitigating the Impact of the Economic Crisis provides new possibilities to employers faced with financial difficulties, and modifies temporarily the provisions of the Polish Labour Law. In particular, the act allows the period for settling working time to be prolonged up to 12 months, allows individual working hours to be introduced so that work started before the end of the 24-hour work cycle will not constitute work in overtime hours, and provides specific rules concerning the use of the employment contract for a specified period that will apply until 31 December 2011.

Litigation

14.1 Jurisdiction

14.1.1 Competence of Polish courts

Polish courts are competent to hear and examine the cases submitted to them according to the provisions of EU law *(Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters)* multilateral international conventions *(i.e. the Lugano Convention of 16 September 1988 on jurisdiction and the enforcement of judgments in civil and commercial matters)*, bilateral international conventions and, in the absence of any external law sources, where it is provided in the Polish Code of Civil Procedure. The parties to the contractual relationship are free to designate Polish courts as competent to settle their disputes, if it is stated in writing (a jurisdiction clause).

As a general rule, Polish courts have jurisdiction in accordance with the principle of *actor sequitur forum rei* (where the defendant is based in Poland), when the defendant has property in Poland, when the dispute emerged in Poland or an obligation should have been performed or was performed in Poland. In addition, the exclusive jurisdiction of the Polish courts is provided for disputes relating to real estate in Poland, and the competence of Polish court is accordingly excluded for overseas real estate.

14.1.2 Polish civil court system

The Polish court system is comprised of district courts *("Sąd Rejonowy")*, regional courts *("Sąd Okręgowy")*, courts of appeal *("Sąd Apelacyjny")* and the Supreme Court *("Sąd Najwyższy")*.

A district court is presumed to be the court of first instance, though some cases are brought in the first instance directly before a regional court. Namely:

- where the value of the claims exceeds PLN 75,000 in civil matters, or PLN 100,000 in commercial matters
- where protection of intellectual and industrial property rights or against the acts of unfair competition is sought

where it is aimed to abrogate or invalidate a resolution of a corporate body.

In district and regional courts there are specialised departments dealing with commercial, labour and social insurance, as well as family law disputes. Certain designated commercial departments in district courts deal with insolvency proceedings, whereas others maintain the companies register within the National Court Register *("Krajowy Rejestr Sądowy")* system. The chosen civil district courts maintain the land register.

14.1.3 Decisions, judgements and means of appeal

The court issues decisions (in general in the course of the proceedings dealing with incidental matters) or judgments (settling the disputes). All judgments can be appealed against, and certain final judgments of the court of second instance can be challenged with a cassation complaint. Decisions, on the other hand, can only be appealed against if they terminate the proceedings or where provided by law. An appeal against a district court is filed with a regional court, whereas an appeal against a regional court is filed with a court of appeal (within 14 days from the day of delivering the judgment with its reasons – in writing at the request of one of the parties – or within 21 days from the public communication of the judgment where the reasons were not asked for within seven days from this communication). There is an exceptional type of a remedy at law against a final and binding judgment of the court of second instance – a cassation complaint – which is filed with the Supreme Court within two months from the delivery of that judgment with its reasons. However, it can only be submitted under the following conditions:

- a cassation complaint is based on an incorrect application or interpretation of the law (the Supreme Court does not examine the facts)
- the assistance of an attorney *ad litem* is obligatory
- the value of a claim has to exceed PLN 50,000 in civil matters and PLN 75,000 in commercial matters (with certain exceptions i.e. in cases on the protection of competition).

The Supreme Court might refuse to examine the cassation complaint if it estimates that the case does not present a significant legal problem or

does not refer to an ambiguous legal issue that requires an interpretation from the Supreme Court. As a result of an appeal (or a cassation complaint) the court may:

- dismiss an appeal (a cassation complaint) and uphold the judgment
- set aside the judgment and revert the case for re-examination
- modify the judgement, where the evidence proceedings does not have to be entirely or largely repeated (court of second instance only, though the Supreme Court might exceptionally set aside the judgment if the breach of material law is imminent and settle the dispute).

