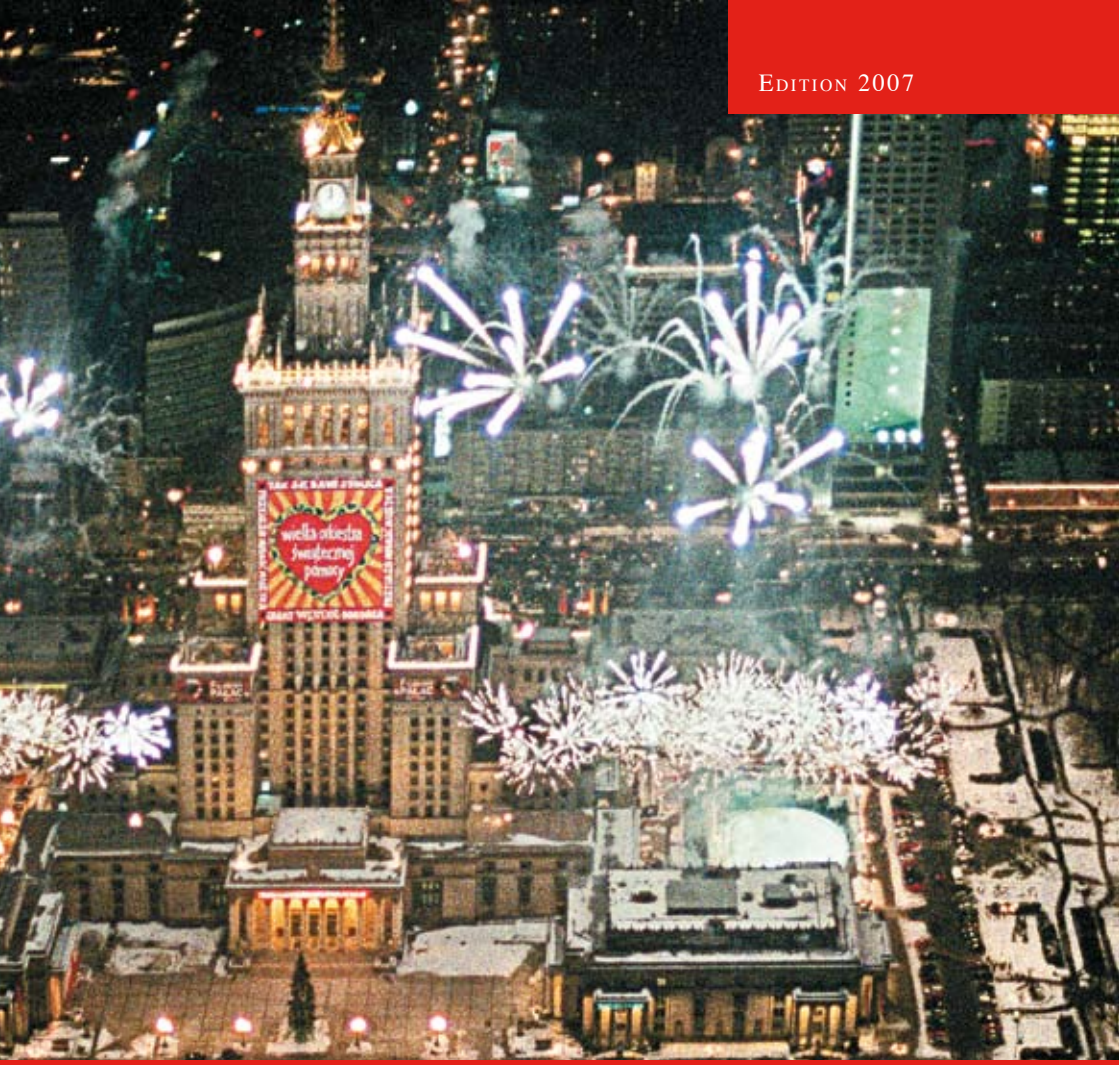

Edition 2007

ERNST & YOUNG

Quality In Everything We Do

Doing Business in Poland

A Guide to Doing Business in Poland

PAI
Polish Information
and Foreign Investment Agency

Domański Zakrzewski Palinka

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Photos by:
Marek Ostrowski (cover, pages: 6, 26, 48, 114, 120, 138)
Jerzy Gumowski (pages: 60, 96, 108)

Preface

The aim of this publication is, therefore, to familiarise potential investors with the basics of the Polish business environment, and to facilitate informed decision-making by providing pertinent information. Consequently, it is hoped that investors will be better placed to assess investment opportunities and weight up the potential benefits against the potential risks. Each of the eight chapters in Doing Business in Poland offers an authoritative summary of one key area of the business environment. These areas are: general business climate and investment incentives, company law, real estate, taxation, employment regulations, competition law, capital markets, accounting and auditing. The present publication is intended as a guide for investors with limited knowledge of the Polish economy. While the information it contains was to the best of our knowledge correct at the time of writing, the rapid pace of change in Poland means that laws and regulations are unlikely to remain static. We would therefore urge readers to treat this publication as a general overview and to seek specific advice before any investment decisions are taken. Doing Business in Poland is written by professionals from Ernst & Young in co-operation with professionals from Domański Zakrzewski Palinka in legal matters and Polish Information and Foreign Investment Agency. The authors are all leading specialists in their field, with a proven track-record in providing expert advice to domestic and foreign clients about all aspects of the Polish economy.

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1 Business Climate

1.1 Market Overview and Key Drivers

Since the collapse of communism in 1989, Poland has made dramatic progress moving from a centrally planned to a market-oriented economy. Trade liberalisation, economic restructuring, privatisation, capital inflows, and the gradual adaptation of legal and administrative standards to market-oriented practices have improved economic structures dramatically. In the mid-to late-1990s the Polish economy grew rapidly. After a slowdown, due mainly to the global economic conditions, Poland has regained the pace of growth that it achieved in the second half of the 1990s.

On 1 May 2004, Poland joined the European Union and thus became a member of the vast European single market where goods, services,

capital and labour move as freely as within one country. The accession to the EU crowned years of preparations and reforms.

Polish economy is developing much faster than the Euro zone (2.6%) and higher than the average of all EU members (2.8%). Poland's growth has been driven to a significant extent by export growth, industrial production and investments. Employment is also slowly increasing[1].

Poland: Macroeconomic Data 2005/2006

Size (sq. km)	312 685	
Population (million)	38.2	
	2006	**2007 Forecasts**
Real GDP Growth Rate (%)	5.8	6.5
Unemployment Rate (%)	15.9	12.0 (August 2007)
Inflation (%)	1.0	2.1 (August 2007)
Value of Polish export (bln €)	88.0	102.5

Source: Central Statistical Office (GUS), National Bank of Poland, BZ WBK, EIU

Poland's EU membership creates **new opportunities** for investors planning to invest in the country:

- access to the single market of 490 million customers (EU including new member states, Norway, Iceland and Liechtenstein);
- the single largest beneficiary of EU aid among the acceding countries;
- Polish law will be further harmonised – the legal environment fully compatible with Western standards;
- EU membership guarantees stability and a dynamic development.

The examples of Ireland and Spain show how membership contributes to a country's rapid economic development and bring about massive investment inflows.

[1] The Polish Information anf Foreign Investment Agency (PAIiIZ S.A.).

Investors from outside the EU can also benefit from Poland's accession to the EU – by investing in Poland they get access not only to the Polish but to the EU market while taking advantage of lower production costs than in the "old" EU countries.

1.2 Foreign Direct Investment

As a member of the EU, NATO and OECD, Poland is a trustworthy and reliable partner for international business. A high inflow of foreign direct capital is a direct evidence of a country's attractiveness to foreign investors. Seventeen years after the successful introduction of economic reforms, Poland is the leader in Central Europe in terms of foreign direct investment. According to the National Bank of Poland (NBP), the inflow of foreign direct investments in 2006 amounted to 13.9 billion $.

Investors' motivation in undertaking cross-border direct investment is typically either to gain access to new and growing markets, or to reduce costs. Poland scores on both counts, representing a dynamic marketplace – the largest market among the new EU members, as well as a lower cost base than the "old" EU countries. Given its strategic geographical location, the country may also play a crucial role in EU trade as a gateway to markets further east, particularly Russia and Ukraine.

Other reasons for investors to enter Poland are:

- costs (incl. labour costs and costs of living) and the possibility of decreasing them. Costs of conducting business in Poland are significantly lower than in Western Europe[2];
- size of Polish market;
- human capital – availability of labour, qualified workforce;
- economic growth prospects: solid macroeconomic foundations and monetary policy set by an independent Central Bank;

[2] According to a survey commissioned by PAIiIZ in 2005.

- political and economic environment favourable to foreign investment, ongoing corporate restructuring, deregulation and further privatisation; beneficial tax rates – Corporate Income Tax rate of 19% of taxable base; low inflation and falling interest rates; strong orientation towards joining the Euro zone; mature financial system and stable banking sector.

Projects serviced by PAIiIZ in 2006

Country	Capital invested in 2006 ($ million)
Japan	441.25
Spain	153.4
South Korea	103.1

Source: Polish Information and Foreign Investment Agency

The biggest investors in Poland in alphabetical order

Investor	Country of origin	Business Activity
Citigroup	USA	Banking
Fiat	Italy	Motor vehicles, insurance, banking
France Telecom	France	Telecom
KBC Bank	Belgium	Banking
LG	South Korea	Electronic equipment
Metro Group	Germany	Retail
Unicredito Italiano	Italy	Banking
The European Bank for Reconstruction and Development	International	Banking

Source: Polish Information and Foreign Investment Agency

1.3 Investment Incentives in Poland

The investment incentive system in Poland is compliant with EC law requirements and is composed of three main types of public aid: regional, horizontal and sectoral. The amount of public aid that may be awarded to an investment cannot exceed certain levels set separately for each category of state aid.

Regional aid

The information given below are based on the Guidelines on National Regional Aid for 2007–2013, Commission Regulation No 1628/2006, the Decision of the European Commission on Regional Aid Map 2007–2013 for Poland (State Aid N 531/06 – Poland) and the Council of Ministers Regulation of 13 October 2006 on regional aid map.

General rules

Regional aid is aimed at supporting initial investments, which are generally defined as investments related to setting up a new enterprise, development of an existing enterprise, diversification of the output into new, additional products, or a fundamental change in the overall production process of an existing enterprise.
One of the conditions to benefit from this kind of aid is the maintenance of the investment or job retention for a minimum of five years[3] (in order to prevent relocation of companies after aid is granted).

Aid intensity

Regional aid for initial investments can generally be awarded up to the maximum aid intensity, understood as a percentage of costs eligible for funding, i.e. investment or job creation costs.

Maximum aid intensity levels in Poland*:

Region	Aid intensity
Voivodships: Lubelskie, Podkarpackie, Warmińsko-Mazurskie, Podlaskie, Świętokrzyskie, Opolskie, Małopolskie, Lubuskie, Łódzkie, Kujawsko-Pomorskie	50%
Voivodships: Pomorskie, Zachodniopomorskie, Dolnośląskie, Wielkopolskie, Śląskie	40%
Voivodship: Mazowieckie	– 40% until 31.12.2010 – 30% from 01.01.2011
Warsaw	30%

** As a rule, the aid intensity levels are higher for Small (by 20 percentage points) and Medium Enterprises (by 10 percentage points). These bonuses, however, do not apply to aid awarded in the transport sector.*

[3] 3 years in the case of Small and Medium Enterprises.

For large investment projects (eligible costs of above 50 million €) the aid level is reduced. The available aid amount for a large investment project is calculated according to the formula:
maximum aid amount = R × (50 million € + 0.50 × B + 0.34 × C)
where: R is the maximum aid intensity allocated to a given area;
B is the eligible expenditure between 50 million € and 100 million €;
C is the eligible expenditure above 100 million €.

Methods of calculating available aid

The amount of aid available for an investment project is generally based either on the costs of the investment or the costs of creating jobs:

- Investment costs
  - material assets such as land, buildings and plant/machinery;
  - immaterial assets such as assets entailed by the transfer of technology through the acquisition of patent rights, licenses, know-how or unpatented technical knowledge[4];
  - cost related to acquisition of assets other than land and buildings under financial lease; lease of land and buildings if continued after the anticipated date of the completion of the investment project for at least 5 years in the case of large companies, or 3 years for SMEs.

- Job creation costs

Aid for job creation cannot exceed a percentage, equal to the aid intensity level for a given region, of the two-year labour costs of newly employed workers, comprising the gross costs of employing the workers increased by all obligatory payments related to their employment (e.g. social security contributions) incurred by the company. The aid for employment refers to a net job creation, i.e. net increase in the number of employees directly employed in a particular establishment compared with the average over the previous 12 months.

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[4] Immaterial assets must be bought from third parties under market conditions and meet several other criteria.

Aid notification

As a rule, the European Commission should be notified of any public aid to be individually granted in excess of 200 000 € unless the aid is to be granted based on the notified aid programme (e.g. legal acts providing the framework for real estate tax exemption for investors creating new jobs in a given region). Aid programme notification involves the following steps:

- draft aid programme is prepared by a body granting the aid;
- the aid programme obtains endorsement of the President of the Office of Competition and Consumer Protection ("Urząd Ochrony Konkurencji i Konsumentów");
- the Council of Ministers approves the aid programme in a form of an attachment to its Resolution;
- the programme is notified to the European Commission.

The notification process may last up to 5 months.
If, however, investors are granted the so called *de minimis* aid, i.e. one which does not exceed gross amount of 200 000 € during 3 following years, the support is not considered public aid and therefore there is no obligation to notify the European Commission (it only has to be approved by the Office of Competition and Consumer Protection).

Forms of regional aid

New investments in Poland can mainly be supported by means of, among other things:

- cash grants;
- CIT exemption available for companies operating within Special Economic Zones (SEZs);
- Multi-Annual Support Programmes;
- technological loan;
- real estate tax exemptions.

Enterprise established in SEZ may simultaneously benefit from CIT relief, cash grants as well as technological loans, however, the total value of grants and other types of regional state aid offered

to the investor cannot exceed the maximum available regional aid pool computed using the regional state aid intensity admissible for a given investment project.

Cash grants

A cash grant is given to an enterprise under an agreement concluded between the enterprise and the Minister of Economy. The agreement stipulates the value of the investment project, the timetable of the investment process, the technologies to be applied, the number of new employees, etc.

The grant application procedure opens with call announcement. The applications which are filed within the set out deadline are then evaluated. After evaluation procedure which is based on the scoring mechanism described precisely in the law, the Ministry informs applicants about its decision and signs the co-financing agreements. The whole assessment procedure takes ca. 3–4 months. The projects are chosen in open competition. An investment to be co-financed from cash grants may only start after the application has been submitted.

The first calls under the 2007–2013 budget are anticipated to be announced in late 2007 or early 2008.

The maximum permissible aid for one investment project is maximum aid intensity for a given region multiplied by investment costs (or two-year employment costs of new employees if this amount is higher than the amount of investment costs). Should the regulations on cash grants valid until 2006 also apply to the new 2007–2013 period, investors might apply for co-financing equal to half of the maximum permissible aid. Still, current wording of drafts of particular regulations does not include such limitation, thus, it is possible that the aid will be granted up to the aid intensity limits. Business activity related to the co-funded investment should be maintained for at least 5 years[5] from the investment completion

[5] 3 years in the case of Small and Medium Enterprises.

date. In the case of support for creating new jobs, the newly created jobs (understood as the jobs created within 3 years after completion date) will have to be maintained for at least 5 years[6] from the date of investment completion.

CIT exemption (only in Special Economic Zones)

Special Economic Zones are part of Polish territory set up for a specific period of time (most until 2017) where companies' operations are governed by specific rules set out in the SEZ Act and further defined in the relevant SEZ regulations.

At present there are 14 SEZs in Poland, each compiling several sub-zones located within the territory of the country. The total size of all SEZs amounts to approx. 8 000 ha and can be extended to 12 000 ha.

Location of SEZs in Poland:

[6] 3 years in the case of Small and Medium Enterprises.

SEZ management presents to a potential investor possible locations for industrial facilities and also provides free assistance to investors by, among other things, facilitating their contacts with local or state authorities in matters such as the purchase of land for investment. At a later stage SEZ management collects fee for administering the SEZ. The most significant incentive offered in SEZ is CIT exemption available for enterprises operating in SEZ.

Maximum permissible aid for one investment project performed within the SEZ equals maximum aid intensity for a given region multiplied by investment costs (or two-year employment costs of new employees if this amount is higher than the amount of investment costs). The so-calculated amount of available CIT exemption can be utilized by the investor till the end of the given SEZ existence in relation to the income generated on the business activity specified in the SEZ permit.

CIT exemption is granted by virtue of law for the companies, which obtained an SEZ permit. Each permit specifies the conditions levied on the investor. In particular, the value of the planned investment, the intended level of employment, date of commencing the business activity (e.g. production) and deadlines for fulfilling all the obligations are mentioned in the permit. The permit is usually valid until the SEZ ceases to exist. If the permit is based on investment value criterion the minimum value of an investment project in SEZ is 100 000 €.

Generally, list of activities that cannot be performed within the SEZ and the construction of the CIT exemption results in the fact that locating the company in the SEZ is beneficial mainly for production companies. However, shared services centres may also be located in the SEZs which makes it a perfect incentive for companies operating in the outsourcing services sector or BPOs (business process offshoring).
Investment maintenance conditions:

- business activity related to a particular investment should be conducted for at least 5 years[7] from the investment completion date, or

[7] 3 years in the case of Small and Medium Enterprises.

- the newly created jobs should be maintained for at least 5 years[8] from the investment completion date.

It takes minimum 2–3 months to complete all the formal requirements needed to enter the SEZ and obtain an SEZ permit. However, the entire process may take up to 4–5 months, depending on the particular case.

Multi-Annual Support Programmes – system of incentives for major investments

This type of aid has been designed in order to attract investments of special importance to Poland. Therefore, the Multi-Annual Support Programme is designated for large investments, which are considered crucial for the Polish economy.

To apply for support within the system the investment should be implemented in one of the priority sectors such as automotive, electronic, biotechnology, shared services centres (BPO), R&D Centres, etc. Also, one of the following conditions has to be met:

- minimum level of new jobs to be created is 250, or
- the value of investment is at least at the level of 40 million €.

The system of incentives may combine different types of aid, e.g. initial investment support, employment grant, training grant, preferential land purchase price, CIT exemption in Special Economic Zones, real estate tax exemption, financing of the commuting costs, assistance in establishment of co-operation between the investor and academic institutions, etc. Also, employment of people in a location where the unemployment rate is higher than the national average enables the investor to apply for a 10% higher amount of support than the base values.

Please note, however, that the amount of aid to be received in this programme depends mostly on the outcome of negotiations with the authorities. In order to benefit from this form of support, investors negotiate the aid package with the Polish Information anf Foreign

[8] 3 years in the case of Small and Medium Enterprises.

Investment Agency[9] and the Ministry of Economy. The process of negotiations usually lasts several months and is finalized in form of an agreement.
The granted aid is then notified to the European Commission.

Technological loan

The technological loan is granted for the so called "technological investment" – purchase or development of a new technology (tangible and intangible assets) and its implementation.

Currently, the basic rules of technological loans are as follows:

- a loan may not exceed 2 million €;
- up to 50% of the loan principal (not more than 1 million €) can be waived – in installments of up to 20% of the net amount of invoices documenting the sale of goods and services produced as the result of implementing the technological investment financed with the loan;
- the loan remission constitutes regional public aid;
- applications for loans are submitted in April, July and October.

Please note that the regulations are being revised at the moment. The most important changes in the current wording of drafts of these regulations include abolition of the 2 million € limit (loan levels would be specified by the bank granting the loan) and access for SMEs only. However, the 1 million € threshold of maximum loan redemption is planned to be maintained.

Sectoral aid

Separate regulations were set for so-called sensitive sectors, eg. synthetic fibres, steel, shipbuilding, transport.
As far as the motor vehicle industry is concerned, specific rules have been abolished since 1 January 2007. Currently, companies from the automotive sector can obtain aid calculated according to the corresponding regional aid intensity. As a consequence the automotive sector may apply for public aid under the same

[9] PAIiIZ may undergo restructuring.

regulations as other non-sensitive branches of industry (however, it is not possible to increase the intensity level in the case of SMEs).

Horizontal aid

Horizontal aid schemes are separate from regional aid. This means that even companies that have used up the maximum available regional aid may benefit from horizontal aid schemes.

Employment

Employment aid is granted for the following types of projects:

- creation of jobs;
- recruitment of disadvantaged people (that is: youths under the age of 25, long-term unemployed, persons over the age of 50, single adults looking after at least one child under the age of 7, persons with no qualifications) or disabled people;
- to cover the additional costs of employing disabled people.

Such aid is considered horizontal if employment creation is not linked to an initial investment. Employment grant may be obtained only for recruiting unemployed persons. Job creation is understood as a net increase in the number of jobs, compared to the annual average employment level, maintained for at least 3 years (or 2 years in the case of SMEs).

Maximum level of support:

The level of support is set in line with an algorithm specific for each case and it is generally linked directly to the amount of average salary.

Terms and conditions:

As a rule the aid may be obtained throughout the year after filing all the necessary documentation.

Procedure:

Generally, a company completes an application and submits it to the Local Labour Office. The Company is informed whether the project will be funded. Funding starts from the moment at which selected

persons are employed based on agreement concluded with the Local Labour Office.

Companies employing disabled persons may additionally obtain the aid from the State Fund for the Rehabilitation of the Disabled (*Państwowy Fundusz Rehabilitacji Osób Niepełnosprawnych*):

- for adapting workplaces to needs of disabled persons;
- exemption from social security contributions;
- monthly financial support to salaries of disabled persons (amounts depending on the level of a person's disability and a number of employees in a company).

