

WARDYŃSKI & PARTNERS
ADVOCATES & LEGAL ADVISERS



**A GUIDE TO DOING BUSINESS
IN POLAND**

PREFACE

This publication is an overview of the legal aspects on conducting business activity in Poland.

It is primarily, although not exclusively, aimed at foreign investors that already operate on, or are considering entering, the Polish market.

The publication provides, at a glance, the general rules and provisions that apply when establishing and conducting a business in Poland, presented in the form of questions and answers. The choice of questions reflects the most frequent enquiries raised by foreign investors in the course of discussions with our firm.

Although this publication faithfully reflects the legal position as at August 2006, it should be treated as a general guide only, and can never be a substitute for proper legal advice.

I hope that the information contained herein will assist and galvanise those of you who have not yet done so to invest in Poland.

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BACKGROUND

Poland is the largest country in East-Central Europe and one of the largest and most attractive markets for investors in Europe.

Since the collapse of communism in 1989, Poland is a liberal democracy with a strong rule of law. The foundation of the Polish system (political and socio-economic) is the Constitution of the Republic of Poland of 1997, which guarantees civil rights and liberties, as well as economic freedoms.

Successful political transformation followed by economical and social reform led to the accession of Poland to the European Union (EU) and the European Economic Area (EEA) in May 2004. Consequently, domestic laws are now in line with European Community provisions. In the next several years Poland is likely to join the European Monetary Union that will culminate in the Euro replacing the domestic currency.

As well as being an EU and EEA Member State, Poland is a member of many international organisations (OECD, WTO, NATO, etc.) and a signatory to numerous bilateral and multilateral agreements. Therefore, further development of Poland's free market economy will also be stimulated by external factors.

Poland has been successful in promoting economic growth, which has risen steadily in recent years. The GDP in 2005 stood at 3.4 % and, according to forecasts, is set to reach at least 4% by the end of 2006. A remarkable success of economic reform was the reduction of hyper-inflation of 600% in 1990 to a level that is around 2% today.

Almost all major companies owned by the state under communist rule have been privatised. These include some of the largest service providers in the banking, insurance, and telecommunications markets, as well as those in manufacturing sectors (e.g. iron and steel, and the shipbuilding industry). There are still major re-privatisation challenges since issues surrounding this goal are complex.

The modernisation of the Polish economy would not be possible without the existence of a modern financial and banking system. Regulations concerning the operation of banks and security of the entire banking system are also in line with the European Community requirements. Commercial banks offer their services to both corporate bodies and private individuals. Numerous foreign and domestic investment banks are also active in Poland. The National Bank of Poland plays an overall supervisory role over the banking sector.

The Warsaw Stock Exchange, which has been active since 1991, plays a pivotal role in stimulating the financial market. Shares in Polish and foreign companies are traded, as are bonds and other securities, as well as derivatives. In 2005, detailed legislative provisions were enacted to regulate trading in financial instruments, public offerings, as well as capital market supervision.

Commercial services have grown significantly in recent years in Poland. The possibility of hiring highly-trained local personnel, as well as relatively low costs of employment, precipitated a flood of investors to relocate their global operational support facilities to Poland. The country has seen a growth in technical research, IT, call centres, and accounting services. In addition, numerous initiatives exist for new investments, including 14 Special Economic Zones and numerous technology parks.

Poland is currently one of the largest and most attractive investment markets in Europe. Given its geographic location, an investment in Poland also provides easy access to neighbouring markets in Russia and the Ukraine. Since the early 1990s the inflow of foreign capital into Poland has exceeded USD 73 billion and is expected to grow on average to more than USD 8.5 billion annually by 2010.



I. ESTABLISHING AND RUNNING A BUSINESS IN POLAND

1.1 WHAT ARE THE RULES GOVERNING BUSINESS ACTIVITY IN POLAND?

The Economic Activity Freedom Act of 2004 governs the establishment, performance and termination of a business activity in Poland. The underlying principles of the Act are:

- freedom of establishment, performance and termination;
- equal treatment of all economic operators;
- fair competition; and
- consumer protection.

The same rules that apply to Polish citizens equally apply to:

- nationals of EU and EEA Member States;
- foreign nationals with permanent residence in Poland;
- refugees recognised as such in Poland;
- those with exceptional leave to remain, or those who are subject to temporary asylum, in Poland.

Other foreign nationals or entities may only conduct business in Poland through established legal forms, such as a limited liability company, but not as individuals. However, initial capital requirements are minimal as compared to the highly developed countries.

1.2 ARE THERE ANY RESTRICTIONS ON CONDUCTING BUSINESS ACTIVITIES?

The basic principle is that business activity not expressly forbidden by law is otherwise permitted. However, there are circumstances where a permit or licence is required.

Activities requiring a licence include:

- the prospecting for, or exploitation of, subterranean natural resources;
- the manufacture of, or trade in, explosives, armaments or ammunition, as well as manufacture of, or trade in, goods, and development of, or trade in, technology, specifically intended for the military or the police;
- the manufacture, processing, storage, transport, or distribution of fuels or energy, as well as trade therein;
- the provision of property or personal security services;
- radio or television broadcasting; and
- the carriage of goods or passengers by air.

A licence for any of the above is issued for a period of between five years and 50 years, depending on the activity.

In some sectors of the economy, special conditions must be fulfilled prior to commencing the activity concerned. An undertaking may have to be entered in a regulated activities register, and obtain a prior permit.

The applicable provisions cover, *inter alia*, the following:



- special economic zones;
- trade in financial instruments;
- electronic payment instruments;
- pharmaceutical products;
- telecommunication services;
- banking services;
- insurance services, including agency services;
- postal services;
- carriage of goods or passengers by road;
- construction;
- production and distillation of, or trade in, wines and spirits; and
- gambling and mutual betting services.

1.3 IN WHAT FORM CAN A BUSINESS ACTIVITY BE ESTABLISHED AND CARRIED ON IN POLAND?

The most common forms are the following:

- registered partnership;
- professional partnership;
- limited partnership;
- partnership limited by shares;
- limited liability company (*sp. z o.o.*); and
- joint stock company (*S.A.*).

On a smaller scale, a business activity can also be conducted in the form of a sole trader or a civil partnership.

In addition, EU and EEA investors can operate through the European Company (*Societas Europaea* (SE)) or the European Economic Interests Grouping.

1.4 WHAT ARE THE BEST WAYS TO CONDUCT BUSINESS IN POLAND?

The most effective way to conduct business in Poland is to establish a company.

LIMITED LIABILITY COMPANY OR JOINT STOCK COMPANY

As in many other jurisdictions, by establishing a separate company in Poland investors limit their liability to the value of the capital invested. This is the most efficient form through which to conduct business activity in Poland. Operating a limited liability company is



cheaper and subject to fewer formalities than in the case of a joint stock company. However, in certain sectors business activity may only be conducted through a joint stock company, e.g. insurance, commodity markets, investment funds and banking.

BRANCH OFFICE

A foreign company branch office can only operate within the defined scope of business activities of the parent company, and is, therefore, a more restrictive form of business entity. A branch office does not have a separate legal personality and any liability arising from its activities is borne by the parent company.

REPRESENTATIVE OFFICE

A representative office may not conduct any business activity in Poland independently of its parent company. It may only engage in the promotion or information-related operations. It is the most limited form through which business can be conducted.

1.5 WHAT ARE THE INITIAL CAPITAL REQUIREMENTS FOR A LIMITED LIABILITY OR JOINT STOCK COMPANY IN POLAND?

In the case of a limited liability company the minimum share capital is set at PLN 50,000 (approx. EUR 12,500).

For a joint stock company, it is PLN 500,000 (approx. EUR 125,000).

In both cases, there are additional costs. These include the cost of registering the company in the National Court Register, court fees and charges, and notary fees, fixed by applicable provisions. Notary fees depend on the value of the company's share capital.