There are also other types of exceptional remedies at law against a final and binding judgment such as a motion for a resumption of completed proceedings and motion for a declaration of the unlawfulness of a final judgment.

14.2 Evidence

Evidence is required to substantiate facts important for the settlement of the dispute. As a general rule, the burden of proof lies on the party who attributes legal consequences to the fact claimed. However, exceptionally, the judge can admit evidence not requested by the parties. The Code of Civil Procedure does not limit the range of means of evidence, but provides for the most commonly used evidence, such as:

- official (legal) or private documents (as a general rule, original documents should be submitted, but it is a common practice to provide copies or copies certified by an attorney of the documents, and to provide with originals upon the adversary's demand)
- witness testimony
- expert opinion (a private expert opinion presented by a party is not considered as evidence, but it is considered only as a party's statement it is, however, common to produce private expert opinions in order to enforce claims)
- the inspection of an object important for the settlement of a dispute
- statements of parties, where certain facts are still unsettled by other means of evidence.

In addition, the judge may order anyone in possession of a document that may serve as evidence to file this document with the court.

14.3 Civil proceedings – general principles

Polish civil proceedings are governed by several fundamental principles such as: equal rights of parties to the proceedings, objective truth (subject to the principle of *inter partes*), direct examination of evidence by the judge, oral and public hearings, concentration of evidence.

Procedural writs (including law suits) are filed with the court and then delivered to the other party by the judge by post. The parties may be represented by attorneys *ad litem* (advocate, legal counsel, patent attorney in industrial property cases only), the permanent mandatory of a party (if the case falls within the scope of a mandate), or an employee of a legal entity under a specific power of attorney. They may also represent themselves. Where both parties are represented by attorneys *ad litem*, the procedural writs can be sent directly themselves.

Court fees are usually calculated on the basis of the value of the claim (5% of the value), but in some cases the amount of the court fees is fixed by law. The claimant, who bears the fees of the proceedings, can be exempted by the court from this obligation if he can prove that he has insufficient funds to pay them. However, if a claimant fails in his claims, he remains obliged to reimburse the other party for the expenses related to the proceedings (i.e. remuneration of a professional attorney *ad litem*, within the limits set out in the Ministry of Justice regulation).

Before the first hearing, the defendant may reply to a statement of claim (in complex or clearance cases the judge may oblige the defendant to make such a reply). If the defendant fails to appear at the trial (or appears but does not participate) and does not lodge a motion to hear the case in his absence, the court might consider the facts claimed by the claimant as true (provided that they do not raise any doubts) and can render a judgment in default. At the parties' consent, the judge can suspend the proceedings and appoint a mediator, before whom the parties may execute a court settlement agreement (mediation is confidential). Even before filing a law suit, a party may demand conciliatory proceedings, which is facultative in cases where the dispute can be settled by a settlement (these pre-litigation

proceedings hardly ever succeed, but the demands are frequently formulated as they interrupt the limitation period of the claims). Apart from the parties (claimants and defendants) other participants, such as the main and subsidiary intervener, may act in the proceedings. A main intervener files a law suit against both parties to the proceedings if he raises claims as to the object of their litigation. A subsidiary intervener, on the other hand, can enter the ongoing proceedings if he has a legal interest in the settlement of the dispute in favour of one of the parties. A transfer of the object of litigation in the course of the proceedings has no suspensive effect (the acquirer may, however, succeed a party in the proceedings with the other party's consent). The defendant can file the counterclaims or set off claims.

The court can render a partial judgment if only certain claims are ready to be settled beforehand, and than a final judgment concerning the remaining claims. The court can render a preliminary ruling (judgment on merits) and than decide on the amount due. The judgment can be accompanied by an immediate enforcement clause, at the party's demand, if the protection of its rights requires so (the judgment by default is always immediately enforceable).