Training Grants

Training aid covers public support for different kinds of trainings useful for company's employees. Companies take advantage from training aid by reducing training costs (i.e. the aid covers part of training institution costs).

Types of project:

An investor can benefit from subsidised training (general or specialised) for employees and managers, e.g. concerning IT use and application, enterprise management, including human resources management, work organization improvements, postgraduate studies for enterprise employees and managerial staff, internships for employees of enterprises in scientific and research institutions, upgrading skills of employees with low qualifications.

Beneficiaries:

This aid is accessible for training institutions (e.g. scientific institutes, universities etc.) and companies, which specialize in training activities. Final beneficiaries are enterprises which train their managerial staff and employees. As training institutions receive public aid, enterprises pay lower fees for participation in trainings.

Maximum levels of support:

- up to 60% of qualifying expenditures for general trainings;
- up to 35% of qualifying expenditures for specialized trainings (not useful outside the company organizing the training);
- up to 80% and 45% respectively in case of SMEs.

Terms and conditions:

Announcement of first calls is expected in the second half of 2007.

Research & Development

R&D center status

The status of an R&D centre is granted to entities with income generated on sales of goods and products and on financial operations worth at least 800 000 €, at least 50% of which is generated on sales of own R&D activity results (in the year prior to the year of filing the application). Apart from that there is a requirement of no outstanding tax and social security liabilities. The above-mentioned conditions must be fulfilled each consecutive year of holding the R&D centre status. The centres may create the so called "innovativeness funds" – up to 20% of their monthly income can be allocated to the fund and treated as tax deductible costs for CIT purposes. The requirement that must be fulfilled in order to create the fund is that its resources must cover expenses linked with own R&D activity. The R&D centres are eligible for real estate tax exemption to the extent that the assets are used to conduct R&D activity (*de minimis* aid).

R&D support within Structural Funds

According to new Community Framework for State Aid for Research and Development and Innovation applicable since 2007 aid for R&D can be granted either for:

- fundamental research – experimental or theoretical work undertaken primarily to acquire new knowledge, without any direct practical application or use in view;
- industrial research – planned research or critical investigation aimed at the acquisition of new knowledge and skills for developing new

products, processes or services or for bringing about a significant improvement in existing products, processes or services, and

- experimental development – acquiring, combining, shaping and using existing scientific, technological, business and other relevant knowledge and skills for the purpose of producing plans and arrangements or designs for new, altered or improved products, processes or services.

The aid intensities applicable for R&D support are as follows:

	Small enterprise	Medium enterprise	Large enterprise
Fundamental research	100%	100%	100%
Industrial research	70%	60%	50%
Industrial research subject to: – collaboration between undertakings, or – collaboration of an undertaking with a research organization, or – dissemination of results	80%	75%	65%
Experimental development	45%	35%	25%
Experimental development subject to: – collaboration between undertakings, or – collaboration of an undertaking with a research organisation	60%	50%	40%

Costs eligible for funding:

- project team salaries;
- instruments and equipment;
- buildings and land;
- contractual research, technical knowledge and patents (bought or licensed);
- additional overheads (e.g. costs of materials, supplies, etc. incurred directly as a result of the research activity).

Research & Development support within European Community Programme – Seventh Framework Programme

The Framework Programmes (FPs) have been the main financial tools through which the European Union supports research and development activities covering almost all scientific disciplines.

The current FP7 has been fully operational as of 1 January 2007 and will expire in 2013.
The proposed Seventh Framework Programme will be organised in four programmes corresponding to four basic components of European research:

- Cooperation (support given to whole range of research activities carried out in trans-national cooperation); themes covered:
  – Health;
  – Food, agriculture and biotechnology;
  – Information and communication technologies;
  – Nanosciences, nanotechnologies, materials and new production technologies;
  – Energy;
  – Environment (including climate change);
  – Transport (including aeronautics);
  – Socio-economic sciences and the humanities;
  – Security and Space;
- Ideas (aimed at enhancing the dynamism, creativity and excellence of European research at the frontier of knowledge in all scientific and technological fields, including engineering, socio-economic sciences and the humanities);
- People (quantitative and qualitative strengthening of human resources in research and technology in Europe);
- Capacities (objective is to support research infrastructures, research for the benefit of SMEs and the research potential of European regions as well as to stimulate the realisation of the full research potential of the enlarged Union and build an effective and democratic European Knowledge society).

Participants:
Any legally established company, university, research centre, organisation or individual

Terms & conditions:
Calls for proposals have already been announced. Deadlines for application submission have been set out separately for each call.

- Budget:
  – Cooperation – 32 292 million €;
  – Ideas – 7 460 million €;
  – People – 4 727 million €;
  – Capacities – 4 291 million €.
- Proposed forms of grants under FP7:
  – reimbursement of eligible costs (preferred method for most funding schemes);
  – lump sums, and flat-rate financing (introduced gradually and if successful will be used more extensively).
- Financial contribution of the EU will cover:
  – a maximum of 50% of eligible costs minus receipts both for research and for demonstration activities, with a top up of a maximum of 25% for research activities for SMEs, public bodies, secondary and higher education establishments and non-profit research organisations;
  – 100% of "frontier research" actions for all entities;
  – up to 100% for all other activities, including coordination and support actions, and training and career development of researchers, for all entities.

Environmental support within Structural Funds

Support for environmental protection covers aid for actions designed to remedy or prevent damage to physical surroundings or natural resources or to encourage the efficient use of these resources. Projects have to involve adjusting existing environmental infrastructure to the requirements of EU environmental protection policy.

Generally, the support can be granted

- as regional aid if the environmental protection is connected with new investment, or
- in form of horizontal aid if the environmental protection results in modernisation and improvement of existing installations.

The aid intensity levels depend on the type of investment as indicated above and scope of actions undertaken.

Areas of support:

- investments concerning i.a.:
  - development of water-sewage infrastructure;
  - improved waste management (eg. waste recycling and utilization);
  - companies' adjustment to environmental protection requirements (eg. by implementing BATs);
  - air protection;
  - environmental friendly energy infrastructure.

Beneficiaries:

Enterprises

Terms and conditions:

Announcement of first calls is expected in the second half of 2007.

European Economic Area (EEA) grants Iceland Liechtenstein Norway

EEA grants are two financial aid instruments from three non-EU countries of the EEA: Iceland, Liechtenstein and Norway. These instruments were implemented in Poland on the basis of two agreements signed by the Polish government in September 2004: the Memorandum of Understanding of the Implementation of the EEA Financial Mechanism and the Memorandum of Understanding of the Implementation of the Norwegian Financial Instrument.

Types of projects:

Support under the EEA Financial Mechanism is envisaged for projects related to one of the six priorities listed below:

1. environmental protection, including human environment, through e.g. reduction of pollution and promotion of renewable sources of energy;
2. promotion of sustainable development through better sources usage and management;
3. protection of the cultural European heritage, including public means of transport and cities renovation;

4. development of human resources through promotion of the education and trainings, enhancement of the potential of the administration institutions and public services;
5. health care and children care;
6. scientific research.

Beneficiaries:
All entities from public and private sector and non-governmental organizations, providing they are established in Poland, particularly: governmental entities, regional and local authorities, scientific and research institutions, trade and environmental institutions, social assistance organizations, public-private partnerships, private partnerships and companies acting in public interest.

Maximum rates of support:
Limit of project co-financing is generally 60% of all eligible project costs. In the case of additional support from national budget or local authorities budget (at least 15%) co-financing may reach the level of 85%.

Terms and conditions:
- project has to be realized in public interest;
- only expenditures incurred after financing is granted may be refunded;
- in justified cases projects can gain support in advance (maximum 10%);
- minimum aid amounts to 250 000 €.

Procedure:
Applications for financial aid should be submitted to appropriate Managing Authority (e.g. the Ministry of Health in the case of projects concerning health care; the Ministry of Environment in the case of environmental projects). Only projects approved in national selection procedure will be directed to the EEA countries where the final decision on granting the aid will be made. The financing agreement is signed between the appropriate Managing Authority and beneficiaries. The assessment procedure takes ca. 8 months.

2 Establishing a Business Presence

2.1 Overview

The legal concept of "doing business" is best defined under Polish law in the Act on Freedom of Economic Activity (2004), which defines economic activity as "…production, construction, trade, service, the search for, recognition and extraction of natural resources, as well as professional activity pursued for the purpose of obtaining profit and conducted in an organised and continuous manner". The Act also provides that undertaking and pursuing economic activity shall be free and allowed to every person on equal terms subject to any conditions specified in law.

This definition of "doing business" also applies to foreign investors undertaking economic activity in Poland. However, there are

New company registration. The procedure of establishing business activity

1.	Preparation of the Articles of Association or Statute and other necessary documents (statements, powers of attorney etc.).
2.	Executing the New Company's articles of association in notarial form.
3.	Arranging for an official address of the company (at least a lease agreement for the office).
4.	Application to the Central Statistical Office (*Główny Urząd Statystyczny – GUS*) for a Statistical Identification Number (*REGON*).
5.	Opening an account at a Polish bank.
6.	Entering the New Company into the Polish Court Register (*Krajowy Rejestr Sądowy*) kept by the registration court.
7.	Announcing the New Company's entry into the commercial register in the Official Journal (*Monitor Sądowy i Gospodarczy*).
8.	Filing the application for a tax identification number (*NIP*) and registration of the New Company as a VAT payer and monitoring the procedure in the tax office.
9.	Notifying the Social Insurance Institution (*Zakład Ubezpieczeń Społecznych – ZUS*). (This obligation arises after employment of the first employee)
10.	10. Notifying the National Labor Inspectorate. (i.e. the General Personal Data Protection Inspectorate)

differences between investors from countries that are EU and EFTA members, and those from other countries.

Investors from countries that are EU and EFTA members may conduct economic activity on the same terms as Polish citizens.

Investors from countries that are not EU and EFTA members may conduct economic activity on the same terms as Polish citizens only if they hold permits legalizing their stay in Poland and allowing them to conduct commercial activity. Investors from other countries who do not hold such permits may conduct economic activity through:

- establishing limited partnerships, limited joint-stock partnerships, limited liability companies and joint-stock companies;
- purchasing and acquiring shares in such companies.

The following are the main legal forms available for doing business in Poland. All these forms are available to Polish investors and foreign investors based in countries that are EU and EFTA members:

- joint-stock company (*spółka akcyjna – S.A.*);
- European Company (Societas Europea) (*Spółka Europejska – SE*);
- limited liability company (*spółka z ograniczoną odpowiedzialnością – sp. z o.o.*);
- limited joint-stock partnership (*spółka komandytowo-akcyjna – S.K.A.*);
- registered partnership (*spółka jawna – sp.j.*);
- limited partnership (*spółka komandytowa – sp.k.*);
- professional partnership (*spółka partnerska – sp.p.*);
- sole proprietorship (*indywidualna działalność gospodarcza*);
- European Economic Interest Grouping (*Europejskie Zgrupowanie Interesów Gospodarczych – EZIG*);
- civil law partnership (*spółka cywilna*) – this partnership may not be registered as an individual entrepreneur conducting economic activity. Its participants may be registered as individuals pursuing economic activity jointly. Therefore, such a partnership is not a separate business entity. However, it may be used for joint investment projects or consortia.

Many of the laws relating to doing business are contained in the following acts:

- Code of Commercial Companies (15 September 2000) – this relates to forms of doing business by companies and partnerships;
- Council Regulation (EC) No 2157/2001 on the Statute for a European Company (8 October 2001);
- Council Regulation (EEC) No 2137/85 on the European Economic Interest Grouping (27 July 1985);
- Act on European Economic Interest Grouping and European Company (4 March 2005);
- Act on Freedom of Economic Activity (2 July 2004).

Other regulations important for commercial companies include the:

- Banking Law (29 August 1997);
- Law on the Privatisation and Commercialisation of State-owned Enterprises (30 August 1996);
- Insurance Law (22 May 2003);
- Capital Market Regulation Act dated 8 July 2005;
- Act on Public Offer and Terms and Conditions of Introducing Financial Instruments to Organised Trading System and on Public Companies dated 8 July 2005;
- Trade in Financial Instruments Act dated 8 July 2005.

These acts contain provisions concerning banking and insurance activities and public trade in securities.

2.2 Companies

All types of companies are available to a foreign investor, provided that the investor:

- has a permit legalizing his stay in and allowing him to conduct commercial activity Poland, or
- originates from a country that is an EU or EFTA member state.

If the above conditions are not met, the investor may establish a limited partnership, limited joint-stock partnership, limited liability company or joint-stock company. Such investors are not subject to further limitations on the form of economic activity they choose to undertake.

Joint-stock company

A Polish joint-stock company can be established by one or more founding members. A limited liability company with one shareholder cannot be the sole founding member of a joint-stock company. However, the law does not prohibit subsequent operation of a joint-stock company with only one shareholder who also happens to be a joint-stock company with one shareholder.

Company's formation

The founding members agree upon and sign the Articles of Association of the joint-stock company, supply at least 25% of the initial capital, and make all vital management decisions concerning the company before the company's Management Board and Supervisory Board are elected.

The formation of a joint-stock company involves the following:

- execution of the Articles of Association by the founding members;
- making the payments for shares in accordance with the law (see Share capital requirements);
- establishment of the Management Board and Supervisory Board (see Management);
- entry of the company into the Register of Entrepreneurs (part of the National Court Register).

The Articles of Association should be concluded in the form of a notarial deed and signed by the founding members. All founding members should present to the notary public documents describing their legal status (i.e. for a foreign corporate shareholder, an excerpt from the appropriate commercial register or a certificate of incorporation that must be usually validated by an apostille clause

or in a Polish embassy or consulate together with its sworn translation into Polish).

Registration of the company is performed by the registry court.

The following documentation should be filed with the court:

- an application for registration signed by all the members of the Management Board;
- the Articles of Association of the company;
- notarial deeds on formation of the company and subscription for its shares;
- a statement of all members of the Management Board that payments for shares provided for by the Articles of Association have been made in accordance with the law;
- proof of payment for the shares made to bank account of the company in organisation, certified by a bank or brokerage house; if the statutes provide for payment of the share capital with in-kind contributions after the registration of the company, a proper statement by all members of the Management Board must be enclosed;
- a document evidencing the appointment of members of the company's bodies with a list of their members;
- a relevant permit or evidence of approval of the statute by a competent administrative authority if such documents are required for the incorporation of the company;
- specimen signatures of all members of the Management Board.

For the company to become fully operational, the statistical office should be notified, whereupon the company will receive its own statistical identification number (REGON). In addition, the company should apply to the tax office for its taxpayer number (NIP). There is a statutory requirement for a joint-stock company to carry out an annual audit.

Share capital requirements

The minimum share capital requirement is 500 000 PLN. A share must have a value of at least 0.01 PLN (1 grosz). Shares are equal and indivisible. Shares acquired through a contribution in kind should be

fully paid up not later than one year after the registration of the company. Shares acquired through a cash contribution should be paid up in 25% prior to the registration of the company. If shares are acquired solely through a contribution in kind, or through a contribution in kind plus a cash contribution, 25% of the nominal share capital should be paid up prior to registration.

If the shares are paid up with a contribution in kind, the founders must prepare a special valuation report to be examined in the course of the registration process by auditors appointed by the registration court.

Preference shares may be issued, awarding, for example, preferential dividend rights (though these are limited), voting privileges (up to two votes per share), or privileges with respect to the distribution of assets in the event of the company's liquidation. A joint-stock company may issue either registered shares or bearer shares. Bearer shares are not subject to any legal restriction on transferability either under the law or under the Articles of Association of a given company. Shares which are not paid up to their full nominal value, or which are allotted in consideration for a contribution in kind, cannot be issued as bearer shares. Registered shares may only be transferred by a contract evidenced by a written statement of the previous shareholder, and delivery of the share certificate.

Reserve capital

A reserve fund for potential losses must be created through the transfer of 8% of the annual profits of the joint-stock company until the reserve capital amounts to one third of the share capital.

Management

The formal bodies of a joint-stock company are the Shareholders' Meeting, the Management Board and the Supervisory Board.

Shareholders' Meeting

The powers of the Shareholders' Meeting comprise:

- examining and approving the report, balance sheet and profit and loss account for the previous year;

- the discretion to allocate profit or cover losses, making any decisions on claims for damage caused during the establishment, management or supervision of the company;
- the discretion to dispose of or lease the company's enterprise or its organised part or establish a limited property right thereon;
- the discretion to dispose of or acquire real estate, perpetual usufruct of it or its part (unless otherwise stated in the Articles of Association);
- the discretion to issue convertible bonds or bonds with a pre-emptive right;
- the discretion to acquire the company's own shares;
- amending the company's Articles of Association;
- increasing or decreasing the company's share capital;
- for a period of two years after the registration of the company, the discretion to acquire property for a price higher than 1/10 of the paid-up share capital from the founding member or a shareholder, for the company (or for the subsidiary), of the founding member or the shareholder of the company.

An absolute majority of votes cast is sufficient for most decisions. However, some resolutions may be adopted only by:

- unanimity of the shareholders whom they concern (for example, amendments to the Articles of Association increasing the shareholders' preferential dividend rights from the company or reducing individual rights vested in shareholders personally);
- a qualified majority of three quarters of the votes cast (for example, in respect of amendments to the Articles of Association or a decrease in share capital or in respect of a decision on merging the company.

The Articles of Association may provide for more stringent conditions to adopt these resolutions.

Management Board

The Supervisory Board elects the Management Board of a joint-stock company unless otherwise provided by the Articles of Association.

The Management Board members' term of office cannot exceed five years.

The Management Board is vested with the exclusive power to represent the company before third parties. This right extends to all judicial and extra-judicial acts of the company, and its limitation cannot have any legal effect on third parties. The Management Board is a collective body, so it makes decisions by resolution.

Supervisory Board

A joint-stock company must have a Supervisory Board of not fewer than three persons, elected by the Shareholders' Meeting.
The Supervisory Board exercises permanent supervision over the activity of the company in all branches of the enterprise. Its particular duties include: examination of the reports of the Management Board and financial statements of the company in respect of their compatibility with the books, documents and the actual state of affairs; examination of the Management Board's motions as to the distribution of profit and losses; as well as submission of an annual written report on the results of the examination to the Shareholders' Meeting.

Responsibility

The shareholders of a joint-stock company are not personally responsible for the obligations of the company Management Board members are liable jointly and severally with all their assets for the tax arrears of the company if enforcement against the company proves ineffective, unless a member of the Board shows that bankruptcy was declared or arrangement proceedings were initiated in due time, or that the lack of such a declaration or arrangement proceedings was not his fault, or if he indicates property on which the enforcement can be effected.

This responsibility of Board members includes tax obligations arising while carrying out the duties of a Board member. The Code of Commercial Companies also provides for the civil and criminal liability of the company founders, Management Board

and Supervisory Board members and shareholders, for certain activities undertaken in violation of the law.

Dissolution

A joint-stock company may be dissolved:

- for reasons provided under the company's Articles of Association;
- on a resolution of the Shareholders' Meeting to dissolve the company or to transfer abroad the registered office or principal establishment of the company;
- upon declaration of the company's bankruptcy;
- for other reasons provided for by law.

European Company

A European Company is a company which is intended for large, European-size businesses. It is to be free of the obstacles resulting from national company laws of each EU member state. The main advantage of a European Company is the possibility to move its registered office from one EU state to the other without losing legal personality.

A European Company is regulated by the Regulation No. 2157/2001 on the Statute for a European Company, European Company's Articles of Association, laws of EU members states adopted in implementation of EU measures relating to this Company and laws of EU member state which would apply to a joint-stock company formed in accordance with the law of the member state where the European Company has its registered office. This mean that, to the extent not regulated in the EU laws, European Companies with registered offices in Poland will be subject to Polish law regulating joint-stock companies established under Polish Code of Commercial Companies.

Formation

A European Company may be formed through:

- merger of two joint-stock companies from different EU member states;
- formation of a holding company by two joint-stock companies or limited liability companies from different EU member states

or by any two joint-stock companies or limited liability companies having for at least two years a subsidiary or a branch in another EU member state;
- formation of a joint subsidiary by two entities from different EU member states or by two entities having for at least two years a subsidiary or a branch in another EU member state, or
- transformation of a joint-stock company previously formed under a national law having for two years a subsidiary in another EU member state.

Any existing European Company may move its registered office to Poland.

Capital requirements

A European Company must have a minimum capital of 120 000 € (unless the Polish law requires larger capital for companies exercising certain types of activity).

Management

Founders of the European Company may choose between the two-tier system (i.e. the system composed of the management board and supervisory board, similar to the Polish joint-stock companies described above) or single-tier system (i.e. the system where the European Company is managed by the administrative board, close to the concepts of Spanish or Italian company law). The one-tier system assumes that the European Company's administrative board runs its affairs, represents it and supervises its business.

The administrative board may appoint managing directors from among its members or from third parties. However, at least one-half of the administrative board members should not be managing directors.

Limited Liability Company

A limited liability company may have a single shareholder. However, a limited liability company cannot be formed solely by another limited liability company with one shareholder. Incorporation of a limited

liability company involves broadly the same procedure as incorporation of a joint-stock company. A limited liability company does not necessarily require an audit every year (see Accounting and audit requirements).

Share capital requirements

The minimum share capital of a limited liability company is 50 000 PLN. The full amount of the share capital must be paid up before registration. The nominal value of one share cannot be less than 50 PLN.

A shareholder can hold either one share (when shares are divisible and unequal) or more than one share (when they are indivisible and equal). Preference shares may be issued. The transfer or pledge of a share or its part in a limited liability company should be made in written form with the signatures authenticated by a notary public.