1.6 WHAT STEPS MUST BE TAKEN TO ESTABLISH A COMPANY?

LIMITED LIABILITY COMPANY

The procedure for establishing a limited liability company in Poland involves the following basic steps:

- execution of Articles of Association;
- shareholders to pay up the company's share capital in full (in cash or in kind);
- appointment of a management board, and where required by law or the Articles of Association, a supervisory board or audit committee;
- registration in the National Court Register.

JOINT STOCK COMPANY

The procedure for establishing a joint stock company is more complicated. It involves:

- adoption of the Statute;
- appointment of management and supervisory boards;
- issuing of shares;
- shareholders to pay up the share capital in part or in full (in cash or in kind) - it suffices to pay up 25% of the share capital prior to registration;
- registration in the National Court Register.



The registration application must be submitted within six months of the date of signing of Memorandum of Association. The application must contain: the name of the company and its registered office, and Memorandum of Association.

The registration process usually takes between two and four weeks.

1.7 WHAT GOVERNING BODIES MUST A LIMITED LIABILITY COMPANY OR A JOINT-STOCK COMPANY HAVE?

In both cases, a shareholders' meeting must be constituted and a management board appointed. A supervisory board is only mandatory if required by the relevant governing document or by law. An audit committee may be constituted in addition to, or instead of, a supervisory board.

The powers and structure of these bodies are regulated by the relevant governing document, subject to applicable provisions of law.

SHAREHOLDERS MEETING

In both companies, the shareholders' meeting is the supreme decision-making body. As a rule, the number of votes held by each shareholder reflects the number of shares owned, unless the relevant governing document or provisions of law provide otherwise.

The shareholders' meeting is responsible for the following:

- amending the Articles of Association or Statutes, as the case may be;
- approving the company's annual financial statement;
- appointing members to the company's governing bodies (certain restrictions apply in the case of a joint stock company);
- approving the activities of the company's governing bodies performed by them during the preceding financial year;
- approving a reduction or increase in the company's share capital.

MANAGEMENT BOARD

The management board is responsible for managing and representing the company. It may comprise one or more members. Shareholders of a limited liability company normally appoint management board members at a shareholders' meeting. In the case of a joint stock company, the supervisory board appoints the management board, unless the company's Statutes provide otherwise.

SUPERVISORY BOARD (OR AUDIT COMMISSION)

The appointment of a supervisory board and/or audit commission is optional for a limited liability company. Nonetheless, where the company's share capital exceeds PLN 500,000 (approx. EUR 125,000) and the company has more than 25 shareholders, a supervisory board must be appointed.

In a joint-stock company, an internal supervisory board must be constituted. Furthermore, in the case of a state-owned company, the composition and structure of its supervisory board is governed by detailed provisions of law.

A member of a supervisory board or an audit commission cannot perform any other functions in, or for, the company: in particular (s)he may not be a management board member, nor act as an agent, receiver, accountant, consultant or lawyer.



1.8 WHAT ARE THE REQUIREMENTS FOR BECOMING A MANAGEMENT BOARD MEMBER? CAN A FOREIGN NATIONAL SERVE AS A BOARD MEMBER IN A POLISH COMPANY? WHAT IS THE SCOPE OF MANAGEMENT BOARD MEMBERS' LIABILITY?

There are no separate restrictions on foreign nationals becoming members of a Polish company's governing bodies. In all cases, any individual with full legal capacity can serve as a management board member.

Management board members are duty bound to act in the best interest of the company and may not compete with it, or serve on governing bodies of any of its competitors, without the company's consent. This also applies to members holding 10% or more shares in any competitive undertaking.

Management board members, as in the case of shareholders, are not liable for the company's obligations.

However, board members may incur criminal and fiscal criminal liability for acts performed by them to the detriment of the company. Board members of a limited liability company may be exposed to a secondary civil liability where the company becomes insolvent and enforcement against its assets fails to satisfy the company's debts. In those circumstances, board members may be liable with their private assets. Board members may also be deprived of the right to serve on management and supervisory boards of other companies. A board member can avoid personal liability by filing a petition for a declaration of insolvency within two weeks of the date when the circumstances for corporate insolvency became apparent.

1.9 WHAT ARE THE MAIN DAY-TO-DAY DUTIES OF THOSE RESPONSIBLE FOR MANAGING A COMPANY?

REGISTRATION

A company's management board is obliged to notify the National Court Register of any changes pertaining thereto in respect of the company, including any amendments to its governing documents, the appointment or dismissal of its commercial proxies, as well as resolutions adopted by the company shareholders' meetings.

ACCOUNTING

All companies incorporated in Poland must keep accounts and maintain documentation in accordance with the Accountancy Act of 1994. As a rule, accounts should be kept at the company's registered office. Where the company's accounting is outsourced the accounts may be kept outside the company's registered office, but within Poland.

A company must prepare an annual financial statement in accordance with the rules laid down by law. Subject to certain provisions, smaller companies may draw up a simplified financial statement.

Financial statements of most companies are subject to an audit by a chartered accountant and must be published in the Polish Official Journal (B). There are no exceptions to this rule.

1.10 WHAT ARE THE POSSIBILITIES FOR INCREASING OR REDUCING THE SHARE CAPITAL?

In general, increasing a company's share capital (both in the case of a limited liability company and a joint-stock company) requires the company's governing documents to be amended. In the case of a limited liability company there may be exception to this rule. No amendment is required where the company's Articles of Association provide for the possibility of increasing its share capital to a specified amount within a specified period.



A company's share capital may be increased in one of two ways:

- by increasing the nominal value of the existing shares — which requires the current shareholders to make additional payments for shares held; or
- by issuing new shares.

Apart from the general rules that apply to both limited liability companies and joint stock companies, there are specific provisions governing the issue of new shares by the latter. A joint stock company may offer new shares to selected institutions or companies (private subscription), to shareholders with a subscription right (closed subscription) or any interested parties (public subscription).

In both cases, it is possible to increase the share capital from the company's own equity.

Where the company's shareholders wish to reduce its share capital, they must adopt the relevant resolution, and notify all creditors of this fact.

A resolution adopted to increase or reduce the company's share capital must be notified to the competent court, and only becomes effective upon registration.

1.11 WHAT ARE THE POSSIBILITIES FOR TRANSFORMING ENTITIES IN POLAND?

TRANSFORMATION

Under Polish company law provisions it is possible to transform companies, e.g. a partnership may be converted into a company and *vice versa*. Transforming a limited liability company into a joint stock company is the most common form of conversion in Poland. It is usually done to implement the investor's expansion plans, and to float the transformed entity on the stock exchange.

A transformation must be executed in accordance with the relevant legal provisions and the governing document of entities involved.

MERGES AND DEMERGERS

Subject to certain provisions, companies are free to merge and demerge. This is a three-stage process:

- drafting of a merger/demerger plan (an important element of which is the legal audit);
- approval of the transformation plan by a qualified majority of votes of the governing bodies of all entities involved, unless the law provides for stricter requirements;
- registration and public notification.

The procedure on mergers between companies and partnerships is significantly simpler than the procedure on mergers between companies. However, the option to demerge is open only to limited liability companies and joint stock companies. There are restrictions on demerging companies in liquidation and those declared insolvent.

A merger of two or more entities (in particular companies) must comply with commercial law provisions and merger control rules, as well as the governing documents of entities involved.

1.12 WHAT IS THE PROCEDURE FOR A COMPANY TAKEOVER: SHARE ACQUISITION VS. ASSET ACQUISITION?

An acquisition of shares (share deal) is a simpler process but carries a greater risk, in particular where it involves the acquisition of the entire company, as all its assets and liabilities are assumed by the purchaser.



An acquisition of assets (asset deal) is more complex, requiring identification of the assets to be taken over and appraisal of the risks involved. Assets acquired constitute an enterprise for which the purchaser is jointly and severally liable with the seller for liabilities incurred by that enterprise. This liability cannot be excluded without the consent of creditors, and is up to the value of the enterprise, unless the purchaser could not have discovered such liabilities by employing due diligence.