14.4 Commercial proceedings – main differences

Commercial proceedings are obligatory for disputes between companies resulting from their professional activity. Moreover, it is applied to disputes concerning the relations between partners and shareholders of partnerships and commercial companies, as well as claims against the members of their governing bodies, on an infringement of environmental law by a company, resulting from competition law, energy law, telecommunication law, postal law and rail transport law, as well as proceedings against companies aimed at ruling the provisions of standard contracts as illicit. As in civil proceedings, commercial disputes are heard by professional judges. There are no separate commercial courts, but there are special departments in district and regional courts.

The main differences between civil proceedings in commercial matters and the "ordinary" civil proceedings are listed hereunder:

- irregularities in pleadings (including statements of claim) are not asked by the judge to be remedied, but are sent back to the party and are of no legal force
- parties represented by a professional attorney *ad litem*, are bound to deliver pleadings themselves directly
- the judge orders a closed session at a party's demand, if a business secret might be revealed in course of the proceedings
- the claimant is bound to include all statements and to produce all evidence when submitting the statement of claim, of will not be able to produce such evidence during the proceedings the defendant is obliged to reply to a statement of claim within two weeks from receiving it (or a judgment by default will be issued), which must include all counterevidence and counterstatements. Statements or evidence not raised or produced in introductive pleadings can only be raised later if the party proves that the need to raise or produce them appeared afterwards, but not later than within 14 days from that moment
- the claimant is bound to attach to the statement of claim a summons or a cease and desist letter with which the defendant did not comply
- counterclaims are inadmissible, whereas set-off claims are authorised as long as they are documented
- the court should aim at settling the dispute within three months (in practice this period is not observed, especially in complex cases) and may issue a ruling on a non-public hearing if the case is ready for settlement upon exchange of a statement of claim and a reply thereto, provided that none of the parties requested a public hearing
- the judgment of a court of first instance on pecuniary claims or exchangeable movables has force of a security warrant feasible without endorsing an enforcement formula
- two years after the judgment becomes final and binding, a motion to resume completed proceedings is not admissible (unless the party was deprived of the right to act in the proceedings or was unduly represented).

14.5 Accelerated and simplified procedures

The Code of Civil Procedure provides for three accelerated and simplified proceedings: proceedings by order of payment, reminder proceedings and simplified proceedings.

14.5.1 Proceedings by an order of payment

This procedure is applied only at the demand of the claimant if pursuing pecuniary claims or claims on other exchangeable movables, where the claims are corroborated official (legal) documents, a bill accepted by a debtor or summons with a debtor's written statement acknowledgement of a debt, or a summons accepted by the debtor but returned by a bank due to insufficient resources on a bank account. An order of payment may be also rendered against a party obliged on the grounds of a bill of exchange, cheque, warehouse warrant and letter of indemnity if these documents are filled in correctly and their authenticity or content do not raise any doubts. This procedure can be applied both in "ordinary" civil proceedings and in civil proceedings in commercial matters. The claimant is obliged to pay only ¼ of the due court fees, where the outstanding ¾ are paid by the defendant filing his plea.

Once the criteria are met, the court issues an order of payment and delivers it to the both parties (the defendant is also delivered with the statement of claim), urging the latter to satisfy the claims completely or make a plea within two weeks. The order of payment has the force of a security warrant feasible without endorsing an enforcement formula (and the order of payment rendered on the basis of a bill of exchange, cheque, warehouse warrant and letter of indemnity becomes immediately enforceable once the claims are not satisfied within the time limit set).

The rules of civil proceedings in commercial matters concerning counterclaims and set off claims, as well as pertaining to the submission of arguments and producing of evidence, apply *mutatis mutandis*. If the plea is filed properly, the judge fixes a date for the hearing and allows

the claimant to reply to the plea. Nonetheless, the order of payment is not invalidated, so its feasibility or enforceability can be exceptionally suspended at the defendant's request. On the contrary, if the defendant fails to file a plea, or files it ineffectively, the order of payment has the effect of a final and binding judgment. In the judgment rendered afterwards, the order of payment may be maintained in force or reversed, partially or entirely, and the court adjudicates on the claim.

