

R O B E R T
Jędrzejczyk & Partners | Law Firm

Doing Business in Poland

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BASIC INFORMATION

The Republic of Poland has been a Member State of the European Union since 2004 and is a country located at the geographical heart of Europe.

The population of Poland amounts to around **38.5 million inhabitants**, living on a territory of around **312 thousand sq. m.** Warsaw is Poland's capital city (with around **1.7 million inhabitants**). Other large cities and important commercial centres include the following:

- Kraków (765 thousand inhabitants),
- Wrocław (637 thousand inhabitants),
- Gdańsk (463 thousand inhabitants),
- Łódź (696 thousand inhabitants),
- Poznań (540 thousand inhabitants),
- Katowice (298 thousand inhabitants).

As part of the European Union, Poland borders Germany, the Czech Republic, Slovakia and Lithuania. Poland's neighbours that do not belong to the European Union include the Russian Federation, Belarus and Ukraine.

Poland belongs to:

- The North Atlantic Treaty Organisation (**NATO**),
- The World Trade Organisation (**WTO**),
- The Organisation for Economic Co-operation and Development (**OECD**)
- The **Schengen** Area.

Poland is a unitary state, based on the principle of the separation of powers into central and local government administration.

In administrative terms, Poland is divided into **16 provinces (*województwo*)**, which constitute a lower level of governmental administration as well as the highest level of local authorities. Lower levels of local authorities are represented by counties (***powiat***) (there are **314 counties in total and 66 towns enjoying the rights of a county**) as well as boroughs (***gmina***) (**2478 boroughs**).

The Polish language is the official language of Poland. Even though an increasing number of Poles speak at least one foreign language, it is still difficult to communicate in a language other than Polish in public offices across the country. In practice, the use of other languages is excluded in correspondence with authorities. Similarly, the participation of a foreigner in court proceedings usually requires participation of a sworn translator.

The Polish zloty (PLN) is the legal tender in Poland	EUR 1 = PLN 4.22 USD 1 = PLN 3.60
GDP per capita (2016) (nominally according to the IMF)	USD 12,316
GDP per capita (2016) (purchasing power according to the IMF)	USD 27,690
Unemployment rate (2017)	7%
GDP growth (2017)	3.5%
Inflation (2016)	-0.6%
Minimum gross salary	PLN 2,000 (EUR 474)
Average gross salary	PLN 4,221 (EUR 997)
Public debt 2016 (according to Eurostat)	51% PKB

*The table presents average exchange rates announced the National Bank of Poland on 18 October 2017

In terms of GDP levels, Poland is the sixth largest economy of the European Union.

The Polish economy is very diversified. The automotive industry and the food, energy, metallurgical, electrical machinery, means of transport, textile as well as clothing industries play a vital role in the economy of the country.

The economy is also significantly affected by mining and processing of mineral raw materials.

The share of agriculture in Polish GDP does not exceed 4%, though the proportion of individuals employed in agriculture is much higher.

Since 1992, the Polish economy has recorded continuous growth at the level of 1% - 7% per annum at various times (on average, it amounted to around 4% over that period), which places Poland in the position of being one of the fastest developing European countries.

Poland's main economic partners are other EU members, especially Germany and France. Among non-EU countries, the Russian Federation is Poland's most important commercial partner, being the main provider of energy raw materials.

Internal demand plays an important part in economic growth, reducing the Polish economy's vulnerability to risks resulting from perturbations in other markets.

For many years, Poland has been one of the most popular places attracting foreign investors.

TAX REGIME

The Polish tax system is rather complicated, but in principle it does not differ from the solutions applied in other EU countries. In the case of transactions entailing tax risks, taxpayers can ask the tax authorities to issue a tax interpretation, the provisions of which will be binding.

Income tax

PIT	
▪ income up to PLN 85,528	18%
▪ income above PLN 85,528	32%
CIT	
▪ flat rate	19%

Poland offers an interesting tax solution to individuals conducting business activities (sole proprietorship, without the obligation to create a company). They can choose a general form of taxation (as above) or a flat rate (*podatek liniowy*).

PIT	
▪ Flat rate for individuals performing business activities	19%

Poland has concluded double taxation agreements with many countries. There are ninety such agreements in force, for instance with the United States, Germany, France, China, Italy, the United Kingdom, Spain and the Netherlands.

Considering the above, investors intending to conduct business activities in Poland should check beforehand the rules of taxation applicable to the income they will generate in Poland.

In principle, in order to calculate the income constituting the basis for taxation, the revenues and tax deductible expenses from all sources should be combined. Similarly, tax losses from one source decrease the profits from other activities. It should be noted, however, that in the framework of the tax consolidation system, i.e. restricting the use of tax optimisation by businesses, as an exception to the above rule, some types of revenues and costs are counted as separate income and cannot be combined with others.