Regardless of the manner in which a company is acquired, the process should be preceded by a detailed due diligence in order to minimise any potential risks.

1.13 WHAT ARE THE PROVISIONS GOVERNING E-COMMERCE IN POLAND?

Although Poland introduced e-commerce provisions only in 2000, this sector has enjoyed significant growth year on year, with 2005 seeing a boom in the e-commerce market, estimated to be worth PLN 1 billion (approx. EUR 250 million).

In Poland e-commerce is governed by both general commercial law provisions and e-commerce provisions.

Recently, e-banks, e-shops and e-auctions have become increasingly popular. The growth in this industry, however, is still being hampered by the fact that provisions on electronic signatures are only to come into force in 2008.

1.14 HOW CAN AN ENTITY PROTECT ITSELF AGAINST THE EFFECTS OF A CLIENT'S INSOLVENCY?

It is impossible to have complete protection against the effects of insolvency, although preventive measures taken early on can ensure that a creditor is in a privileged position in the event of a debtor's insolvency.

This can be achieved in several ways:

- by reserving ownership title to any property or product sold until the price is fully paid;
- by establishing security whereby the title to debtor's asset will be transferred to the creditor in the event that the debt is not paid.

Title reservation must be made in a document with a certified date. The document must be drafted by a notary public, or a public official such as a mayor, provincial governor etc. Where the title is reserved, the assets or interests concerned are excluded from the insolvent estate.

An alternative, although a less advantageous solution, is to establish limited property rights over the debtor's assets in order to secure amounts due under an agreement.

1.15 WHAT SHOULD BE BORNE IN MIND WHEN FINANCIAL DIFFICULTIES ARISE?

Where a balance sheet reveals that the level of losses exceeds both the reserve and share capital, the management board of the company must immediately call a shareholders' meeting to adopt a resolution on the company's fate.

The company can:

- commence recovery proceedings, where it is still only threatened with insolvency;
- commence insolvency proceedings with the possibility of entering into a composition agreement;
- commence liquidation proceedings.



Where management board members fail to take appropriate actions to prevent the company's insolvency, they may be held accountable and personally liable.

Polish law does not recognise the principle of protection against liquidation at the cost of creditors.



II. CONFLICT RESOLUTION AND DEBT RECOVERY

2.1 WHAT IS THE LEVEL OF LEGAL RISK IN POLAND?

The level of legal risk in Poland is low. The safeguarding of legal transactions is enshrined in domestic legislation and protected by the relevant European Community provisions.

Poland's legal system is based on codified law (in contrast to the common law system), administered by common and administrative courts that determine a range of issues, including civil, employment, commercial and insolvency cases.

Administrative decisions are subject to the judicial review by administrative courts, although common courts do have jurisdiction in certain cases (e.g. in anti-trust matters).

Any judgment issued by a common or an administrative court of first instance can be appealed. Appeals are heard by common courts of second instance, or by the Supreme Administrative Court, respectively. Judgements of the common courts of second instance can also be appealed. In such cases, the appeal is lodged with the Supreme Court whose ruling is final.

2.2 CAN FOREIGN LAW BE RELIED ON IN POLAND?

Since 2004, when Poland became a member of the European Union, European Community provisions have direct applicability in Poland. Only in few areas is Polish legislation yet to be fully harmonised with the Community legislation. In those cases, transitional provisions apply. In addition, other international agreements may be invoked in Poland once ratified.

Foreign court judgments are recognised in Poland in accordance the provisions of the Lugano Convention of 1988 and Council Regulation (EC) 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

2.3 WHAT ARE THE TIME LIMITS FOR BRINGING CLAIMS?

Depending on the type of claim being brought, the limitation periods are:

- ten years for cases unrelated to business activity;
- three years in cases concerning business-related activity and majority of employment-related claims.

Location of the defendant's registered office, (or place of residence in the case of an individual) and the value of the claim are factors that determine which court should hear a claim (regional courts deal with cases where the value of a claim exceeds PLN 100,000; approx. EUR 25,000).

2.4 WHAT ARE THE COURT COSTS?

As a rule, the court fee in commercial cases is calculated at 5% of the value of the claim or subject-matter of appeal, but in any event the fee cannot exceed PLN 100,000 (approx. EUR 25,000). The court fee is payable in advance and is non-refundable.



Fees are also payable on appeal against judgments of common and administrative courts, and on appeal against certain decisions of administrative bodies. A party to proceedings should also be prepared to cover, among other things, the cost of any legal services, travel and accommodation for witnesses, translation and expert services.

Fees for legal services can be negotiated, although under the professional ethics code, a lawyer may not undertake work on a contingency or conditional fee basis.

2.5 HOW LONG DOES IT TAKE TO RESOLVE A CASE IN COURT?

On average courts of first instance deliver their judgments within 18 months of the claim being lodged. Nonetheless, the duration of proceedings will depend on the number of cases lodged in a given geographical jurisdiction, and the level of complexity involved.

2.6 ARE THERE ANY ALTERNATIVE WAYS TO RESOLVE DISPUTES?

Under Polish law cases may be submitted for resolution by an arbitral tribunal or by mediation. In this regard, Polish law incorporates international provisions, such as the New York Convention of 1958 and the UNCITRAL model law of 1985.

2.7 WHAT MUST PARTIES DO TO GUARANTEE THEMSELVES THE OPTION OF ARBITRATION?

Parties can provide for such an option by incorporating an arbitration clause in their original agreement. As a rule, this clause must be in writing. In addition, under the new provisions parties may agree such a clause by exchanging statements to that effect. This can be done at any time prior to submitting the dispute to an arbitral tribunal.

2.8 WHAT RULES GOVERN PROCEEDING BEFORE ARBITRAL TRIBUNALS?

Parties to proceedings may by themselves determine the rules for arbitration. In this respect, the law does not impose any requirements. Generally, parties themselves appoint an arbiter, but where they are unable to do so an arbiter may be appointed by a common court.

2.9 CAN A COMMON COURT REVIEW THE AWARD OF AN ARBITRAL TRIBUNAL?

A common court, acting retrospectively may only verify the legality of the arbitration clause and determine whether the case was justifiably resolved under the arbitral procedure. Where the court finds that any of the above requirements had not been fulfilled, it must quash the award.

2.10 WHEN SHOULD PARTIES CHOOSE MEDIATION?

Polish law provides for the possibility of dispute resolution through mediation. A court, acting *ex officio*, may submit a case to mediation prior to hearing it. Any mediation settlement approved by the court is binding and enforceable. Despite the fact that mediation is a cheaper and faster method of resolving disputes than arbitration, and gives parties greater influence over the final outcome, it is still seldom used in Poland, largely due to the lack of professional mediators.



2.11 IS IT POSSIBLE TO SECURE CLAIMS?

Parties to proceedings (whether before a common court or an arbitral tribunal), as well as those with a legal interest, can apply to secure their claims. The court may grant interim relief having regard to both the principles of proportionality and equity. The most common forms of security are: placing property or cash in deposit, or establishing a mortgage.

2.12 WHAT POSSIBILITIES ARE THERE FOR FURTHER ENFORCEMENT WHERE A PARTY REFUSES TO COMPLY WITH A COURT JUDGMENT?

At the request of the interested party, the court may institute enforcement proceedings. Pursuant to an enforcement order (i.e. a legally binding order granted by a court or an arbitral tribunal, or provided for in an out-of-court settlement), and after issuing a writ of enforcement, the court transfers the execution of the judgment to a court executive officer. (Under Polish legal system a court executive officer performs some of the obligations of a bailiff, in particular when executing writs of enforcement, but enjoys lesser powers than a court bailiff.)

However, one of the consequences of enforcement proceedings is that they may trigger the filing of an insolvency petition.