14.5.2 Reminder proceedings

This procedure is applied by the court ex officio if a claimant pursues a pecuniary claim. It is, however, forbidden to render an order of payment if a claim is manifestly unfounded or raises doubts, the facts raised in the law suit are doubtful, a satisfaction of a claim depends on a reciprocal performance of the defendant's obligation, the defendant's place of temporary residence in Poland is unknown or if he does not reside in Poland. This procedure applies not only to "ordinary" civil proceedings, but equally to civil proceedings in commercial issues, with all resulting consequences. In response to a payment order issued and delivered by the court along with the law suit, the defendant should satisfy the claims completely or make an objection within two weeks from receiving the payment order. If the objection is made correctly, the payment order is abrogated by law and the judge fixes a hearing. The proceedings are then conducted on a general, civil or commercial basis. However, if no objection was made, or was made ineffectively, the payment order has the effect of a final and binding judgment.

14.5.3 Simplified proceedings

These proceedings are required to settle minor cases where the dispute arouse from a contract and the value of the claim does not exceed PLN 10,000, or refers to the payment of rent irrespective of the amount due. As the aim of these proceedings is simplification and acceleration, many rules of the general proceedings are limited or excluded. Procedural writs are filled in specimen forms. Expert opinions are not admissible. If, however, the court considers that

the case is complicated, the general rules of civil or commercial proceedings will be applied. No cassation complaint is admissible.

14.6 Injunction

Proceedings to secure claims are admissible in every civil and commercial case, as well as in cases where a court or arbitration is competent. They are granted at the request of a party or another participant to the proceedings, as long as its claim is shown to be probable and that the non-issuance of an injunction will hinder or prevent the enforcement of a future judgment. The protection may be given in the course of the proceedings or even before (if before, the court sets a time limit in which proceedings must be initiated, not longer than 14 days). These proceedings are *ex parte* and the obliged party is informed that the measure was taken once the claimant proceeds on securing of its claim (this decision might however be appealed against). The Polish Code of Civil Procedure and other laws provide for various forms of injunction depending on the nature of the claims:

- for pecuniary claims (inadmissible against the State Treasury) – i.e. seizure of movables, resources in a bank account or receivable debts, garnishment of salary or wages, setting up a compulsory mortgage etc.
- for non-pecuniary claims – i.e. temporary fixation of the rights and obligations of the parties for the time of proceedings, prohibition on the sale of objects or rights that form the object of the proceedings etc.

The obliged party may demand the modification or annulment of the injunction at any time if the reason for granting it has disappeared or changed. In addition, the injunction expires if:

- the obliged party pays the amount claimed into a deposit account of the court
- the law suit or the motion is finally returned, rejected or dismissed
- the proceedings are declared discontinued
- within one month after the judgment granting the claims becomes final and binding (in order to enable to the claimant to proceed on enforcement).

If an injunction expired without a final judgment granting the claims, the obliged party can pursue the claimant for indemnity for any damage suffered.

14.7 Enforcement of judgments

Cases on the enforcement of judgments fall within the jurisdiction of district courts and court enforcement officers ("bailiffs"). The acts of enforcement are undertaken by bailiffs under enforcement titles. Enforcement titles are: a final and binding judgment, a judgment immediately enforceable, judicial, mediation or arbitration settlements, arbitration awards, uncontested payment orders, submission to enforcement in the form of a notarial deed, as well as judgments, court settlements and authentic instruments on uncontested claims certified with an European Enforcement Order.

An order for the execution of the enforcement is delivered upon a motion for indorsing the order, filed with the district court (the order should be issued within three days, but in practice this time limit is not strictly observed). These incidental proceedings are *ex parte*.

