Legal and tax-related bases for the conducting of business activity in Poland

PAI
iIZ

RWP

www.paiz.gov.pl

www.rwp.de

The Polish Information and Foreign Investment Agency (*Polska Agencja Informacji i Inwestycji Zagranicznych S.A. – PAIiIZ*) was brought to life in June 2003, as a result of the merger of the Polish Agency for Foreign Investment (*Państwowa Agencja Inwestycji Zagranicznych S.A. – PAIZ*) and the Polish Information Agency (*Polska Agencja Informacyjna S.A. – PAI*), for the coordination of economic promotion of Poland.

PAIiIZ exists to increase the inflow of foreign direct investment (FDI) by encouraging foreign corporations to invest in Poland. It serves to help them deal with all the administrative and legal procedures encountered during the investment process.

PAIiIZ's mission includes creating a positive image of Poland in the world, as well as the promotion of Polish brands of products and services, thus supporting exports.

PAIiIZ offers investors:

- quick access to complex information regarding economic–legal investment environment,
- help in finding suitable partners and suppliers, and attractive investment locations,
- advice during each phase of the investment process.

Main elements of the PAIiIZ strategy include:

- attracting USD 10 billion annually in FDI inflow into Poland by 2006,
- creating a strong agency, to act as a 'one–stop–shop' offering complex services to foreign investors,
- creating a strong brand for Poland, over the next 10 years bringing it into the group of around 30 so–called 'branded countries' which enjoy a positive image in economics, politics and culture and are widely respected by the international community,
- helping to boost exports by promoting a positive image of Polish goods and services on international markets.

PAIiIZ also acts as:

- OECD contact point,
- Secretariat of the Polish–Japan Economy Committee,
- Secretariat of Promotion Network Poland.

PAIiIZ also promotes Poland's regions, organising conferences, media and economic missions to Poland and abroad.

PAIiIZ is creating a net of **Regional Investor Assistance Centers** around Poland that will serve to improve the quality of investor services in the regions, along with providing access to the latest information such as up–to–date investment offers and microeconomic data. These specialised offices, financed by the regional authorities, and employing staff trained by PAIiIZ, also serve as links between the investor and the local authorities.

Legal and tax-related bases for the conducting of business activity in Poland

Warsaw, December 2004

I. Introduction

The aim of this publication is to provide information on the most important legal and tax terms and conditions for conducting business activity in Poland.

It contains details on the form of business activity, basic information on the business opening procedure and its costs as well as real estate purchase regulations and other formalities required by the Polish legal system.

The publication presents the basic information about the legal system in Poland as well as the investment incentives, which have a considerable influence on an investment process implementation and profitability.

"Legal and tax–related bases for the conducting of business activity in Poland" was prepared according to the legal status as on 31st December, 2004.

The aim of this publication is to fully illustrate the major changes, which have been implemented to the previously binding Commercial Code and the regulation of the Economic Freedom Act, in order to make it the basis for preparing companies' articles of associations in line with obligatory law.

Naturally, this publication cannot be used instead of professional, legal advice suited to each individual case. We hope, however, that it shall prove a useful tool in managing business activity in Poland.

Andrzej Zdebski
President
Polish Information
and Foreign Investment Agency

Joanna Żmuda
Advocate
RWP Żmuda Legal Office Limited Partnership
in association with
Rotthege Wassermann & Partner

II. Business activity conducted in the territory of the Republic of Poland

The main business operation regulation – the Economic Freedom Act of July 2, 2004 on – grants foreign business entities and Polish entities the same rights to commence and conduct their business operations in the territory of the Republic of Poland.

Foreign persons from within the European Union and the European Free Trade Association (EFTA) countries being parties to the European Economic Area agreement, may commence and conduct business activity on the same terms as their Polish counterparts. Nationals from countries which have not been mentioned above, who have obtained a residence permit, temporary stay permit or refugee status granted in the Republic of Poland, or who are under temporary protection of Poland, may commence and conduct business activity in Poland according to the same regulations as Polish citizens. All other foreign persons have the right to commence and conduct business activity only in the form of a limited partnership, limited joint-stock partnership, limited liability company or a joint-stock company; such persons may also join the above mentioned partnerships or they may purchase shares or stocks in such partnerships or companies, unless international agreements provide otherwise.

A. FORMS OF BUSINESS ACTIVITY IN POLAND

Joint-Stock Company (*Spółka Akcyjna*):

purpose:	for large business activity and any other legitimate activity, a possibility to gain capital through issue of stocks
founders:	one or more natural or legal persons, or "imperfect" legal persons (i.e. private companies) can establish and be the sole company stockholder; exception: a joint-stock company can not be established exclusively by a sole-shareholder limited liability company (a civil partnership which is not a legal person and does not have the capacity for legal operation can not be a company founder)
minimum initial capital:	PLN 500,000
legal personality:	a joint-stock company is a legal person
liability of a joint stock company:	a company shall be liable with all its assets
liability of shareholders:	shareholders shall not be liable for the obligations of the company
taxation:	CIT (Corporation Income Tax) declaration
establishment:	steps to be taken in order to form a joint-stock company are similar to those of a limited liability company – vide: detailed procedure below; however, considering complexity of the procedure, it is advisable to use services provided by a lawyer's office

Limited Liability Company (*Spółka z ograniczoną odpowiedzialnością*):

purpose:	for conducting business activity and for any other legitimate operation
founders:	one or more natural or legal persons (or other organisational units having legal capacity; exception: a sole-shareholder limited liability company can not be set up exclusively by another sole-holder limited liability company
minimum initial capital:	PLN 50,000
legal personality:	a limited liability company is a legal person
liability of a company:	a company shall be liable with all its assets
liability of shareholders:	shareholders shall not be liable for company obligations
taxation:	CIT declaration
establishment:	"step-by-step" detailed procedure is presented on page 6

Limited Joint-Stock Partnership (*Spółka komandytowo–akcyjna*):

purpose:	operating under its own business firm, for larger business activity (i.e. large family companies)
founders:	at least 2 entities (natural or legal) are necessary to form and conduct a company
minimum initial capital:	PLN 50,000
legal personality:	*no legal personality* – a private company
liability:	at least one partner (general partner) has unlimited liability towards creditors and at least one partner is a shareholder; the shareholder shall not be liable for the company obligations
taxation:	PIT (Personal Income Tax) or CIT declaration
establishment:	the deed of a limited joint-stock partnership shall be made in the form of a notarial deed and shall be signed by at least all general partners, upon which a partnership shall be entered into the National Court Register (*Krajowy Rejestr Sądowy – KRS*); a limited joint-stock partnership shall come into existence upon entry into the register

Limited Partnership (*Spółka komandytowa*):

purpose:	operating under its own business firm
founders:	at least 2 entities are necessary to form and conduct a limited partnership; one of them shall be a general partner, the other one a limited partner
minimum capital:	not applicable – cash or non-cash contributions
legal personality:	*no legal personality* – a private company

liability: at least one partner (general partner) has unlimited liability towards the partnership's creditors, and at least one partner (limited partner) has limited liability

taxation: PIT declaration – personal income tax, each partner is taxed individually, CIT declaration (mandatory) if partners are legal persons

establishment: the deed of a limited partnership shall be made in the form of a notarial deed, then a partnership shall be entered into the National Court Register (*KRS*); a limited partnership shall come into existence upon entry into the register

Professional Partnership (*Spółka partnerska*):

purpose: practise of a liberal profession by shareholders/partners in a partnership conducting an enterprise under its own business firm

founders: at least 2 natural persons authorised to practise a liberal profession

minimum capital: not applicable

legal personality: *no legal personality* – a private company

liability: a partner shall not bear liability for partnership's obligations having arisen in relation to the practise of liberal profession by the remaining partners within the partnership, as well as for partnership's obligations resulting from the actions or default of the persons employed by the partnership under an employment contract or in a different legal relationship, with such persons being subordinate to another partner, when performing services connected with the object of activity of the partnership; the partnership deed may envisage that one or more partners agree to bear such liability as a partner of a registered partnership; a partner shall be liable with all their assets, jointly and severally with a partnership and other partners, for partnership's and partners' outstanding taxes resulting from a partnership's operation

taxation: PIT declaration

establishment: the deed of a professional partnership shall be made in the form of a notarial deed, upon which a partnership shall be entered into the National Court Register (*KRS*); a professional partnership shall come into being upon entry into the register

Registered partnership (*Spółka jawna*):

purpose: conducting an enterprise under its own firm, running large businesses

founders: at least two entities, natural or legal persons; capital companies (a limited liability company or a joint-stock company), as well as a registered or limited partnership, can also be partners in a registered partnership

minimum capital: not applicable

legal personality:	*no legal personality* – a private partnership
liability:	every partner shall be liable for obligations of the company, without limits, with all their assets jointly and severally with the remaining partners and with the partnership
taxation:	PIT declaration – natural person income tax or CIT, every partner is taxed individually
establishment:	the partnership deed shall be performed in writing under the pain of nullity, upon which a registered partnership shall be entered into the National Court Register (KRS), and therefore a partnership shall come into being upon entry into the register

Civil Partnership (*Spółka cywilna*):

purpose:	conducting small-sized enterprises – a large-sized partnership is a partnership with net income from sales and provided services in each of two previous fiscal years in the amount imposed on a company, according to accounting regulations, an obligation to keep books, whereas upon obligatory entry into the register, in the aforesaid case, a large–sized civil partnership becomes a registered partnership
founders:	minimum 2 persons
minimum capital:	not applicable
legal personality:	*no legal personality*, a civil law partnership – partners, and *not a partnership*, act as entrepreneurs
liability:	every partner is liable for a partnership's obligations, without limits, with all their assets
taxation:	PIT declaration
establishment:	sign the deed of partnership, which shall be performed in writing, upon which each partner shall be entered into the Commune Office (*Urząd Gminy*) register as an entrepreneur conducting a business in the form of a civil partnership

Entry in the Business Activity Register – sole proprietorship business activity (*Wpis do ewidencji działalności gospodarczej*):

purpose:	*conducting small-sized enterprises by a natural person*
founders:	one natural person
minimum capital:	not applicable
legal personality:	*no legal personality*, a natural person referred to as an entrepreneur
liability:	personal liability with all assets
taxation:	PIT declaration or lump tax paid on accounted revenues, or the so called "tax sheet" (*karta podatkowa*)
establishment:	enter into the Business Activity Register kept by a head of Commune (*wójt*), mayor of District (*burmistrz*) or president of the city

B. ESTABLISHING A LIMITED LIABILITY COMPANY – "STEP–BY–STEP" PROCEDURE

A limited liability company can be established by any foreign natural or legal person.

1. Notarial deed

The articles of association or the founding deed shall be drawn up (sole-shareholder companies) before a notary public in the form of a notarial deed.

Apart from a Notarial Fee and Tax on Civil Law Transactions, a notary public, for executing the notarial deed, shall also collect a Tax on Goods and Services for the service provided *(Notarial Fee – calculated as a percentage of the share capital; Tax on Civil Law Transactions – calculated as a percentage of the share capital; Tax on Goods and Services according to 22% rate).*

The founding deed or the articles of association shall determine:

— business name and seat of the company,
— objects of the company, according to the Polish Business Classification (*Polska Klasyfikacja Działalności – PKD*),
— lifetime of the company, if defined,
— amount of the initial capital,
— whether a shareholder may have more than one share,
— number and nominal value of shares taken up by each shareholder.

The next step includes making contributions by the shareholders for covering the entire initial capital, and appointments to the management board.

2. Entry into the court register

An application for entry shall be performed by the management board. The application shall be signed by all management board members.

A limited liability company shall be entered into the register of entrepreneurs established within the National Court Register (*KRS*). Addresses of the Economy Departments – for the National Court Registers and each location please find at the Ministry of Justice website http://www.ms.gov.pl/.

The application for registration shall be submitted on a special form with the symbol KRS–W3 and shall state:

— business firm, seat and address of the company; any name may be chosen as the business firm of the company; however, it shall include an additional designation *"Spółka z ograniczoną odpowiedzialnością"* ("limited liability company"); generally, the shareholders may chose any name for a company, providing it is recognisable enough among other, already existing, companies in the territory on which the company is going to operate;
— objects of the company (for example: trade in metal goods) – KRS-WM annexe. The objects of the company shall agree with the Polish Business Classification (*Polska Klasyfikacja Działalności – PKD*), since *PKD* symbol is used in the annexe;
— amount of initial capital (at least PLN 50,000);
— whether a shareholder may have more than one share;
— surnames and forenames and addresses of the management board members and the manner of representation of the company (KRS-WK annexe);
— data concerning shareholders as the subject to entry into the register (KRS-WE annexe);

— surnames and forenames of the supervisory board members or audit commission members, where appointment of the supervisory board or the audit commission is required under the act or under the company deed;
— where shareholders make non-cash contributions, annotation to that effect;
— lifetime of the company, if defined;
— where the company deed provides for a special paper, other than the "*Monitor Sądowy i Gospodarczy*" (Court and Business Gazette), in which company announcements are to be made, and the designation of such paper.