III. TAXATION

3.1 WHAT BUSINESS ACTIVITIES ARE TAXED IN POLAND?

Undertakings, including companies, partnerships and sole traders, are liable for 19% income tax on their business profits.

Withholding taxes are collected on outbound dividends, interest and royalties, as well as certain intangible services, subject to double tax treaties and applicable European Community provisions.

VAT is levied on the supply of goods and services at the standard rate of 22%, save where exemptions and reduced rates (0%, 7%) apply.

In addition, businesses that own the title to a property are subject to a local real estate tax, imposed by municipalities.

Certain business transactions are governed by the special Tax on Civil Law Transactions (TCT), including the pay out and increase of share capital, loans from outside the financial sector and securities issues.

3.2 HOW IS PROFIT DISTRIBUTION TAXED?

Dividends paid out by Polish subsidiaries are in general subject to a withholding tax of 19%. However, foreign shareholders from countries that have signed a double taxation treaty with Poland may benefit from reduced tax rates, usually between 5% and 15%.

Dividends paid to companies from other EU Member States, with at least a 20% shareholding in Polish subsidiaries, will not be subject to a withholding tax in Poland, pursuant to the provisions of the Parent-Subsidiary Directive incorporated into Polish tax law.

Royalties and interest distributed abroad are subject to a withholding tax in Poland at the rate of 20%, which may be mitigated or exempted under the provisions of double taxation treaties, where applicable.

In the EU, interest and royalties are exempt from withholding taxes paid across the border to companies with a qualified shareholding. However, Poland has been granted transitional protection as regards the application of relevant European Community provisions. Thus, interest and royalties paid out by Polish subsidiaries to EU companies that have more than a 20% shareholding in the Polish subsidiary are subject to a withholding tax at the rate of 10% until 1 July 2009, falling to 5% between 1 July 2009 and 1 July 2013. After that period, all interest and royalties distributed to qualified EU shareholders will be exempt from a withholding tax in Poland.

3.3 HOW ARE BUSINESS PROFITS OF FOREIGN ENTITIES TAXED IN POLAND?

Under the general OECD rules, business profits earned by foreign entities in Poland (e.g. from the supply of goods or services to Polish customers) are not taxed in Poland, unless the foreign undertaking operates in Poland through a permanent establishment, within the meaning of double taxation treaties.

Polish tax law does not, however, lay down any separate rules for taxing permanent establishments, which are subject to the same general provisions applicable to incorporated and unincorporated businesses in Poland. Profits attributable to a permanent establishment are, therefore, subject to income tax in Poland at the flat rate of 19%.



In addition, the deductibility of costs, exemptions, tax losses carried-forward etc. is regulated by general tax provisions. Nonetheless, controversies may arise in certain areas, especially as regards the deductibility of costs incurred at group level (such as management, administration, R&D or financing costs), and allocated to the permanent establishment by the parent company.

3.4 HOW IS REAL ESTATE TAXED IN POLAND?

The transfer of land by a business entity is generally subject to VAT at the standard rate of 22%. However, VAT does not apply to the sale of undeveloped land that has not been designated for development in a local zoning plan or entered in a real estate register. The transfer of previously owned real estate, upon which used buildings or installations are located, is VAT exempt.

Under the European Community transitional provisions, until 1 January 2008 new apartments supplied by developers will continue to be subject to a reduced VAT rate of 7%.

Where a transaction transferring title to real estate is VAT exempt, TCT is charged on the market value of the property, at a rate of 2%. The creation of a mortgage attracts TCT at a rate of 0.1 % of the value of the liabilities secured.

Real estate is also subject to a local real estate tax, which is levied on the surface area in the case of land, and on depreciable book value in the case of buildings used for commercial activities, at rates of up to PLN 0.68 (EUR 0.16) per square metre and PLN 18.43 (EUR 4.5) per square metre respectively, subject to any reductions or exemptions that apply in a given municipality.

3.5 WHAT ARE THE ANTI-AVOIDANCE RULES IN THE AREA OF TAX LAW?

Legislative amendments and binding court rulings indicate that tax authorities have limited powers to assess and classify various tax-optimising schemes applied by businesses, except in cases of obvious abuse or fraud. Therefore, tax levied in Poland on the distribution of profits from an inbound investment may be mitigated by employing various tax schemes.

Nonetheless, Polish law contains both general and specific anti-avoidance provisions. Under the former, tax authorities are empowered to examine the true intentions of parties concluding a transaction or arranging a business scheme. Where tax authorities have any doubts as to whether an agreement should be re-classified, they are obliged to institute civil proceedings in order for a common court to examine and determine the true legal classification of the transaction.

There are some specific anti-avoidance provisions contained in the tax legislation, for example, M&A taxation and the determination of market value of goods or services for tax purposes.

3.6 DOES POLAND APPLY THIN CAPITALIZATION RULES?

Yes, and a maximum debt-to-equity ratio of 3:1 applies. Debt is defined broadly, and includes not only loans, but other financing facilities, including securities and bonds, deposits and capital investments in general.

3.7 DOES POLAND APPLY ANY CFC LEGISLATION?

Polish tax laws do not contain any CFC rules.



3.8 WHAT EXPENDITURE IS TAX-DEDUCTIBLE?

The general rule is that the expenditure of a person liable to pay tax incurred in the course of generating taxable revenue is deductible for tax purposes. Whilst the provisions ensure flexibility, in certain borderline cases it may not always be clear what expenditure is tax deductible.

Certain costs can only be deducted proportionately to the revenues that the particular expenditure is expected to yield. Not all expenditure may be deducted in full immediately, and in some cases it can only be deducted over a several year period.

Expenditure on the acquisition of fixed assets and intangibles is generally required to be depreciated for tax purposes. Taxpayers may choose between different depreciation methods, including regressive or accelerated methods, as they deem appropriate.

In addition, income tax legislation provides a list of expenditures which, by default, may not be deducted or may only be deducted to a certain percentage or up to specified limits.

3.9 WHAT ARE THE BASIC TRANSFER PRICING REGULATIONS?

Polish provisions generally follow the OECD rules on transfer pricing and should, in most cases, comply with international practices.

Recent developments in the TP area included the introduction of a new system of Advance Pricing Agreements (APAs) which, whether unilateral, bilateral or multilateral, can be negotiated with the Ministry of Finance. As a rule, APAs provide the applicant with a guarantee that tax authorities will accept the transfer prices applied in accordance with the APA. There is, however, little experience as regards the procedure for obtaining an APA in Poland.

National regulations require domestic entities to procure and, when requested to do so by tax authorities, provide special transfer pricing documentation. In essence, the TP documentation should explain the method used by Polish taxpayers to set prices in transactions with other entities.

Where a Polish taxpayer fails to submit the TP documentation within seven days from the date of request, and tax authorities find that its income had been wrongly reduced when using transfer prices, the notional difference in the income of the Polish entity is subject to the punitive rate of tax levied at 50%.

Similar rules apply to Polish taxpayers purchasing goods or services from tax havens listed in enabling regulations, which are broadly in line with the OECD guidelines.

3.10 ARE THERE ANY RULES FOR ADVANCE TAX RULINGS?

A complex set of rules on advance tax rulings has evolved under Polish tax legislation and case law. A taxpayer may request an advance tax ruling on any tax issue pertaining to his business or private activities. ATRs are usually issued within three months of the request, and are meant to advise the taxpayer on the interpretation of given tax provisions as adopted by tax authorities.

Moreover, tax legislation expressly provides that ATRs cannot be revoked unless a special procedure is invoked. Even where an ATR is revoked, any revised interpretation will not apply retrospectively, and can only apply to future activities.

Advanced tax rulings must be published and made available in the public domain. Tax payers are, therefore, provided with rulings promulgated by tax authorities on complex tax issues that may have in the past hampered tax planning of businesses operating in Poland.