The enforcement of the judgment is initiated at the creditor's demand, which is communicated to the debtor by the bailiff along with the acts of enforcement taken. There are various ways of enforcing pecuniary claims (seizure and sale of movables and immovables, garnishment of salary or wages, seizure of resources on a bank account or receivable debts, receivership, sale of the commercial establishment), as well as of non-pecuniary claims. The district court might be assigned to give orders and instructions if necessary for the proper conduct of the proceedings. As a general rule, the creditor has to cover the bailiff's expenses, but the fee for enforcing pecuniary claims is charged to the debtor.

14.8 Recognition and enforcement of foreign judgments and arbitration awards

The procedure on recognition or enforcement varies depending on the country of origin (judgments that are not enforceable are submitted to recognition).

14.8.1 Foreign judgments

RECOGNITION – EUROPEAN COMMUNITY MEMBER STATES JUDGMENTS

A judgment rendered or other judicial decision (such as on injunctions) issued in a member state is recognised by the Polish regional court without any special procedure being required. A judgment will not be recognised if recognition would be manifestly contrary to the Polish public policy and a rule of law, where it was given in default of appearance, if the defendant was not served with the document that instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so, if it is irreconcilable with a judgment given in a dispute between the same parties in Poland or if it is irreconcilable with an earlier judgment given in another member state or in a third state involving the same cause of action and between the same parties, provided that the earlier judgment meets the conditions necessary for its recognition in Poland.

Under no circumstances can a foreign member state judgment be reviewed by the Polish court on its substance.

RECOGNITION – OTHER = FOREIGN JUDGMENTS (UNLESS PROVIDED OTHERWISE IN THE INTERNATIONAL CONVENTION POLAND IS A PARTY TO)

A judgment is recognised by a Polish regional court in accordance with the principle of reciprocity, at the party's demand, on the condition that the case was admissible for the recourse to law (according to Polish law), judgment is final and binding in the country of origin, the case does not belong (according to Polish law or under an international convention) to the exclusive jurisdiction of Polish or a foreign country's court, as well as if the judgment was rendered in accordance with fundamental principles of civil proceedings. The proceedings on recognition are inter partes.

ENFORCEMENT – JUDGMENTS FROM EUROPEAN COMMUNITY MEMBER STATES

A judgment issued in a member state and enforceable in that state will be enforced in

Poland if, at the request of a party, it is declared enforceable in that other member state. As far as the enforcement of judgments, court settlements and authentic instruments on uncontested claims certified as a European Enforcement Order are concerned, see 14.7 above.

ENFORCEMENT – OTHER FOREIGN JUDGMENTS (UNLESS PROVIDED OTHERWISE IN THE INTERNATIONAL CONVENTION POLAND IS A PARTY TO)

Judgments rendered by a foreign court will be declared enforceable by the Polish district court at the party's request if the judgment is enforceable in the country of origin, the case was admissible for the recourse to law (according to Polish law), the judgment is final and binding in the country of origin, the case does not belong (according to Polish law or under an international convention) to the exclusive jurisdiction of the Polish or foreign country's court, and if the judgment was rendered in accordance with fundamental principles of modern civil proceedings. The proceedings on enforcement are inter partes.

14.8.2 Arbitration awards

Every arbitration award, whether Polish-based, institutional or ad hoc, arbitration court or foreign (international) arbitration tribunal, has the power of a court judgment if it is recognised or declared enforceable by the Polish regional court. The court refuses to recognise or to declare its enforceability if the subject matter was not apt for settlement by arbitration under the Polish law or if the recognition or enforcement of the award would have been contrary to Polish public policy and the rule of law. As for arbitration awards issued outside Poland, the law provides for additional conditions related to the regularity of arbitration clause and proceedings before arbitration. Poland has ratified the Convention New York of 7 June 1959 on the Recognition and Enforcement of Foreign Arbitral Awards.