The notification of a sole-shareholder company by the registration court shall also state the surname and forename or business firm and the seat and address of the sole shareholder, likewise the annotation that they are the sole shareholder of the company.

The following shall be appended to the company's notification:
— company deed,
— statement by all members of the management board that all shareholders made full contributions towards the initial capital,
— where members of company bodies are appointed, otherwise than under the notarial deed wherein the company deed is contained, proof of appointment of these bodies and specification of their members,
— the list of shareholders signed by all members of the management board, stating their surnames and forenames or business firms and number and nominal value of shares held by each: specimen signatures of the management board members, performed before the court or certified for authenticity by a notary,
— receipts for payment of register entry charges and for the publication in the "*Monitor Sądowy i Gospodarczy*",
— where an application for the first entry into the register of entrepreneurs is submitted together with an application for the entry in the national register of business entities (REGON) and an application for Tax Identification Number (*Numer Identyfikacji Podatkowej – NIP*), document authorizing the company to use premises or real estate for the company seat shall be appended.

Failing notification of the formation of a company to the registration court within six months from the date on which the company deed was entered into, the company deed shall terminate.

3. Notification to the Statistical Office (Urząd Statystyczny)
Entrepreneurs shall have a REGON identification number.

The Statistical Office shall be notified within 14 days from the date on which register entry certificate was received. An entrepreneur organising business activity may, however, submit an application for the entry into the national register of business entities (REGON) together with an application for the entry into the register of entrepreneurs, in the competent registration court.

In order to get a REGON identification number, an entrepreneur shall appear in person or by a proxy in the Statistical Office competent for business activity location.

Application forms are available at the seats of Statistical Offices. The Offices take in applications for registration in the register of business entities from entrepreneurs having their seat or place of residence in a voivodeship in which they operate. Application forms are free of charge; there is also no charge for taking in applications.

An entrepreneur shall be entered into the register on the basis of an application submitted on an RG-1 form: *„Wniosek o wpis do krajowego rejestru urzędowego podmiotów gospodarki narodowej lub o zmianę cech objętych wpisem"* ("Application for registration in the national register of business entities or for data change registration"). It is a uniform application form valid in the whole territory of Poland.

The following shall be appended to the application: an excerpt, extract from the register or a document certifying the establishment of entrepreneur or starting a business. The Statistical Offices issue certificates for registered entities stating the REGON identification numbers granted to them and to their local branches. Certificates are issued free of charge, usually right away.

Documents required when applying for REGON statistical number in case of *a limited liability company*:
— excerpt, **extract** or registration certificate confirming the company registration in the National Court Register (*KRS*) with a full address of the company seat,
— a completed RG-1 application.

4. Opening a bank account

Opening a bank account is obligatory for the entrepreneurs. They are obliged to non-cash dealings under the Economic Freedom Act.
Under art. 22 of the Economic Freedom Act (Journal of Laws, No. 173, item 1,807) an entrepreneur is obliged to:
— always effect or accept payments related to their business activity through their bank account when the other entrepreneur is a party in a transaction in which this payment is to be affected or accepted, and one-time value of the transaction, regardless of the number of resulting payments, exceeds EUR 15,000, calculated in PLN according to average exchange rate announced by the National Bank of Poland (*Narodowy Bank Polski – NBP*) as on the last day of month preceding the month in which transaction was made.

Steps required to open a bank account

Opening a bank account requires signing an agreement with a bank. Usually, a bank demands the presentation of originals of an entrepreneur, and to make copies of all possible documents received in the course of a company's registration.

The entrepreneur should thoroughly read the agreement. If the agreement refers to other documents such as regulations, general provisions, bank resolutions, etc., they should ask for them and read as well. In case of doubts, one should ask a bank clerk for explanations, if they are not sufficient, they should contact a lawyer.

A chart of specimen signatures of persons authorised to use the account (entrepreneur should have a stamp with them) will be appended to the bank account agreement. Authorised persons may present their signatures in the presence of a bank clerk.

Banks may collect charges for:
1) opening an account,
2) issuance of a chequebook,
3) keeping an account,
4) transfers,
5) cash payments
and other services provided to a customer.

A company account may be an interest-bearing account, however, according to some banks arrangements made for the money deposited into the account does not bear interest. When using a bank account, an entrepreneur may be entitled to a credit or debit balance under separate agreements.

5. Registration in the Tax Office (Urząd Skarbowy) – Tax Identification Number (NIP)

Entrepreneurs who are taxpayers shall be registered in the Tax Office and get a NIP (Tax Identification Number). Tax identity registration is performed by tax authorities only once, regardless of the kind and number of paid taxes, taxation forms, number and kind of conducted business activities and number of undertaken enterprises.

Identity notification of a limited liability company includes full and abbreviated business firm of a company, its organisational and legal form, address of a company seat, REGON identification number, registration body and the number granted by this body, list of bank accounts, address of a place at which accounting documents are stored and objects of a company as defined in classification, and additionally:

1) in case of divisions (branches) of a limited liability company and other separated internal units being taxpayers – *NIP* and other data concerning parent company,
2) in case of tax capital groups – data concerning companies within a group, *NIP* identification numbers of these companies included.

Identity notification should be appended with authenticated or officially certified copies of documents confirming information given in a notification, and especially: a copy from the National Court Register (*KRS*), the deed of a company, documents authorising a company to use the premises or real estate on which the seat is located, and certificate confirming assigned REGON identification number.

Stamp duty on confirmation of registration notification for those who are to be payers of Tax on Goods and Services (VAT) is PLN 152:

— payers of tax on goods and services or excise tax are obliged to submit identity notification before executing a first operation on which such taxes are imposed,
— payers of corporation tax are obliged to submit identity notification no later than the time of submitting first tax form concerning advance corporation tax.

Taxpayers conducting business activity may also submit an identity notification together with an application for the entry into the register of entrepreneurs in the National Court Register (*KRS*) or into a business activity register, and natural persons having a *NIP* identification number and starting their business operation – updating notification together with submission of notification of entry into the business activity register.

In the abovementioned situation, taxpayers conducting business activity are obliged to lodge an updated notification including a list of bank accounts, and the submission of an authenticated and officially certified copy of REGON identification number certification.

6. Registration at Social Insurance Institution (Zakład Ubezpieczeń Społecznych – ZUS)

Apart from notification in the Tax Office, a taxpayer starting their business activity is obliged to register at Social Insurance Institution (*ZUS*).

Payers of social insurance contributions are to be registered at Social Insurance Institution (*ZUS*) as payers of such contributions.

A payer of insurance contributions shall submit notification within 7 days from the employment date of his first employer or the date of legal obligation to effect an old age insurance and retirement annuity for the first person.

C. ESTABLISHING A LIMITED PARTNERSHIP

1. The deed of a limited partnership

A limited partnership shall come into existence upon the deed entered into by at least two persons (natural or legal) and having the form of a notarial deed. A sole-shareholder limited partnership is not stipulated.

Entirety of rights and duties of a partner in a limited partnership may be assigned to the other person only when the deed stipulates so and upon written consent of all remaining partners. The deed of a limited partnership shall include:

— business firm and seat of the partnership,
— objects of the partnership,
— lifetime of the partnership, if defined,
— specification of contributions made by each partner and their value,
— amounts designating the scope of liability of each limited partner towards the creditors (commandite sum).

The deed of a limited partnership shall also determine which partner has unlimited liability and which is liable only up to the amount of commandite sum. Commandite sum is the amount in cash being the upper limit of a limited partner's personal liability. It has a general character and reference to all obligations which shall arise in the running of a business.

2. A limited partnership may not exist without contributions

Contributions may be in cash or in kind. If the limited partner's contribution to the partnership is wholly or partly a contribution in kind, the partnership deed shall determine the object of such performance (contribution), its value, as well as the partner making such contribution in kind.

The obligation to perform work or provide services for the benefit of the partnership, and the remuneration for services performed at the time of partnership coming into existence, can not constitute the contribution of the limited partner, unless the value of their other contributions to the partnership is not lower than the commandite sum.

If a general partner is a limited liability company or joint-stock company and a limited partner is a shareholder in this company, the limited partner's contribution can not consist of their shares in that limited liability company or joint-stock company.

Unless the deed provides otherwise, the value of contribution of a limited partner may be lower than the commandite sum. A decision of the partners to release a limited partner from the duty to make a contribution shall be invalid.

3. A limited partnership shall come into existence upon entry into the register

It means that entering into the deed of a limited partnership alone shall not constitute a partnership.

The persons acting in the name of a partnership after its formation and before entry into the register shall bear joint and several liability for the obligations which arose at that time.

An application for registration of a limited partnership by the registration court shall include:

— business firm, seat and address of the partnership,
— objects of the partnership according to the Polish Business Classification (*PKD*),

— surnames and forenames or business firms of general partners and, separately, surnames and forenames or business firms of limited partners, and, where applicable, the circumstances relative to the limitation of partner's capacity for acts of law,
— surnames and forenames of the persons authorised to represent the partnership and the manner of representation; where the general partners entrusted some from among their number with conducting the partnership affairs, indication of such circumstance,
— commandite amount.

Any changes of the particulars mentioned above shall be reported to the registration court.

D. REPRESENTATIVE OFFICE

1. Definition

Foreign entrepreneurs may set up representative offices with their seat in the Republic of Poland. Representative offices are set up for conducting business activity of a foreign entrepreneur directly for them and on their behalf, always being a permanent part of a broader organisational, legal and functional structure of this business entity. In such case business activity is conducted solely by a foreign entity.

A representative office of a foreign entrepreneur is a legally dependent subordinate in the full scope of its operational and organisational entity conducting activity to advertise and promote the foreign entrepreneur. Such activity constitutes a part of business activity of the foreign entrepreneur. Representative offices may also be set up by foreign persons appointed to promote the economy of their countries. The scope of action of such representative offices encompasses only promotion and advertising of the country's economy.

A representative office has no separate assets. Even when an entrepreneur has separated the assets, it is only a technical and organisational separation.

Subject of business operation of representative offices is not the same as that of a business activity of an entrepreneur – it is to promote and advertise their business operation or to promote and advertise the economy of the country which is the seat of a foreign person setting up the office. For that reason subject of business activity of representative offices does not have to be entered into the register of entrepreneurs.

To set up a representative office an entry must be made in the records of representative offices of foreign entrepreneurs maintained by the Minister with jurisdiction over matters of the economy.

2. Application for entry into the register

The application for entry into the register shall be drawn up in Polish and contain the following:
— the name, seat and legal form of foreign entrepreneur setting up a representative office,
— the subject of business activity of foreign entrepreneur who sets up the representative office,
— surname, forename and Polish address of the person authorised to represent foreign entrepreneur in the representative office,
— the address of the representative office in Poland.

The following should be attached to the application mentioned above:
— a copy of the founding deed (the deed or the articles of a company or partnership) of the foreign entrepreneur when they conduct business activity under such deed,
— a copy from the commercial register when the entrepreneur is formed or conducts activity on the basis of the entry into the register,

— a statement of foreign entrepreneur about setting up the representative office in the territory of the Republic of Poland,
— a document confirming legal claim to premises (real estate) on which activity is to be conducted.

The abovementioned documents drawn up in a foreign language should be presented along with an authenticated translation into Polish. This is the consequence of art. 97 point 3 of the Economic Freedom Act and art. 27 of the Constitution of the Republic of Poland defining Polish as the official language.

Defining the subject of business activity upon entry into the records is important to verify whether promotion and advertising activity of a representative office is consistent with actual activity of a foreign entrepreneur. The Act, however, does not specify how precisely this subject is to be defined. It should be specific enough to make it possible for authorities keeping the records to fulfil law obligations defined by regulations concerning refusal of making the entry into the records and refusal of the right to conduct activity by the representative office when it is necessary.