IV. EMPLOYMENT LAW

4.1 HOW ARE EMPLOYMENT-RELATED ISSUES REGULATED IN POLAND?

The bulk of employment-related issues are regulated by the Polish Labour Code. Polish law also incorporates relevant provisions and standards set down by European Community provisions, in particular as regards equal treatment. Poland is also a signatory to most international instruments on employment law, including the Conventions of the International Labour Organisation (ILO).

However, because Poland has not ratified the Rome Convention of 1980, its rules cannot be invoked when determining the law governing an employment contract.

4.2 WHAT CONDITIONS MUST AN EMPLOYMENT CONTRACT COMPLY WITH?

All employment contracts must be in writing, and may be concluded for a fixed or indefinite period, or for the period of performance of a specific task. An employment contract may be preceded by a separate probationary period contract of up to three months.

All employment contracts must specify the type of work to be performed, the place of performance and the remuneration. The latter may be negotiated between the parties, although it may not be lower than the minimum Polish national wage, currently set at PLN 899.10 (approx. EUR 230).

The employer and employee are free to agree more favourable employment terms than those laid down by law.

Employers lay down remuneration rules either individually with each employee or through a collective bargaining agreement concluded with trade unions. Alternatively, remuneration rules may be defined by wage regulations. An employer employing more than 20 employees is required to issue such regulations. Furthermore, where trade unions operate at the enterprise, they should also be consulted. Similarly, an employer employing 20 or more employees is required to issue workplace regulations that define the work order and duties and responsibilities of the employer and employees. The employer must consult in this regard any trade union operating at the employer's place of work.

4.3 IS THE EMPLOYER OBLIGED TO CONSULT EMPLOYEES ON CHANGES INTRODUCED TO THE ORGANISATION OF THE ENTERPRISE?

An employer is required to inform employees of any significant changes in employment, in particular as regards collective redundancies. Where trade unions, employee councils or employee representatives appointed by employees for the purposes of consultation, operate at the employer's place of work, they must also be consulted. Subject to any consultations, the employer is free to implement the planned changes.

4.4 UNDER WHAT CIRCUMSTANCES MAY AN EMPLOYER DISMISS AN EMPLOYEE?

A contract for an indefinite period requires the employer to provide reasons justifying the termination of the contract. Where an employee is dismissed for an unjustified reason, or the employer fails to comply with the dismissal procedure, the employee can either seek to be reinstated or claim damages, which as a rule do not exceed three times the monthly wage of the dismissed employee.



Special protective provisions apply in case of a dismissal on notice of pregnant employees, those on maternity or parental leave, members of trade union governing bodies, members of work council and employees due to retire within four years.

4.5 WHAT RULES REGULATE COLLECTIVE REDUNDANCIES?

Specific provisions on collective redundancies apply where an employer, employing 20 or more employees, intends to terminate employment contracts for reasons other than those attributable to employees, by serving a termination notice, or on the basis of mutual consent, where within a period of 30 days:

- 10 employees are to be dismissed (where the employer employs less than 100 employees);
- 10% of employees are to be dismissed (where the employer employs 100 or more employees, but less than 300 employees);
- or 30 employees are to be dismissed (where the employer employs 300 or more employees).

An employee dismissed for reasons attributable to the employer is entitled to a statutory severance payment of between one and three months the employee's salary, depending on the number of years of employment.

4.6 WHAT ARE THE COSTS OF EMPLOYMENT IN POLAND?

Each month an employer is required to withhold a monthly personal income tax from an employee's salary. Income tax is payable on an upward-sliding scale of 19%, 30% or 40%, depending on the income earned in a given tax year.

The overall contribution of an employee to the social security system (e.g. health, retirement pension and accident contributions) is 18.71% of his income, whereas an employer pays approximately 20.33%, depending on the current insurance rate and industry sector.

4.7 WHAT ARE THE TAX OBLIGATIONS OF FOREIGN NATIONALS WORKING IN POLAND?

Poland has signed double taxation treaties with over 80 countries, including the majority of EU Member States.

Individuals who are not resident in Poland are only required to pay tax on income generated from work performed in Poland, regardless of where such remuneration is paid.

As a rule, foreign nationals who work in Poland less than 186 days in a year have no tax obligation in Poland.

Anyone employed in Poland is required to pay social security contributions. However, where European Community provisions or international treaties so provide, a foreign national employed by a Polish employer is not required to pay such contributions. Income earned in Poland by foreign nationals who are management board members is taxed at the flat rate of 20%.

4.8 DO EMPLOYEES OF STATE ENTERPRISES HAVE ANY SPECIAL PRIVILEGES?

Under the state enterprise privatisation process trade unions may request that an investor agrees on a "social package" for employees. This, in particular, concerns industry sectors that were traditionally state-owned e.g. mining and steel industries. Under the social



package, employees would expect to be provided with, among other things, employment guarantees and additional severance payments in the event of early redundancies.



V. COMPETITION LAW

5.1 IS POLAND'S ANTI-TRUST LAW SIMILAR TO THAT OF THE EU?

Polish competition law conforms to the provisions of the European Community competition law.

5.2 WHO ENFORCES THE COMPETITION LAW?

The authority responsible for enforcing competition provisions in Poland is the President of the Office of Competition and Consumer Protection (the President of the Office), assisted by officers of the competition office (OCCP). The OCCP's head office is in Warsaw, with nine other regional branches spread throughout the country. The President of the Office is also responsible for consumer protection.

The President of the Office may impose financial penalties whenever competition law provisions are breached, and is empowered to carry out controls and, subject to a court order, searches of undertakings suspected of violating competition law (dawn-raids).

5.3 WHAT KIND OF TRANSACTIONS MUST BE NOTIFIED TO THE POLISH OFFICE OF COMPETITION AND CONSUMER PROTECTION?

The pre-merger notification obligation applies both to Polish transactions and foreign-to-foreign transactions, where the concentration may have an effect in Poland (the effects rule). The President of the Office determines whether a transaction could have a potential impact on the Polish market.

As a rule, every concentration must be notified where the combined turnovers of the participating undertakings in the year preceding the notification exceeded EUR 50 million (the threshold refers to the joint turnover of all capital groups to which the parties to the transaction belong).

The main types of transactions that are subject to the notification obligation are: mergers between undertakings, a takeover of direct or indirect control of the whole or part of an undertaking, establishment of a joint enterprise (joint venture), assumption or acquisition of shares that give 25% of voting rights.

Transactions in which the target's turnover did not exceed EUR 10 million in each of the preceding two accounting years do not have to be notified, save where these will result in the creation or strengthening of a dominant position in the relevant market.

5.4 WHAT ARE THE PENALTIES FOR CLOSING A NOTIFIABLE TRANSACTION WITHOUT RECEIVING THE CONSENT OF THE PRESIDENT OF THE OFFICE?

A failure to notify a transaction, or closing a transaction before obtaining consent from the President of the Office, may result in the imposition of a financial penalty on the undertaking saddled with the duty to notify. The fine is a maximum of 10% of the undertaking's revenue achieved in the accounting year preceding the imposition of the fine.

In the case of a transaction closed prior to obtaining a clearance decision, and which may seriously affect competition on the Polish market, the President of the Office may impose additional sanctions in the form of a demerger order or a divestiture order of all or part of the undertaking's assets.



5.5 WHAT IS THE DEFINITION OF DOMINANCE UNDER THE POLISH COMPETITION LAW?

An undertaking has a dominant position when it can prevent effective competition in the market, and thus act independently of its competitors, contractors and consumers. There is a rebuttable presumption in Polish competition law that an undertaking has a dominant position when its market share exceeds 40%.

Possessing a dominant position is not in itself prohibited. It is the conduct that constitutes an abuse of dominant position which is forbidden. Polish competition law contains a non-exhaustive list of abuses that mirrors Article 82 of the EC Treaty. Conduct found to constitute an abuse of dominant position is prohibited, and any resulting agreements are deemed null and void by virtue of law.