Reserve capital

There is no requirement for a limited liability company to have a reserve fund.

Management

The formal bodies of a limited liability company are the Shareholders' Meeting and the Management Board.

A Supervisory Board or Audit Commission is optional, unless the limited liability company has a share capital exceeding 500 000 PLN and there are more than 25 shareholders. The Shareholders' Meeting is the supreme body of a limited liability company. The Shareholders' Meeting has similar rights to those of a joint-stock company, although some of the activities exclusively within its competence, and the majorities required for passing resolutions on certain issues, may differ.

The Shareholders' Meeting elects the Management Board.

The powers of the Management Board are similar to those of a joint-stock company, except that any individual Board member

may conduct matters not exceeding the scope of the ordinary course of business. Members of the Management Board of a limited liability company may be elected for an unlimited period of time.

Each shareholder has the right of inspection. In order to exercise this right, each shareholder (or a shareholder accompanied by an authorised person) may at any time inspect the books and documents of the company, draw up a balance sheet for his own use, and request the Management Board to provide explanations. Where a Supervisory Board or Audit Commission is established, the company's Articles of Association may exclude the right of individual inspection by shareholders. The Supervisory Board (Audit Commission) of a limited liability company, where appointed, must consist of at least three persons. The powers of the Supervisory Board are similar to those of a joint-stock company.

Responsibility

The rules are identical to those applicable to a joint-stock company, described above.

Dissolution

A limited liability company may be dissolved for reasons similar to those for a joint-stock company.

Major differences between limited liability companies and joint-stock companies

		Limited liability company	Joint-stock company
Shareholders	Number of founding members	One or more shareholders. A limited liability company cannot be formed solely by another limited liability company with one shareholder.	One or more founding members. A limited liability company with one shareholder cannot be the sole founding member of a joint-stock company.
	Minimum amount	50 000 PLN	500 000 PLN
	Minimum value of one share	50 PLN	0.01 PLN (1 grosz)
	Contributions	In cash or in kind. The full amount of the share capital must be paid up before registration.	In cash or in kind. Shares acquired through a contribution in kind should be fully paid up not later than one year after the registration of the company. Shares acquired through a cash contribution should be 25% paid up prior to the registration of the company. If the shares are acquired solely through a contribution in kind, or through a contribution in kind plus a cash contribution, 25% of the nominal share capital should be paid up prior to registration.
	Valuation procedure in the case of a contribution in kind	No valuation report needs to be drawn up by the shareholders.	The founders must prepare a special valuation report to be examined in the course of the registration process by auditors appointed by the registration court.
	Additional payments	The company's Articles of Association may oblige shareholders to make additional payments up to a specified amount in proportion to their shares.	Shareholders may be obliged to make additional payments only in exchange for additional privileges granted for their shares.

		Limited liability company	Joint-stock company
	Authorised capital	The law does not provide for such a possibility.	The Articles of Association may authorize the Management Board to conditionally increase the share capital for a period not longer than three years.
	Supervision	Each shareholder has the right of inspection. A Supervisory Board or Audit Commission is optional, unless the company has share capital exceeding 500 000 PLN and there are more than 25 shareholders.	Shareholders have no right of inspection. A company must appoint a Supervisory Board.
	Exclusion of a shareholder	Relating to an individual shareholder, the court may decide on the exclusion thereof on the request of all the remaining shareholders, provided that the value of the shares held by the shareholders requesting the exclusion exceeds one half of the initial capital.	The law does not provide for the possibility of excluding a shareholder. However, the possibility of compulsory buyout of shares (so-called "squeeze out") exists.
	Responsibility	Management Board members are liable jointly and severally with all their assets for the company's liabilities towards its creditors and for the company's tax arrears if enforcement against the company proves ineffective, unless a member of the Board shows that bankruptcy was declared or arrangement proceedings were initiated in due time, or that the lack of such declaration or arrangement proceedings was not his fault, or if he indicates property on which the enforcement can be effected.	Management Board members are liable jointly and severally with all their assets for the company's tax arrears if enforcement against the company proves ineffective, unless a member of the Board shows that bankruptcy was declared or arrangement proceedings were initiated in due time, or that the lack of such declaration or arrangement proceedings was not his fault, or if he indicates property on which the enforcement can be effected.

2.3 Commercial Partnerships

There are four types of commercial partnerships under Polish law. According to new legal provisions, the rights and obligations of a partner in a partnership may be transferred, under certain conditions, to another party, who becomes a partner after the effective transfer of rights.

Registered partnership

This form of partnership is regulated by the Code of Commercial Companies. Such a partnership does not have legal personality, though it may act on its own behalf, and has its own assets and debts. All participants are jointly and severally liable for the partnership's obligations, but creditors are obliged to seek payoffs in the assets of the partnership first. The liability of partners may not be excluded.

All partners are entitled to represent the partnership and manage its business. A partner may be excluded from the representation of the partnership in the agreement establishing the partnership or by the court.

The deed of the registered partnership must be prepared in writing; otherwise it is null and void.

Limited partnership

The limited partnership is also regulated by the Code of Commercial Companies and it also has no legal personality.

There are two types of partners in this partnership, which differ in liability from each other. The personal liability of certain partners is limited to a declared amount, which is registered in the Register of Entrepreneurs. Such partners are free of any liability above the amount of their contribution to the partnership. A limited partner can only represent the partnership to a limited extent set by the power of attorney granted to him by the partnership.

Other partners are liable jointly and severally for all the obligations of the partnership with their personal assets, in the appropriate way as partners in a registered partnership.

The deed of a limited partnership must be prepared by a notary public in the form of a notarial deed; otherwise it is null and void. In most matters, the provisions concerning registered partnerships also apply to limited partnerships.

Professional partnership

This partnership is available for investors wishing to conduct economic activities defined as "free professions" in Poland. These include attorneys at law, notaries public, dentists, architects and accountants, and are fully listed in Article 88 of the Code of Commercial Companies. This partnership also has no legal personality.

Partners in this partnership must be entitled to work in the profession concerned. They are liable for the partnership's obligations with all their personal assets. However, their liability is limited to obligations arising from the actions or relinquishments of people working for the partnership under the management of a certain partner. The deed of the partnership may provide that partners are liable for all the obligations of the partnership. Each partner is entitled to represent the partnership independently unless the deed states otherwise. A partner may be deprived of the right to represent the partnership by a resolution of the other partners. The deed of the partnership must be prepared by a notary public in the form of notarial deed; otherwise it is null and void.

Limited joint-stock partnership

This partnership also has no legal personality, though it is a hybrid of a joint-stock company and a limited partnership.
The deed of this partnership must be prepared by a notary public; otherwise it is null and void. There are two types of partners required to form this partnership:

- a partner whose liability for all the obligations of the partnership is not limited in any way and is regulated in the same way as in a registered or limited partnership;
- a shareholder who is not liable for the obligations of the partnership but is obliged to acquire and pay up the shares – the legal status of this shareholder is equal to that of a shareholder in a joint-stock company.

Partners are entitled to represent the partnership, while shareholders may do so only on the basis of a power of attorney. Partners manage the day-to-day business of the partnership. In certain situations, some partners may be excluded from management and representation. The minimum share capital of this partnership is 50 000 PLN. Partners may contribute to the company in cash or in kind, but this is not obligatory.

This partnership may form the following formal bodies:

Supervisory Board

If the number of shareholders exceeds 25, a Supervisory Board must be established. If there are fewer than 25 shareholders, the Supervisory Board may be established by the General Meeting. The members of this corporate authority are elected by the General Meeting.

General Meeting

The General Meeting has a different character than in a joint-stock company or limited liability company. It consists of shareholders and partners, who may take part in the Meeting even if they do not possess any shares in the partnership.

The Meeting may exclusively:

- examine and approve the partners' report, and financial statements for the previous year, and dissolve the partnership;

- acknowledge the fulfillment of duties by members of the Supervisory Board and partners managing the day-to-day business of the partnership;
- appoint a certified auditor, unless this is reserved for the Supervisory Board.

The provisions concerning voting in joint-stock companies apply to this partnership accordingly. However, in certain cases an unanimous resolution of the partners is obligatory. In other cases, a resolution passed by a majority of the partners is sufficient, if, together with votes of the shareholders, the required majority is reached.

If the provisions regarding this company do not provide a comprehensive solution, the provisions concerning limited partnerships apply accordingly to the legal status of partners and their contributions to the partnership. In other cases, the rules concerning joint-stock companies apply appropriately to the limited joint-stock partnership.

European Economic Interest Grouping

The purpose of the European Economic Interest Grouping is to facilitate or develop the economic activities of its members. The European Economic Interest Grouping has legal capacity but its members are fully liable for its debts. It can be formed by companies, firms and other entities governed by public or private law which have been formed in accordance with the law of any EU member state and which have their registered office in the EU. It can also be formed by individuals carrying on an industrial, commercial, craft or agricultural activity or providing professional or other services in the Community. However, at least two members must reside or has registered office in different EU member states.

Unless otherwise regulated in the Regulation No 2137/85 on the European Economic Interest Grouping or in the Act on European Economic Interest Grouping and European Company, Polish law

regulating registered partnership applies to European Economic Interest Grouping with registered office in Poland.

Sole proprietorship

This form of business entity is widely used in Poland, especially for small enterprises. It is not subject to any special regulations except the Act on Freedom of Economic Activity. A natural person may conduct economic activity in this form using either his/her name or the name of the enterprise.

A person using this form of economic activity is liable for all obligations arising from it with all his/her personal assets.

2.4 Branches and Representative Offices

Under the terms of the Act on Freedom of Economic Activity, foreign investors may use the following forms of business entity:

- branch;
- representative office.

A branch is registered in the Register of Entrepreneurs, a part of the National Court Register, under the name of the foreign investor with a supplement "branch in Poland". Such a branch may only conduct activities within the scope of business of the foreign investor who established the entity concerned. The minister responsible for the economy may prohibit the further conduct of activities by a branch in certain situations specified in law. A representative office may conduct activity in the area of promotion and advertising of the foreign investor establishing the entity. No other economic activity may be conducted in this form. Such an office is registered in a special register of representative offices kept by the minister responsible for the economy. Registration may be refused in certain situations provided by law.

Establishing a branch or representative office does not require any permits to be obtained from administrative authorities. In both cases, registration and an entry into the appropriate register are obligatory.

2.5 The Register of Entrepreneurs

According to the Law on the National Court Register of 7 October 1997, companies and commercial partnerships must be registered in the Register of Entrepreneurs, which is the part of the National Court Register managed by district courts. The Register of Entrepreneurs is open to the public. It consists of six parts. The information contained in it includes, among other things:

- part 1 – the company's name and legal form, REGON number, its previous number in a commercial register or register of businesses, place of conducting business activity, and address of the registered office of the company, indication of the shareholders of commercial partnerships, any branches of the company, the share capital of the company (and whether it was covered by contributions in cash or in kind), indication of the shareholders of limited liability companies with the number of shares held by each (only those shareholders holding more than 10% of the share capital), the only shareholder of joint-stock company, the company's statutes and any subsequent amendments;
- part 2 – the representatives, the supervisory bodies and any holders of a commercial power of attorney of the company;
- part 3 – scope of activity, information on submission of the annual financial statements of the company, auditor's reports, resolutions on the adoption of the financial report and distribution of profits and losses;
- part 4 – information on outstanding tax and other payments and social security contributions covered by enforcement if they were not paid within sixty days of the initiation of enforcement proceedings, indication of creditors of the company and its claims if the creditor has an execution title and was not paid within thirty days after the date of his call-in to the fulfillment of the performance, information regarding securing the debtor's

assets in bankruptcy proceedings by suspension of execution as well as information regarding the dismissal of the motion due to the fact that the debtor's assets are insufficient to cover the costs of the proceedings;

- part 5 – information on appointment or dismissal of custodians for the company;
- part 6 – information on the initiation and termination of liquidation proceedings, appointment of receivership, the liquidators and official receivers, dissolution and annulment of the company, mergers and transformations of the company, information on the initiation and termination of restoration proceedings as well as the other information regarding those proceedings whose disclosure in the National Court Register is required by law.

A partnership may commence its operations after it is entered in the register. This rule does not apply to companies, which may commence their activity before they are entered in the register. A company is entered in the register upon an application made by its management board. Any changes in data contained in the register must be reported to the court, and must be entered in the register. An application for a company to be entered in the register or for data contained therein to be changed must be filed by using a special official form.

The court is obliged to issue its decision concerning entering the company or changes in data contained in the register within 14 days of the date an application is filed. However, in practice this time limit may be prolonged.

3. Real Estate

3.1 Acquisition of Real Estate by Foreigners

As a rule, currently binding regulations (the Act on Acquisition of Real Estate by Foreigners, further referred to as the "Act") provide for foreigners (individuals and entities) willing to purchase real estate in Poland, the duty to obtain a permit of the Minister of Internal Affairs and Administration. Furthermore, the Act also provides for a duty for foreigners to obtain a permit of the Minister of Internal Affairs and Administration for the purchase of shares in a commercial company that has its registered office in Poland, or for the execution of any other legal action that may concern such shares, if the company is the owner or/and perpetual usufructuary of real estate in Poland and if as a result of the above purchase or another action, it will become a so called "controlled" company. In addition, the permit is required for the purchase or subscription for shares in an already

controlled commercial company, with its registered office in Poland, if the company is the owner or/and perpetual usufructuary of real estate in Poland and the shares are purchased/subscribed for by a foreigner who is not a shareholder in that company.

There are, however, numerous exemptions from this rule and the most important one concerns citizens and entrepreneurs (including also companies) of the European Economic Area (EU, Norway, Liechtenstein and Iceland, hereinafter the "EEA") that do not require any permit for the acquisition of real estate or shares in companies which own/hold under perpetual usufruct real estate in Poland, except for the following cases:

- the acquisition of agricultural or forest real estate where Poland was granted the right to introduce 12-year transition periods with respect to unrestricted acquisition of such real estate by foreigners (there are, however, some additional exemptions to this rule regarding the unrestricted acquisition of land by its tenants from the EEA that used the land on the basis of lease agreements (umowa dzierżawy) for at least 3 or 7 years, depending on the location of land, and met some other additional conditions);
- the acquisition of so called "second houses" (housing or recreational real estate that will not constitute the place of a foreigner's permanent residence, except for a self-contained apartment) where a 5-year transition period was introduced (from this type of restriction in this case there are again exceptions regarding the acquisition of land by foreigners from the EEA who (i) legally reside in Poland for at least 4 years, or (ii) acquire the land for conducting business activity in the tourist services sector).

In consequence, currently the requirements of the Act to obtain the permit of the Minister of Internal Affairs and Administration before a foreigner can acquire real estate or shares in a company that owns/holds under perpetual usufruct real estate apply mainly to foreigners other than those from the EEA countries.

Real estate is defined under the Polish Civil Code as "that part of the earth's surface which constitutes a separate object of ownership, as well as buildings permanently attached to the land or their parts if under special provisions they constitute an object of ownership separate from the land."

In the Act, the foreigner is defined as:

a) a person who is not a Polish citizen, or
b) a legal person having its registered office outside Poland, or
c) a partnership of persons mentioned under items (a) and (b), having its registered office abroad, established in accordance with legal regulations of a relevant foreign country, or
d) a company or a legal person having its registered office in Poland, controlled, directly or indirectly, by companies or person/s mentioned under (a), (b), and/or (c).

A commercial company is deemed to be "controlled" by a foreigner if a foreigner or foreigners hold, directly or indirectly, over 50% of votes at the general meeting or shareholders' meeting, also as a pledgee, usufructuary or on the basis of agreements with other parties, or if foreigners are "dominant entities" over this company, as defined by the Polish Code of Commercial Companies in Article 4 § 1 point 4 (b), (c) or (e). The definition of a "dominant entity" in the Code of Commercial Companies – Article 4 § 1 point 4 (b), (c) or (e) covers the following cases:

- the entity is entitled to appoint and remove the majority of members of the Management Board or the Supervisory Board of another entity (dependent entity), also on the basis of agreements with third parties;
- the entity holds, directly or indirectly, a majority of votes in a dependent partnership or at the general meeting of a dependent cooperative, also on the basis of agreements with third parties.

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

- the acquisition of the real estate by the foreigner does not entail a threat to state defense, safety or public order, and does not contravene social and health policy;

- the foreigner can prove that he/she has links with Poland (e.g. Polish nationality, Polish origin, marriage to a Polish national, possession in Poland of a permit for a temporary residence, a permit to settle or a stay permit of an EU long term resident, membership of a managing authority in a controlled company in Poland, conducting business or agricultural activity in Poland).

The area of real estate acquired by a foreigner for ordinary living purposes may not exceed 0.5 ha. If real estate is acquired by a foreigner conducting business operations in Poland, the area should be sufficient to meet the needs of that business. Additionally, the acquisition of agricultural real estate by foreigners is regulated by the Act of 11 April 2003 on Shaping the Agricultural System (see below). Currently, the Minister examines the case within 2–4 months (including the consultation with the Minister of National Defence and the Minister of Agriculture) but it may happen that such examination will last longer. Additionally, it takes a few weeks to collect all necessary documents before the application is filed.

The policy of the Minister of Internal Affairs and Administration is to grant permits exclusively to companies (or branches of foreign companies) that were incorporated in Poland. Consequently, chances to receive a permit directly by a foreign company that was incorporated abroad are equal to nil.

If the investor does not have a commercial company in Poland, he/she can submit an application and obtain a promise of a permit. The promise is subject to the relevant regulations on such permits. The promise of a permit is valid for 1 year from the date of issue.

During this period, the Minister may not refuse granting a permit unless material facts relating to the case change.

In addition to general exemptions that concern the EEA citizens and entrepreneurs, the permit is also not required in, inter alia, the following cases:

- purchase of a self-contained apartment;
- purchase of a self-contained garage if this is connected with the satisfaction of housing needs of a purchaser/owner of real estate or a self-contained apartment;
- purchase of real estate by a foreigner residing in Poland for at least 5 years (from the date of obtaining a residency permit);
- acquisition 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 residency permit, of a real estate which will become part of the spouses' community property;
- 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 the owner or the perpetual usufructuary for at least 5 years;
- purchase for business purposes by legal persons and partnerships not vested with a legal personality, controlled directly or indirectly by foreigners, of non-developed real estate with not more than 0.4 ha in total area of Poland and located within the city limits;
- acquisition of real estate by a bank who is a mortgage creditor by way of taking possession as a result of unsuccessful auction sales;
- acquisition (by purchase or otherwise) by a corporate bank controlled directly or indirectly by foreigners, of shares or interests in a company or partnership which is the owner or perpetual usufructuary of the real estate, if the acquisition is involved in the enforcement of the bank's claims resulting from banking business;
- acquisition of shares of the companies that are listed on a stock exchange or an OTC (over-the-counter) market;
- acquisition of shares of the companies that are owners/perpetual usufructuaries of such real estate the acquisition of which is exempt from the permit requirement.

The above mentioned exceptions will not apply, if the real estate is located in the border zone or constitutes an agricultural land having over 1 ha in area (issues related to the agricultural land are governed by the Act on Shaping the Agricultural System).
The permit is subject to the stamp duty amounting to 1 570 PLN.

3.2 Perpetual Usufruct

Perpetual usufruct is the right to use and administer land owned by the state or local authorities under the terms and conditions of a contract for a maximum term of ninety-nine years and a minimum term of forty years. In practice, a full term of ninety-nine years is almost always granted and the holder has, in any event, the right to request an extension within five years of the end of the term. Upon the granting of the right of perpetual usufruct, the holder of such right must pay the first fee amounting to 15–25% of the land value. Subsequently, the holder of the perpetual usufruct right is obliged to pay during the entire term of perpetual usufruct an annual fee estimated by the state or local authority on the basis of the land value. It is also possible to purchase the perpetual usufruct right directly from the current holder of such a right on the basis of a contract.

An investor's perpetual usufruct right is established after its entry to the real estate and mortgage register.

3.3 Leases

Both Polish and foreign legal entities and natural persons may lease real estate. There is no requirement to obtain a permit from the Minister of Internal Affairs and Administration. Polish law recognizes two types of lease contracts: *umowa najmu* and *umowa dzierżawy*. Under *umowa najmu* the lessee may only use the property, while under *umowa dzierżawy* the lessee may use the property and collect benefits therefrom. Both types of contracts may be executed for a definite or indefinite duration. A typical use for *umowa najmu* would be the short-term lease of an apartment or an office. *Umowa dzierżawy* would typically be used for the lease of farmland or a site for development. Any lease for a period of more than one year should be executed in writing. Furthermore, both Polish and foreign entities may use real estate under various leasing schemes (in particular on the basis of so-called "sale and lease back" transactions). There is no

requirement to obtain a permit from the Minister of Internal Affairs and Administration in this case either.

3.4 Real Estate Purchase Agreements

In principle real estate owned by state or local authorities can be purchased only through an auction or tender procedure. Real estate owned by other entities or persons can be acquired on the basis of a sale contract, donation, inheritance etc. According to the rules of the Civil Code, the contract for purchase of real estate must be made in the form of a notarial deed executed by a Polish notary. A contract in any other form is null and void. It is possible to execute, prior to obtaining the Ministry's permit, a preliminary agreement in which the seller undertakes to sell a specific piece of real estate to the purchaser and the purchaser undertakes to pay a price for such real estate to the seller on a specific day or on a specific condition. Such agreement does not transfer the ownership title to the real estate, but is the basis for a claim for execution of the final agreement after the permit is obtained. After the Ministry issues the permit, the agreement to transfer the ownership title to the real estate or the perpetual usufruct right should be executed in the form of a notarial deed; otherwise it is null and void.