As far as documents appended to the application are concerned, the founding deed of a foreign entrepreneur should be indicated. It is a deed of establishment, formation or appointment of an entrepreneur. Nature of such deeds may vary depending on particular foreign law systems. The issue is, that there are a variety of organisational and legal forms adopted by entrepreneurs to conduct business activity. Companies organised under commercial law are of key importance.

Example:
In case of a registered partnership an agreement entered into by two or more persons is needed for a partnership to be established whereas a limited liability company is established upon conclusion of the deed or drawing up a founding deed of a sole-shareholder limited liability company.
A required statement of a foreign entrepreneur on setting up a representative office in the territory of the Republic of Poland should be submitted by an authority competent to submit such statement. Such authority should be entitled to represent the entrepreneur, submission of statements of will have legal consequences, and establishing legal relations on behalf of entrepreneur.

3. Entry into the register
Setting up a representative office requires entry into the register of representative offices kept by the ministry with jurisdiction over the matters of the economy (now it is the Ministry of Economy and Labour). The minister effects the entry on the basis of submitted application in accordance with its content.

A certificate is issued about the entry of a representative office in the records. This certificate should contain data included in the application, entry number and date. If there are deficiencies concerning the contents or form of the application, or its contents do not agree with the entry, a foreign entrepreneur may apply for their elimination from this application.

Ministry with jurisdiction over the matters of economy may refuse to make the entry into the records by way of a decision, if:
— setting up of the representative office would pose a threat to the national security and defence or protection of state secrets or other important public interest,
— the application mentioned above refers to activity of the representative office exceeding the scope of promotion and advertising of the foreign entrepreneur or promotion and advertising of the economy of their country, or contains deficiencies which have not been eliminated within the prescribed period, as well as if the required documents have not been appended to the application.

The scope of activity of a representative office is exceeded, when it undertakes activity different than promotion and advertising, such as, for example, when it commences business activity. The scope of activity of the representative office is also exceeded when the activity is conducted against the law.

4. Obligations of a representative office

A foreign entrepreneur who has set up a representative office is obliged:

— to use the original business firm of the foreign entrepreneur along with their legal form translated into Polish with the words *"Przedstawicielstwo w Polsce"* ("representative office in Poland") added,
— to conduct separate accounts in Polish in compliance with the provisions on accountancy,
— to report to the Minister with jurisdiction over matters of the economy on all amendments to the factual and legal state of affairs in reference to data mentioned in the application and about the commencement of liquidation of the foreign entrepreneur and its conclusion, as well as about the loss of the foreign entrepreneur's right to conduct business activity or to dispose of its assets within 14 days after such events occurs.

5. Ban on conducting activity by a representative office

The minister with jurisdiction over matters of economy issues a decision forbidding the representative office from conducting activity in the event when:

— the representative office grossly infringes upon Polish law or does not perform the duty in accordance with the Act,
— liquidation of the foreign entrepreneur who has established a representative office was commenced or they have lost the right to conduct business activity,
— the activity of the foreign entrepreneur or a representative office poses a threat to the national security and defence, protection of state secrets or some other important public interest.

One may not appeal against decisions of the Ministry of Economy and Labour. However, under the Code of Administrative Proceedings, a party dissatisfied with a decision may submit an application to the authority, which has made the decision, asking it to be reconsidered.

A representative office, as a party in administrative proceedings, has the right to lodge a complaint at a competent voivodship court against the decision made by the Minister of Economy and Labour upon the application for reconsidering the case.

E. BRANCH

To conduct business activity in the Republic of Poland, foreign entrepreneurs may set up branches with their seat in the Republic of Poland. Entitlements of foreign entrepreneurs depend on whether international agreements grant similar entitlements to Polish entrepreneurs abroad (principle of reciprocity), as well as on whether international agreements ratified by Poland do not stipulate otherwise.

Foreign persons from within European Union and the European Free Trade Association (EFTA) countries being parties to the European Economic Area agreement, may commence and conduct business activity in such form on the same terms as their Polish counterparts.

1. Subject of activity

Foreign entrepreneurs setting up a branch may conduct business activity only within the scope of the line of business of the foreign entrepreneur. The scope of the line of business activity of a branch

does not have to be as broad as the line of business conducted by a foreign entrepreneur abroad. It may encompass only some of its aspects.

2. Entry into the register of entrepreneurs

A branch may undertake business activity upon entry into the register of entrepreneurs established within the National Court Register (*KRS*). The rules for entry are set forth in the provisions of the Act on the National Court Register of August 20, 1997 (Journal of Laws No. 121, item 769 with subsequent amendments).

Regardless of the duties outlined in the provisions of the above mentioned Act, in order to be entered into the register, a foreign entrepreneur is obliged to the following:

— to state forenames and surnames and the address in Poland of the person authorised in the branch to represent the entrepreneur,
— to attach a specimen certified by a public notary of the signature of the person authorised in the branch to represent the entrepreneur,
— in case when they operate on the basis of a founding deed, articles of association or partnership – to file such document in registration records of the branch along with certified translation into Polish; in case a foreign entrepreneur has set up more than one branch in the Republic of Poland, these documents may be filed in records of only one of the branches; however, in the registration records of other branches the branch, at which the documents were filed, along with the name of the court at which these records are kept, branch entry number should be indicated,
— in case when they are established or conduct business activity on the basis of entry into the register – to file a copy of registration along with certified Polish translation in registration records of the branch; in case a foreign entrepreneur has set up more than one branch in the Republic of Poland, these documents may be filed in records of only one of the branches; however, in the registration records of other branches the branch, at which the documents were filed, along with the name of the court at which these records are kept, branch entry number should be indicated.

3. Obligations of a branch

An foreign entrepreneur who sets up a branch is obliged to do the following:

— to use the name of the foreign entrepreneur in the language of the nation of its seat along with a translation in the Polish language of the legal form of the entrepreneur while adding the wording "*Oddział w Polsce*" ("Branch in Poland"),
— to conduct separate accounts in Polish in accordance with the provisions of accountancy,
— to notify the Minister with jurisdiction over matters of the economy about all amendments to the actual and legal state of affairs pertaining to the alteration of the circumstances, that is when liquidation of the foreign entrepreneur who has established a branch has been opened, the said entrepreneur has lost the right to perform business activities or to dispose of its assets, within 14 days after the occurrence thereof.

Obligations mentioned above are similar to those of Polish entrepreneurs.

As far as accountancy is concerned, it is permissible for a foreign entrepreneur to conduct accounts according to legal regulations of their country. The Polish law, however, imposes on a foreign entrepreneur an obligation to conduct separate accounts in accordance with provisions of Accountancy Act of September 29, 1994.

4. Ban on conducting business activity by a branch

The Minister with jurisdiction over matters of the economy may issue a decision prohibiting the performance of business activities by the branch in the event when:

— the branch has grossly violated Polish law or does not notify the Minister with jurisdiction over matters of the economy about all amendments to the actual and legal state of affairs pertaining to the alteration of the circumstances mentioned below,
— the dissolution of the foreign entrepreneur who established a branch that has been opened or the entrepreneur has lost the right to perform business activities,
— the foreign entrepreneur's activities pose a threat to national security and defence, protection of state secrets or some other important public interest.

F. COSTS OF ESTABLISHING A COMPANY

1. Costs of entries into the National Court Register (KRS) and of announcements in "Monitor Sądowy i Gospodarczy"

Costs of entries to the National Court Register (KRS) are specified in the regulation by the Minister of Justice of December 17, 1996 on the costs of entries in civil cases (Journal of Laws No.154 item 756); charges for the announcements in "*Monitor Sądowy i Gospodarczy"* (Court and Business Gazette) are specified in the regulation by the Minister of Justice of April 15, 1996 (Journal of Laws No. 45 item 204) on organisation, manner of publishing and distribution, and manner of settling the price of "*Monitor Sądowy i Gospodarczy"* issues and amount of charges for published announcements and notices.

Sample amounts of the above mentioned costs are the following:

— cost of application for an entry of entity which is not a natural person into the register of entrepreneurs – PLN 1,000,
— cost of announcement in "*Monitor Sądowy i Gospodarczy*" – PLN 500,
— cost of application for a data change in entry regarding an entity which is not a natural person already registered in the register of entrepreneurs – PLN 400,
— cost of announcement of data change in *"Monitor Sądowy i Gospodarczy"* – PLN 250,
— in cases when several applications for entry into, or changing the entry in, the National Court Register (*KRS*) are submitted at the same time, on several forms, by the same applicant – only one entry is charged, and when there are different charges for particular types of cases – a charge in the higher amount is collected,
— cost of application for crossing out an entity which is not a natural person from the register of entrepreneurs and at the same time from the National Court Register (*KRS*) – PLN 300.

2. Costs of entry of a representative office in the records of foreign representative offices

An application for entry of a foreign representative office in the records of foreign representative offices, kept by the minister with jurisdiction over the matters of economy, is subject to stamp duty in the amount of: PLN 5 for application and PLN 0.50 for every appendix.

An entry of a foreign representative office in the records of foreign representative offices is subject to stamp duty in the amount of PLN 6,000.

Issuance of certificates confirming the entry in the records of foreign representative offices is subject to stamp duty in the amount of PLN 11.

3. Other costs

Apart from the above mentioned costs, entrepreneurs must pay other charges related to operations of business activity, for example taxes, stamp duties, notarial charges, charges for services provided by attorneys and lawyers.

In case of establishing capital companies, their founders must pay **costs related to covering their initial capital**. These costs amount in the case of:

— a limited liability company – at least PLN 50,000, however the nominal share value can not be lower than **PLN 50**,

— a joint-stock company – at least PLN 500,000, however the nominal share value can not be lower than **PLN 0.01**.

III. Purchase of real estate by foreigners

A. PRINCIPLES

Purchase of real estate by foreigners is regulated by the Act of March 24, 1920 (Journal of Laws No. 49 item 466) on Purchase of Real Estate by Foreigners with subsequent amendments.

In the Act, a **foreigner** is defined as:
— a natural person not having Polish citizenship,
— a legal person having a seat abroad,
— a company without legal personality, established by persons referred to in items above, having its seat abroad, established in accordance with legal regulations of relevant foreign countries,
— a legal person and a commercial partnership without legal personality, seated in the territory of the Republic of Poland, controlled directly or indirectly by persons or companies mentioned above.

Countries from outside of European Economic Area (EEA)
As a general rule, acquisition of real estate by foreigners from outside of EEA requires a permit issued by the Minister of Interior and Administration.

Countries from EEA
In accordance with the Act of February 20, 2004, on amendments to the Act on Purchase of Real Estate by Foreigners and to the Act on Stamp Duties (Journal of Laws No. 49 item 466), citizens or entrepreneurs from European Economic Area (EU, Norway, Iceland, Liechtenstein and Switzerland) do not require a permit for acquisition of real estate. However, two exemptions from this general rule should be noticed. They concern:
1) agricultural and forest real estate, the acquisition of which will still require a permit during the period of 12 years from the day of Poland's accession to European Union, and
2) acquisition of so called "second houses" where a permit will be required during a period of 5 years from the day of Poland's accession to European Union. A "second house" is defined in the Act as housing or recreational real estate not designated for a foreigner's permanent residence. This does not apply to the acquisition of a self-contained apartment as defined in the Act of June 24, 1994 on Ownership of Premises (Journal of Laws of 2000, No. 80 item 903).

Foreigners from European Economic Area do not have to obtain a permit in the periods indicated above in case of:
1) acquisition of agricultural real estate located in:
   a) the Dolnośląskie, Kujawsko-Pomorskie, Lubuskie, Opolskie, Pomorskie, Warmińsko-Mazurskie, Wielkoplskie and Zachodnio-Pomorskie voivodships – upon 7 years from the day of conclusion of a lease contract with stated date, if during this period they were personally conducting agricultural activity on this real estate, and were legal residents of the Republic of Poland (citizens from European Economic Area countries who, at the date of Poland's accession to European Union, were shareholders or stockholders of commercial companies with their seats in the Republic of Poland, may recognise the period of companies' lease of agricultural real estate as period of lease if, being shareholders or stockholders of that companies, they

were conducting agricultural activity on that real estate in person and were legal residents of the Republic of Poland),

b) the Lubelskie, Łódzkie, Małopolskie, Mazowieckie, Podkarpackie, Podlaskie, Śląskie and Świętokrzyskie voivodship – upon 3 years from the day of conclusion of a lease contract with stated date, if during this period they were personally conducting agricultural activity on this real estate and were legal residents of the Republic of Poland (periods recognised as periods of lease as indicated above);

2) acquisition of a second house:
   a) if a purchaser legally and continuously resided in the Republic of Poland for at least 4 years, or
   b) acquires the land for conducting business activity in the tourist services sector.