5.6 WHAT IS A CARTEL AGREEMENT UNDER THE LAW?

Like European Community provisions, Polish competition law prohibits agreements, including cartels, which have as their object or effect the prevention of competition. The prohibition covers agreements concluded between competitors (horizontal agreements) or between undertakings acting at different economic levels, for example, suppliers and distributors (vertical agreements).

Polish competition law provides for the possibility of introducing specific block exemptions (for example, the current exemptions cover vertical agreements, specialisation and research and development agreements).

5.7 IS CARTEL CONDUCT CRIMINAL? WHAT IS THE PENALTY FOR ENGAGING IN ANTICOMPETITIVE PRACTICES IN POLAND?

There is no criminal liability for breaches of Polish competition laws, irrespective of the conduct. Where an undertaking breaches the provisions of competition law, the President of the Office may impose an administrative financial penalty up to a maximum of 10% of the revenue achieved in the accounting year preceding the year when the penalty is imposed.

Bid rigging in a public tender, however, is a crime under the Polish Criminal Code.

5.8 IS THERE A LENIENCY PROGRAMME?

As of 1 May 2004, undertakings that engaged in anticompetitive practices can benefit from a leniency programme. The violating undertaking may have its penalty waived or greatly reduced if it approaches the President of the Office, produces evidence, ceases to engage in the prohibited practices, and agrees to cooperate with the President of the Office in the ensuing investigation. Although the Polish leniency programme is similar to that of the EU, it differs in its extension of leniency to include not only horizontal agreements but vertical agreements as well.



VI. CONSUMER PROTECTION

6.1 WHO IS RESPONSIBLE FOR CONSUMER PROTECTION IN POLAND?

Bodies responsible for consumer protection in Poland are:

- the President of the Office of Competition and Consumer Protection;
- city and county consumer ombudsman; and
- trade inspectorate.

There are other non-governmental organisations in Poland actively engage in protecting and promoting consumer interests.

It is incumbent on the President of the Office to keep:

- a register of abusive clauses;
- a register of dangerous products;
- a register of goods that fail to meet the requirements laid down by law.

6.2 IN WHAT WAY ARE COLLECTIVE CONSUMER INTERESTS PROTECTED IN POLAND?

Any businesses activity conducted contrary to the collective consumer interest is prohibited, as is any activity that violates the law. Agreements listed in the register of abusive clauses, the promulgation of false information and dishonest advertising, are also forbidden.

Consumers can lodge a complaint with the President of the Office against any breach of collective consumer interests.

Breaches of individual consumer's rights should be reported to the city or county consumer ombudsman, or to the relevant industry ombudsman, e.g. the banking ombudsman.

Additionally, the General Inspector for Data Protection has a residual duty to protect the interests of consumers.

6.3 WHAT OBLIGATIONS DO BUSINESSES HAVE IN THE CONTEXT OF CONSUMER PROTECTION?

Under the consumer protection regulations businesses are under a duty:

- to verify that its standard agreements/clauses have not been entered in the register of abusive clauses;
- to meet all production standards and provide technical information on their products;
- to ensure that products meet the "essential requirements" provided by law, and where required, to carry out appropriate examinations or tests;
- to certify products, where required to do so by law;
- to mark products in a manner that does not mislead the consumer, in particular, to indicate the product's composition and manufacturer, and to designate any product manufactured in the EEA with the EC mark;



- to guarantee product safety (specific safety requirements must be met for certain products e.g. cosmetics, toys and food);
- to register dangerous products with the OCCP;
- to guarantee product quality (businesses are liable for the physical and legal defects in a product);
- not to use dishonest advertising.

These obligations apply to any business deemed to be a producer, and may include any entity carrying out repairs as well as the importer of a product, where it originates from outside the EU. Distributors (sellers and wholesalers) have limited liability in this regard.

There is also a prohibition on businesses to engage in unfair competition practices.

Failure to comply with the statutory obligations exposes a business to civil or administrative liability, or in cases involving dangerous products, to criminal liability.

The above consumer protection regime also applies to e-commerce, although there are specific provisions that apply in that area.

6.4. WHAT ARE THE WAYS TO OBTAIN CONSUMER CREDIT?

A consumer may enter into a loan agreement, or an agreement deferring the consumer's payment deadline, with a financial institution. Banks can conclude credit agreements.

The terms and conditions of consumer credit agreements must be stipulated in writing. The terms of consumer credit agreements cannot restrict the consumer's statutory rights e.g. the option to repay a loan earlier, even where foreign law governs the agreement.

The lender must provide in the agreement, and bring it to the attention of the consumer, the real rate of interest as well as all costs and fees connected with the credit facility.



VII. REAL ESTATE

7.1 ON WHAT BASIS CAN REAL ESTATE BE HELD AND DISPOSED OF IN POLAND?

In Poland the most common legal interest in real estate is:

- ownership of title;
- a perpetual usufruct right;
- an easement over land (e.g. a right to pass over a neighbouring real estate – an easement of necessary access);
- a mortgage; and
- a lease.

A perpetual usufruct right may only be created in respect of real estate belonging to the State Treasury or a local government body. It may be created for a period of 99 years with an option of extension, and the land may only be used in accordance with the purpose laid down in the agreement.

7.2 IS THERE ANY LEGAL RISK IN POLAND ON THE CONVEYANCE OF REAL ESTATE?

The object of the Polish land registration system is to provide certainty whenever real estate is conveyed.

Information on legal status (e.g. owners and encumbrances) is held for each real estate in property registers kept by the courts. In conveyancing, there is a fundamental principle of public trust in the accuracy of the land and mortgage registers. There is a presumption of authenticity of the legal status shown in land and mortgage registers.

This principle protects the purchaser of a real estate acting in good faith. Land and mortgage registers are available for public inspection.

Furthermore, all land, buildings and premises are registered in the land and buildings record, kept by county governors. Real estate records include information on: the location, boundaries, surface area, type of use and the number of the relevant land and mortgage register.

7.3 CAN REAL ESTATE TO BE FREELY PURCHASED IN POLAND? WHAT ARE THE BASIC RESTRICTIONS ON PURCHASING REAL ESTATE IN POLAND?

In general, real estate can be freely purchased and sold in Poland. There are certain restrictions that apply to properties previously owned by the State Treasury or a local government body, agricultural real estate and real estate in harbours and ports.

Municipalities may have a pre-emptive right of purchase in respect of, for example, undeveloped real estate, which the seller purchased from the State Treasury or local government bodies, and the right of perpetual usufruct to undeveloped land, regardless of the form in which the seller purchased this right.



The sale of agricultural real estate is subject to a statutory pre-emptive right of purchase enjoyed by an existing tenant on specified terms. Where there is no tenant, or where the tenant fails to exercise his pre-emptive right to purchase, the right passes to the Agricultural Real Estate Agency.

7.4 ARE THERE ANY RESTRICTIONS ON THE PURCHASE OF REAL ESTATE BY FOREIGN NATIONALS?

There are certain restrictions on purchasing real estate by foreign nationals. Similar rules apply to foreign nationals who acquire stocks or shares in undertakings that have their registered offices in Poland, and which own or hold real estate under a right of perpetual usufruct. In both cases a distinction is made between foreign nationals who are citizens of EEA Member States and those who are not.

A foreign national who is not a citizen of an EEA Member State is required to obtain a permit from the Minister of Internal Affairs to purchase a real estate in Poland. In the case of share acquisition a permit is only required if, as a result of the purchase, the foreign company takes over control of a Polish company that owns or holds the title to real estate.

Foreign nationals who are citizens of an EEA Member State or who are running an undertaking from an EEA Member State are not in most cases required to obtain permits. As of 1 May 2004 for a period of 12 years they still require permission to purchase agricultural and forested land, and for a period of 5 years they require permission to buy a second home.

7.5 WHAT ARE THE BASIC CONDITIONS FOR COMMENCING AND IMPLEMENTING PROPERTY INVESTMENT PROJECT?

In Poland, any building investment must be implemented in accordance with the local zoning plan. The plan specifies the means of developing and conditions for building in a particular area, and indicates whether the area is designated for public investments (e.g. public roads and railway lines).