3.5 Real Estate and Mortgage Register

Once the final agreement to transfer the ownership title to the real estate or the perpetual usufruct right is duly executed, the new owner or usufructuary should be entered in the real estate and mortgage register maintained by the appropriate court.

3.6 Expropriation

Expropriation of real estate may take place if it is the only mean of serving certain public purposes. Expropriation might be in favour

of the State Treasury or local authorities. Expropriation is effected against compensation, the value of which should amount to the value of the real estate.

The expropriated real estate may not, without the prior consent of the former owner, be used for a purpose other than that specified in the decision establishing the expropriation.

The former owner has a claim for return of the real estate if it has become useless for the purpose specified in the decision on expropriation. The law defines that the real estate is regarded as useless for the purpose specified in the decision on expropriation if:

- despite the lapse of 7 years from the day on which the decision became final, the beneficiary of the expropriation has not commenced any work connected with carrying out of the purpose of expropriation, or
- despite the lapse of 10 years from the day on which the decision became final, the purpose of expropriation has not been achieved.

3.7 Investment process

Assuming the land is zoned for intended type of investment, at the beginning of the construction process a building permit is required. The permit can be issued:

a) directly based on local master plans;
b) if the plan does not exist, a Decision on the Conditions of Site Development (WZ) is required. The investor, having received this decision and made other necessary arrangements may apply for the building permit.

At the end of the planning and construction process the investor usually must obtain an occupancy permit.

Unfortunately, starting from January 2004 most of local master plans have expired, therefore, until the adoption of new plans which

should be much more detailed than the previous ones, investors have to apply a quite troublesome procedure specified in item (b) above. The Zoning Law imposes some restrictions on issuing WZ, e.g. it requires that at least one adjacent plot, that is accessible from the same public road, must be developed in a way allowing to define the requirements for the new investment as regards the continuation of its functions, parameters, features, etc., including the size and architectural form of the new building, the line of development and intensiveness of land use, that the plot must have access to the public road, that the plot does not require exclusion from agricultural or forest production, etc. Certain constructions defined by the Construction Law do not require a building permit (e.g. fences, separate utility buildings, umbrella roofs and arbors with a building area of up to 10 square meters, electricity, water supply, sewage disposal, gas, heating, telecommunications connections to the buildings), although some of them need to be reported earlier to the competent authority. If, within 30 days, the authority does not object, the construction work can be started.

The investor should also notify the Environmental Protection Inspection, Sanitary Inspection, Labour Inspection and Fire Protection Services that it has finished the construction and intends to use it. Under the Law on the Protection of Agricultural Land and Forests, undertaking construction projects on land classified as agricultural land or forest in most cases requires a decision of the relevant administrative authority (these are: (a) the Head of the Province (Voivode) for arable land in classes IV and V–VI comprising organic soils and peat bog, if additionally the planned investment area exceeds one hectare, or for forest land other than that owned by the State Treasury, (b) the Minister of Agriculture and Countryside Development for arable land in classes I–III, if additionally the planned investment area of this land exceeds 0.5 hectare and (c) the Minister of the Environment, owned by the State Treasury) on excluding such land from agricultural or forest production.

If such decision is required, it must comply with the local master plan. Thus if the plan does not allow activity other than agricultural or forest-related activity to be carried out on the land, the plan must first be changed, which is quite a complicated and time-consuming procedure. Furthermore, if there is no plan, and the land has to be excluded from agricultural or forest production, in practice no investment is possible.

The decision to exclude land from agricultural or forest production gives rise to the obligation to make a one-off payment and pay annual fees (with some exceptions). The payment for the exclusion from production, decreased by the value of the land set on the basis of market prices applied in a given village on the real property market, is equal to the value of a specified number of tonnes of rye seed, the value being determined depending on the class of the excluded land. The equivalent value of one tonne of rye seed is the same as the equivalent value used to calculate agricultural tax (i.e. based on Central Statistics Office data). Law provisions also specify in detail the payment for excluding forest land and other agricultural areas in specific locations. The payment should be made within 60 days of the date on which the decision to exclude land from production becomes final and unappealable. In practice, the obligation to make the payment is rather unlikely to arise, as market prices for land are usually much higher than the amount of this payment. The annual fee for a given year should be paid before 30 June of that year. It is calculated on the basis of the equivalent of a tonne of rye seed used when calculating agricultural tax for the first six months of that year announced by the Central Statistics Office. If a permit to exclude forest land from production is finally granted, a one-off compensation payment may still be due if the trees on the land have been prematurely cut down. The amount of the compensation will be the difference between the forecast future value of the trees at the age at which they are mature enough to cut down as specified in the forest arrangement plan, and their value at the time they are actually cut down.

The owner of land is responsible for making these payments and paying the annual fees. If the land is sold, this obligation is transferred to the purchaser. If a decision on exclusion from production is issued but actual exclusion does not take place before the land concerned is sold, the obligation to make payments and settle annual fees is transferred to the purchaser that actually excluded the land from production. The classification of a given piece of land can be checked in the register of land and buildings kept by the local authorities.

3.8 Acquisition of agricultural land

A Polish agricultural policy prefers the family-owned farms with the area not bigger than 300 ha on which the agricultural activity is carried out by persons having agricultural experience or qualifications. The same rules concern Polish citizens and foreigners.

Acquisition of privately owned agricultural real estate by individuals or companies is not limited by the area of real estate, however, the Agricultural Real Estates Agency can execute the first refusal right unless the transaction meets certain requirements (e.g. the transaction is executed to increase the area of the family-owned farm up to 300 ha and the purchaser lives in the same or neighbouring municipality).

This is a way of controlling by the State Agency the transactions concerning agricultural real estate. State-owned agricultural real estate is controlled by the Agricultural Real Estate Agency. The sale of agricultural real estate by the Agency may take place only if, as a result of this transaction, the total area of farming land owned by the acquirer does not exceed 500 ha.

4 Taxation

4.1 Corporate Income Tax

The Personal Income Tax, Corporate Income Tax and Value Added Tax Laws were all introduced in the early 1990s. Since that time Polish tax law is subject to frequent and fundamental changes. Such changes may occur through various mechanisms: changes in laws, varying court decisions, authorities' rulings and accepted practice.

Substantial modification and amendments to the tax law have resulted from the Polish accession to the European Union. The new Value Added Tax Law is binding from the date of accession (1 May 2004). The Corporate Income Tax Law has been significantly modified with regard to cross-border transactions such as payments of dividends and restructurings.

Scope

Resident vs. non-resident

A company is regarded as a Polish resident when it is either incorporated in Poland or managed and controlled in Poland. The concept of management for this purpose is broadly equivalent to the effective management test in many treaties and is typically exercised where the board of directors (or equivalent) meets and takes decisions. Resident companies are subject to corporate taxation on their worldwide income and capital gains. Non-resident companies are taxed only on income and capital gains earned in Poland. Foreign partnerships are subject to corporate tax in Poland if they are treated in their home country as legal persons having unlimited tax liability. Estimates can be used to determine taxable income where this cannot be determined from the accounting records.

Taxation of partnerships formed by companies

Revenues derived and costs borne by partnerships are subject to corporate income tax on the proportion of the corporate partners' shares.

Branch vs. subsidiary

A branch of a non-resident company is generally taxed under the same rules as a Polish company. Only its Polish source income is subject to taxation. The branch will usually be taxed on income determined on the basis of the accounting records, which must be kept in Polish currency. However, there are regulations under which coefficients can be applied for specific revenue categories if the taxable base cannot be determined from the books (see Coefficients). There is no branch withholding tax on the transfer of profits from a branch to its head office, as from the legal point of view a branch is considered to be a unit that is part of the foreign company. A branch can be transformed into a subsidiary by transferring assets or the business to the subsidiary.

Foreign-source income

Income from an overseas representative office or permanent establishment of a Polish resident company is included in the total

taxable income of such a company unless exemption can be applied under a double tax treaty (about 80% of treaties provide exemption). Under some circumstances Polish law allows overseas corporate income tax paid to be credited against Polish tax payable, but only up to the amount of Polish tax on that income. Any excess foreign tax is lost (subject to comments further below).

Dividends from a subsidiary in another EEA Member State can be exempt from income tax in Poland. The above rules apply if the Polish parent has held at least a 15% capital participation in the subsidiary for an uninterrupted period of at least 2 years. The minimum participation will be reduced to 10% from 1 January 2009. The rules also apply to permanent establishments of non-resident EEA companies located in Poland, if they receive dividends from another EEA companies. The exemption may also apply in the case of Swiss subsidiaries, however the required minimum participation of Polish parent in the Swiss subsidiary is 25%.

The tax actually paid by a foreign subsidiary on the part of its profits from which a dividend was paid can be credited against tax payable by the Polish parent company ("underlying tax credit"). However, the total tax credit utilised (i.e. the ordinary and the underlying tax credit) cannot exceed the Polish tax due on that income. To apply the underlying tax credit, the Polish recipient should hold for a minimum period of 2 years at least 75% of the capital in the company paying the dividends and the latter company should be resident in a country with which Poland has a valid double tax treaty other than EEA members or Switzerland.

Underlying tax credit does not apply to payments of liquidation proceeds.

Furthermore, the time requirement to hold the shares for an uninterrupted period of not less than 2 years doesn't have to be met on the payment date (it is possible to declare the intention to hold the shares and meet the holding period criterion after the dividend is paid).

Financial and tax year

Corporate income tax is payable annually. However, advance monthly payments have to be made when cumulative income is recorded.

Under certain circumstances, special rules on simplified advance monthly payments can be applied.

The tax year consists of twelve consecutive months and usually corresponds to the calendar year. A company may choose to extend its first tax year to 18 months if it was established in the second half of a calendar year and chose the calendar year as its tax year. A company is free to change its tax year by choosing another twelve-month period and notifying the relevant tax office. When a company changes its tax year, the first tax year after the change cannot be shorter than twelve or longer than twenty three consecutive months.

Groups of companies

Tax consolidation

A "tax capital group" may be formed for corporate income tax purposes. Due to restrictions on forming and managing a group, this method of consolidation has rarely been used. Taxable income for the group is calculated by combining the incomes and losses of all the companies.

A tax capital group may be formed only by limited liability or joint-stock companies based in Poland, provided that average share capital is not lower than 1 million PLN.

A tax capital group can only be formed by subsidiaries 95% owned by a parent company. No other structures are allowed. An agreement on joint group filing for a minimum period of three years must be signed before a notary and filed with the tax office.

In practice, tax capital groups are rarely formed, as companies have to meet the following restrictive formation requirements:

- no outstanding tax liabilities to the Treasury (e.g. VAT, CIT) as at the date the group is formed; this condition is met also where a company, having joined a tax capital group, files an adjusted tax return and pays the outstanding tax together with default interest within 14 days of the adjusted declaration being filed or pays the arrears together with interest within 14 days of a first instance decision assessing the amount of liability is served on the company, and
- profitability ratio of the group is not lower than 3% for each tax year.

As the tax authorities have up to six years to inspect taxpayers, it is possible that the tax authorities may challenge the tax position of the companies forming the group retrospectively.

Group losses

When a group loss arises (i.e. the companies' total losses exceed their total income), the group automatically loses its tax group status.

Asset transfers

The transfer of assets between companies in tax capital groups is treated as a normal disposal. However, transfer pricing restrictions do not apply. Donations between companies in a tax capital group are CIT-neutral, as the donor can treat the value of the donation as a tax cost. Donations outside the group are not deductible.

Determination of taxable base

In practice taxable income is arrived at by adjusting accounting profits for tax purposes. Taxpayers are obliged to keep books of account in a manner that allows determination of the taxable base and the amount of tax due. Otherwise, income will be assessed by the tax authorities.

Revenues

Generally, the taxable revenues of incorporated entities carrying out business activity are recognised on an accrual basis. As a rule revenue is recognized on the date when the asset or property right was disposed of or the service was supplied (or supplied in part), not later than:

- the date of the invoice, or
- the date when the payment was received.

If the parties agree that the services are accounted for over reporting periods, the revenue is recognized on the last day of a reporting period set in a contract or an invoice; in this case revenue must be reported at least once a year.

The definition of revenues includes free and partially free benefits.

Capital gains

Chargeable capital gains are calculated by deducting sale-related costs and expenses from the sale proceeds. They are then aggregated with other sources of income and taxed at the standard tax rate. There is no indexation allowance. If the sales price differs substantially from market value, the tax office may require an independent expert valuation. Relief from Polish taxation may be available to a non-resident company if its resident country is covered by a double tax treaty.

Capital losses are deductible from normal business income.

A capital gain arising on a contribution in kind in exchange for the issue of shares will generally carry the liability to recognize revenue at the nominal value of shares received. In most cases the revenue will correspond to the fair market value of the assets contributed. In some situations the tax point is deferred until the shares acquired in exchange for the contribution are disposed of, e.g. when:

- a contribution involves an enterprise or an organised part of an enterprise;
- shares are contributed to an EEA resident company (if the shares received in exchange give more than 50% of votes in the EEA company or if the company possessing the shares giving 50% of votes increases its share).

Tax deductible costs linked to contributions in kind vary according to the type of asset contributed.

Dividends, interest royalties and services

Dividend distributions are generally subject to a withholding tax of 19% levied on the gross amount. Income from sharing in profits of corporate entities paid by a Polish company to companies established in Poland or in EEA countries can be exempt from withholding tax where the dividend recipient holds at least 15% shares in the dividend payer's share capital over not less than 2 years (10% from 2009 onward). Also dividend paid to Swiss parent company can be exempt, however the shareholding threshold in that case amounts to 25%.

The minimum holding period does not have to be fulfilled on the payment date. If the holding period is not fulfilled after payment, the dividend recipient is obliged to pay the withholding tax together with penalty interest (the reduced treaty rate applies). The right to exemption is conditional on the Polish payer being provided with the certificate of tax residence of the dividend recipient.

Interest and royalty payments are subject to standard tax rates at payee level and are generally deductible for the payer. Payments of interest and royalties to foreign companies are subject to 20% withholding tax unless a relevant tax treaty provides otherwise and an appropriate tax residence certificate will be provided.

Under the CIT Law the 20% withholding rate also applies to payments of fees for advisory, accounting, market research, legal assistance, advertising, management and control, data processing, search and selection services, guarantees and pledges and other similar services (unless the relevant treaty provides otherwise). Under most Polish tax treaties such payments are treated as business income taxable in the taxpayer's country of residence.

On joining the EU, Poland should have incorporated into Polish law the provisions of the EU Directive on Interest and Royalty Payments, which (under certain conditions) eliminates withholding tax on such payments, if payable to companies or permanent establishments

of EU companies established in EU member countries. However, Poland was granted a transitional period for full implementation of this Directive. Under the transition rules withholding tax may be imposed at a maximum amount of 10% until 30 June 2009 (4 years) and a maximum of 5% to 30 June 2013 (following 4 years) provided Directive criteria are met. Interest and royalties incoming to Poland from other EU countries should generally be exempt from withholding tax if the conditions under the Directive are met and the EU source country has not been granted a transitional period.

Since 1 July 2005 interest and royalty payments paid to EU countries are subject to withholding tax at the reduced rate of 10% if, among other things, the following criteria are jointly met:

- interest/royalties are paid by a Polish resident company or the permanent establishment of an EU company in Poland;
- the beneficiary is subject to income tax on its worldwide income in an EU Member State;
- EU beneficiary and the Polish payer are 'associated companies' i.e.:
  a) the EU beneficiary directly holds at least 25% of the Polish payer's shares, or
  b) the Polish payer directly holds at least 25% of the EU beneficiary's shares, or c) a third EU company directly holds at least 25% in the capital of both the EU beneficiary and the Polish payer;
- the holding will be maintained for an uninterrupted period of not less than two years;
- the EU beneficiary's tax residence certificate is provided to the Polish payer.

Coefficients

Where it is impossible to determine the taxable income of foreign entities (branches, permanent establishments) based on the books of account, the tax authorities may assess taxable income by applying the relevant coefficient for specific revenue categories. The coefficients are: 5% for wholesale and retail activities, 10% for construction, assembly and transport services, 60% for agency

activities, 80% for legal or expert services and 20% for income derived from other sources. Taxable income is then taxed at the standard rate.

Costs

Starting from 1 January 2007 the costs incurred for the purpose of generating income, retaining or protecting sources of income are divided into direct and other costs.

Direct costs are tax deductible:

- in the tax year in which the related income was earned (including those incurred after the end of the tax year but before the date of the financial statements/filing deadline for the annual tax return);
- in the tax year following the year for which the financial statements are prepared/the annual tax return filed if the costs were incurred after the financial statements are prepared/the annual tax return is filed for the tax year in which the related income was earned.

Other (indirect) costs are tax deductible on the date they were incurred. If they relate to a period longer than the tax year and it is impossible to determine which part should be attributed to a given tax year they should be allocated on a *pro rata* basis according to the length of the period to which they relate.

Depreciation

Assets which have a useful life of more than one year are deemed capital items and are therefore subject to depreciation.

Tax depreciation is often different from book depreciation. Tax depreciation rates are specified in tax law and cannot be exceeded. Both straight line and reducing balance methods are allowed (the latter applies only to machinery and equipment, except for passenger cars). Under certain circumstances, it is possible to apply accelerated tax depreciation. Land is not subject to depreciation.

Typical examples of depreciation rates

Asset	Rate (%)
Buildings	1.5
Office equipment	14
Computers	30
Motor vehicles	20
Plant and machinery	5 to 20

Intangibles subject to amortisation are the following:

- intellectual property rights and licenses;
- know-how (with the exception of know-how contributed in kind);
- goodwill resulting from the purchase of a business (assets and liabilities making up an enterprise or its organised part); goodwill on share deals or mergers is excluded from tax amortisation;
- certain research and development costs.

Intangibles are amortised over a period ranging from twenty-four months (e.g. for licenses to computer software) to sixty months (e.g. for goodwill).

Bad debts

Bad debts, written off as uncollectible, are tax deductible only if they were previously accounted for as revenues for tax purposes (thus no loan/credit write-off is allowed with the exception of banks). Bad debts are deemed to be uncollectible and may be tax deductible when:

- a decision on uncollectibility issued by a court execution officer is approved by the creditor as reflecting the actual situation;
- the court dismisses a request for bankruptcy where the bankruptcy assets are not sufficient to cover the costs of proceedings, or discontinuation of bankruptcy proceedings for the same reason, or completion of the proceedings;
- the taxpayer files a statement to the effect that the projected costs of court or enforcement proceedings will exceed the amount of claims.

The uncollectibility of debts will be considered probable and therefore a provision for bad debts may be created and recognised as tax deductible cost when:

- a debtor dies or is deleted from the National Court Register or is put into liquidation or declared bankrupt;
- a debtor has requested settlement or bankruptcy proceedings and they have been initiated;
- a debt has been confirmed by a court decision and is subject to enforcement proceedings;
- a debt is questioned by the debtor under a court claim.

There are special rules on bad debt provisions for banks.

Thin capitalisation

Interest due on loans or credits granted by a related party (a sister company held by the same parent or a shareholder holding at least 25% of share capital measured by voting power) is not recognised as a tax deductible cost when the loan/share capital ratio exceeds 3:1 in a portion in which the loan (credit) exceeds this ratio. For thin capitalization purposes, a "loan" is any kind of debt claim including debt securities and certain deposits.

Others

There are certain exceptions to the matching concept, e.g. foreign exchange gains/losses are taxable/deductible when realised (i.e. settled). Certain expenditures are not tax deductible, for instance:

- expenditures incurred in respect of abandoned investments;
- most penalties and fines;
- expenditures incurred in excess of the statutory limit (e.g. depreciation charges and insurance of passenger cars over 20 000 €);
- representation expenses.

Losses

Tax losses suffered by a company which has a legal personality may be carried forward and set off against income over the five following tax years. Up to half the original loss may be deducted in any one year. Losses cannot be carried back.

Withholding taxes

The standard rate of withholding tax is 19% on dividends and 20% on interest and royalties. If paid abroad, the rate may be reduced under a double tax treaty upon presentation of a certificate of tax residence. The table below shows the withholding tax rates under Polish double tax treaties.