B. PURCHASE REQUIRING A PERMIT

The purchase of any real estate, that is the purchase of the right of ownership or the right of perpetual usufruct on the basis of any legal event, requires a permit.
Operations requiring a permit are the following:

— purchase of real estate,
— purchase or taking up shares or stocks in commercial companies with their seats in the territory of the Republic of Poland, which have the right of ownership or the right of perpetual usufruct to the real estate.

A permit is issued upon a foreigner's application when:

1) the purchase of real estate by a foreigner does not pose any threats to state defence, safety or public order, and does not contradict social and health policy,
2) a foreigner can prove that there are circumstances confirming their bonds with the Republic of Poland.

Circumstances confirming a foreigner's bonds with the Republic of Poland may include, in particular:

1) Polish nationality or Polish origin,
2) marriage to a citizen of the Republic of Poland,
3) temporary or permanent residence in the Republic of Poland,
4) membership in managing authorities of entrepreneurs who are legal persons or commercial companies without legal personality which have their seats in the Republic of Poland and are directly or indirectly controlled by foreigners,
5) conducting business or agricultural activity in accordance to the Polish legislation.

A permit is required when a foreigner, through acquiring shares in a company which is the owner or perpetual usufructuary of the real estate, takes over the control over this company, or when a company is already controlled and shares and stocks are acquired or taken up by a foreigner who is not its shareholder or stockholder. A commercial company is deemed to be controlled when a foreigner or foreigners hold, directly or indirectly, over 50% of votes at the general meeting or shareholders' meeting, also as a pledge, usufructuary or on the basis of agreements with other parties, or if they are dominant entities over this company, as defined in article 4 § 1 item 4 b), c) or e) of the Act of September 15, 2000 – Code of Commercial Companies (Journal of Laws No. 94 item 1,037, Journal of Laws of 2001 No. 102 item 1,117 and Journal of Laws of 2003 No. 49 item 408 and No. 229 item 2,276).

Foreigners who are citizens or entrepreneurs from the European Economic Area countries (European Union, Norway, Iceland, Liechtenstein and Switzerland) do not have to obtain a permit to acquire

shares or stocks in a commercial company seated in the Republic of Poland when by this purchase a company, being the owner or perpetual usufructuary of real estate in the Republic of Poland, becomes a controlled company, or if this company is a controlled company and its shares or stocks are acquired or taken up by a foreigner who is not a shareholder or stockholder of this company. It also refers to purchase or taking up stocks and shares in companies which are the owners or perpetual usufructuaries of agricultural and forest real estate.

Additionally, the purchase of agricultural real estate by foreigners is regulated by the Act of April 11, 2003 on Shaping the Agricultural System (Journal of Laws No. 64 item 592).

Regulations of the Act do not apply to transformation of a company or acquisition of real estate through inheritance by persons entitled to statutory succession.

Any legal actions and entries of rights of ownership or perpetual usufruct can not be undertaken without submission of the permit issued by the Minister of Interior and Administration. If special provisions are included in a permit, proofs of keeping to such provisions have to be provided in the form of official documents.

Acquisition of real estate or acquisition of shares or stocks by a foreigner against this Act shall be null and void.

C. GRANTING A PERMIT

A permit is issued by the Director of Licenses and Permits of the Ministry of Interior and Administration authorised by the Minister. It is issued in the form of an administrative decision on the basis of an application submitted by a foreigner. Proceedings of acquisition of real estate are regulated by the provisions of the Code of Administrative Proceedings.

An application for a permit should contain information on the applicant and his legal status (forename, surname, name of a company, seat of a person entitled to represent a company and of shareholders, a detailed address), as well as information on real estate to be acquired, its seller, legal form of acquisition, its purpose and possibility.

An application is to be drawn in Polish; appendixes in foreign languages have to be translated into Polish by a sworn translator.

A number of documents must be appended to the application, among them are the following: a copy from the real estate register, an extract from the land register along with a sketch from a cadastral map, an extract from a currently binding spatial development plan, and when there is no such plan – from a prepared study, and a declaration of the seller expressing their will to sell particular real estate.

Conducting business activity in Poland is a practical reason for obtaining a permit by a legal person. Thus, in practice, permits may be obtained by commercial companies seated in Poland. The Minister of Interior and Administration should review the application within 2 months. A decision regarding real estate located in a special economic zone, established on the basis of separate provisions, is issued by the Minister of Interior and Administration within one month from the day the application is submitted by the party. A permit is not binding on a seller; it is only a premise of purchase. Purchase of real estate has to be executed in the form of a notarial deed.

A permit is valid for two years from the date of issue. A binding contract of purchase should be prepared and concluded within this period.

A foreigner intending to acquire real estate may apply for a promise of the issuance of a permit referred to as a "*promesa*" (promissory note). An application for a promissory note and its appendixes must meet the same formal and legal requirements as in the case of application for a permit for purchase of real estate.

A promissory note is valid for one year from the date of issue. A promissory note may also be issued upon application of shareholders of a controlled company. A promissory note specifies conditions, the fulfilment of which entitles a foreigner to apply for a permit. During the validity period of a promissory note, the Ministry of Internal Affairs and Administration may not refuse granting a permit unless factual data relating to the case change.

D. EXCEPTIONS

A permit is not required in the following cases:

— purchase for business purposes by a "controlled legal person" of non-developed real estate with no more than 0.4 hectares in total area of Poland and located within urban areas,
— purchase of a self-contained apartment,
— purchases of self-contained business premises to be used as a garage, or a share in these premises, if it relates to providing for the living needs of a purchaser, owner or a self-contained apartment,
— purchase of real estate by a foreigner residing in the Republic of Poland for at least 5 years from the day of obtaining a permanent residency card,
— purchase by a foreigner whose spouse is a citizen of Poland, provided that the foreigner has been residing in Poland for at least 2 years from obtaining a permanent residency card, or of a real estate which will become part of the husband and wife joint estate,
— purchase of real estate by a foreigner, if on the date of purchase the foreigner is entitled to statutory inheritance from the seller of the real estate, and if the seller has been its owner or perpetual usufructuary for at least 5 years,
— purchase of real estate by a foreigner who is a bank and at the same time a mortgage creditor by way of taking possession as a result of unsuccessful auction sales in execution proceedings,
— purchase or taking up by a bank, controlled directly or indirectly, of shares or stocks in a commercial company seated in the Republic of Poland which is the owner or perpetual usufructuary of real estate, if the acquisition is involved in the enforcement of the bank's claims resulting from undertaken bank operations.

The above mentioned exceptions will not apply, if the real estate is located in the border zone or constitutes an agricultural land containing over 1 hectare in area.

IV. Foreigners in Poland – rights to reside and work

A. GENERAL ISSUES

The Act of 13 June 2003 (Journal of Laws 2003, No 128, item 1175) regulates the legal aspects regarding principles and conditions of foreign citizens' entry into the territory of the Republic of Poland, as well as the principles concerning their transit and departure from Poland. A person who does not have Polish citizenship is considered a foreigner.

In order to legally reside in the territory of the Republic of Poland such person has to obtain the right of residence. In order to do this one must meet the following conditions:

— a person should have valid travel documents and a visa (unless visa-free movement agreement has been signed) allowing this person to legally cross the border, and
— sufficient financial means to cover costs of travel, stay and departure from the territory of the Republic of Poland. The person will also need a suitable permit to enter another country of their destination or to return to their country of origin if such a permit is needed; possession of financial means can be proved by submitting a letter of invitation.

1. Temporary residence permit and residence permit document

A temporary residence permit shall be granted to a foreigner who proves that the following circumstances exist for their stay in the territory of the Republic of Poland for a period longer than 3 months:

— a foreigner has been awarded a promise, or promise prolongation to issue a work permit, or a written declaration of the employer regarding the intention of entrusting the performance of work to the foreigner; if no work permit is required, and there is evidence of indispensable financial resources for coverage of the costs of stay in the territory of the Republic of Poland,
— is conducting business activities,
— intends, as a renowned artist with recognized artistic output, to continue their creative activity in the territory of the Republic of Poland,
— participates in training and trainee programs,
— intends to start or continue university studies,
— is married to a Polish citizen or a foreign citizen who has a permit to say in Poland, unless the marriage has taken place exclusively for the purpose of obtaining a residence permit,
— intends to arrive in the territory of the Republic of Poland to join his family.

A foreigner staying within the territory of the Republic of Poland is obliged to file a relevant application to the proper voivode for their residence. A temporary residence permit is granted for a period no longer than 2 years with the possibility of extension for further periods. The foreigner is obliged to apply for a temporary residence permit at least 45 days prior to the expiry of the stay period as per the visa or the period for which the previous temporary residence permit had been granted.

A temporary residence permit can be revoked from the foreigner or prolongation of this document can be denied when:
— the reason for granting the permit is no longer valid,
— any circumstances for visa refusal take place.

A residence permit document shall be issued for a foreigner who was granted a temporary residence permit. A residence permit, within its validity period, confirms the holder's identity during their stay in the territory of the Republic of Poland and entitles them, together with a travel document, to cross the border repeatedly without the necessity of applying for a visa.

A foreigner is obliged to return a residence permit immediately – upon the service of a document confirming the acquirement of Polish citizenship, or a decision of withdrawing a residence permit. In the event of death of a foreigner, the persons obliged to report the death, pursuant to the regulations on registry deeds, shall be obliged to return said residence permit.

2. Permanent residence permit and residence permit document

A decision regarding granting the permanent residence permit is made by voivode proper for the area of foreigner's intended residence. A foreigner residing outside of the territory of the Republic of Poland shall file an application via the consul.

A permanent residence permit shall be granted to a foreigner who satisfies all of the following conditions:
— proves the existence of a stable family or economic ties with the Republic of Poland,
— has ensured accommodation and means of living in the Republic of Poland,
— directly before filing an application, has stayed continuously in the territory of the Republic of Poland based on a visa or temporary residence permit for at least 5 years, and based on a temporary residence permit for a period of 3 years.

A foreigner's stay in the territory of the Republic of Poland shall be deemed as continuous if there have been no interruptions to the stay, longer than 2 months. The condition set up in item "b" is fulfilled when the foreigner themselves and the family members whom they support, without the need of applying for state social support, or there is a relative or there are relatives living in the territory of the Republic of Poland, who are obliged to provide for the foreigners living, and are capable of fulfilling this obligation or if they indicates a dwelling place in which they stays or intend to stay, and presents a legal title to these premises.

A foreigner staying within the territory of the Republic of Poland is obliged to apply to the voivode proper for a residence permit at least 60 days prior to the expiry of the temporary residence permit or the residence period as per the visa. A residence permit is granted for an unspecified period.

The foreigner is refused a residence permit in the following situations:
— the foreigner does not comply with all the requirements,
— there are reasons for refusal.

A residence permit can be withdrawn and a foreigner can be ordered to leave the territory of Republic of Poland at a stated time in the following situations:
— the foreigner has been convicted to at least 3 years of imprisonment with a valid court sentence,
— when the national security, public order or the country defence is at stake.

A residence permit can be withdrawn from a foreigner if they had left the territory of the Republic of Poland permanently.

A residence permit document shall be issued for a foreigner who was granted a permanent residence permit. A residence permit document issued to a foreigner who has been granted a permanent residence permit is valid for the period of 10 years. A residence permit, within its validity period, confirms the holder's identity during their stay in the territory of the Republic of Poland and entitles them, together with a travel document, to cross the border repeatedly without the necessity of applying for a visa.

A foreigner is obliged to return a residence permit immediately – upon the service of a document confirming the acquirement of Polish citizenship, or a decision of withdrawing a residence permit. In the event of a foreigner's death, the persons obliged to report death, pursuant to the regulations on registry deeds, shall be obliged to return said residence permit.

B. VISAS

The Foreigners Act introduces the following visas:
1. residence visa (including work visa),
2. airport visa,
3. entry visa,
4. transit visa,
5. diplomatic visa,
6. business visa,
7. courier visa,
8. transit diplomatic visa.

Ad. 1. A residence visa is issued as a short or long term visa. A residence visa allows foreigners to enter and stay either continuously, or for a number of consecutive stays in the territory of Republic of Poland, that jointly do not exceed the following periods:
— 3 months in a 6 month period, starting from the day of the first entry as per the short term visa,
— one year within its validity period, as per long term visa.
The validity period of this type of visa is 5 years.