Where there is a local zoning plan, an investor may apply directly for planning permission and commence construction once the permission becomes legally binding.

However, where no such plan exists the investment process is longer. Prior to applying for planning permission, an investor must apply for conditions to be prescribed for building and development in the area where he intends to invest.

Investors in projects within the capital city of Warsaw are also required to verify the legal status of the investment property as regards the unregulated issue of returning properties to its previous owners deprived of ownership after the Second World War as a result of nationalisation.



VIII. INTELLECTUAL PROPERTY LAW

8.1 HOW ARE INTELLECTUAL PROPERTY RIGHTS REGULATED IN POLAND?

Polish intellectual property law mirrors the relevant European Community provisions. In addition, Poland is a signatory to most international agreements on intellectual property rights.

8.2 IS IT POSSIBLE TO TRADE IN INTELLECTUAL PROPERTY RIGHTS?

Save for a few exceptions, trading in intellectual property rights is possible. New provisions abolished the onerous restrictions that only permitted trademarks to be transferred with the enterprise.

A licence can also be issued in respect of the majority of protective rights, i.e. authorisation for a specific entity to use a protective right to the extent set out in the licence.

INDUSTRIAL PROPERTY RIGHTS

8.3 WHAT INDUSTRIAL PROPERTY RIGHTS ARE PROTECTED IN POLAND?

The following industrial property rights are protected in Poland:

- patents for inventions (where they are of a technical nature, novel and comprise an inventive step);
- protective rights to utility designs (new and useful technical solutions, affecting the shape, construction or durable assembly of an object);
- rights deriving from registration of industrial designs;
- protective rights to trademarks (verbal, verbal-graphic, graphic, 3-D, melodies);
- geographical designations.

Pursuant to the relevant provisions, community designs, community trademarks, protected geographical indications (PGI) and marks of origin are also subject to protection in Poland. European Community provisions have direct application in this regard.

8.4 HOW CAN INDUSTRIAL PROPERTY PROTECTION BE OBTAINED?

An industrial property right is only protected upon registration at the Polish Patent Office (PPO). The PPO assesses the characteristics necessary to obtain a protective right in the case of inventions, utility models and trademarks. However, in respect of topography of integrated circuits, industrial designs or geographical indications, the PPO only assesses the formal admissibility of the application to grant protective rights.

The verification procedure can be highly complicated due to the nature of a given invention or trademark, hence proceedings may be considerably protracted. For example, trademarks proceedings can last as long as four years.



8.5 FOR WHAT PERIOD ARE PROTECTIVE RIGHTS GRANTED?

As in other jurisdictions, protective rights are granted for a specific period and, as a rule, cannot be extended. Protective rights to trademarks constitute an exception to this rule and may be extended for successive ten year periods, whereas geographic marks are granted indefinitely.

8.6 WHAT DOES A RIGHT HOLDER GAIN FROM PROTECTIVE RIGHTS?

The right holder has exclusive rights to use the object of the protective rights. Without the consent of the right holder, no other entity can designate goods with a trademark (or similar trademarks), use a patented invention in production or produce goods that are identical or very similar to the registered industrial design.

8.7 WHAT REMEDIES ARE AVAILABLE IN THE EVENT OF BREACH OF THOSE RIGHTS?

Any infringement of protective rights is subject to civil liability. However, an infringement of a trademark may in some cases also attract criminal liability.

A right holder may, in the course of civil proceedings, apply to the court for any of the following orders: a cessation of the infringement, that its effects be remedied (e.g. the destruction of infringing goods), the publication of an appropriate statement in the press, and the return of unlawfully acquired benefits. The aggrieved right holder can also claim damages.

In trademark protection cases, criminal proceedings is usually a highly effective means of enforcing rights, in terms of the length and costs of the proceedings.

8.8 CAN A RIGHT HOLDER COUNT ON ASSISTANCE FROM CUSTOMS AUTHORITIES?

Under the relevant European Community provisions, Polish customs authorities have powers to seize goods that they suspect may infringe intellectual property rights (including copyrights), and to inform the right holders of this fact. The right holders may then commence civil and/or criminal proceedings against the suspected infringer.

COPYRIGHTS

8.9 WHAT IS REGARDED AS A WORK IN POLISH LAW?

A work is something fixed in any form, regardless of its value, purpose and means of expression, which has the following necessary features in accordance with the Copyright and Neighbouring Rights Act of 1994:

- originality;
- individuality.

A work is not required to be complete. It may be a sketch, plan or outline of a work. It may also be a study (a dependent work), e.g. a translation, alteration or adaptation of a work made with the knowledge and consent of the author of the main work. Anthologies, collections, selections, databases and computer programs can also be works.



8.10 WHAT IS DEFINITELY NOT A WORK?

Under Polish law, the following are not regarded as works:

- legislation or official drafts;
- official documents, materials, signs and symbols;
- published patent descriptions or protected descriptions;
- simple press information.

8.11 WHO CAN AND WHO CANNOT BE AN AUTHOR?

Anybody can be an author. There is a presumption that the person whose forename or surname appears on the work is its author. Where the author is an employee, copyrights are usually acquired by the employee, unless a relevant agreement provides otherwise.

An animal that by chance “creates” a work cannot be regarded as its author. The same applies to forces of nature. On the other hand a person who scientifically defines forces of nature is not an author, but may be regarded as an inventor under the Industrial Property Rights Act of 2000.

8.12 WHAT RIGHTS DO AUTHORS HAVE TO A WORK?

In Poland an author has moral rights and property rights in the work.

Moral rights are inalienable and include rights to: the authorship of the work, to brand the work with the owner’s surname or pseudonym or to release it anonymously, the inviolability of the work’s form and content, its honest use, deciding on first public release of the work, and supervision over how the work is to be used.

Property rights in the work on the other hand are alienable. They can be transferred under an agreement, which sets out in detail the fields in which the work may be exploited (fields of exploitation). The provisions refer to the following non-exhaustive fields of exploitation:

- fixing and copying the work: manufacturing copies of the work using a specified technique, including printing and reprographic techniques, magnetic recording and digital techniques;
- trade in the original or copies upon which the work has been fixed: marketing, use or lease of the original and copies;
- distribution of the work other than specified above: public performance, exhibition, display, playback, broadcasting, retransmission and public release of the work in such a way that everybody has access to it at a place and time of their choosing.

All copyrights expire 70 years after the author’s death.

8.13 HOW CAN THE AUTHOR ENFORCE HIS RIGHTS?

An author whose moral rights have been infringed by the conduct of another may:

- seek a cessation of the conduct;



- demand that its effects be remedied; or
- request that an appropriate public statement be published.

Where an infringement is found to be culpable, the court may award the author damages for losses sustained or, at the author's request, require the infringer to pay an appropriate sum to a charitable cause indicated by the author.

An author whose property rights have been infringed can seek that the infringer:

- ceases the infringement;
- delivers any benefits obtained; or
- pays double the relevant fee from the time proceedings were commenced, and
- in the event of a culpable infringement pays three times the relevant fee from the time proceedings were commenced, and remedies the harm caused.

As a rule, commercial rights are not subject to enforcement until the author derives a benefit from them i.e. a computer program or a book created by an author cannot be seized until such time as he obtains a fee for them. On the other hand, the fee is subject to seizure by a court bailiff.

8.14 DO ANY COLLECTIVE MANAGEMENT ORGANISATIONS OPERATE IN POLAND?

Collective management organisations (CMOs) such as the Authors Association ZAIKS, SARP and ZASP are mainly responsible for collecting fees due on account of copyrights and for works used in various fields of exploitation. However, a work is occasionally used simultaneously in numerous fields of exploitation, in which case the entity making payment may not know which CMO is responsible for collecting fees due.