Withholding taxes under Poland's tax treaties (%)

	Dividends %	Interest %	Royalties %
Albania	5/10 (d)	10	5
Algeria (aa)	5/15 (d)	0/10 (k)	10
Armenia	10	5	10
Australia	15	10	10
Austria	5/15 (a)	0/5 (k)	5
Azerbaijan	10	10	10
Bangladesh	10/15 (a)	0/10 (k)	10
Belarus	10/15 (e)	10	0
Belgium	5/15 (bb)	0/5 (k)	5
Bulgaria	10	0/10 (k)	5
Canada	15	0/15 (k)	0/10 (f)
Chile	5/15 (gg)	15 (cc)	5/15 (h) (hh)
China	10	0/10 (k)	7/10 (h)
Croatia	5/15 (d)	0/10 (k)	10
Cyprus	10	0/10 (k)	5
Czech Republic	5/10 (c)	0/10 (k)	5
Denmark	0/5/15 (r)	0/5 (k)	5
Egypt	12	0/12 (k)	12
Estonia	5/15 (d)	0/10 (k)	10
Finland	5/15 (d)	0	0/10 (f)
France	5/15 (a)	0	0/10 (p)
Georgia	10	0/8 (k)	8
Germany	5/15 (a)	0/5 (k)	5
Greece	19	10	10
Hungary	10	0/10 (k)	10
Iceland	5/15 (d)	0/10 (k)	10
India	15	0/15 (k)	20 (z)
Indonesia	10/15 (c)	0/10 (k)	15
Iran	7	0/10 (k)	10

	Dividends %	Interest %	Royalties %
Ireland	0/15 (d)	0/10 (k)	0/10 (t)
Israel	5/10 (b)	5	5/10 (h)
Italy	10	0/10 (k)	10
Japan	10	0/10 (k)	0/10 (i)
Jordan	10	0/10 (k)	10
Kazakhstan	10/15 (c)	0/10 (k)	10
Korea	5/10 (a)	0/10 (k)	10
Kuwait	0/5 (x)	0/5 (k)	15
Kyrgyzstan	10	0/10 (k)	10 (u)
Latvia	5/15 (d)	0/10 (k)	10
Lebanon	5	5	5
Lithuania	5/15 (d)	0/10 (k)	10
Luxembourg	5/15 (d)	0/10 (k)	10
Macedonia	5/15 (d)	0/10 (k)	10
Malaysia	0	15	15
Malta	5/15 (c)	0/10 (k)	10
Mexico	5/15 (d)	0/5/15 (k) (y)	10
Moldova	5/15 (d)	0/10 (k)	10
Mongolia	10	0/10 (k)	5
Morocco	7/15 (d)	10	10
Netherlands	5/15 (a)	0/5 (k)	5
New Zealand	15	10	10
Nigeria (aa)	10	0/10 (k)	10
Norway	5/15 (d)	0	0/10 (f)
Pakistan	15 (j)	0/20 (k)	15/20 (n)
Philippines	10/15 (d)	0/10 (k)	15
Portugal	10/15 (o)	0/10 (k)	10
Romania	5/15 (d)	0/10 (k)	10
Russian Federation	10	0/10 (k)	10 (u)
Singapore	0/10 (x)	0/10 (k)	10
Slovak Republic	5/10 (c)	0/10 (k)	5
Slovenia	5/15 (d)	0/10 (k)	10
South Africa	5/15 (d)	0/10 (k)	10
Spain	5/15 (d)	0	0/10 (f)
Sri Lanka	15	0/10 (k)	0/10 (l)
Sweden	5/15 (d)	0	5
Switzerland	5/15 (d)	10	0 (w)
Syria	10	0/10 (k)	18

	Dividends %	Interest %	Royalties %
Tajikistan	5/15 (d)	10	10
Thailand	19 (ee)	0/10/20 (k), (ff)	5/15 (f)
Tunisia	5/10 (d)	12	12
Turkey	10/15 (d)	0/10 (k)	10
Ukraine	5/15 (d)	0/10 (k)	10
United Arab Emirates	0/5 (dd)	0/5 (k)	5
United Kingdom	0/10 (g)	5	5
United States	5/15 (g)	0	10
Uruguay (aa)	15	0/15 (k)	15
Uzbekistan	5/15 (c)	0/10 (k)	10
Vietnam	10/15 (d)	10	10/15 (q)
Yugoslavia (m)	5/15 (d)	10	10
Zimbabwe	10/15 (d)	10	10
Non treaty countries	19	20	20 (v)

(a) The lower rate applies if the recipient of the dividends is a company that owns at least 10% of the payer.

(b) The lower rate applies if the recipient of the dividends is a company that owns at least 15% of the payer.

(c) The lower rate applies if the recipient of the dividends is a company that owns at least 20% of the payer.

(d) The lower rate applies if the recipient of the dividends is a company that owns at least 25% of the payer. Under the Ireland treaty, if Ireland levies tax at source on dividends, the 0% rate is replaced by a rate of 5%.

(e) The lower rate applies if the recipient of the dividends is a company that owns more than 30% of the payer.

(f) The lower rate applies to royalties paid for copyrights, among other items; the higher rate applies to royalties for patents, trademarks and industrial, commercial or scientific equipment or information.

(g) The lower rate applies if the recipient of the dividends is a company that owns at least 10% of the voting shares of the payer. In the case of the new double tax treaty between Poland and United Kingdom, effective from 1 January 2007, the 0% rate will apply if the beneficial owner of the dividends is a company that owns at least 10% of the share capital of the payer of the dividends for an uninterrupted period of at least two years.

(h) The lower rate applies to royalties paid for the use of, or the right to use, industrial, commercial or scientific equipment.

(i) The lower rate applies to cultural royalties.

(j) This rate applies if the recipient of the dividends is a company that owns at least one-third of the payer.

(k) The lower rate may apply to, among other items, interest paid to government units, local authorities and central banks. In the case of certain countries, the rate also applies to banks (the list of exempt or preferred recipients varies by country). The relevant treaty should be checked in all cases.

(l) The 0% rate applies to royalties paid for, among other items, copyrights. The 10% rate applies to royalties paid for patents, trademarks and for industrial, commercial or scientific equipment or information.

(m) The treaty with Federal Republic of Yugoslavia applies to the former Yugoslav Republic of Serbia and Montenegro. Due to separation of Serbia and Montenegro it is not clear whether the treaty will be applicable to both republics after the split (most possibly only Serbia would be the successor)

(n) The lower rate applies to know-how; the higher rate applies to copyrights, patents and trademarks.

(o) The 10% rate applies if, on the date of the payment of dividends, the recipient of the dividends has owned at least 25% of the share capital of the payer for an uninterrupted period of at least two years. The 15% rate applies to other dividends.

(p) The lower rate applies to royalties paid for the following: copyrights; the use of or the right to use industrial, commercial and scientific equipment; services comprising scientific or technical studies; or research and advisory, supervisory or management services. The treaty should be checked in all cases.

(q) The lower rate applies to know-how, patents and trademarks.

(r) The 0% rate applies if the beneficial owner of the dividends is a company that holds directly at least 25% of the capital of the payer of the dividends for at least one year and if the dividends are declared within such holding period. The 5% rate applies to dividends paid to pension funds or other similar institutions operating in the field of pension systems. The 15% rate applies to other dividends.

(s) The 5% rate applies if the recipient of the dividend is a company that owns at least 10% of the payer.

(t) The lower rate applies to fees for technical services.

(u) The 10% rate also applies to fees for technical services.

(v) The 20% rate also applies to certain services (for example advisory, accounting, market research, legal assistance, advertising, management and control, data processing, search and selection services, guarantees and pledges and other similar services).

(w) The rate is 10% if Switzerland imposes a withholding tax on royalties paid to nonresidents (currently, Switzerland does not impose such a tax).

(x) The lower rate applies to certain dividends paid to government units or companies.

(y) The 5% rate applies to interest paid to banks and insurance companies and to interest on bonds.

(z) Because the rate under the domestic law in Poland is 20%, the treaty rate of 22.5% does not apply.
(aa) The treaty has not yet come into force
(bb) The lower rate applies if the recipient of the dividends is a company that owns:
a. at least 25% of the payer, or
b. at least 10% of the payer if the value of investments amounts at least to 500 000 € or its equivalent.
(cc) The treaty rate is 15% for all types of interest. However, by virtue of a most-favored-nation clause of the protocol, the rate is replaced with any more beneficial rate agreed on by Chile in a treaty concluded with some other state (e.g. Chile agreed on 5% in respect of interest i.a. (a) paid to a bank or insurance company or (b) derived from bonds or securities that are regularly and substantially traded on a recognized securities market in the treaty concluded with Spain).
(dd) The lower rate applies if the owner of dividends is government or governmental institution.
(ee) Because the rate under the domestic law in Poland is 19%, the treaty rate of 20% does not apply.
(ff) The 20% rate applies, if the recipient of the interest is not a financial or insurance institution or governmental unit - see footnote (k). The treaty should be checked in every case.
(gg) The lower rate applies if the recipient of the dividends is a company that owns at least 20% of the voting shares of the payer.
(hh) The lower rate applies to equipment rentals. The general treaty rate is 15%. However, by virtue of a most-favored-nation clause of the protocol, the rate may be replaced with any more preferential rate agreed on by Chile in some other double tax treaty (e.g. the general rate on royalties under the Chile-Spain treaty is currently 10%).

Tax and investment incentives

Polish law provides for corporate income tax incentives, such as those granted to entities operating in Special Economic Zones (SEZs). In principle, companies operating in SEZ may enjoy tax holidays, which involve tax exemption from corporate income tax depending on the amount invested in the SEZ or the labour costs of newly created job places. Benefiting from tax exemption is possible only if the investor obtains a special permit issued by the SEZ authorities. Regulations applicable to a particular SEZ specify the minimum investment required and the number of employees that must be hired to benefit from the tax exemption.

Starting from April 2005 shared services centres providing such services as accounting, auditing, bookkeeping and call centres might be located in SEZs and consequently benefit from corporate tax exemption. In case of large companies the tax exemption equals up to 50% of the investment expenditures or up to 50% of two years gross labour costs of newly created job places. For SMEs these limits are increased by 20 percentage points for small enterprises and 10 percentage points for medium enterprises.

Transfer pricing

Poland has implemented transfer pricing rules which typically operate by reference to the arm's length principle. Where one individual or corporate entity participates (directly or indirectly) in the management or control of, or holds at least 5% of shares in another corporate entity, and the entities do not comply with the arm's length principle, cross border transfer pricing restrictions may be applied. The restrictions are also applicable when another individual or corporate entity takes part (directly or indirectly) in the management or control of, or holds stocks in, these entities.

The share is calculated in the following way. If an entity A holds a certain share in the capital of an entity B, and the entity B holds the same share in the capital of an entity C, then the entity A holds an indirect share of the same size in the capital of the entity C; if these percentages differ, the indirect share shall be deemed to be of the smaller size.

In such cases, the tax authorities may substitute transaction prices for market prices based on the following methods: comparable uncontrolled price method, resale price method, reasonable margin (cost plus) method, or transaction profit methods. Poland follows the OECD's Transfer Pricing Guidelines, including formal documentation requirements for transactions with related companies and a specific penalty regime for transfer pricing adjustments. Under these requirements, the tax authorities may request taxpayers to submit transfer pricing documentation within seven days. The requirement

to prepare documentation also applies to transactions in which payment is made directly or indirectly to an entity whose residence, registered office or place of management is situated in a territory or country that pursues harmful tax competition practices (so-called "tax havens"), even if the entity is not a related party. The Minister of Finance published a list of countries and territories pursuing harmful tax competition policies. This list mainly includes countries commonly referred to as tax havens.

As the deadline for submitting the documentation is short (seven days), from a practical viewpoint taxpayers should prepare it when the transaction is being carried out. Failure to comply with the reporting requirement will attract a penalty rate of tax. If the tax authorities or tax inspection authorities assess a taxpayer's income at an amount higher (or loss at an amount lower) than that declared by the taxpayer in connection with a transaction, and the taxpayer does not submit the required documentation, the difference between the income declared by the taxpayer and that assessed by the tax authorities will be taxable at a penalty rate of 50%.

As of 1 January 2006, APAs are available in Poland. Under the Polish rules, three types of APA are possible:

- unilateral agreement;
- bilateral agreement, and
- multilateral agreement.

The main benefit for the taxpayer in obtaining APA is the confirmation by the tax authorities of the methodology used to calculate transfer price and its application in the transaction. If the APA is concluded for a particular transaction, the tax authorities will be obliged to accept the methodology selected by the taxpayer and approved by the APA. APAs in Poland are granted for a maximum period of 3 years with the possibility of extension for additional 3 years. They may concern a planned transaction, which will be concluded after submitting an application for the APA or a transaction which has already been concluded and is currently in progress.

The Polish APA regulations do not limit the value of the transaction to be covered by the APA. However, in order to submit an application for the APA, the taxpayer will have to pay a fee generally amounting to 1% of the transaction value. However, fee limits have been set forth in the Polish APA regulations and they are as follows:

- for a unilateral APA the fee cannot be lower than 5 000 PLN (about 1 250 €) and cannot exceed 50 000 PLN (about 12 500 €);
- for a bilateral APA the fee cannot be lower than 20 000 PLN (about 5 000 €) and cannot exceed 100 000 PLN (about 25 000 €);
- for a multilateral APA the fee cannot be lower than 50 000 PLN (about 12 500 €) and cannot exceed 200 000 PLN (about 50 000 €).

Rates

Corporate income tax

The standard corporate income tax rate is 19%. If a taxpayer's tax year is different from the calendar year, the start of the tax year determines what tax rate will be applicable during the entire tax year.

Returns and payments

An annual tax return must be filed and any tax due paid by the end of the third month of the following tax year. Monthly advance payments are required, however starting from 1 January 2007 no monthly returns are required. In certain circumstances, a company can benefit from the simplified declaration procedure.

Fines and penalty interest can be imposed (at an annual rate of 11% as at publication date) for failure to comply with the above requirements.

4.2 Personal Income Tax

Individuals who are domiciled (resident) in Poland are subject to tax on their world-wide income.
Under the revised law (in force since 2007), an individual is deemed to be resident in Poland if:

a) his centre of vital interests is in Poland, or
b) he stays on the territory of Poland for more than 183 days in the tax year.

Limited taxation (i.e. on Polish source income only) applies to those individuals who are not domiciled (resident) in Poland.

Income tax is payable on most sources of income including cash and in-kind benefits which are taxable as salary. One of the most important exceptions are relocation costs, which may be reimbursed at levels of up to twice the person's monthly salary in the month of relocation, which is tax free. Interest income from personal, i.e. non-business, bank accounts and income from dividends are subject to a 19% withholding tax and are not subject to further taxation. The above flat rates are applied unless a double tax treaty provides for a reduced tax rate or excludes Poland's right to tax. In order to benefit from the treaty regulations, an individual must however provide the interest/dividend payer with a certificate of foreign residence. Capital gains from sale of shares are also subject to 19% tax, while those earned from disposal of other assets than real estate may be subject to tax as normal income. However, there are some exceptions and exemptions, including tangible assets held for longer than six months, real estate held for more than five years.

The tax brackets for 2007 are as follows:

Personal income tax rates

Tax assessment basis in PLN	Tax rate
up to 43 405	19% of assessment basis minus 572.54
43 405 to 85 528	7 674.41 + 30% of amount exceeding 43 405
over 85 528	20 311.31 + 40% of amount exceeding 85 528

Note: Cumulative tax is shown net of the annual tax credit of 572.54 PLN (see Deductions and exemptions).

For some individuals e.g. the self-employed, members of civil partnerships a flat tax at 19% rate is applicable if certain conditions are met.

Special rules for expatriates

Foreign nationals with limited liability to Polish tax will be taxable solely on income received in connection with the performance of duties in Poland or from Polish sources. For those who qualify for limited tax liability, income from board duties (under certain conditions) and Polish Civil Code contracts such as personal services contract, specific task agreement may be taxed at a flat rate of 20%. In such cases, no deductions are available.

Social security taxes

Social security contributions are payable at rates of 18.71% by employees and (19.71% – 22.41%) by employers up to a cumulative earnings limit of 78 480 PLN and 2.45% by employees and (3.45 – – 6.15%) by employers thereafter. Contributions consist of four elements: pension (19.52%), disability (13%), sickness (2.45%) and industrial injury (0.9% – 3.6%) insurance. The rate for the industrial injury insurance depends on the type of business activity conducted. The first two are payable in equal parts by employees and employers up to the limit of 78 480 PLN. Sickness insurance is only paid by employees and accident insurance only by employers. Both are uncapped.

Employers must also pay contributions of 2.45% to the Labour Fund and 0.1% to guarantee the salaries of employees of bankrupt companies.

In general, for individuals subject to personal services contracts, contributions are computed in a similar way as for employment income, i.e. are payable at the same rates, allocated between the service provider and the principal as between employees and employers and subject to the same limits, or uncapped as appropriate. In certain cases, it may be possible to avoid payment of sickness and accident insurance. If the personal service contract is concluded with an employer, social security is payable as in the case of an employment contract.

Where an individual concluded a contract with a third party and already pays contributions in respect of e.g. an employment contract, payment of contributions for a personal service contract is voluntary unless the work is performed for the ultimate benefit of the original employer. However, in general the remuneration from the full time employment contract must be 936 PLN per month or higher (in 2007).
In addition to the above healthcare contribution is payable.

The contribution in question amounts to 9% (in 2007) of the employment income decreased by the employee social security contribution assessed. The healthcare contribution may be deducted from tax on employment income up to 7.75% of its calculation basis. Consequently, the remaining part of the healthcare contribution (1.25% of the assessment basis in 2007) and is left as and additional non-deductible cost (decreasing the after-tax income). As of 1 May 2004, after Poland accession to the EU, the European social security regulations have started to apply. The general rule involves contributing to the social security system of the country where the work is actually performed.

Deductions and exemptions

A deduction of 108.5 PLN per month is available in respect of expenses associated with earning employment income. Those with more than one employment are entitled to an increased deduction up to 1.5 times the maximum. An annual tax credit of 572.54 PLN is available to all individuals who have a taxable presence in Poland. Married couples are entitled to the allowance, regardless of whether they are taxed separately or jointly.

The individuals engaged under Polish Civil Code contracts (but not expatriates with limited tax liability or those with management contracts) may deduct 20% of their income as costs of earnings, irrespective of whether these expenses are actually incurred.

Higher deductions are available to individuals engaged under Polish Civil Code contracts if their actual expenses are greater than 20%. Certain activities, e.g. exploiting a copyright, attract a 50% deduction.

Returns and payments

Polish employers must withhold tax on their employees' taxable salary and make payments to the tax office by the 20th day of the month following the month of payment. However, the employers may not be required to withhold a tax advance on income paid to employees for their work abroad if this income is or is to be taxed outside of Poland. Collection of advance is then to be continued at an employee's request. In certain cases, employees may select for an employer to file an annual tax return and settle any outstanding liability through an adjustment to the subsequent year's withholdings. Self-employed individuals who work in Poland, or expatriates working for and paid by a foreign entity, are personally responsible for meeting monthly payments. As a rule, the deadline is the 20th day of the next month. An annual return must normally be filed (as well as the tax due be paid) by 30 April of the following year, stating all sources of income and showing any additional tax due. Self-employed individuals benefiting from a flat tax rate are obliged to file the annual return by 31 January or 30 April, depending on the method of taxation that is applicable to their income. Separate annual tax return should be filled with respect to capital gain income (e.g. sale of shares). Married couples may file joint returns, provided (among others) they are both tax residents in Poland. Then, their tax liability is calculated on the half of the total income and multiplied by two.

Expatriates who qualify for limited tax liability do not have to report income taxed at 20% flat rate in their annual return as this is the final tax liability.

Disclosure requirements

The requirements concern those entities that benefit from work or services provided by individuals (predominantly foreigners) without a domicile in Poland.
In the situation where the remuneration of such persons is paid by nonresidents within the meaning of the currency law (e.g. by a foreign company), the Polish entity using such work or services will be

required to collect, prepare and disclose information concerning the remuneration for work or services provided to it.

The requirement will arise if:

- in connection with tax treaties and other international agreements ratified by Poland, it may affect the tax obligation or tax liability of persons receiving the remuneration;
- a non-resident participates, directly or indirectly, in the management or control of an entity subject to the duty of disclosure, or holds an interest in such an entity's share capital, to which at least 5% of all voting rights are attached.

The above information (ORD-W1) should be disclosed without a prior request from the tax authorities by the last day of the month following the month in which the non-resident started providing services (working).

4.3 Value Added Tax (VAT)

General

Value added tax was launched in Poland in 1993. The first attempts to bring the country's VAT system into line with Community regulations were made prior to Poland's entry into the European Union. The final step to ensure compliance was taken on 1 May 2004, when a new VAT Act came into force. However, based on the Treaty of the Accession, there are some derogations as far as the harmonization is concerned.

Scope of the VAT

Under the Polish VAT regulations, VAT applies to the following transactions:

- supply of goods and services made in Poland for consideration. The supply of goods includes handing over by a taxpayer of business-related goods for non business-related purposes, e. g. donations. However, the supply of samples, small gifts and printed advertising and informational materials is excluded from the VAT-able events;

- exportation of goods outside the EU;
- importation of goods from outside the EU;
- intra-Community acquisition of goods (from the EU) effected for consideration in Poland, inclusive of the movement of goods between different Member States within the same business;
- intra-Community supply of goods (to the EU) inclusive of the movement of goods between different Member States within the same business.

Activities which are outside the scope of VAT include sale of a business or a branch (division) that prepares its balance sheet independently.

Taxpayers

The taxpayers are legal entities, organizational units without the status of legal persons and individuals that independently carry on any business activity, regardless of the purpose or the effect of such activity. The use of word 'independently' means that employees under contracts of employment are excluded from tax. Moreover, other persons rendering services under 'ad-hoc' agreements are also outside the scope of VAT provided they are bound to the employer by a contract of employment or by any other legal ties creating a legal relationship with regard to the working conditions, remuneration and employer's liability.

A VAT payer is also an entity which is the recipient of the services rendered or goods delivered by taxpayers having their registered seat, fixed place of business or place of residence abroad.

A VAT payer is also an entity:

- performing intra-Community supply of new means of transport;
- that makes intra-Community acquisition in Poland, or
- performing distance sales to Polish customers in excess of the threshold of 35 000 €.

Public bodies that act within the scope of their activities are not considered as taxpayers.

VAT registration

Entities that perform VAT-able activities in Poland are obliged to register for VAT before undertaking their first taxable activity.

Upon VAT registration they gain the status of the active VAT payers.

Taxpayers who are eligible for VAT exemption with no right to deduct input VAT (activity-or entity-related) may register for VAT. If they do, they receive confirmation from the tax office that they are registered as exempt VAT payer. Taxpayers must notify in advance their intention of making intra-Community transactions to the Polish tax authorities. On the basis of this notification, the entity is registered as an EU VAT payer. Taxpayers whose net amount of taxable sales did not exceed 10 000 € in the previous year are exempt from VAT. Similarly, taxpayers commencing to perform taxable sales during the tax year are exempt from VAT if the expected net amount of their taxable sales in a corresponding fraction does not exceed 10 000 €. However, taxpayers can opt for taxation provided they notify the relevant tax office of their intention.