A work visa allows a foreigner to undertake employment or any paid job conforming to the provisions of the Act of April 20, 2004 of Employment Promotion and Labour Market Institutions during their stay in the territory of Republic of Poland. The visa is issued to foreigners who can present a work permit promise or a written declaration of the employer regarding the intention of entrusting the performance of work to the foreigner if the permit is required. The work visa is issued for a period of a foreigner's stay, relevant to the period referred to in the work permit promise and employer's declaration, however for a period not longer than one year.

Ad. 2. Airport visa – allows a foreigner to enter and stay in the transit zone at an international airport. It is granted to a foreigner who can prove this stay to be indispensable for their journey. It is issued for a period no longer than 2 days.

Ad. 3. Entry visa – authorizes a single entry into the territory of Republic of Poland and it can be granted to a foreigner who before or at the moment of crossing the border has received a legal document granting them permission to stay in this territory. The validity period of visa during which a foreigner's entry into territory of the Republic of Poland should take place is one year.

Ad. 4. Transit visa – authorises a driving licence holder to travel through the territory of Republic of Poland in transit, and it can be issued to a foreigner who has the right to enter a country of their destination, or another country that borders with the Republic of Poland. A transit visa is issued for a period no longer than 5 days from the day of entry into the territory of the Republic of Poland.

Ad. 5. Diplomatic visa – authorises its holder to enter the territory of the Republic of Poland within 6 months from the date of issue as well as allows entry and departure within the period of its validity. Diplomatic visa is issued for a period of stay no longer than 3 months, unless otherwise decided according to agreements and commonly used international customs.

Ad. 6. Business visa – authorises its holder to enter the territory of Republic of Poland within the 6 month period from the date of its issue as well as allows entry and departure within the period of its validity. A business visa is issued for a period of stay no longer than 3 months, unless otherwise decided according to agreements and commonly used international customs.

Ad. 7. Courier visa – authorises its holder to enter the territory of Republic of Poland within the 6 month period from the date of its issue as well as allows entry and departure within the period of its validity. A courier visa is issued for a period of stay no longer than 10 days, unless otherwise decided according to agreements and commonly used international customs.

Ad. 8. Transit diplomatic visa – authorises a driving licence holder who has the right to enter a country of their destination or another country that borders with the Republic of Poland for travel through the territory of Poland in transit. A transit visa is issued for a period no longer than 5 days from the day of the entry to the territory of Republic of Poland.

Visas are issued by consuls. A visa application form should contain: particulars of the foreigner as well as data concerning the children, features of the document of transportation, information about stays and foreign trips within the period of the last 5 years, and indication of the purpose of the stay. The application should be substantiated, and enclose documents proving the circumstances enumerated in the application. Application for a visa extension should be made to the voivode at least 7 days prior to the end of the short term visa validity and 14 days prior to the end of the long term visa validity.

C. EMPLOYING FOREIGNERS IN POLAND

The Act of Employment Promotion and Labour Market Institutions of April 20, 2004 (Journal of Laws 2004, No. 99, item 1,001) introduced new regulations concerning employment of foreigners. A foreigner should obtain the work permit issued by a voivode proper for the employer's registration.

The following persons are exempt from the requirement of possessing a work permit:
the foreigners who have been granted a residence permit, tolerated stay permit, refugee status in the Republic of Poland or exercise temporary protection in the territory of the Republic of Poland. A work permit is issued by the voivode proper for the employer's registration based on their written application. The conditions of granting a foreigner a work permit are: obtaining a promise by the employer prior to issuing a work permit or obtaining an appropriate visa or a temporary residence permit by the foreigner.

A work permit is issued in accordance with the conditions described in the promise of granting a work permit for the time of stay stated in the visa, or the validity period of the temporary residence permit in the Republic of Poland.

The voivode makes the decision of issuing the promise. The decision is based on the current job market situation, as well as the regulations regarding the issuance of promises and work permits for foreigners. Both the promise and the work permit are issued for a definite period of time to a particular foreigner and employer, for a particular position or type of job. This period should not be longer, however, than the period of validity of a particular visa or a given temporary residence permit that allows for stay in the territory of the Republic of Poland.

A local employment office, proper for the employer's registration, should be notified of the so called position availability prior to submitting their application for a work permit. The local employment offices supply special forms used for this procedure, referred to as "*Zgłoszenie wolnego miejsca pracy*" ("Position Availability Notification").

After the application has been filed the local employment service provides relevant information about the prospects of filling the vacancy or about the lack of employment possibilities.

The following documents should be attached to the work permit application (that should be filled in two counterparts), according to Voivodship Labour Office (*Wojewódzki Urząd Pracy*):

1. extract from the National Court Register (*KRS*) to certify entry in records of the register of enterprises or certificate of entry in business activity records,
2. a certificate of obtaining the Statistical Identification Number (REGON),
3. a certificate of obtaining the Tax Identification Number (*NIP*),
4. a contract of lease of premises,
5. annex on employment status,
6. payment receipt,
7. copy of the foreigner's travel document,
8. certificate of the foreigner's professional qualifications,
9. the employer's statement filed according to the provisions of art. 75 Code of Administrative Procedure pertaining to:
   — employment activity during the last 6 months,
   — no subjection to insolvency or liquidation procedures,
   — adherence to valid employment regulations,
   — adherence to legal regulations valid in the Republic of Poland, especially related to public order, concerning the foreigner the employer wants to obtain the promise for;
10. confirmation of the fact that the foreigner is temporarily registered as a tenant at the moment of obtaining the permit.

If, according to other legal provisions, the possibility of holding a particular position or performing a paid job depends on the need of granting special permission from a relevant institution, the employer shall obtain such permission prior to making a work permit application.

The position and type of the offered job should be relevant with the valid classification of professions. All the document submitted in copy should be certified for accordance with originals by the employer. In case of a positive decision the permit is granted in two stages. First, the employer receives a **promise** of employment which constitutes the basis for granting the foreigner a work visa.

Upon obtaining the work visa, the foreigner arrives in Poland and reports with the employer. After the foreigner's arrival, the employer attaches the work visa and a copy of a document of their registration as a tenant to the application that has been filed earlier.

In the second stage, a **work permit** is issued valid in the territory of the Republic of Poland. Only at this moment can the employer sign an employment contract with the foreigner.

The situation when the foreigner is in possession of an appropriate visa or residence permit on the day of making an application is an exception from the procedure described above. In this case there is no need of obtaining the promise prior to the decision of granting a work permit.

The permit is cancelled if the foreigner works illegally or if they lost the rights to perform a particular job as well as when the circumstances or documents related to the issuance of the permit have expired or the reason for granting the decision is no longer valid. This is also the case when the foreigner performs activities regulated by provisions of Labour Law on behalf of the employer and violates this law.

A fine shall be imposed on the employer if he employs a foreigner without a relevant suitable permit. The same applies to the foreigner who shall be also expelled from the territory of the Republic of Poland.

Promises and work permits are not required in the following situations:

1. running trainings, participation in professional courses or consultation programmes organised by the European Union or supported by international aid programmes as well as those based on Polish government loans;
2. foreign languages teachers or those running foreign language related courses, performing their work within international agreements organised by a minister proper for education;
3. foreigners in relation to whom international agreements apply where Poland is a party, allowing them to perform work without a work permit;
4. civil personnel and military forces members working within North Atlantic Treaty Organisation;
5. permanent mass media correspondents, working for press, radio, TV, film or photo agencies, who were granted accreditation by minister proper for foreign affairs on request of a foreign agency that employs them;
6. individual or group performers namely: actors, conductors, vocalists, dancers or mimes who perform for a period of time no longer than 30 day per calendar year;
7. foreigners delegated to work in culture institutes of foreign countries in the Polish territory, based on international bilateral agreements;
8. foreign students studying in Poland - for no longer than 3 months during holiday period;
9. students involved in professional trainings offered by organisations that are related with international students' associations;
10. foreigners, who by their foreign permanent address, are delegated to Poland by foreign employers, up to 3 months per calendar year for the purpose of:
    a) performing assembly works, maintenance or repairs of devices, constructions, machines or other equipment produced by a foreign employer,
    b) arriving to Poland in order to collect devices, machines or other equipment items that have been produced by Polish companies and ordered from them,
    c) training of Polish employees employed by a Polish company that has received devices, constructions, machines and other equipment items mentioned in item a),
    d) assembly and disassembly and maintenance of exhibitions stalls if the exhibitor is a foreign employer who have delegated his workers to do so;
11. foreigners residing abroad and occasionally giving lectures or preparing presentations of particular scientific or artistic value;

12. foreign executive officers of legal entities running business when these foreigners reside abroad and perform work in the territory of the Polish Republic for up to 30 days in a calendar year;
13. foreigners – religious clergy working in churches, church organisations or religious societies, if such organisations obtained a registration certificate issued by the ministry of internal affairs and administration.

Organisations representing foreign executive officers of legal entities running business in Poland are required to apply for a relevant promise or a work permit.

According to the requirements enumerated above, executive officers who maintain permanent residence abroad and perform their duties in the territory of the Polish Republic for the period of up to 30 days in a calendar year are exempt from the work permit requirement.

Promise and work permit issued for the foreigners employed by foreign companies providing export services in the Republic of Poland

A voivode proper for the place where services are provided grants a work permit for a foreigner posted to work in Poland – a document hereafter called Permit.

A permit, according to the conditions stated in the promise, shall be issued for the entire period in which the foreigner is posted, no longer however than the time of stay stated in a visa or no longer than the validity period of the residence permit allowing the foreigner to reside in a given area of the Republic of Poland.

A voivode makes the decision on issuing a promise; the decision is based on current situation of the job market in the area where export services are to be provided. If the above mentioned service is to be provided in another voivodship, the decision made by the voivode as to granting the promise is made after consulting the matter with the voivode of the area where the services are to be provided. The promises are granted to the foreigners who have qualifications relevant for the services that are to be provided.

Cases in which promises and work permits are granted regardless of the situation on the local job market and regardless of the criteria for their issuance

Regardless of the situation on the local job market and regardless of conditions of their issuance the promises and work permits are granted by a voivode in the following cases:

1. in case of citizens of the EU member states who are posted as key personnel in conformity with the provisions of art. 52 of European Agreement that establishes an association between the European Communities and their Member States, of the one part, and the Republic of Poland on the other signed in Brussels on December 16, 1991 (Journal of Laws of 1994 No. 11 item 38, 1995 No. 63 item. 324 and 326 as well as 1997 No. 104, item 662);
2. foreigners – members of families who accompany workers of diplomatic agencies, consulates, international organisations or their departments posted to Poland that provide services within the framework of international agreements;
3. foreigners – doctors and dentists – graduates of Polish medical schools, who participate in required professional trainings in Polish medical institutions;
4. foreigners posted to represent a foreign company at its department or representative office with the seat in the territory of the Republic of Poland;
5. foreigners employed as personal service workers of employees of diplomatic agencies, consulates and international organisations of their representative offices;
6. foreigners – sports coaches or sports personnel employed in sports clubs and other organisations promoting sports and physical activities;

7. foreigners – pharmacists working in Polish pharmacies who are graduates of Polish universities and participate in the annual professional trainings within the framework of the regulations concerning the pharmacist chambers;
8. foreigners working in Poland within the framework of international employment agreements if the need for employing a foreigner is confirmed by the relevant employment institution, as indicated in the relevant agreement.

D. REGULATIONS GOVERNING EMPLOYMENT OF EEA MEMBER STATES CITIZENS AND THEIR FAMILY MEMBERS IN THE TERRITORY OF THE REPUBLIC OF POLAND

1. Countries whose citizens are exempt from holding a work permit in Poland are as follows:
Ireland, the U.K.

2. Countries whose citizens have a restricted employment right on the territory of the Republic of Poland, i.e. citizens of these countries are required to have a work permit issued by a voivode, if work is the purpose of their stay in the Republic of Poland: Denmark, the Netherlands, Norway, Italy, Finland, Belgium, France, Greece, Spain, Iceland, Lichtenstein, Luxemburg, Portugal, Austria, Germany.

3. Countries for which there is a simplified procedure of issuing a work permit, i.e. a voivode issues the permit without application of the regulations regarding the following:
a) assessment of the situation on the job market,
b) criteria for issuing promises and work permits,
c) the circumstances of refusal of granting promises or permits: Denmark, the Netherlands, Norway and Italy.