IX. IMMIGRATION

9.1 WHAT DOCUMENTS ARE NECESSARY TO ENTER POLAND?

Foreign nationals wishing to travel to Poland and who are from outside the EU, EEA and Switzerland, or from countries with whom Poland does not have a bilateral visa-free travel agreement, and are not individuals who have been granted a visa-free travel permit, must provide on entry:

- a valid travel document;
- a visa;
- sufficient funds to maintain themselves during their stay in Poland;
- medical insurance cover for the period of stay;
- document confirming third-party vehicle insurance cover (i.e. a green card), if required.

Since Poland is not a signatory to the Schengen agreement, all foreign nationals wishing to enter Poland, including those from the EU and EEA Member States and Switzerland, are subject to border controls, and must provide a valid travel document on entering Poland.

Customs control of Poland's borders is conducted in accordance with European Community provisions applicable across the EU.

9.2 WHO IS RESPONSIBLE FOR ISSUING VISAS TO FOREIGN NATIONALS?

A Polish consular officer is responsible for issuing visas. There is no right of appeal against a refusal to issue a visa. In general, however, the majority of applicants are granted visas.

The type of visa obtained depends on the purpose and length of stay in Poland. Visas usually entitle their holders to a three-month stay in Poland. In certain cases visas may be granted for a longer period not exceeding 12 months.

9.3 ON WHAT BASIS CAN FOREIGN NATIONALS LIVE IN POLAND?

Where a foreign national intends to stay Poland for more than three months, he should obtain permission to enter for a specified period. This includes EU nationals and their families, with the exception of those who work, practice a profession or conduct business activity whilst maintaining their permanent place of abode in another EU Member State.

Permission to remain for a specified period does not bestow on foreign nationals from outside the EU, EEA and Switzerland, an automatic right to work in Poland.

Temporary residence permit will be granted automatically to any individual who holds an initial work permit or conducts commercial or artistic activity in Poland. Under relevant provisions, all other cases are examined and determined as to whether a temporary residence permit should be issued. A temporary residence permit may be issued for up to two years, subject to a possible extension.



On application, a foreign national may be granted a permanent residence permit, provided that he can establish that he has resided lawfully in Poland for at least five years (three years in some cases), has lasting family or commercial ties with Poland, and can accommodate and maintain himself in Poland.

9.4 ARE FOREIGN NATIONALS REQUIRED TO HAVE A WORK PERMIT?

The provisions make a distinction between EU and non-EU nationals. The conditions for obtaining a work permit depend on the sector and the type of job that is to be performed. In the case of management positions a simplified procedure applies.

Generally, foreign nationals may work in Poland if they hold a relevant work permit. A provincial governor grants work permits and initial work permits. It takes approximately eight weeks for a permit to be issued. In the case of certain professions and representatives of foreign undertakings posted to work in Poland, a simplified procedure may be applied.

The following foreign national are exempt from holding a work permit in Poland:

- refugees;
- permanent residence holders;
- those with exceptional leave to remain,
- EU citizens and nationals from countries with whom Poland has concluded an agreement on the free movement of workers.

Where Polish nationals are required to obtain a work permit during a transitional period in any EU or EEA Member State, the nationals of those countries are similarly required to obtain a work permit in Poland.

Certain categories of persons, for example, permanent foreign media correspondents, members of the armed forces and civil personnel of NATO, are exempt from having to obtain a work permit.



X. INVESTMENT INCENTIVES

10.1 WHAT INVESTMENT INCENTIVES ARE AVAILABLE?

Poland offers a range of incentives to private investors, in particular:

- direct subsidies;
- low-interest financing facilities;
- public services;
- capital injections;
- public assets;
- guarantees;
- tax exemptions;
- credits and social security relief.

Investment aid may also be obtained from various EU funds. In particular the Financial Support for Investments Act of 2002 regulates investment incentives.

The eligible expenditure varies according to the type of investment concerned, with special rules applying to projects with a qualifying expenditure of more than EUR 50 million. State aid in the form of tax exemptions continues to be available in the Special Economic Zones and in Technological Parks. Depending on its location, an exemption may cover 30%, 40% or 50% of the investment, including both tangible and intangible assets.

The Industrial Development Agency may also offer subsidies, loans and other financing facilities.

10.2 WHAT ARE THE RULES GOVERNING THE GRANTING OF STATE AID IN POLAND?

Investment incentives granted to private businesses may qualify as State Aid. Therefore, strict rules and procedures are to be followed as provided by European Community provisions. Moreover, the European Commission keeps under constant review the State Aid policies in existence in EU Member States. Further, the Commission, in the event that aid granted is not compatible with the provisions laid down in Article 87 of the EC Treaty, or the aid is being misused, may ultimately impose on an EU Member State measures to recover the aid in whole or in part.

The general rule is that any State Aid exceeding certain thresholds for a large investment project is to be notified to the Commission. Moreover, new State Aid not envisaged by any programme must also be notified thereto.



XI. USEFUL LINKS

SELECTED PUBLIC INSTITUTIONS

Ministry of Economy: www.mgip.gov.pl

Ministry of Finance: www.mf.gov.pl

Ministry of Foreign Affairs: www.msz.gov.pl

Ministry of Labour and Social Policy: www.mpips.gov.pl

Ministry of Interior and Administration: www.mswia.gov.pl

Ministry of Justice: www.ms.gov.pl

Supreme Court: www.sn.pl

Ministry of the State Treasury: www.msp.gov.pl

Ministry of Transportation, Ministry of Maritime Transport, and Ministry of Construction: www.mi.gov.pl or www.mtib.gov.pl

Ministry of Agriculture and Rural Development: www.minrol.gov.pl

Ministry of the Environment: www.mos.gov.pl

UE Structural Funds in Poland: www.fundusze-strukturalne.gov.pl

National Bank of Poland: www.nbp.gov.pl

Office of Competition and Customer Protection: www.uokik.gov.pl

Office of the Committee for European Integration: www.uokik.gov.pl

Public Procurement Office: www.uzp.gov.pl

Polish Patent Office: www.uprp.pl

Office for Repatriation and Aliens: www.uric.gov.pl

Polish Information and Foreign Investments Agency: www.paiz.gov.pl

Polish Agency for Enterprise Development: www.parp.gov.pl

OTHER ORGANISATIONS

Warsaw Stock Exchange: www.gpw.com.pl

Foreign Investors Chamber of Industry and Commerce: www.iphiz.com.pl

Industrial Development Agency: www.arp.com.pl



Polish Chamber of Commerce: www.kig.pl

Polish National Tourist Office: www.pot.gov.pl

INTERNATIONAL ORGANIZATIONS

European Commission Representation: www.delpol.pl

World Bank: www.worldbank.org.pl

United Nations Industrial Development Organisation: www.unido.pl



XII. ABOUT WARDYŃSKI & PARTNERS

Wardyński & Partners is one of the largest independent Polish law firms, and has been in practice since the 1980s. Over the years the firm has grown organically and through a number of mergers. The combined firm now has 19 partners and 75 associates.

Our lawyers have expertise and experience in providing comprehensive legal advice to international and domestic clients in all aspects of business law.

Wardynski & Partners is recognized, both locally and internationally, as the market leader in a number of areas of practice, such as corporate and commercial law, project finance, M&A, dispute resolution and litigation, real estate & construction, infrastructure, banking and finance, intellectual property and trademarks, and taxation. The firm is regularly ranked highly by independent Polish and international business and mainstream media.

The firm is based in Warsaw with a regional office in Poznań, and since October 2001 also has an office in Brussels.

Wardyński & Partners has a strong international presence thanks to its membership of a number of international legal networks. These are close cross-border collaborations on a non-exclusive basis between law firms that are themselves leaders in their home markets in Central and Eastern Europe, as well as in Britain, Spain, Germany, Holland, Denmark, Sweden, France and the USA. These peer contacts have proved to be of great practical benefit to both domestic and international clients.

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