Fiscal Representative

VAT payers that have no registered seat, fixed place of business or place of residence in Poland or other EU country are obliged to appoint a fiscal representative.

The fiscal representative is jointly liable with the business it represents for all Polish Tax liabilities.

The place of supply rules

The place of supply with respect to goods is considered the following:

- the place where the goods are at the time of dispatch or transport to the purchaser;
- the place of installation or assembly;
- the place where the goods are at the time of delivery (in case they are not dispatched or transported);

- as regards the delivery of goods on ship, plain or train boards – the place where the passenger transport starts;
- the country of importation.

The place of intra-Community acquisition is in principle the place where the transport or dispatch ends.

In principle, the place of supply of services is the place where the supplier established his business or has a fixed place of business or the place of residence. However, there are special rules determining the place of supply of, among others:

- services connected with immovable property – the place of supply is where the property is situated;
- transportation services – the place of supply is the place where the transport takes place, having regard to distances covered;
- intangible services, e. g. consultancy, advertising, electronic services etc. – the place of supply is assigned to the place of establishment of the customer provided that the customer is a taxpayer established in the EU or any entity established in the third country.

VAT rates and the taxable base

In Poland, three rates of VAT apply – the standard rate of 22%, the reduced rates of 7% and of 0%. The standard rate of VAT applies to all supplies of goods or services, unless a specific provision allows a reduced rate or exemption. As an example, the 7% VAT rate is applicable to health care related goods and hotel services.

0% supplies include exports of goods outside the European Union and intra-Community supplies of goods. In addition, on the basis of the EU Accession Treaty, exclusively within the transitional period, i.e. till 30 April 2008, the super-reduced VAT rate of 3% may be applied to foodstuffs.

Under the VAT Law some supplies are exempt (without a right to deduct input VAT), e. g. supplies of financial, educational or health care services.

The taxable base for VAT purposes is net turnover, including received subsidy, subvention and any other extra of similar nature related to supply of goods or services, decreased by the amounts of rebates and discounts.

As regards import of goods, the taxable base is the customs value increased by all customs and excise duties, including provision, packaging transportation and insurance costs incurred up to the first place of destination in Poland.

The taxable base for intra-Community acquisition of goods is the amount of payment due from the purchaser, inclusive of taxes and duties paid in connection with the goods acquisition as well as costs of provision, packaging, transportation and insurance collected by the seller.

Tax point

General rules

In principle, under the Polish VAT regulations the tax point arises when the goods have been released or the services have been completed. Where a transaction should be documented with a VAT invoice, the tax point is the time when such a document is issued, but no later than on the 7th day from the day the goods were released or the services completed. However, for selected supplies (e.g. electricity, telecommunications, transport, leasing, printing) the tax point is deemed to arise at a different point (usually payment deadline or payment receipt).

Prepayments

The tax point for an advance payment or prepayment received before the goods are released or services completed is the date of payment receipt.

Exported goods

As a rule, the tax point for exported goods arises upon confirmation by customs that the goods have been transported outside the Community.

Imported goods

In general, the tax point for imported goods is the date when the customs debt arises.

Intra-Community acquisition

The tax point for an intra-Community acquisition of goods is the 15th day of the month following the month in which the supply of goods subject to intra-Community acquisition occurred. However, if the supplier issues an invoice prior to this deadline, the tax point arises when the invoice is issued.

Intra-Community supply

The tax point for an intra-Community supply of goods is the 15th day of the month following the month in which the supply occurred. If prior to this deadline a taxpayer issues an invoice, the tax point arises when the invoice is issued.

Recovery of input VAT

General rules

A taxpayer may recover input tax, i.e. the VAT charged on goods and services supplied to him and used for taxable activity purposes. Input tax is generally recovered by being deducted from output tax, i.e. the VAT charged on the supplies made.

Input tax includes:

- VAT charged on goods and services supplied within Poland;
- VAT paid on imports;
- VAT self-assessed on the intra-Community acquisitions of goods;
- VAT self-assessed on the purchase of goods and services taxed under the reverse charge.

Input tax may not be recovered, e. g. on the purchase of fuel, diesel or gas used for passenger cars or on restaurant services. In the case of purchase or lease of a passenger car, partial recovery of input

VAT is allowed (60% of input VAT but not more than 6 000 PLN). Input tax directly related to making exempt supplies is generally not recoverable (but it can be, under certain conditions, deducted as a cost for corporate income tax purposes), except for input tax related to financial services rendered to entities established outside the EU.

Partial recovery

If a taxpayer makes both exempt and taxable supplies and it cannot allocate its input VAT accordingly, it cannot recover input VAT in full.

For determining the amount of VAT that may be recovered in this situation, the taxpayer calculates a proportion representing the ratio of turnover made on taxable supplies in the total turnover. The ratio is subject to correction at the end of the tax year. In connection with this, capital goods adjustments are required to be made with respect to fixed assets (adjusted for a period of five years) and immovable property (adjusted for a period of ten years).

Refund of VAT

Excess of input VAT may be carried forward against future VAT liabilities or refunded. Refunds are generally made within 180 days.

Where a company performs activities taxed at the reduced rates or are zero-rated or if the excess VAT is due to fixed asset purchases, the refund period is accordingly reduced to 60 days. Under certain conditions the above deadlines can be shortened up respectively to 60 and 25 days.

Under certain circumstances (investment purchases), it is also possible to claim an advance VAT refund, i.e. before performing the first VAT-able activity.

VAT returns, EC Sales listing and INTRASTAT reporting

As a rule VAT returns are filed on a monthly basis (or quarterly but only for taxpayers whose sales do not exceed 800 000 €).

VAT returns and full payment of the VAT due must be made by the 25th day of the month following the month in which the tax point arose (or the 25th of the first month of the following quarter). In addition, taxpayers who supply services for the benefit of individuals not involved in business activity are obliged to maintain and operate cash registers under special rules.

The taxpayers who trade in goods with other EU countries must also complete statistical reports (INTRASTAT) on a monthly basis and EC Sales and Purchase Lists (recapitulative statements) on a quarterly basis.

Separate statistical reports are required for intra-Community acquisitions (INTRASTAT Arrivals) and for intra-Community supplies (INTRASTAT Dispatches). The submission deadline is the 10th day following the month in which the given transaction should be declared. EC recapitulative statements must be submitted by the 25th day of the month following the end of the quarter in which the tax point arose with respect to the intra-Community acquisitions or intra-Community supplies.

Special procedures under the Polish VAT regulations, special rules apply with respect to:

- small entrepreneurs;
- flat-rate farmers;
- supply of tourist services;
- supply of second-hand goods, works of art, collectors' items and antiques;
- gold investment;
- tax refund for tourists;
- foreign entities supplying electronic services to non-taxpayers within the EU.

4.4 Customs Duty and Excise Duty

Customs duty

Starting from 1 May 2004 Poland became part of the European Union, i.e. became part of the customs union. Most of the Polish customs provisions were replaced with the respective EU regulations including Community Customs Code, Community Tariff and implementing provisions. Becoming a part of the customs union involved abolition of any physical and fiscal barriers (e.g. customs controls, customs duties) between Poland and other EU member states. Transactions involving transfer of the goods between Poland and EU member states changed their nature from import / export into respectively intra-Community acquisition and supply. At the same time transfers of goods between Poland and non-EU member states sustained their nature as import / export, however, they are subject to the uniform EU rules. Application of the Community Customs Code and implementing rules implies that importation of goods into Poland is subject to the same rules as importation to any other member of the EU. Customs procedures are not applicable with respect of the goods transferred to or from the EU (as transactions performed within the customs union), the customs procedures are applicable only with respect of the goods coming from or being sent to the non-EU countries. The customs duty rates applicable to importation of goods into Poland result from the Customs Tariff. As a result of introduction of the Community Customs Tariff the overall level of customs duty rates has been significantly reduced. The free-trade agreements concluded by Poland in previous years were revoked prior to accession into the EU. Instead, Poland adopted the free-trade agreements concluded by the EU, as well as EU Generalised System of Preferences (GSP) under which the reduced customs duty rates are applicable to goods imported from under-developed and the least developed countries. Based on GSP, goods coming from approximately 150 countries benefit from preferential customs duty rates.

Currently the decision on quotas or customs suspensions to be applied to goods imported into Poland is taken at the Community level.

Any information on the customs duty rates, customs preferences, available quotas, customs suspensions as well as anti-dumping duty rates applicable at importation of goods into Poland can be currently obtained from TARIC – the electronic integrated Community Tariff.

The Polish Ministry of Finance (Customs Department) maintains also a tariff browser – ISZTAR, which provides information on goods in international trade to customs administration and traders. ISZTAR presents data from TARIC system (goods nomenclature, duty rates, restrictions, tariff quotas, tariff ceilings, suspensions) and national data (VAT, excise duty, restrictions and non-tariff measures) as well.

In December 2006 the implementing provisions for the concept of an Authorised Economic Operator were published. This initiative is intended to increase security in global supply chains through risk management and customs compliance. It is also supposed to enable economic operators to move goods faster and more effectively as well as benefit from customs facilitations. Customs authorities within the entire EU will begin granting AEO certificates as from 1 January 2008. Since there are numerous requirements, it is worthwhile for the companies to start their preparations to obtain the AEO status right now.

Excise duty

Polish excise duty rules have been harmonised with EU legislation. As a result of the harmonization process the new Excise Duty Act has been adopted. The excise goods are divided into harmonised and non-harmonised excise products. Harmonised excise products include products subjected to excise duty by EU provisions such as mineral oils, tobacco and alcoholic products. Non-harmonised excise products include goods subject to excise duty on the basis of independent Polish provisions (e.g. passenger cars).

Currently the Polish Ministry of Finance is working on amendments to the Excise Duty Act, which should be implemented on 1 January 2008. The amendments are necessary because Poland has failed to meet its obligations under the Energy Tax Directive (Directive

2003/96/EC) and did not harmonise its electricity system by shifting the tax liability from the producer to the distributor or redistributor.

In November 2006, the Commission formally opened an infringement procedure against Poland by sending a letter of formal notice. Poland's reply was not satisfactory and the Commission has therefore decided to launch the second stage of the infringement procedure by sending a reasoned opinion to Poland.

Moreover, the planned amendments to the Excise Duty Act should adjust the Polish excise duty provisions regarding the energy products as there are significant differences between the Polish and European scope of excise duty taxation in this area. Additionally the proposed changes may have an effect on abolition of excise duty on non-harmonised excise products (e.g. passenger cars) as a result of the judgment of the European Court of Justice regarding Polish excise duty being discriminating against second-hand cars imported from another Member State.

Excise duty is charged on:

- production of harmonised excise products and release of such products from the tax warehouse;
- supply of the excise products in Poland;
- export and import of excise products;
- intra-Community supply and acquisition of excise products;
- shortages and losses of harmonised excise products;
- other activities treated as sale of excise products.

Harmonised products are subject to special rules with respect to their production, holding and movement. Under these rules:

- production of harmonised products can take place only within special tax warehouses;
- production and holding of harmonised products can be performed within the excise duty suspension regime;
- excise duty on harmonised products is chargeable in the country where the goods are released for consumption;

- suspension of excise duty can also be applied to the movement of goods, provided that the goods are dispatched from a tax warehouse to another tax warehouse located in Poland or in the EU or registered or non-registered trader operating in another EU member state.

Generally, excise duty is payable by the producers or importers of excise goods or entities conducting intra-Community acquisitions of excise goods. Taxable value for excise purposes is defined as:

- the net amount due (i.e. reduced by VAT and excise duty due);
- customs value together with customs duties – in the case of imported products;
- the amount due – in the case of intra-Community acquisition;
- excise duty is established in a specific way for harmonised products, as:
  - fixed amount per number of units (e.g. hl of pure alcohol or hl of product);
  - fixed amount per number of units and the percentage of maximum retail price (i.e. cigarettes).

Export of excise goods is exempted from excise duty (except for excise goods marked with excise duty stamps). In the case of mineral oils, tobacco products, alcohol and alcoholic beverages, excise duty is reconciled on a daily basis, with the final reconciliation being made on a monthly basis. In the case of other excise products, only monthly reconciliation is made. The entity making the export supply or an intra-Community supply of excise products the excise duty on which has been paid is able to recover its amount.

5 Human Capital

5.1 The Polish Labour Code

Polish labour law issues are mainly regulated in the Labour Code.

There are also separate acts on, for example, group redundancies, trade unions, and employing temporary workers. Importantly, other legal sources that apply to employees (i.e. collective bargaining agreements and individual contracts of employment) must never worsen the situation of the employee as it stands under the Labour Code.

The Labour Code specifies the rights and duties of all employees, regardless of the category of work and the legal basis of the employment relationship. This does not apply to workers rendering services on the basis of civil law contracts (i.e. service contracts).

5.2 Legal Basis of the Employment Relationship

Polish law provides for the following types of employment relationship:

- employment contract;
- appointment, election, nomination and co-operative contracts of employment.

The employment contract is the most common basis of employment relationship.

5.3 Employment Contract

An employment contract should be concluded in writing. If not, the type of the employment contract and its conditions should be confirmed on the first day of performing work at the latest. An employment contract must specify its parties, type, date of its execution and the conditions of the work and remuneration, in particular:

- the type of work, the place of its performance and the date of its commencement;
- the remuneration corresponding to the type of work with an indication of its components;
- working hours.

Apart from the contract, written information about the basic conditions of employment must be given to the employee during the first seven days of work.

An employment contract can be concluded for:

- an indefinite period;
- a definite period (only two successive fixed-term contracts can be concluded between the same employee and employer);
- the time required to complete specific work;
- the period of absence of another employee.

Each of the contracts mentioned above may be preceded by an employment contract for a trial period (no longer than three months).

5.4 Termination of an Employment Contract

In general, an employment contract can be terminated:

- by mutual agreement of the parties;
- upon declaration by one of the parties with observance of the period of notice (termination by notice);
- upon declaration by one of the parties without observance of the period of notice (termination without notice, possible only in the cases specified in the Labour Code);
- upon expiration of the period for which it was concluded, or upon completion of the task it was concluded for.

Declarations of both parties on the termination of an employment contract (with or without notice) must be made in writing.
Any declaration by an employer of termination of an employment contract concluded for an indefinite period, or of termination of an employment contract without notice of termination, should provide reasons for the termination of the contract.

Termination of an employment contract by notice

Either party may give notice of termination of an employment contract concluded for a trial period, for an indefinite period or for the period of absence of another employee. Additionally, where an employment contract is concluded for a definite period longer than six months, the parties may provide for an earlier termination of this contract with a two-week notice period.

The period of notice for an employment contract concluded for a trial period is:

- three working days if the trial period does not exceed two weeks;
- one week if the trial period is longer than two weeks;
- two weeks if the trial period is three months.

The period of notice for an employment contract concluded for an indefinite period depends on the duration of employment with a given employer and is:

- two weeks if the employee has been employed for less than six months;
- one month if the employee has been employed for at least six months but not longer than three years;
- three months if the employee has been employed for at least three years.

The period of notice for an employment contract concluded for the time of absence of another employee is three working days.

If the employee occupies a post involving financial liability for property entrusted to him, the parties may agree in the contract of employment that in the event of its termination the period of notice shall be:

- one month if the employee has been employed for less than six months;
- three months if the employee has been employed for at least six months.

It is also possible to provide for longer notice periods in the employment contract if the longer periods of notice are more favourable to the employee.

Termination of an employment contract without notice

An employer may terminate an employment contract without notice due to the fault of an employee who:

- seriously violates the basic duties of an employee;
- commits an offence during employment, which renders impossible his further employment in his/her post, if the offence is obvious (it is beyond doubt that the offence has been committed) or has been established by an unappealable court judgment;
- loses his/her licence necessary for the performance of duties connected with his/her post.

Additionally, an employer may terminate an employment contract without notice if, for example, the employee is unfit to work due to illness:

- for longer than three months, if the employee has been employed by the employer for less than six months;
- for longer than the period of receiving sick pay and welfare benefits, if the employee has been employed by the employer for at least six months.

An employee may also terminate an employment contract without notice in cases strictly defined by the Labour Code.

Rights of the employee in the case of an unlawful or unjustified termination of an employment contract by an employer

In general, in the case of an unlawful or unjustified termination of an employment contract by an employer, the employee is entitled to claim from the Labour Court:

- reinstatement on former conditions, or
- due compensation.

However, the final decision as to which of these two employee rights shall be applied in an individual case belongs to the Court.

5.5 Remuneration for Work

The minimum remuneration for work for full-time employees is specified by the act on minimum remuneration and the Council of Ministers' regulations. The general rule is that an employee cannot be offered lower remuneration than that specified by the law. For example, the minimum monthly remuneration for the year 2007 has been fixed as 936 PLN. Remuneration in Poland is settled in its gross amount, i.e. prior to the payment of any taxes, social security or other mandatory payments.

According to the provisions of the Labour Code, conditions governing the remuneration for work and the granting of other benefits connected with work are fixed in collective bargaining

agreements or in the remuneration regulations. Any employer employing at least twenty employees who are not covered by a collective bargaining agreement must set out the conditions of remuneration for work in written remuneration regulations.

5.6 Social Security Contributions

Social security contributions for pension and disability are made by the employee and by the employer only up to an annual cumulative earnings limit. In 2007 the limit is 78 480 PLN. The other social security contributions (2.45% to be paid by the employee and 0.67% – 3.60% to be paid by the employer) are made irrespectively of the earnings amount. See below social security rates details.

Social security contributions as a percentage of the calculation base and their sources of financing [%]

Social security contribution	Contribution as a percentage of the calculation base	Financing by	
		Employer	Employee
Pension	19.52	9.76	9.76
Disability – from 1.07.2007 to 31.12.2007 – from 1.01.2008 – 6%	 10.00 6.00	 6.50 4.50	 3.50 1.50
Sickness	2.45		2.45
Industrial injuries	0.67–3.60*	0.67–3.60	
Total in 2007	32.64–35.57	16.93–19.86	15.71
Total in 2008	28.64–31.57	14.93–17.86	13.71

** The level of contribution to industrial injury insurance is generally established yearly. The level of contribution ranges from 0.67 to 3.60 percentage, depending on the type of business.*

In addition to the above social security contributions, the employer shall pay 2.45% of the calculation base to the Labour Fund and 0.1% of the calculation base to the Employee Benefit Guarantee Fund.

Healthcare contribution

The healthcare contribution amounts to 9% (in 2007) of the employment income decreased by the employee social security contribution assessed. The healthcare contribution may be deducted from tax on employment income up to 7.75% of its calculation basis. Consequently, the remaining part of the healthcare contribution (1.25% of the assessment basis in 2007) and is left as and additional non-deductible cost (decreasing the after-tax income).

5.7 Workplace Regulations

An employer who employs at least twenty employees is obliged to introduce workplace regulations. These regulate the organisation of the work process and the rights and duties of the employer and employees.

5.8 Working Time

In general, working time may not exceed eight hours per day and an average of forty hours per week in a five-day week on average within a reference period not exceeding four months. The total weekly working time with overtime hours cannot on average exceed 48 hours in a reference period.
The Labour Code includes many provisions modifying this general rule, depending on the system of working hours used by an employer.

5.9 Overtime Work

Work performed in excess of working time applied to a given employee constitutes overtime work. Such work is permissible only in the case of:

- the need to carry out rescue operations for the protection of human life or health, or for the protection of property or the environment;
- the special needs of the employer (the most typical situation when overtime work occurs);

- employees working overtime are entitled to receive overtime pay amounting to:
  – 100% of remuneration for overtime work at night, on Sundays or during holidays that are not working days for the employee according to the applicable work schedule, and also for overtime work on a day off in lieu (granted in consideration for work on Sundays or during holidays that are working time for the employee according to the applicable work schedule);
  – 50% of remuneration for overtime work on any other days.

In consideration for overtime work, at the employee's request, the employer may grant time off in lieu equal to overtime to the employee. In such a case, the employee is not entitled to receive overtime pay.

Time off in lieu may be granted without the request of the employee.

In such a case, the employer grants time off in lieu by the end of the reference period at the latest, equalling overtime plus 50%, but it must not reduce the employee's remuneration due for total monthly working time. In such a case, the employee is not entitled to receive overtime pay.

Generally, while working due to the special needs of the employer, employees cannot work more than 150 hours per calendar year. An employer can establish (with trade union approval, if unions are present at the employer's enterprise) an overtime limit different from the statutory one. Its maximum length is limited by the requirement that the total weekly working time may not on average exceed 48 hours in the reference period.

5.10 Vacation Leave

In general, the length of leave is:

- twenty working days in every year – for the first ten years of work;
- twenty-six working days in every year – after ten years of work.

When establishing the vacation length, service for previous employers and periods of education (under rules stipulated in the Labour Code) are also cumulated.

An employee acquires the right to his first leave after one month of service in the amount of 1/12 of the statutory vacation leave to which an employee is entitled after one year of service according to the Labour Code. If an employee changes employer during a calendar year he acquires the right to leave with the new employer proportionally to the duration of his employment with the new employer in that calendar year.

5.11 Protection of Women at Work and Employment of Young Adults

Issues connected with women's work and employment of young adults are specifically regulated by the Labour Code and secondary legislation.

5.12 Health and Safety at Work

The Labour Code and secondary legislation regulate in detail the employer's obligations connected with health and safety at work.

5.13 Group Redundancies

Issues connected with group redundancies are specifically regulated by the provisions of the Act on Special Terms of Employment Termination for Reasons Not Concerning Employees.

The provisions of this Act relate to employers employing at least 20 employees, that simultaneously terminate, or terminate within a period of 30 days, employment contracts with a group of employees comprising at least:

- 10 employees, if the employer employs fewer than 100 employees;
- 10% of employees, if the employer employs at least 100, but fewer than 300 employees;
- 30 employees, if the employer employs 300 or more employees.