Provision of article 88 item 1 point 1 of April 20, 2004, Employment Promotion and Labour Market Institutions are applicable to the above mentioned countries. In accordance with the provision of Annex 2 item 1 of May 16, 2004 Minister of Economy regulation pertaining to the restrictions on work for foreigners on the territory of Republic of Poland (Journal of Laws 2004, No 123, item 1,293) the rule of mutual terms is used, referred to in Annex 12 point 2 of "Accession Treaty", particularly in the case of:
— citizens of the above mentioned countries that were legally employed in the territory of the Republic of Poland on the day Poland's accession to the EU who had been allowed to work for an uninterrupted period of at least 12 months,
— citizens who were granted access to the labour market for an uninterrupted 12 months are subject to same regulations.

4. Posting workers
Posting of workers referred to in the article 88 item 1 Act of Employment Promotion and Larbour Market Institutions of April 20, 2004 (Journal of Laws 2004, No 99, item 1,001) and article 1 of the directive 96/71/EC of the European Parliament and the Council of December 16, 1996 concerning posting of workers within provision of services (Official Journal WE L 18 of 21 January 1997).

For the citizens of countries such as Germany and Austria, the directive has a limited application and thus the foreigners should obtain a work permit referred to in Annex No. 2 item 2 of Ministry of

Economy and Labour form May 26, 2004 (Journal of Laws 2004, No 123, item 1,293) concerning the limitations of employment of foreigners on the territory of the Republic of Poland unless:

a) citizens of the Republic of Austria deal with any of the following services:
   - gardening related services,
   - cutting, finishing and the related stonework,
   - construction and related services,
   - security services,
   - industrial cleaning,
   - in-house care,
   - social work and services provided without accommodation;

b) German citizens providing the following services:
   - construction and related services,
   - industrial cleaning,
   - interior decoration services.

V. Taxes

A. CORPORATE INCOME TAX (CIT)

1. Legal basis:
February 15, 1992 Act on Corporate Income Tax (Journal of Laws No. 21, item 86 with subsequent amendments).

2. Taxpayers are:
— limited liability companies,
— joint stock companies,
— capital companies in organisation,
— corporate groups (groups that comprise of at least two commercial law companies that have a legal status and operate in the form of capital cooperation in conformity to the provisions of the Act),
— organisations that do not have legal status with the exception of companies which do not have legal status,
— companies which do not have legal status, with the seat or management in another country if, according to the law of that country, they are regarded as legal persons and are subject to taxation for the whole income they earn, regardless of the place where it is earned.

Taxpayers with registration in the territory of the Republic of Poland are subject to taxation for the whole income they earn, regardless of the place where it is earned. A taxpayer whose seat is outside the territory of the Republic of Poland shall pay tax for the income earned in Poland.

In the latter case, when it is impossible to establish the income of a taxpayer with registration outside the territory of the Republic of Poland based on their tax records, it shall be done by estimating income to revenue ratio, for instance 5% – in wholesale or retail trade, 10% in construction business, assembly operations and transport services.

3. Income
According to general taxation rules, income is subject to taxation, regardless of the source of revenue from which it was obtained.

Income is an extra amount of revenue that is left after subtracting the cost of generating such income in a tax year; if the costs exceed the total amount of revenue the difference is deemed loss. If a taxpayer incurred loss in the tax year he is allowed to reduce income with the amount of such loss over a five consecutive tax year period, this reduction however shall not exceed 50% of the amount of the loss in any single year.

4. Tax is:
19% of the tax base.

5. Tax records
Taxpayers trading with corporate groups or those entities that reside or have their registration in so called "tax havens" may be obliged to keep detailed records of their operations if the authorities responsible for taxation or financial control order them to do so. The records shall be presented within 7 days from the day an order of presenting these records for control is delivered. They should include:
— description of functions of the institutions that take part in the transactions,

A STAR ALLIANCE MEMBER

POLISH AIRLINES LOT

The world at your fingertips

LAW IN POLAND

The TEPIS Publishing House was created for you and the company you represent. For our purpose is to assist investors like you in forging through the thicket of Polish regulations.

- ✓ TEPIS Publishing House regularly provides translations of some 50 of the most important legal instruments in the area of regulating business activity in Poland.
- ✓ TEPIS enjoys the trust of a long list of government authorities and prestigious institutions and companies. Among them is the Polish Information and Foreign Investment Agency (Polska Agencja Informacji i Inwestycji Zagranicznych). TEPIS is proud to have provided the English-language section of PAIiIZ's website www.paiz.gov.pl with a range of Polish legal instruments vitally important to investors.

Invest safely by taking advantage of our foreign-language publications!

Please contact us at:

Wydawnictwo TEPIS, ul. Krasińskiego 16 lok. 134
00-967 Warsaw, Poland
Tel.: (+48 22) 839 49 53, fax: (+48 22) 839 89 95,
tepis@polishlaw.com.pl.

www.polishlaw.com.pl

— description of all the costs of these transactions as well as the form and deadline of payment,
— methods and ways of calculating costs of the transactions,
— description of the business strategy as well as other operations within such strategy,
— identification of estimated profits related to received services – in the case of non material type of service agreements.

If a taxpayer fails to submit such documentation to the revenue authorities and if, as a result of taxation proceedings, Inland Revenue or tax control inspector proves that established or imposed conditions are different from those in other independent institutions higher income (lower loss) than the one revealed by the taxpayer shall be established. This would indicate that the taxpayer failed to reveal the income, or provide information of income that is lower than should be expected. In this case the difference between the amount declared by the taxpayer on one hand, and the one established by tax authorities on the other, shall be taxed with 50 % rate.

6. Exemptions

As far as exemptions described in the Act are concerned, there are subject exemptions for such intuitions as: associations, unions, and foundations aiming at achieving socially justified goals. In the case of these institutions, the income devoted to achievement of statutory goals shall be exempt from taxation.

7. Tax collection

Taxpayers file an tax declaration every month (by the 20th of each month from the previous month) and they pay tax at the amount equal to the difference between the tax due from the beginning of the tax year and the total amount of all advance payments of tax made in the previous months.

The taxpayers can also use a simplified procedure. Advanced tax payments are in this case dependant on the amount of due tax indicated in the tax return that was filed in the previous tax year or two years before. In case of the simplified procedure, taxpayers do not have to file a tax declaration.

Taxpayers are required to file an income (loss) level return about the income earned within the first three months of the next tax year and pay due tax or the difference between the tax due from the beginning of the tax year and the total amount of all advance payments of tax made in the previous months.

8. Dividends

Income tax from dividends or other types of income related to the share in profits of legal entities that have their seat in the territory of the Republic of Poland shall constitute 19% of the income, unless an international agreement on avoiding double taxation, signed with the country of the seat or management of the taxpayer provides otherwise.

Income from dividends and other revenues gained through participation in profits of legal entities that have their seat in the territory of the Republic of Poland is exempt from taxation. This exemption applies to companies that jointly fulfil the following conditions:
— do not have a seat on the territory of the Republic of Poland,
— are subject to taxation of the income tax in the EU members states to the full extent of their income regardless of the place where the income was earned,
— income (revenue) earned through participation in the profits of a legal entity in which a company that earns this income has or intends to have direct share continuously for the period not less than two years:
  - from 01.01.2005 to 31.12.2006: 20%,
  - from 01.01.2007 to 31.12.2008: 15%,
  - from 01.01.2009: 10%.

9. International agreements

Double taxation agreement signed with the country where the company has a registration or its management can reduce the tax rates, e.g.:

Country	Dividends	Interests	Licence liabilities
Poland (basic rate)	19	20	20
Australia	15	10	10
Belgium	10	10	5
Canada	15	15	10
Germany	15 / 5	5	5
Finland	15	0	10
Italy	10	10	10
Japan	10	10	10
Netherlands	15 / 5	5	5
United Kingdom	15	0	10
USA	15	0	10

B. PERSONAL INCOME TAX (PIT)

1. Legal basis:

July 26, 1991 Act on Personal Income Tax (Journal of Laws No. 80 item 350 with subsequent amendments).

2. Taxpayers are:

— natural persons residing in the territory of Republic of Poland who are subject to taxation to the full extent of income regardless of whether it was earned in Poland or abroad (the so called unlimited taxation duty),

— natural persons who do not reside in the territory of Republic of Poland who are subject to taxation only to the extent of income earned when working within the territory of Poland provided that it is related to professional or employment relationships – regardless of where the wages were paid. This also applies to other types of income earned in the territory of Republic of Poland (the so called limited taxation duty).

3. Tax rates

The Act on Personal Income Tax makes provisions for the following ways of establishing the tax level:

a) general rules:

according to the tax scale that is mandatory in Poland in 2005:

Taxation base (PLN)		Tax
over	up to	
	37,024	19% minus the tax free amount PLN 530.08
37,024	74,048	PLN 6,504.48 + 30% of the amount over PLN 37,024
74,048	600,000	PLN 17,611.68 + 40% of the amount over PLN 74,048
600,000		PLN 227,922.48 + 50% of the amount over PLN 600,000

NOTE: The regulation which introduced the fourth tax rate with a 50% tax is not in accordance with the constitution and shall cease to be binding after a relevant verdict has been issued by the Constitutional Tribunal.

b) tax of the income earned from non farming operations:
19% income taxed this way shall not be linked with income from other types of operations;

c) lump sum tax:
it should be noticed however that income (revenue) earned in the territory of Republic of Poland which is taxed in the form of a lump sum according to the regulations of the Act shall not be linked with other income (revenue) sources.

Some of the operations taxed at 19% lump sum tax are as follows:
— interests on loans except for the situation when the loan is offered as part of business activity,
— dividends and other types of income earned as a result of participation in profits of other corporate bodies,
— income earned as a result of participation in capital funds.

Income earned by persons not residing in Poland is taxed at 20% rate in the following situations:
— income earned as a result of artistic, literary, scientific, educational and publicist activities performed personally,
— income earned as a result of personal participation in management or supervision boards,
— income earned as a result of performance of services based on mandatory contracts and performance contracts.

C. TAX ON GOODS AND SERVICES (VALUE ADDED TAX – VAT)

On March 11, 2004 the Polish parliament passed the Tax on Goods and Services Act – VAT (Journal of Laws No. 54 item 535). This bill replaced the January 8, 1993 Goods, Services and Excise Tax Act. Fundamental assumption of this new Act was the adaptation of Polish VAT regulations to the requirements of the EU directives.

1. Taxpayers

The most important factor in determining whether an entity (a legal entity, an organization that is not a legal entity or natural person) should be regarded as a VAT taxpayer is the fact of running a private business regardless of its goal or result of its operations. Such business activity involves all varieties of production, trade, and service operations including companies that mine natural resources, farmers as well as freelance workers, and also when the operations were performed on one occasion but there are circumstances indicating a possibility of performing it regularly.

Such business activity may also involve operations where goods or intangible and legal assets are commercially used.

2. Subject to taxation

Subjects to taxation are as follows:
— paid supply of goods and services,
— export and import of goods,
— acquisition of goods between the EU member states,
— supply of goods between the EU member states.

3. Taxation of real estate

As of May 1, 2004 transfer of land is subject to taxation. Development estates are subject to taxation while other types of estates are exempt from this duty according to legal regulations of the Act.

In case of a building that is permanently attached to the ground, the value of the land is included as subject of taxation. This means, that in case of the transfer of a building ownership – the properly taxed amount also includes the value of the land on which the building is located. This also applies to establishing tenant rights or ownership rights to premises in a building association. These rights are now treated in the same way as the above mentioned transfers (this of course applies to new premises that were not inhabited before May 1, 2004).

The transfer for the development of a land parcel (that which has not yet been developed) is subject to taxation at the tax base equal to the goods and services tax of 22%.

Transfer of residential development property or its part is exempt from goods and services tax, with the exception of properties or parts of properties that are to be occupied for the first time.

According to the provisions of the Act the transfer of a used building with the land to which the building is attached will be exempt from goods and service tax.

4. Taxation base

Taxation base, with exceptions described otherwise in the act, is identified with a turnover in other words an amount due for the sales less the amount of due tax. The due amount comprises the whole payment that a buyer is required to pay. In case of properties acquired within the European Union the taxation base is the whole amount that the buyer is due to pay.

The taxation base is comprised of:

— taxes, tariffs, payments and other amounts paid for the acquisition of goods,
— additional expenses, such as commissions, costs of packaging, transportation and insurance charged by the supplier from the entity that acquired the commodity in the EU market.

The tax base in the case of imported goods is their customs value less due customs duty. If goods are taxed with excise, the tax base equals the customs duty value plus custom duty and excise.