Gide Loyrette Nouel
Warsaw Office Partners

Dariusz Tokarczuk
legal advisor,
partner
tokarczuk@gide.com

Robert Jędrzejczyk
legal advisor,
partner
jedrzejczyk@gide.com

Jean-Christophe Valette
advocate, partner
valette@gide.com

Piotr Sadownik
advocate, partner
sadownik@gide.com

Paweł Grześkowiak
advocate, partner
grzeskowiak@gide.com

Rafał Dziedzic
legal advisor,
partner
dziedzic@gide.com

Andrzej Lulka
legal advisor,
partner
lulka@gide.com

Poland – Upside Opportunity

By Martin Oxley,
British Polish Chamber of Commerce, CEO

It is no accident and should come as no surprise that (at the time of writing) Poland is top of the GDP growth rankings in Europe. As global economies emerge from the downturn, Poland has maintained positive growth as the country continues on its trajectory of modernisation towards a fully developed market economy. What is it that makes Poland such an attractive business destination?

Attractive consumer market in early stage of development

Poland has a consumer market of 38 million people and there is an expectation for quality and a "catch up" to established market norms. This anticipates massive potential as retail structures are established and the underlying economy develops.

An EU entry point - manufacturing and logistics

With its prime central position in mainland Europe, Poland is a recognised manufacturing and distribution platform. The country offers significant potential as global companies seek access to EU markets.

The creation of modern infrastructure

Over the next five years Poland will spend up to €100 billion on modernising public utilities, transport infrastructure and economic development frameworks. This creates massive opportunity for civil engineering projects.

An innovation based economy

The shift towards an innovation based economy is a precursor of Poland's sustainable growth. Over the centuries the country has contributed to global technological advancement. With its highly skilled population and solid education system, Poland has great potential to build on its heritage here.

People

Modern Poland is characterised by its dynamic and determined people. This essential ingredient has underpinned a number of very successful investments in the country to date. The ability to harness the country's skills and build on investment in manufacturing is an opportunity not to be missed.

Rich in potential, Poland's short term growth will be predicated by a continuing surge in consumer demand, inflows of EU funding and the infrastructure deadline set by EURO 2012. Already the sixth largest retail market in Europe,

Poland – Upside Opportunity

Poland can only grow as its infrastructure approaches established market norms. As the new economic map of Europe is redrawn, Poland will undoubtedly play a key role.

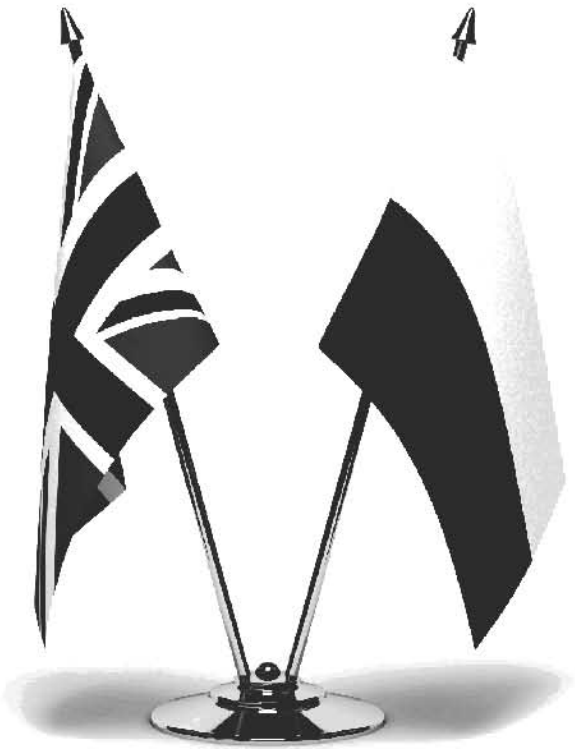
About the British Polish Chamber of Commerce (BPCC)

The BPCC is an independent, not-for-profit organisation, which assists in the development of British-Polish business links.
Our mission is to serve members' interests by promoting and facilitating business, trade and cultural relations in and between Poland and the United Kingdom through the provision of top-quality information, know-how, services and events, and by working with government and related bodies in Poland and the UK.
Join us for:

- First class networking and business events
- Access to key commercial and government decision makers
- Innovative business development opportunities
- Support for importers and exporters
- Professional media and marketing promotions
- Up to the minute economic and business information
- Unrivalled reach across the UK and Poland

Talk to us about how we can promote your business:

www.bpcc.org.pl
membership@bpcc.org.pl
+48 (0)22 320 01 00 / +44 (0)203 239 8730



Foreign investors are coming to Poland

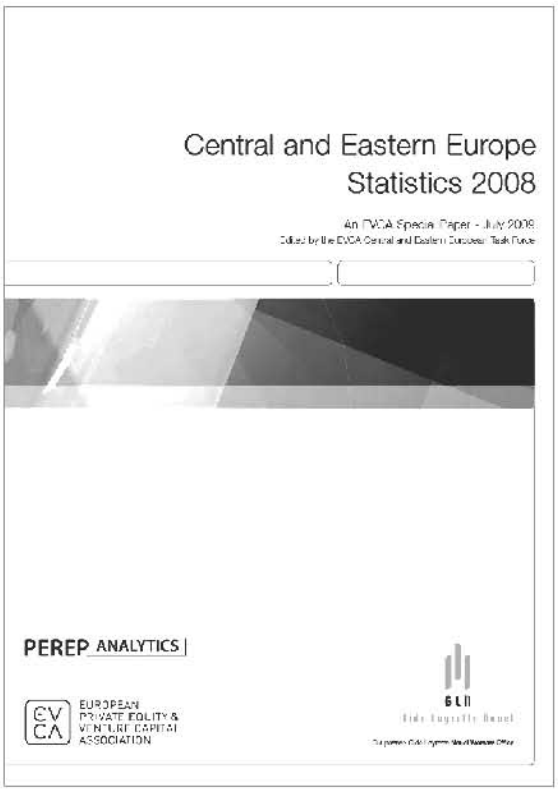
Invest
in Poland

The Polish Information and Foreign Investment Agency (PAIiIZ), has been serving investors for 16 years. Its mission is to increase Foreign Direct Investment (FDI) by encouraging international companies to invest in Poland. The Agency guides investors through all the essential administrative and legal procedures at every stage of the investment process; helps investors to enter the Polish market, but also supports firms that are already active in Poland. PAIiIZ provides quick access to complex information relating to legal and business matters regarding the business activity in Poland and helps in finding the appropriate partners and suppliers or new locations.
Agency's mission is also to create a positive image of Poland across the world, to promote Polish goods and services abroad by organizing conferences, seminars, exhibitions, workshops and study tours for foreign journalists.
Contact us to learn more about how your company can profit from the unique business potential
of Poland.

Contact details:
Polish Information and Foreign Investment Agency
Foreign Investment Department
ul. Bagatela 12, 00-585 Warsaw (Poland)
tel. (+48 22) 334 98 75, fax (+48 22) 334 99 99
e-mail: invest@paiz.gov.pl **or** post@paiz.gov.pl
www.paiz.gov.pl

Central and Eastern Europe Private Equity Statistics

Gide Loyrette Nouel Warsaw Office is the only partner supporting the preparation of the report entitled "Central and Eastern Europe Statistics" published by the European Private Equity and Venture Capital Association (EVCA), concerning private equity investments in Central and Eastern Europe.
We have published the 2007 and 2008 Statistics so far. The current report for 2009 is being prepared.



The reports are available on the EVCA website: www.evca.eu

Gide Loyrette Nouel
Tokarczuk, Jędrzejczyk i Wspólnicy Kancelaria Prawna GLN Sp. k.
Metropolitan, Pl. Piłsudskiego 1 00-078 Warsaw, Poland
tel: +48 (22) 344 00 00 fax: +48 (22) 344 00 01
e-mail: gln.warsaw@gide.com
www.gide.com

GLN
Gide Loyrette Nouel

Invest in Poland