The provisions of the Act on the Special Terms of Employment Termination for Reasons Not Concerning Employees also apply in the case of the bankruptcy or the liquidation of an employer's enterprise.

5.14 Trade Unions

Employees have the right to freely join trade unions. According to the law, at least 10 persons may establish a trade union.
The employer cannot limit this right in any manner.

5.15 Company Social Fund

According to the provisions of the Act on Company Social Funds, business entities that employ at least twenty employees on a full-time basis should create a Social Fund and introduce appropriate regulations on how the money is collected and how it will be spent.

5.16 Foreigners

EU citizens are released from the obligation to obtain a work permit.

Non-EU citizens, as employees or board members of Polish companies, require work permits, which are granted only if an employer who intends to employ a foreigner has obtained a work permit promise (przyrzeczenie) and the foreigner has obtained an appropriate visa or permit to live in Poland for a limited period. Working visas are granted by the consulate in the foreigner's permanent place of residence upon presentation of the work permit promise.

5.17 Temporary work

The Law on Employment of Temporary Workers allows temporary workers to be used in specific circumstances, e.g. for seasonal or periodical work, for work which cannot be performed by permanent employees on time, or for work previously performed by an absent employee. A temporary worker cannot be employed in posts in which especially dangerous work is performed. A temporary worker cannot replace an employee taking part in a strike or a worker dismissed for reasons not concerning employees.

As a rule, a temporary worker can be employed by a given employer for a period not exceeding 12 months in a period of 36 months. Temporary workers execute fixed-term employment contracts or employment contracts for the time required to complete specific work with work agencies entered in the register of employment agencies kept by the minister competent in labour matters. An employment contract with a temporary worker can be terminated earlier by either party with three days' notice. An employer who intends to use temporary workers must execute a contract with an employment agency specifying a number of issues concerning work performed by temporary workers defined in the Law on Employment of Temporary Workers. The law provides for a number of obligations of employers using temporary workers related to work safety, trade union consultation and informing temporary workers of vacancies.

5.18 Work councils

The European Works Council Act and the Employee Information and Consultation Act are currently in force in Poland. The latter has been passed recently.

Employee Information and Consultation Act specifies the terms of informing and consulting employees as well as electing

an employee council. It applies to employers carrying on business and having at least 50 employees.

The European Work Council Act applies to community-scale undertakings and community-scale groups of undertakings ('undertakings') which employ at least 1 000 employees in European Union Member States including at least 150 employees in at least two European Union Member States if there are connections between Poland and the undertaking, that is:

- the central management of the undertaking is based in Poland, or
- the central management has designated a representative in Poland, or
- the employing establishment of the undertaking that employs the greatest number of employees among those employed in the EU is in Poland.

The Act provides for the manner of establishing European Work Councils and the rights and obligations of European Work Councils and the employers at which such councils exist.

6 Competition Law

Competition law in Poland is generally governed by the Act on Combating Unfair Competition (1993) and by the Act on the Competition and Consumer Protection (2007).

The aim of the Act on Combating Unfair Competition is to ensure that entities operating on the market compete on a fair basis, i.e. do not undertake any acts of unfair competition. On the other hand, the general aim of the Act on the Competition and Consumer Protection is the protection of the freedom of competition. Therefore the Act of 2007:

- determines conditions for the development and protection of competition as well as the rules on protection of interests of entrepreneurs and consumers, undertaken in the public interest, and
- regulates rules and measures of:
  – counteracting competition restricting practices (cartels and abuse of dominant position);

– anticompetitive concentrations of entrepreneurs and associations of thereof (mergers control);
– practices violating collective consumer interests;

where such practices or concentrations cause or may cause effects on the territory of the Republic of Poland.

6.1 The Act on Combating Unfair Competition (1993)

The Act on Combating Unfair Competition regulates protection of the interests of entrepreneurs, customers and consumers against unfair competition, and prevention of unfair competition, in the public interest as well as in the interest of entrepreneurs and customers, especially consumers. The Act defines an act of unfair competition as any activity in violation of the law or good practice if it infringes or may infringe on the interests of other entrepreneurs or customers (so called: general clause). The Act contains an open list of activities deemed to be acts of unfair competition. These include especially: misleading designation of an enterprise; false or fraudulent designation of geographical origin of goods or services; misleading designation of goods or services; violation of business secrets; unfair encouragement to terminate or not to perform agreements; product imitation; imputations or dishonest praise of goods; obstruction of market access; bribery of a person performing public duties; dishonest or unlawful advertising; organization of avalanche sales system; spamming. The Act also contains a detailed description of the above acts.

It should be stressed that the list of activities is open, so there may exist acts of unfair competition that do not appear in the list, but still violate the general clause mentioned above.

The entrepreneur whose interest was infringed as a result of the acts of unfair competition may claim:
- cessation of prohibited activities;
- elimination of the effects of prohibited activities;

- public statements of appropriate content and in proper form;
- redress of damage caused to the entrepreneur according to the general rules of civil law;
- refund of unjust benefits, and
- adjudicating of a certain amount for a specified social purpose connected with the support of Polish culture or protection of national heritage, in the case of willful acts.

Some acts of unfair competition (e.g. violation of business secrets, product imitation, misleading designation of goods or services, imputations or dishonest praise of goods) may also result in criminal liability.
In practice the application of Act on Combating Unfair Competition is often connected with implementation of another legal measures provided for by the various legal provisions, especially concerning protection of industrial property and copyrights.

6.2 The Act on the Competition and Consumer Protection (2007)

The Act on the Competition and Consumer Protection describes the conditions of competition development and protection, and the rules for protecting the interests of entrepreneurs and consumers in the public interest. The central government administration organ competent in the protection of competition and consumers is the President of the Office of Competition and Consumer Protection (UOKiK).

First of all, the Act prohibits agreements being entered into that prevent, restrict or distort competition on a relevant market.
These agreements may in particular consist in:
- fixing, directly or indirectly, prices and other conditions of purchase or sales of products;
- limiting or controlling production or supply as well as technical development or investments;
- sharing markets of supply or purchase.

Such agreements are invalid under the law. The Acts provides exemptions for prohibition of competition restricting agreements in particular situations stipulated in the Act.

The Act also forbids abusing of a dominant position by one or more entrepreneurs. The abuse of a dominant position may, in particular consist in:

- direct or indirect imposition of unfair prices, including predatory prices or prices glaringly low, significantly delayed payment terms or other conditions of purchase or sale of products;
- limiting production, supply or technical development to the detriment of contractors or consumers;
- application in similar transactions with third parties onerous or not homogenous contract terms, thus creating for these parties diversified conditions of competition.

All legal acts that are the result of abuse of a dominant position are invalid under the law.

Since Poland's accession to the EU, provisions of EU law (especially Articles 81 and 82 of the EC Treaty) apply directly. Polish competition authorities are therefore empowered to apply fully the provisions of the Treaty.

According to the Act entrepreneurs are obliged to notify to the President of the Office of Competition and Consumer Protection of any intended concentration. Typical examples of concentration are:

- a merger of two or more independent entities;
- the take-over of control of another entity;
- creation by entrepreneurs of one joint entrepreneur.

The obligation shall apply, if the following turnover-thresholds are met: combined turnover of the entrepreneurs participating in the concentration in the marketing year preceding the year of the notification exceeds 1 million € or combined turnover of the

entrepreneurs participating in the concentration in the marketing year preceding the year of the notification exceeds 50 million €.

The President of the Competition and Consumer Protection Office examine the intended concentration and will approve it if it does not result in a significant restriction of competition, in particular, by emergence or strengthening of dominant position in the market. If it does, the President may prohibit the concentration (with some exceptions). Before issuing an approval for concentration the President may impose upon the entrepreneur or entrepreneurs intending to perform the concentration an obligation, or accept their obligation to meet some specific conditions (e.g. to divest the entirety or a part of the property of one or more entrepreneurs).

The EC Merger Regulation applies accordingly. The European Commission and the President of the Office of Competition and Consumer Protection cooperate with each other through the European Competition Network (ECN).

The substantial part of the Polish antitrust law is the prohibition of practices infringing collective consumer interests. A practice infringing collective consumer interests shall mean any unlawful activity of an entrepreneur prejudicial to these interests. The President may, in a decision on pronouncing a practice as infringing collective consumer interests, order that the same be discontinued. Such decision may be published in its entirety or in part at the expense of the entrepreneur.

Non-observance of the terms of the Act concerning the competition restricting agreements, abuse of dominant position, merger control or practices infringing collective consumer interests may result in severe pecuniary fines being imposed by the President of the Office of Competition and Consumer Protection.

7. Capital markets

7.1. General

In recent years, Polish capital market experienced a period of continuous development. This is particularly visible in the robust growth of the stock and bond market, but also in the Polish investors' rapidly increasing interest in investment funds.

7.2. Regulatory Environment

Legal provisions

The basic principles of the Polish capital market are set out by the following regulations:

- the Act on Trading in Financial Instruments;

- the Act on Public Offering and on Terms on which Financial Instruments are Introduced to an Organised System of Trading and as on Public Companies;
- the Capital Market Supervision Act.

These provisions implement the European Parliament and Council Directives regarding the capital markets, adjusting the Polish provisions to the European Community standards. In particular, the manner in which prospectuses are prepared is currently in line with the EU prospectus regulation, reference filings for securities admitted by other EU regulators have been adequately provided for in the Polish provisions. The provisions also address the issue of foreign investment firms acting in Poland in view of the single passport concept.

Increasing attention is applied to market communication, protection of minority investors, counteracting fraud and insider trading.

Also the regulations regarding investment funds, contained in the law on investment funds dated 27 May 2004 reflect the appropriate provisions of EU law concerning undertakings for collective investments in transferable securities. In particular the offering of foreign investment funds in Poland is now regulated in detail.

Financial Supervision Commission

Polish capital market is supervised by the Financial Supervision Commission (*Komisja Nadzoru Finansowego – FSC*). FSC is a newly established single regulatory authority supervising insurance, pension funds and financial markets institutions. FSC recently replaced, among others, the Polish Securities and Exchange Commission. As of 2008, the joint regulator is also to take over supervision over the banking sector.

As far as capital markets are concerned, one of the substantial functions of the FSC is protecting the interests of investors.

The role of the FSC includes also supervision over brokerage houses, collective investment institutions and public companies acting

or offered in Poland. The competences of the FSC include both initial control, as well as subsequent supervision over the activity over the aforementioned entities as well as over brokers and investment advisors. FSC may impose fines and other administrative measures upon market participants who fail to comply with Polish regulations.

In case of entities which are also subject to supervision within other EU jurisdictions, FSC cooperates with local market regulators in exercising supervision.

Warsaw Stock Exchange

The Warsaw Stock Exchange (*Giełda Papierów Wartościowych w Warszawie – WSE*) is the principal market in Poland where stocks, bonds, derivatives and other financial instruments are traded. Securities are traded on two different markets within the WSE: the "main floor" (primary market), the "parallel market". In addition, WSE also owns an OTC market called CeTo (*Centralna Tabela Ofert*). The details of these three markets are given below. As at 27 March 2007, there were 291 companies (including 13 foreign companies) and several treasury, corporate and foreign bond series quoted on all markets on the WSE in total. Traded derivatives include future contracts on indices and selected stocks, options on indices, and other. The capitalisation of WSE as of 28 March 2007 exceeded 700 billion PLN. The total stocks trading volume in 2006 exceeded 340 billion PLN.

Main floor (primary market)

To be admitted to the main floor, the stocks must have an aggregate value of not less than 1 million €, and the shares subject to the application are held by shareholders who hold not shares entitling to no more than 5% of shares represent not less than 25% of all shares in the company, or where at least 500 000 shares of an aggregate value of 17 000 000 € are held by shareholders who hold shares entitling to less than 5% of votes each. The issuer must publish audited annual

financial statements for the previous three financial years. As of 28 March 2007, 278 companies were listed in the main market.

Parallel market

The parallel market generally accepts financial instruments which do not meet the criteria for the primary market, provided that the issuers meet the reporting/offering requirements provided by law and are not subject to bankruptcy or liquidation proceedings, and that there are no restrictions regarding the transfer of such instruments.

OTC Market

The Polish over-the-counter (OTC) market, is at an early stage of development and the number of listed financial instruments and the volume of trading on it is relatively small [as of 27 January 2006 only 12 companies and 84 other instruments (bonds, mortgage instruments and investment certificates) were listed on the OTC market]. Transactions in the OTC market may be carried out by and between brokerage houses that are shareholders of CeTo.

Investment Funds

Recent years have evidenced the increasing interest of Polish investors in investment funds. The assets held by collective investment institutions have grown from 7.1 billion PLN in 2000 to over 107 billion PLN as of end of February 2007. Also the number and variety of available Polish investment funds have increased rapidly. Domestic offer is supplemented by a growing number of foreign funds originating from other EU countries, which were admitted to offering in Poland.

Polish investment funds are separate legal entities managed by fund management companies which act as joint-stock companies. Depending on the structure, participation of investors in the decision making process regarding the assets may also be involved.

Open end investment funds

These funds represent the majority of Polish investment funds. Investors may join and leave the funds virtually at any time throughout the life of the fund. The participation units offered by these funds are not considered securities for the purpose of Polish regulations. As far as open end investment funds are concerned, recently more and more investors turn to umbrella investment funds due to flexibility and favourable tax treatment.

The investment limits binding upon open end investment funds are quite stringent, however in case of specific types of funds called specialized investment funds some of these limitations are levied.

Closed end investment funds

Closed end investment funds are divided into a specified number of investment certificates, which limits the possibility of entering and leaving such funds. Investment certificates issued by these funds are considered securities under Polish regulations and may be admitted to trading in a regulated market.

New types of closed end funds, including securitization funds, real estate funds and non public asset funds were introduced to Polish legal system. These new types of funds are also becoming increasingly popular and should contribute to the growth of the Polish investment fund market.

8 Accounting and Auditing

Introduction to the accounting framework in Poland

Polish accounting is regulated by the Accounting Act of 29 September 1994 (the Act). The Minister of Finance has also issued several decrees covering specific accounting areas such as financial instruments, consolidation, accounting for banks, insurance companies and pension funds. The Accounting Act underwent significant changes, effective in 2002 to bring Polish accounting practices closer to the then effective International Financial Reporting Standards (IFRS). However, due to the many changes in IFRS becoming effective in 2005 and later, differences now exist between the Act and IFRS as noted in Section 8.4 below. In 2002 the Polish Accounting Standards Committee was established to prepare and issue standards to implement the Act. Till January 1, 2007 three standards have been issued.

The Committee issued also two standpoints (not a standard), one on accounting for emission rights and the second on conversion costs for balance sheet valuation.

In areas unregulated by the Act on National Standards, reference may be made to IFRS.

The amendments to the Act, which came into force on 1 January 2005 permit some Polish entities to apply IFRS as adopted by EU as their primary basis of accounting, rather than applying the accounting principles in the Act. This choice is summarised in the following table:

		Standalone financial statements	Consolidated financial statements
1	Entities listed on a regulated market in Poland or other European Economic Area (EEA) country	Choice	Required
2	Banks (other than those included in 1, 3 and 4)	Not permitted	Required
3	Entities applied for permission to list on a regulated market in Poland or other European Economic Area (EEA) country	Choice	Choice
4	Entities that are part of a group where the parent prepares consolidated financial statements for statutory purposes in accordance with IFRS as adopted by EU	Choice	Choice
5	Other entities	Not permitted	Not permitted

Accounting Records

The provisions of the Act and related regulations are applicable to, among others, companies and partnerships that have their registered office or place of management in Poland. For those entities that select to apply IFRS as their primary basis of accounting instead of Polish principles, the following sections of the Act will still apply:

- the principles of maintaining accounting books (it will not however include the format of financial statements) (chapter 2);
- stock taking (chapter 3);
- auditing and publishing financial statements (chapter 7);

- directors' report (Art. 49);
- protection of data (chapter 8);
- penal liability (chapter 9);
- specific and interim provisions (chapter 10);
- amendments to the provisions in force, and final provisions.

Each entity is obliged to maintain accounting books and other documentation which, in particular, contain:

- a description of the entity's accounting principles;
- rules for keeping subsidiary ledgers and their link to general ledger accounts.

Accounting records should be kept and financial statements drawn up in the Polish language and expressed in the Polish currency.

Major aspects of valuation of balance sheet items

Intangible assets

Intangible assets are recognised if it is probable that the future economic benefits that are attributable to the asset will flow to the company. Intangible assets are recorded initially at their purchase price and then are amortised over their useful lives or written down for impairment. The amortisation period for goodwill and development costs qualifying for capitalisation should not exceed five years. If justified, however, the amortisation period for goodwill may be extended up to 20 years.

Property, plant & equipment

Property, plant and equipment are stated at acquisition or production cost, less accumulated depreciation and impairment write-offs. Land is valued at its acquisition cost reduced by write-offs due to impairment.

Assets may be revalued in accordance with separate regulations.

The last revaluation was on 1 January 1995 based on decrees issued by the Ministry of Finance. The result of revaluation is reflected in the revaluation reserve. After a fixed asset is sold or liquidated,

the amount remaining in the revaluation reserve is transferred to reserve capital, which can be distributed.

Costs incurred on an asset already in use, such as repairs, overhauls or operating fees, are expensed as incurred. If, however, such costs increase the expected future economic benefits of a given fixed asset beyond the original expected benefits they are capitalised into the value of the asset.

Assets, except for land, are depreciated on a straight-line or other systematic basis over the assets' estimated useful lives or shorter of useful life or term of right.

Borrowing costs (interests) which relate to the construction, adaptation, assembly or improvement of a fixed asset or intangible asset are capitalised as part of the cost of the asset, where those borrowings were taken out for that purpose. FX gains/losses on such borrowings are also capitalised.

Investment property

Investment property is valued at purchase price decreased by depreciation and write-offs due to impairment or at their fair value – the policy to be selected. If the fair value model is selected, the change is recognized in the revaluation reserve in equity.

Investment property includes properties which the Company does not use for its own purposes but which were acquired or constructed for the purpose of generating profits in the form of increasing value and revenues from rental.

Other investments

Financial instruments

Financial instruments are initially recognised at their acquisition cost (price), being the fair value of the consideration given. The costs of the transaction are included in their initial value.

After initial recognition, financial instruments (including derivatives and embedded derivatives) are classified into one of the following four categories and reported as follows:

- investments held to maturity – measured at amortised cost, calculated using the effective interest rate;
- originating loans and receivables from providing funds – measured at amortised cost, calculated using the effective interest rate. Receivables from trade sales are not discounted;
- investments held for trading – measured at fair value. Any unrealised gains/losses are recorded in the profit and loss account;
- investments available for sale – measured at fair value, with unrealised gains/losses recognised in the profit and loss account or in the revaluation reserve in equity until the investment is sold or impaired at which time the cumulative gain/loss is included in the profit and loss account – the policy to be selected.

In single entity accounts of a dominant entity, investments in subsidiaries, associates or joint ventures can be carried at cost, equity accounted or fair valued. If carried at fair value, all changes are recognized in the revaluation reserve in equity. The fair value of financial instruments traded on an active market is set with respect to the prices listed on such market as at the balance sheet date. If there is no such listed market price, the fair value is estimated based on the listed market price of a similar instrument or based on the expected cash flow.

Those companies that are not subject to a statutory audit may elect not to apply the above valuation methods if it does not effect the true and fair presentation. In this case investments may be accounted for as follows:

- short-term investments – at lower of cost or market value or at fair value with gains/losses recognised in the profit and loss account;
- long-term investments – at acquisition cost less impairment or at fair value with gains/losses recognised in the revaluation reserve in equity.

Hedge Transactions

Transactions involving derivative instruments to hedge a financial risk are split into three types of hedges – cash flow hedges, fair value hedges and a hedge of a net investment in a foreign subsidiary. Hedge accounting applies as follows:

	Cash Flow Hedges	Fair Value Hedges	Hedge of a net investment in a foreign subsidiary
Hedged item recognized	In accordance with other standards	At fair value, with all changes recognized in the income statement	In accordance with other standards
Hedging instrument recognized	At fair value, with effective part of all changes in equity	At fair value, with all changes recognized in the income statement	At fair value, with effective all changes in equity

Inventories

Stock should be valued at the lower of cost or net realisable value. Capitalisation of financial costs in stock is permitted if the production process requires a necessary lengthy period of preparations.

Foreign currency transactions

Transactions denominated in non-Polish currencies are translated into Polish equivalents at the rate of exchange on the date of the transaction.

At the balance sheet date assets and liabilities denominated in foreign currencies (other than shares in subsidiaries and associates valued using equity method) are restated at NBP rate.

Foreign exchange differences arising on revaluation are recorded as financial income or financial expense except for:

- certain types of long-term investments denominated in foreign currencies where gains are recognised in the revaluation reserve;
- foreign exchange differences relating to liabilities financing assets under construction which form part of the cost of those assets;
- foreign exchange differences relating to derivative instruments used to hedge foreign exchange risk.

Share capital

Instruments are classified into equity or liability based on the terms and the definition of a liability and equity. *Dopłata* – or additional capital – regardless of its terms of redemption is classified as equity.

The share capital presented in the balance sheet should be equal to the amount registered at the registration court based on the shareholders' resolution.

Deferred tax

Deferred tax is provided, using the liability method, on all temporary differences at the balance sheet date between the tax bases of assets and liabilities and their carrying amounts for financial reporting purposes.

Deferred tax liabilities are recognized for all taxable temporary differences. Deferred tax assets are recognized for all deductible temporary differences and unused tax losses, to the extent that it is probable that taxable profit will be available against which the deductible temporary differences and unused tax losses can be utilized.