5. Tax rates

The basic tax rate is 22%.

A reduced, 7% rate is used for goods and services enumerated in Annex No. 3 of the Act (some of these are cereals, vegetables, meat, fish, bread, children's shoes, books with ISBN codes, fire-control equipment, services provided by hotels).

A reduced, 3% percent tax rate is used for goods and services enumerated in Annex No. 6 of the Act. Poland gained transitional period for taxation of these goods and services, and it will be used until April 30, 2008.

6. Allowances

New legal regulations that pertain to goods and services tax collection introduce a general rule that a taxpayer has the right to tax allowance for the tax due only to the degree in which goods and services that they have acquired are used for the operations that are subject to taxation.

7. Cash registers

Taxpayers who sell their product and services for natural persons that are not involved in business activity and natural persons that are involved in farming activities are required to record their operations by means of cash registers.

8. Subject exemption

The following taxpayers are exempt from payment of goods and service tax:

— a taxpayer whose total taxable sales values did not exceed in previous tax year the amount expressed in PLN equal to EUR 10,000. The amount of tax to be paid is not to be treated as part of the sales value,
— a taxpayer who starts their business operation that is subject to taxation during the tax year and who estimate that their sales in proportion to the sales operation period will not exceed the amount expressed in PLN equal to EUR 10,000.

9. Stock brokering

In case a taxpayer is involved in stock brokering, trust funds management, agency and mandatory operation, or other similar types of services, taxed sales shall be regarded as the amount equal to the level of their commission or other types of payments they receive for their activity, multiplied by 30.

D. TAX ON CIVIL LAW TRANSACTIONS

1. Legal basis:

September 9, 2000 Tax on Civil Law Transactions Act (Journal of Laws No. 86 item 959).

2. Subject to taxation

The following operations are subject to taxation:

— civil law transactions enumerated in Article 1 item 1 of the Act such as sales agreements, contracts of exchange and property exchange agreements, loan agreements, and mortgage agreements, as well as contract of partnership (founding acts),
— change of the type of agreement if it causes the increase of the civil law transactions tax rate,
— judicial decisions and agreements, if they cause the same legal effect as the taxed civil law transactions.

3. Taxpayers

Payers of Tax on Civil Law Transaction are natural persons and non-legal status entities and who participate in civil law operations.

4. Tax rates are as follows:

a) in case of a sales agreement:
   — immovables, movables, right to perpetual usufruct, rights to residential property and rights to utility property in co-operative societies arising from the provisions of the cooperative law as well as the property right to a one-family or a small detached house – 2%,
   — other property laws – 1%;
b) loan agreement – 2%;
c) partnership agreement – 0.5%.

E. REAL ESTATE TAX

1. Legal basis:
January 12, 1991 Act on Local Taxes and Charges (Journal of Laws No. 9 item 31 with subsequent amendments).

2. Subject to taxation
Subject to taxation are grounds, buildings, structures as well as building equipment described in the Act that is attached to a site in order to provide a possibility of using the property in accordance with its purpose.

3. Taxpayers are as follows:
— owner(s),
— perpetual usufructuary,
— owner-like possessor,
— in some cases – subsidiary owners of the property or its part which is owned by State Treasury or Self Government unit.

4. Tax rates
The tax rates limits are announced by the Ministry of Finance in a public notice in "*Monitor Polski*".
In the form of resolution of Commune Council (*Rada Gminy*):
— describes the tax rates and charges that are obligatory in its territory,
— can introduce subject exemptions from taxes and local charges.

5. In 2005 tax year the following tax rates are obligatory:
a) grounds used for business operations – PLN 0.66 for every square metres of the area;
b) buildings and their parts (represented in PLN):
   — in residential area – PLN 0.54 for every square metre of the utility area,
   — used for business operations as well as residential buildings occupied for the purpose or running a business activity – PLN 17.98 for every square metre of the utility are,
   — occupied for the purpose of running a business activity related to the sale of sowing materials – PLN 8.37 for every square metre of the utility area,
   — occupied for the purpose of running a commercial enterprise in medical practice – PLN 3.61 for every square metre of the utility area,
   — other, including the buildings occupied for a purpose of commercial statutory social service operations provided by social service organisations – PLN 6.01 for every square metre of the utility are;
c) buildings – 2% of their value that constitutes the base for depreciation in the current year, as described in personal income tax regulations, established on January 1 of the tax year and has not been a subject to depreciation. In the case of buildings that are entirely depreciated – their value is established on January 1 of the year when they were entirely depreciated.

VI. Incentives for investors in Poland

Available investment incentives, as listed below, have to be consistent with the regulations on state aid for entrepreneurs. It is possible to combine various forms of state aid, however the total value of tax exemptions, grants, and other types of state aid provided to an investor cannot exceed the amount of admissible state aid, as defined by regulations on state aid.

A. FINANCIAL SUPPORT FOR INVESTMENTS

The Act on Financial Support for Investments came into force on May 20, 2002. It defines the rules and forms of granting financial support to entrepreneurs making new investments or creating new jobs related to those investments. Financial support granted on the basis of this law is the regional, state aid for entrepreneurs, therefore it has to fulfil all conditions for receiving state aid defined in the relevant European Union regulations, which apply directly in Poland as from May 1, 2004.

Financial support for new investment projects can be granted to investors who:*

— invest at least EUR 10 million,
— invest at least EUR 500,000 provided that the investment involves development or modernisation of the company and ensures at least 100 jobs for 5 years,
— create at least 20 new jobs for a minimum period of 5 years,
— introduce technological innovation,
— make investments having a positive environmental effect,
— make investments within industrial or technology parks.

Support granted to an entrepreneur can be earmarked for:

— subsidizing expenditure qualifying under financial support for investment projects (investment grant) – up to 50% of the maximum admissible regional state aid intensity,
— creating new jobs (a grant for new jobs) – an amount not exceeding the equivalent of EUR 4,000 per one job, the amount of support cannot exceed the portion of the 2-year costs of employing new staff which corresponds to the maximum admissible regional state aid intensity.

Maximum admissible intensity of regional aid in Poland:

Warsaw, Poznań:	30%,
Gdańsk-Sopot-Gdynia, Wrocław, Kraków:	40%,
other regions of Poland:	50%.

For small and medium enterprises the maximum aid intensity is increased by additional 15 percentage points.

For large investment projects the aid level is reduced. The allowable aid amount for a large investment project (qualifying expenditure above EUR 50 million) will be calculated according to the formula:

* New investment – i.e. an investment related to the establishment or extension of a company as well as initiating activities in a company in order to introduce major changes in production or production processes, or changes in the product or service, including changes in services provision method.

maximum aid amount = R x (50 + 0.50 B + 0.34 C), where:
R is the maximum aid intensity allocated to a given area,
B is the qualifying expenditure between EUR 50 million and EUR 100 million,
C is the qualifying expenditure above EUR 100 million.

The maximum aid intensity in the automotive sector granted in favour of projects that involve an aid amount above EUR 5 million, is equal to 30% of the corresponding regional aid intensity.

The qualifying expenditure includes:
— the price of land (up to 10% of the total project expenditure),
— the purchase price or costs of manufacturing fixed assets (buildings, structures, machines and infrastructure costs),
— the purchase price of used fixed assets,
— the purchase price of intangible assets (up to 25% of the aforesaid expenditure),
— cost of installation of fixed assets,
— the purchase price of materials and construction works,
— fees for legal consulting, notarial fees, cost of technical and financial expertises,
— fees for maintaining a bank account, if payment of support requires opening a separate bank account.

Other support
Investors who benefit from the investment grants are eligible for other forms of support, such as: tax exemptions in Special Economic Zones or local tax reliefs, however the total value of grants and other types of regional state aid offered to the investor cannot exceed the maximum regional state aid intensity admissible for a given investment project.

Business activity related to the particular investment should be conducted for a period of at least 5 years from the date of completion of the investment, and in the case of support for creating new jobs, the newly created jobs should be maintained for a period of at least 5 years from the date of completion of the investment.

Applications for grants shall be submitted during March and June of each calendar year, to the Minister responsible for economic affairs. The decision is taken by the Minister upon consultation with the Committee for Financial Support to Entrepreneurs. Once a positive decision is made the investor will be invited to sign a contract with the Minister.

B. SPECIAL ECONOMIC ZONES

A Special Economic Zone (SEZ) is an administratively separate part of the Polish territory, in which a more favourable business climate is created. However, the zones are neither exterritorial, nor fenced, nor isolated in any physical way. A SEZ offers preferential tax conditions, as well as special premises on which entrepreneurs may conduct business activities without being subject to the payment of income taxes.

Currently, there are 14 Special Economic Zones in Poland, each of them consisting of several sub-zones. If you choose to invest, for instance, in the Wałbrzych SEZ, the zone's management will present you with several, not necessarily adjacent, locations. In this way, you will be able to choose the most suitable location. The zone's management also issues permits for the conducting of business activities

in SEZ, as well as provides assistance to investors by, among others, facilitating their contacts with local authorities or State administrative authorities in matters such as the purchase of land for investment. Below please find the presented of SEZ locations in Poland.

Fig. 1. Location of Special Economic Zones in Poland

Income tax exemptions

Entrepreneur who choose to invest in a SEZ, have the right of exemption from income tax (CIT or PIT declarations) from business activities conducted in that zone will be. Income tax exemption related to income from activities conducted in SEZ locations under the permit is considered to be regional state aid. The admissible amount of aid cannot exceed the maximum intensity of aid for a given region of Poland, as stipulated in the state aid regulations. The intensity indicates the allowable share of regional aid in costs which qualify for coverage by such aid. The intensity of regional aid in all zones, except for the Kraków zone, is 50% (in Kraków itself 40%). The criterion for obtaining tax exemptions in the SEZ is either the size of investment, or the creation of new jobs.

Therefore, if the investor run a large sized business, he may be eligible for a tax exemption of up to 50% of the investment value (in Kraków itself, up to 40%). Small and medium sized businesses are eligible for a tax exemption of up to 65% of the investment value (in Kraków itself up to 65%). Therefore, if you invest USD 10 million and qualify as a large sized business, you do not have to pay tax on profits from your business activities as long as the sum total of unpaid taxes does not exceed USD 5 million.

Investment expenditure (qualifying costs) includes:

— purchase of land,

— expenditure on buildings and structures,
— expenditure on equipment of facilities with tangible assets (machinery and devices, tools and instruments, equipment for office work, technical infrastructure),
— cost of purchase of intangible assets (up to 25% of the investment cost).

Principles
Business activity related to a particular investment should be conducted for a period of at least 5 years from the date of completion of the investment.

In order to benefit from tax exemption for creation of new jobs an investor must maintain newly created workplaces for at least 5 years – the exemption cannot exceed 50% (40% in Kraków itself) of the value of two years labour costs (65% and 55% respectively for small and medium sized business). The labour costs comprise gross remuneration plus other mandatory fees relating to employment.

The minimum amount of investment outlays eligible for public assistance in the SEZ is EUR 100,000.

In the SEZ investor may be eligible for the following privileges:
— exemption from PIT or CIT,
— a plot prepared for investment, available for a competitive price,
— free assistance in dealing with the formalities related to investment,
— exemption from real estate tax (granted by local authorities at the commune level),
— grants for employee training programmes.

Competent authority
Permits for the conduction of business activities in a Special Economic Zone can be obtained from, and all formalities arranged with, the Management Boards of that SEZ.

	Special Economic Zone	Website
1	Kamienna Góra SEZ for Small Business	www.ssemp.pl
2	Katowice SEZ	www.ksse.com.pl
3	Kostrzyn-Słubice SEZ	www.kssse.pl
4	SEZ - Kraków Technology Park	www.sse.krakow.pl
5	Legnica SEZ	www.strefa-legnica.com
6	Łódź SEZ	www.sse.lodz.pl
7	Euro-Park Mielec SEZ	www.europark.com.pl
8	Pomeranian SEZ	www.strefa.gda.pl
9	Słupsk SEZ	www.parr.slupsk.pl
10	Starachowice SEZ	www.sse.com.pl
11	Suwałki SEZ	www.ssse.com.pl
12	Tarnobrzeg SEZ Euro-Park Wisłosan	www.tsse.pl
13	Wałbrzych SEZ “Invest-Park”	www.invest-park.com.pl
14	Warmińsko-Mazurska SEZ	www.wmsse.com.pl

C. EXEMPTIONS FROM LOCAL TAXES

Real Estate Tax

There is possibility of partial or full exemption from Real Estate Tax. This means that entrepreneurs may use their premises free of tax. The exemption is of general nature (for a group of entrepreneurs meeting certain preconditions) and is considered to be regional state aid.

Example:

Manufacturing facilities have an area of:	10,000 sq. m.;
Real Estate Tax per one square meter is, for instance:	USD 2;
In the event of a total exemption the entrepreneur will gain:	USD 20,000.

Competent authority: the Commune Council (*Rada Gminy*).

Tax on Means of Transport

There is a possibility of partial or full exemption from the Tax on Means of Transport. The tax applies only to trucks and buses. Passenger cars are not subject to tax on means of transport. The exemption is of general nature (for a group of entrepreneurs meeting certain preconditions).

Competent authority: the Commune Council (*Rada Gminy*).

D. GRANTS FOR HIRING UNEMPLOYED PERSONS

Entrepreneurs may obtain support from the local authorities for hiring the unemployed, and for training employees.

Forms of assistance:
— reimbursement of new workplace equipment costs,
— reimbursement of social-security contributions (up to the limit of the three minimum monthly salaries),
— training of future employees in accordance with employer's needs,
— financing internships of unemployed graduates,
— reimbursement of costs of hiring an unemployed person.

Competent authority: the Poviat Labour Office (*Powiatowy Urząd Pracy*) and the Head of a Poviat (*Starosta*).

VII. Frequently asked questions (FAQ)

1. WHAT FORMS OF CONDUCTING BUSINESS ACTIVITY ARE AVAILABLE FOR FOREIGN INVESTORS?

Investors from European Union and from European Economic Area countries can choose the most relevant business form from the list below:

— entry in the Business Activity Register (sole proprietorship business activity),
— civil partnership,
— registered partnership,
— limited partnership,
— limited joint-stock partnership,
— professional partnership,
— limited liability company,
— joint-stock company.

Citizens of non-EU and non-EEA countries have right to undertake and run business activity in the territory of the Republic of Poland according to the same regulations as Polish citizens only if they have been granted a residence permit or tolerated stay permit from Polish authority, or refugee status in the Republic of Poland or exercise temporary protection in the territory of the Republic of Poland. However they still do not have the right to undertake and run business activity in form of sole proprietorship business activity, civil parntership or registered parntership, unless international agreements provide otherwise.

Moreover, foreign business entities may conduct business activity in Poland in the form of a branch office or a representative office.

2. WHAT IS THE COST OF ESTABLISHING A COMPANY IN POLAND?

The initial capital of a limited liability company shall amount to at least PLN 50,000.
The initial capital of a joint-stock company shall be no less than PLN 500,000.

Shares can be taken up for non-cash contributions.

The articles of a limited liability company and joint-stock company shall be drawn up in the form of a notarial deed.

1) *Notarial fee charged* for executing The Articles of Association or the Founding Deed – is calculated as a percentage of the share capital, but should not exceed:
   — up to PLN 60,000 → PLN 710 + 1% of the amount over PLN 30,000
   — from PLN 60,000 to 1,000,000 → PLN 1,010 + 0.5% of the amount over PLN 60,000
   — over PLN 1,000,000 → PLN 5,710 + 0.25% of the amount over PLN 1,000,000 (but not more than sixfold average monthly salary in Poland in the previous year).

2) *Tax on Goods and Services* (VAT) imposed on notarial services → 22%.

3) *Tax on Civil Law Transactions* → 0.5% of a share capital.

4) *Costs of entry in the National Court Register* (*KRS*) and of the publication in the Court and Business Gazette ("*Monitor Sądowy i Gospodarczy*"):
   — for an entry of company or partnership → PLN 1,000,
   — for publication in the Court and Business Gazette → PLN 500.

5) *Approximate cost of establishing a limited liability company with minimum 50,000 share capital:*
   — notarial fee → PLN **910** (PLN 710 + PLN 200 - 1% of the PLN 20,000),
   — VAT tax on notarial services → **PLN 200** (22% VAT of the notarial fee),
   — Tax on Civil Law Transactions → PLN **250** (0.5% of share capital),
   — entry in National Court Register → PLN **1,000**,
   — publication in the Court and Business Gazette "*Monitor Sądowy i Gospodarczy*" → PLN **500**.

   PLN cost: 52,860 (PLN 50,000 of share capital + PLN 2,860 of cost of establishing).
   Approximate USD cost: 14,683 (1 USD = PLN 3,6)*.
   Approximate EUR cost: 12,014 (1 EUR = PLN 4,4)*.

3. WHAT TAXES ARE TO BE PAID BY ENTREPRENEURS?

Tax	Rate / characteristics
Corporate Income Tax (CIT)	19%
Personal Income Tax (PIT)	Progressive scale – 19%, 30%, 40%
Tax on Goods and Services (VAT)	Basic rate – 22%, reduced rates – 7% or 3%, export and Intra-Community Supply rate – 0%
Excise Tax (*akcyza*)	Calculated either as a percentage of the value of goods or on quantity basis (fixed rate per unit); imposed, among others, on: cars, fuels, energy, alcohol, tobacco products, firearms, perfumes and cosmetics
Real Estate Tax (*podatek od nieruchomości*)	Rates established by Commune Councils (*Rada Gminy*); rates differ depending on type, location and purpose of use of the real estate
Tax on Means of Transport (*podatek od środków transportu*)	Rates established by Commune Councils; rates differing depending on the type of mean of transport Imposed on trucks and buses
Tax on Civil Law Transactions (*podatek od czynności cywilnoprawnych*)	Payable on certain civil law transactions e.g.: purchase contracts, mortgage institution, company deeds; rates differing depending on the type of transaction
Stamp duty (*opłata skarbowa*)	Payable on: certificates, permits, official applications, certain documents (e.g. bills of exchange); rates differing depending on the subject of duty

* as of September, 2004

4. HOW CAN A FOREIGNER PURCHASE A REAL ESTATE?

The general principle is that the purchase of real estate by foreigners requires permission from the Minister of Interior and Administration.

On May 1, 2004 the general rule whereby a permit is required for purchase by foreigners of real estate or shares in companies which are legal owners or perpetual usufructuaries of real estate ceased to apply to nationals and entrepreneurs residing or established in the territory of the European Economic Area (EEA = EU plus Iceland, Norway and Lichtenstein).

A permit is also not required for purchase by foreigners of a flat. However, a pemit is requred for purchase of agricultural and forest real estate or a second house.

A permit is issued in the form of an administrative decision further to the application submitted by a foreigner.

5. HOW DOES A FOREIGNER IN POLAND OBTAIN A WORK PERMIT?

The procedure of issuing the work permit is constituted by the three following stages:
1) obtaining the promise of issuing the work permit by the employer who intends to hire a foreigner,
2) by the foreigner obtaining a residency visa with a permit for employment or a card of temporary residency in Poland,
3) granting a work permit to the foreigner.

Both the promises of granting a work permit and a work permit are issued by the voivode with jurisdiction over the territory in which the employer's company has its seat.

6. BEING A BOARD MEMBER, DOES A FOREIGNER NEED TO OBTAIN A WORK PERMIT?

YES, unless they maintain permanent residency abroad and perform work in the territory of Poland for not longer than 30 days in a calendar year.

7. WHAT INVESTMENT INCENTIVES ARE AVAILABLE FOR A FOREIGN INVESTOR?

Avaible investment incentives:
— income tax exemptions in Special Economic Zones,
— financial grants for new investment,
— financial grants for the creation of new jobs and employee training,
— exemptions from local taxes and levies.

8. UNDER WHAT CONDITIONS CAN A FOREIGN INVESTOR INVEST IN SPECIAL ECONOMIC ZONES?

In order to start operating in a Special Economic Zone and take advantage of tax reliefs, a foreign investor must:
— obtain a permit for conducting business activity in the zone,
— invest a minimum of EUR 100,000,
— conduct business activities, as specified in the permit, and remain the owner of property elements connected with the investment outlays for the period of 5 years (if you are granted public assistance for new investment),
— conduct business activities as specified in the permit and maintain the created jobs for the period of 5 years (if you are granted assistance for creation of new jobs).

Contents

I. INTRODUCTION 1

II. BUSINESS ACTIVITY CONDUCTED IN THE TERRITORY OF THE REPUBLIC OF POLAND 2

A. Forms of business activity in Poland 2
B. Establishing a limited liability company – "step–by–step" procedure 6
C. Establishing a limited partnership 10
D. Representative office 11
E. Branch 13
F. Costs of establishing a company 15

III. PURCHASE OF REAL ESTATE BY FOREIGNERS 17

A. Principles 17
B. Purchase requiring a permit 18
C. Granting a permit 19
D. Exceptions 20

IV. FOREIGNERS IN POLAND – RIGHTS TO RESIDE AND WORK 21

A. General issues 21
B. Visas 23
C. Employing foreigners in Poland 24
D. Regulations governing employment of EEA member states citizens and their family members in the territory of the Republic of Poland 28

V. TAXES 30

A. Corporate Income Tax (CIT) 30
B. Personal Income Tax (PIT) 32
C. Tax on Goods and Services (Value Added Tax – VAT) 33
D. Tax on Civil Law Transactions 35
E. Real Estate Tax 36

VI. INCENTIVES FOR INVESTORS IN POLAND 37

A. Financial support for investments 37
B. Special economic zones 38
C. Exemptions from local taxes 41
D. Grants for hiring unemployed persons 41

VII. FREQUENTLY ASKED QUESTIONS (FAQ) 42

CONTENTS 45

Copyright © PAIiIZ, December 2004

ul. Bagatela 12
00–585 Warsaw, Poland
Tel.: (+48 22) 334 98 00
Fax: (+48 22) 334 99 99
E–mail: post@paiz.gov.pl
www.paiz.gov.pl

ISBN 83–60049–12–2

ROTTHEGE WASSERMANN & PARTNER

RECHTSANWÄLTE • WIRTSCHAFTSPRÜFER • STEUERBERATER • GBR

RWP specialises in offering advice to entrepreneurs and investors

RWP with focus on:

- RWP Company Law
- RWP Mergers & Acquisitions
- RWP Construction, Real Estate And Transaction Law
- RWP Enterprise Succession
- RWP Analysis and Development of Tax Concepts
- RWP Enterprise Valuation

RWP in Poland and Germany

RWP as a member of a worldwide network

www.RWP.pl

RWP

RWP Warszawa
ul. Nowy Świat 47
PL 00-042 Warszawa
Tel.: (+48 22) 827 15 80
Fax: (+48 22) 827 86 18

RWP Katowice
ul. Wita Stwosza 5
PL 40-036 Katowice
Tel.: (+48 32) 201 34 56
Fax: (+48 32) 201 34 57

RWP Düsseldorf
Wasserstrasse 7
D-40213 Düsseldorf
Tel.: (+49 211) 867 900
Fax: (+49 211) 132785

RWP Essen
Heinr.-Held-Str. 16
D-45133 Essen
Tel.: (+49 201) 842 190
Fax: (+49 201) 842 1922

RWP Bochum
Farnstrasse 59
D-44789 Bochum
Tel.: (+49 234) 298 380
Fax: (+49 234) 298 3822

RWP Dresden
Wolfshügelstrasse 20
D-01324 Dresden
Tel.:(+49 351) 214 40 60
Fax: (+49 351) 214 4070

ROTTHEGE WASSERMANN & PARTNER

RECHTSANWÄLTE • WIRTSCHAFTSPRÜFER • STEUERBERATER • GBR

RWP

RWP is a leading legal advisory firm internationally, and was established in 1993. We provide services via our branch offices at our Polish locations in Warsaw and Katowice, as well as our German offices in Düsseldorf, Essen, Bochum and Dresden.

Our Katowice office was established in 1996 with the Warsaw office following in 2000, however we have provided advisory services in Polish business law via our office in Düsseldorf since 1994. The Polish offices provide legal and tax advisory services and employ 10 lawyers, including one German attorney-at-law.

Our offices operating in these European economic centres also provide assistance to our customers outside Poland and Germany.

Close connections between both our legal and tax advisory sectors allow us to provide our customers with interdisciplinary assistance in all aspects of business law.

We measure our success based on our customers' satisfaction. Our development is stimulated by the high level of continuous education of our young employees. Our objective is not to be the largest but one of the best legal and tax advisory agencies.

We focus on professional methods of available services which must be tailored to individual customer requirements. In particular, we focus on the practical application of our legal advice, based on education, practice, and international experience. Quality and punctuality of the services we provide are our top priorities.

www.RWP.pl