Deferred tax assets and liabilities are measured at the tax rates that according to provisions enacted by the balance sheet date will apply in the period when the asset is realized or the liability is settled.

The Deferred Tax Standard also requires additional tax credits given to companies in the past to be treated as a government grant – giving rise to a deferred tax asset and deferred income to be amortised over the useful life of the asset. Those companies that are not subject to a statutory audit may elect not to recognize deferred tax balances.

Leases

A lease is classified as a finance lease if at least one of the seven conditions is met:

- the legal title is transferred upon lease expiry;
- the asset may be purchased by the lessee at a price lower than the market value upon lease expiry;

- the lease term is longer than 75% of the economic useful life of the leased asset;
- the sum of the discounted minimum lease payments is higher than 90% of the market value of the leased asset as at the lease inception;
- the lease can be extended on more favourable terms;
- if cancelled, the lessee bears all cancellation costs;
- the asset is adapted to specific needs of the lessee.

Those companies that are not subject to a statutory audit may adopt simplified accounting for leases, i.e. account for the leases in accordance with the tax treatment.

Business combinations

Business combinations may be accounted for using the purchase method or pooling of interest method. Pooling of interest method may only be used where all 11 criteria given in the Act are met. Group reconstructions/reorganisations should generally not result in goodwill or fair value adjustments; i.e. pooling of interests for certain types of transactions is allowed; however, the definition of group restructuring for the application of pooling of interest method is quite restrictive – there must be 100% ownership.

8.1. Financial Statements

Financial statements must be prepared in Polish language and expressed in the Polish currency. Financial statements consist of:

- a balance sheet;
- an income statement;
- notes to the financial statements (split into an introduction and additional notes);
- a statement of cash flows;
- a statement of changes in equity.

A cash flow statement and a statement of changes in equity are only required by entities whose financial statements are subject to an audit.

Joint-stock companies, limited companies, insurance companies, co-operatives and state-owned companies prepare, additionally to the financial statements, a financial review by management – the management report (the Director's report). Such a report should include:

- description of events that occurred during the reported period and after its closing date till the date the financial statements are approved, that significantly impact the entity's performance;
- predicted development of the entity;
- major achievements in the research and development area;
- actual and planned financial situation, including financial ratios;
- details about transactions in own shares;
- financial risk management objectives and methods.

The format of the balance sheet, income statement, statement of cash flows, statement of changes in equity and the contents of notes to the financial statements are determined by the Accounting Act. Companies listed on the Warsaw Stock Exchange (*Giełda Papierów Wartościowych w Warszawie – WSE*) when preparing the financial statements in accordance with Polish GAAP are guided by specific regulations for public issuers. This includes a reconciliation between the results reported in accordance with Polish accounting principles and those that would have been met if IFRS as adopted by EU had been applied.

8.2 Financial Reporting and Audit Requirements

Financial reporting

All entities governed by the Accounting Act are obliged to prepare financial statements and consolidated financial statements (if applicable) for each financial year. The financial year need not be the calendar year. Listed companies are additionally obliged to prepare semi-annual and quarterly (simplified) financial statements as well as consolidated financial statements. An entity must also prepare financial statements as at the date of the close of the accounting records and as

a result of the other events, for example: close of business (liquidation date), at the date preceding the change of its legal form, or at the date of division or merger if the new entity is established.
Financial statements must be filed with the registration court together with the following documents:

- auditor's opinion, if the statements were subject to an audit;
- shareholders' resolution on the approval of the financial statements and distribution of profit or coverage of loss;
- directors' report.

The standalone or consolidated financial statements should be approved respectively within 6 months and 8 months after the balance sheet date.

Filing is required to be performed within fifteen days of approval of the financial statements by the shareholders or the period during which they should have been approved.

Listed companies are also subject to file their financial statements with the Financial Supervision Commission (*Komisja Nadzoru Finansowego – FSC*) including interim (quarterly and semi-annual) reporting. Shorter deadlines apply.

All entities which are required to be audited must also publish elements of their financial statements in the Commercial Bulletin (*Monitor Polski B*).

Violation of the Accounting Act by a person responsible for drawing up the financial statements (usually the Management Board) may be recognised as a criminal offence, punishable by imprisonment for a term not exceeding two years, by a fine, or both.

Audit requirements

Polish statutory audit requirements apply to the annual standalone and consolidated financial statements of the following entities that operate as a going concern:

- all banks, insurance companies, investment and pension funds, joint-stock companies and listed companies;
- other entities that meet at least two of the following three thresholds in the financial year preceding the financial year for which the financial statements were drawn up:
  – annual average employment – 50 individuals in full time jobs;
  – total assets as at the end of the financial year – the Polish currency equivalent of 2 500 000 € or greater;
  – net sales including financial income for the financial year – the Polish currency equivalent of 5 000 000 € or greater.

The statutory audit requirments apply also to entities after merger for the year when the merger occurred.
The semi-annual financial statements of listed companies and investment funds are subject to review by an independent auditor.

Audits are governed by the relevant legal requirements in force, which include:
- Chapter 7 of the Accounting Act;
- Auditors Act;
- auditing standards issued by the National Chamber of Auditors.

8.3 Consolidation

Consolidation requirement

A capital group is defined as a group which comprises a holding company, its subsidiaries and jointly controlled entities not being commercial entities.

According to the Accounting Act, a holding company is defined as a company that controls or jointly controls another entity.

A capital group must draw up consolidated financial statements on the basis of the standalone financial statements of entities that belong to the group.

Consolidated financial statements of a capital group are not required if two out of three of the following thresholds are not met in the financial year and the preceding financial year:

- annual average employment – 250 individuals in full time jobs;
- sum of total assets of all group entities – the Polish currency equivalent of 7 500 000 €;
- sum of sales including financial income of all group entities – the Polish currency equivalent of 15 000 000 €.

A subsidiary or a jointly controlled entity is excluded from consolidation (or proportional consolidation) if:

- the shares in such entity were acquired, purchased or otherwise obtained for the sole purpose of subsequent resale, within one year of the date of acquisition;
- there are restrictions on the exercise of control or joint control over the entity, which restrictions prevent free disposal of its assets, including net profit generated by this entity, or which prevent exercise of control over the bodies directing the entity.

A subsidiary or a jointly controlled entity need not be included in the consolidated financial statements if:

- the amounts stated in that entity's financial statements are immaterial in relation to the holding company's financial statements;
- the costs of gathering information are very high (only for entities outside the EEA).

Consolidated financial statements

Consolidated financial statements comprise:

- a consolidated balance sheet;
- a consolidated profit and loss account;
- a consolidated statement of cash flows;
- a consolidated statement of changes in equity;
- notes to the consolidated financial statements (split into an introduction and additional notes).

Consolidated financial statements should be accompanied by a Group directors' report. The directors' report should be prepared by the Management Board of the holding company.
Consolidated financial statements should be prepared within five months of the balance sheet date of the holding company. They should be approved by the shareholders of the holding company within eight months of the balance sheet date.
Consolidated financial statements should be prepared as at the same balance sheet date and for the same financial year as the financial statements of the holding company. If this date is not the same for all entities within the group, then consolidation may cover financial statements drawn up for a different twelve-month period than the financial year, if the balance sheet date of those financial statements proceeds by no more than three months of the balance sheet date adopted by the group. Companies included in the consolidation should adopt consistent accounting policies and consistent methods of preparation of financial statements. If the accounting policies of consolidated entities differ from those applied for consolidation, then appropriate adjustments must be carried out at the consolidation level.

Methods to Include Entities in Consolidated Financial Statements

A subsidiary (see Consolidation requirement) is consolidated using the full consolidation method.
Jointly controlled entities that are not companies are consolidated using the proportional consolidation method. Commercial jointly controlled entities that are companies are accounted for using the equity accounting method.
Associates are accounted for using the equity accounting method.

8.4 Principal Differences between Polish and International Financial Reporting Standards

The main differences between Polish Accounting Standards (PAS) and International Financial Reporting Standards (IFRS) effective as of 1 January 2007 are presented below.

Other main differences between Polish and International Financial Reporting Standards

Description	PAS	IFRS
Functional currency	Functional currency concept does not underlie the preparation of the financial statements.	Functional currency concept underlies the preparation of the financial statements.
Long term contracts	Long term contracts approach need only be applied for contracts with a period exceeding 6 months	Construction contracts approach should be applied to all contracts of this type regardless of the period.
Investment property	Assets are acquired for increase in value or rental or interest, and not used on the operations of the business. Assets are measured using the fair value or cost model. Fair value model requires regular revaluation of property to fair value, with all changes reflected in equity. Cost model requires carrying at cost and depreciation over a useful life. Assets held under an operating lease cannot be classified as investment property.	Assets are held for increase in value or rental, and not used on the production or supply of goods or services or for administrative purposes or not held for sale in the ordinary course of business. Assets are measured using the fair value or cost model. Fair value model requires regular revaluation of property to fair value, with all changes reflected in the profit and loss. Cost model requires carrying at cost and depreciation over a useful life. Assets held under an operating lease can be classified as investment property, and accounted for as a finance lease. The fair value model must be applied.
Intangible assets	Revaluation to fair value is not permitted. All intangible assets are amortised	Revaluation to fair value permitted only if there is an active market in which to reliably determine fair value. Intangible assets are split into those with a finite life – amortised – and those with an indefinite life – not amortised and subject to a yearly impairment test.
Impairment of assets	Assessed yearly if there is high probability that the assets (including goodwill and intangibles) will not bring expected benefits. Write assets down to selling value or if that is not available to fair value.	Assessed yearly if there are indicators that assets may be impaired (including goodwill and intangibles). If indications exist, write assets down to the higher of fair value less costs to sell and value in use. Even if there are no indicators, goodwill, indefinite life intangible assets and intangible assets not yet in use are subject to a yearly test.

Description	PAS	IFRS
Hyperinflation	No adjustments for hyperinflation – regulated restatements of fixed assets undertaken instead as noted below.	During periods of hyperinflation, assets and liabilities are restated to reflect the changes in the general price index.
Business Combinations	Accounted for as an acquisition or pooling of interest – based on the conditions of the combinations. Group reorganisations among entities under 100% control also apply pooling of interest method.	Accounted for as an acquisition in all cases. No accounting given for combinations among entities under common control.
Goodwill & adjustments to fair value on acquisition	Goodwill on acquisition (including associates) is the difference between the purchase price and the fair value of all assets and liabilities acquired. Changes in the initial fair values of acquired assets and liabilities, which are identified during the financial year in which the acquisition took place should adjust goodwill. Goodwill is amortised over the useful life, generally not expected to be longer than 20 years. Negative goodwill: – relating to future losses acquired is deferred and amortised over the period of the loss; – otherwise, up to the value of the depreciable assets is deferred and amortised over the depreciable life; – balance is recognized as income.	Goodwill on acquisition (including associates) is the difference between the purchase price and the fair value of all assets and liabilities acquired including contingent liabilities. Changes in the initial fair values of acquired assets and liabilities, if only provisionally assessed at the date of acquisition, which are identified within 12 months of the acquisition, are adjusted against goodwill. Goodwill is not amortised, but subject to a yearly impairment test. Negative goodwill is recognised as income.
Fixed assets	Fixed assets may be revalued only on the basis of separate regulations to a value not exceeding the fair value.	Fixed assets may be revalued to their fair value.
Discounting of long-term trade receivables and payables	Trade receivables and payables, regardless of the credit period, are not discounted.	Long-term trade receivables and payables are discounted as any other financial assets.

Description	PAS	IFRS
Capitalisation of borrowing costs	All borrowing costs incurred in the period of construction of tangible and intangible assets are capitalised as part of the assets' cost. FX gains/losses are also included as part of the borrowing costs. A choice is given to capitalise borrowing costs into inventory which takes considerable time to complete.	Requires an entity to choose between capitalising or not capitalising borrowing costs on specific and general borrowings to finance the construction of individual qualifying assets. FX gains/losses are also included as part of the borrowing costs, to the extent they represent an adjustment to the interest charge.
Investments in subsidiaries, associates and joint ventures in separate standalone accounts of the parent	Choice of policy between: – cost; – equity accounting; – fair value with all changes recognized directly in equity.	Choice of policy between: – cost; – fair value with all changes recognized directly in equity.
Joint Ventures	Joint ventures which are commercial companies are accounted for using the equity accounting method. Joint ventures which are not commercial companies are accounted for using proportional consolidation.	Choice of policy applied to all joint ventures, between: – proportional consolidation; – equity accounting.
Financial instruments	There are the following categories of financial instruments: – loans and receivables restricted to those arising from providing funds to another entity; – available for sale financial assets are valued at fair value with a choice of policy to recognize changes in the income statement or equity. Any impairment recognized in the income statement may be reversed in the income statement at a later date; – held for trading instruments are those acquired for the purpose of generating profits from sale in a short period of time;	There are the following categories of financial instruments: – loans and receivables include those arising from sale of goods and may include balances acquired in some cases; – available for sale financial assets are valued at fair value with changes recognized in equity. Any impairment below cost is recognized in the income statement and may not be reversed through the income statement; – financial assets or financial liabilities at fair value through profit and loss consist of: – held for trading category;

Description	PAS	IFRS
	– held for maturity investments are non-derivative financial assets with fixed or determinable payments and fixed maturity that an entity has the positive intention and ability to hold to maturity; – other financial liabilities.	– other assets or liabilities designated by management as at fair value through profit and loss; – other financial liabilities.
Hedging	Cash flow hedges include all firm commitments. The balance in equity is included in the carrying value of the acquired asset/ liability.	Cash flow hedges include firm commitments only relating to FX risk – all other firm commitments are fair value hedges. The balance in equity remains in equity until the underlying transaction effects the income statement. If the firm commitment was for a non-financial asset or liability there is a choice of policy to adjust the carrying value of the asset/liability or keep the balance in equity until the asset/liability impacts the income statement.
Investment tax credits	Investment tax credits used give rise to a deferred tax asset and are recognized as a government grant to be amortised over the useful life of the asset (per standard issued by Accounting Standards Committee).	Unused investment tax credits give rise to a deferred tax asset and affect the tax charge in the year granted.

In any matters not regulated by the Accounting Law or the Decrees an entity may apply national accounting standards issued by the Accounting Standards Committee. In the absence of relevant local regulations, the entity may apply International Financial Reporting Standards.

Contacts

About Ernst & Young

Ernst & Young worldwide...

Ernst & Young, a leading international professional advisory services firm, identifies growth opportunities and helps companies to make the most of them.

Ernst & Young audits over 25% of the companies listed in the Standard & Poor's Global 1200 Index. We are also a world leader in tax advisory.

Over 114 000 specialists in many different areas in 140 countries combine expertise and international experience with a thorough knowledge of local markets.

Our goal is to provide innovative and practical solutions: from thought to finish and a final assessment of solution effectiveness.
Our integrated package of services, vast resources and global reach enable us to serve our clients wherever they may be.

... and in Poland

Our roots in Poland go back to the years 1933–1939, when Whinney, Murray & Co, Ernst & Young's predecessor, provided advisory services in Warsaw. We have operated in Poland under the name of Ernst & Young since 1990.

Thanks to the combination with Andersen, Ernst & Young in Poland has become the biggest auditing and advisory firm on the Polish market. Our total workforce in the offices in Warszawa, Katowice, Kraków, Poznań and Wrocław tops one thousand professional advisors and auditors.

Our cooperation with corporate and entrepreneurial clients is not limited to assessing the current state of affairs and working out successful business strategies; we also aim to help them adapt to the changing market environment and tax regulations thus giving them an advantage over their competitors in Poland and abroad.

We provide professional services in the following areas: audit, business advisory, accounting, tax advisory, transaction advisory, grants and incentives advisory, real estate advisory and training.

Our Services

Assurance

We conduct audits of the financial statements prepared in conformance with the Polish Accounting Act (Polish accounting standards), Generally Accepted Accounting Principles in the United States (U.S. GAAP) or in accordance with standards (International Financial Reporting Standards or IFRSs) issued by the International Accounting Standards Board (IASB).

Business Advisory

We assist our clients in solving the business issues which they face in their operations.

We demonstrate how to improve operations according to global benchmarks, how to comply with legal requirements and gain competitive advantage. In particular:

- we provide advice in business risk management and business process improvement. We provide assistance in setting up internal controls and advise how to prevent and detect fraud;
- we advise our clients in financial risk management, including how to optimize the infrastructure, processes and operations relating to financial instruments. This includes measurement, modelling and hedging against market and credit risk, valuation of derivatives, and selection and implementation of systems used in treasury and risk management departments;
- we review the use of information technologies as well as the costs and effectiveness of IT departments. We help to design and implement solutions improving business processes efficiency and information security;
- we advise telecommunication companies in the most strategic areas of their operations, starting from analysis of cost of goods and services through regulatory advice and support in meeting regulatory requirements;
- services provided to companies from the energy sector include advising on strategies, restructuring, tariffs, transactions, finance and accounting, taxes as well as information systems and trading in emission rights;
- our services to the oil and gas and chemicals sector are industry-focused and include analysing strategies, restructuring, improving processes, reducing costs and creating new business solutions.

Tax Services

Our tax advisors help clients to minimize tax burdens while observing all legal regulations. We offer the following services:

- International tax;

- VAT, customs and excise;
- Corporate income tax;
- Personal income tax and payroll – Human Capital;
- Social security;
- Investment strategies;
- Transfer pricing;
- Litigation;
- Financial solutions.

Transaction Advisory Services

We provide integrated solutions related to a wide range of transaction types. We help clients avoid exposure or inappropriate transactions and achieve set goals on the most favourable terms.

Our services include: a financial, tax, and IT due diligence; assistance before transactions; valuations; financial and business modeling. We provide buy side acquisition advice and sell side advice for those disposing of their holdings in a company or business. We also support our clients in restructuring processes offering effective working capital management and financial restructuring advice, preparing business reviews and participate in the management of the entire process.

We offer a wide scope of services for private equity houses and provide projects for banks, in particular limited reviews before granting a bank loan and monitoring of debtors' business activity.

Real Estate Services

Real Estate Services Group provides a full range of consulting services for all types of real estate including offices, shopping centres, hotels, leisure and residential developments, industrial as well as agricultural properties. Our services include:

- Real Estate Finance & Transaction Support. We offer project finance and transaction advisory for the acquisition and disposal of real estate, perform real estate due diligence (including tax, accounting, legal, physical and market aspects);
- valuations, market analysis, highest & best use studies;

- corporate Real Estate / Portfolio Management/Advisory Services. Services cover restructuring of real estate portfolios, business location analysis and site selection, advice provided to landlord or tenant in negotiations.

Grants and Incentives Advisory Services

The Grants and Incentives Advisory Services Department co-operating with the Global Incentive Advisor of Ernst & Young:

- advises which EU funds are available and helps in the process of applying for financial support;
- supports entrepreneurs in negotiations of terms and conditions for public funds granted by institutions of central and self-government administration;
- analyses the impact of Poland's accession to the EU on companies and industry branches and prepares a schedule of the necessary adjustment steps;
- helps start co-operation with self-government authorities and implement projects co-financed from structural funds.

Accounting Services

Our services cover:

- keeping books of account; we offer Clients our Accounting Online system, which gives them secure, remote access to financial data;
- preparing salary settlements and handling personnel matters;
- reviews of documentation and payroll and bookkeeping procedures;
- help with organising financial-accounting staff/services.

We advise on issues relating to:

- bookkeeping;
- salaries and social security.

Ernst & Young Academy of Business – Training Services

To meet market requirements, we offer the following types of training:

- preparing candidates for exams of international professional organizations;
- multi-level tailor-made training programs;

- short supplementary sessions in a particular area: financial and managerial courses.

All courses are run by professional lecturers and include workshops and case studies. This helps participants develop their skills and acquire useful knowledge.

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About Domański Zakrzewski Palinka

Domański Zakrzewski Palinka spółka komandytowa (DZP) was founded in 1993 in Warsaw, Poland. At present Domański Zakrzewski Palinka, the largest law firm in Poland, employs more than 100 lawyers in Warsaw, Poznań, Wrocław and Toruń. We are recognised as the market leader and the first to offer multi-disciplinary services. Our clients include Polish companies with Polish capital, Polish companies with foreign capital, as well as foreign investors operating in a number of areas, including banking and finance, construction, engineering, food processing, machine industry, stock market, tourism and real estate. We also provide advisory services to the leading telecommunications and electronics companies, as well as companies involved in state-of-the-art technology and e-business. Our service lines include M&A, project finance, labour, IP/IT, securities and community law, private equity funds and venture capital, litigation/arbitration. The enterprises we serve are those starting up in business, medium size firms and international corporations and their Polish subsidiaries in almost all sectors and specialisations.
Our Law Firm comprises teams which specialize in providing a wide range of services to foreign clients. The firm often co-operates with Ernst & Young on projects demanding legal advisory services.

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About the Polish Information and Foreign Investment Agency

The Polish Information and Foreign Investment Agency (*Polska Agencja Informacji i Inwestycji Zagranicznych S.A.*) was established to increase the inflow of foreign direct investment to Poland. Our country according to many international reports ranks very high in terms of investment attractiveness in the world. PAIiIZ offers foreign entrepreneurs quick access to information regarding economic and legal investment environment, as well as advice in each phase of the investment process. It helps in finding a convenient investment location and obtaining investment incentives.

PAIiIZ supports the activities of Polish entrepreneurs abroad. It promotes export of Polish products and services on the international market, as well as Polish foreign investments. The Agency takes part in preparing export support programs.

PAIiIZ's mission includes creating a positive image of Poland in the world by attracting foreign investors to locate their business here. PAIiIZ organises investment seminars, conferences and trade missions.

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