Value-added tax (VAT)

VAT	
▪ basic rate	23%
▪ reduced rate	8%, 5%

VAT is subject to detailed regulations under EU law, and the solutions adopted in Poland fall within the limits permitted under these regulations.

When planning investments in Poland, it is worth noting that the purchase of shares in limited liability or joint-stock companies is not subject to VAT. Likewise, the acquisition of an enterprise, or of an organised part thereof, is not subject to VAT.

The taxation of real properties is more complicated. In principle, the sale of real property is subject to VAT, with the reservation that, in some circumstances, real property trading may be exempt from VAT.

When contemplating a transaction on the real property market, investors should carefully consider whether it would be more favourable to conclude such a transaction with VAT, or whether it would be more advantageous to benefit from a VAT exemption.

Tax on civil law transactions (PCC)

The tax on civil law transactions (PCC) is charged on a one-off basis when concluding certain types of agreement.

Example rates of PCC	
▪ share purchase	1% of the price
▪ sale of real property	2% of the price
▪ loans	2% of the loan amount
▪ capital increase	0.5% of the amount of increase

PCC is not charged on the sale of real property subject to VAT.

Real property tax

Real property tax is levied on land, buildings and structures. The specific tax rates are determined locally by the borough authorities.

The tax on land and buildings is calculated on the basis of their area, and in the case of structures on the basis of their value.

Excise tax

Certain goods are subject to excise tax. This tax applies to the following products: certain cars, tobacco products, alcohol, petrol and electricity.

Excise duty, like VAT, is harmonized in the European Union.

LEGAL FORMS OF BUSINESS

ACTIVITY

Companies

The most popular form of performing business activities in Poland is a **limited liability company**.

Features of a limited liability company

- limited formalities
- large freedom in shaping the provisions of the articles of association
- low mandatory share capital (PLN 5,000, around EUR 1,184)
- the possibility of establishing a sole-shareholder company

Only two company bodies are compulsory in the case of a limited liability company: the management board and the shareholders' meeting. The supervisory board is, in principle, a non-compulsory body (it must be appointed only if the company has at least twenty-five shareholders, and its share capital exceeds PLN 500,000).

A sole-shareholder limited liability company cannot be established by another sole-shareholder company.

A **joint-stock company** is a less frequently chosen form of conducting business activities in Poland.

Features of a joint-stock company

- many formalities in functioning (such as the required form of a notarial deed for minutes of the general meetings of shareholders)
- limited freedom in shaping the provisions of the company's statute
- high mandatory share capital (PLN 100,000, around EUR 23,690)

The compulsory corporate bodies of a joint-stock company include the following: (i) management board, (ii) supervisory board and (iii) general meeting of shareholders.

Both types of companies have some common features:

- The management board is always the managing body. It can be comprised of one or more members. It is worth noting that, under Polish law, the president of the management board does not have any specific competencies. If his special position in the company is not indicated

in the company's articles of association or statute, his primacy over other management board members is only of a titular value.

- The management board does not perform any supervisory functions within the company (such as, for instance, in certain other legal systems, where the administrative board or the board of directors performs both management and supervisory functions). If no supervisory board has been appointed in the company (which frequently happens in the case of a limited liability company), the supervisory functions are performed by the shareholders' meeting, and individually by shareholders.
- In the case of both companies, it is possible to freely regulate the manner of appointing the members of the management and supervisory boards. It is even possible to appoint members of these bodies on the basis of unilateral declarations by one of the shareholders.
- Polish law provides for considerable freedom in determining the majority required to adopt resolutions by corporate bodies.

On the other hand, it sets out restrictions protecting minority shareholders. In particular, it is not possible to introduce any changes to the company's articles of association or statutes that would limit the rights of shareholders or increase the scope of their obligations, without the consent of the parties concerned.

- In both types of company it is possible to differentiate shares in terms of the voting rights assigned to them, as well as the rights to dividends, rights to a share in the liquidated assets of the company, or as regards the appointment of management or supervisory board members.
- Shareholders' agreements are widely used for both types of company, as a way of regulating the manner of performing shareholders' rights.
- Shareholders are not personally liable for the company's obligations in either type of company.
- In both types of companies, in the case of the company's insolvency, the management board members may, in certain specific circumstances, incur personal liability for the company's obligations (including for tax

liabilities). This does not apply to situations where the bankruptcy petition was properly filed by the required deadline.

Partnerships

The following partnerships are popular forms of performing business activities in Poland, though they are rarely used by foreign investors:

- registered partnership,
- limited partnership,
- limited joint-stock partnership.

Their shared feature is that, in principle, they do not have a separate legal personality (though this is a complex issue, as they can, for instance, conclude contracts).

Another common feature is that, in principle, their partners are personally liable for the partnership's obligations if it fails to satisfy its creditors (known as subsidiary liability).

A third feature is that, in principle, partnerships do not have corporate bodies. Their partners perform the management functions and are liable for the partnership's obligations.

There are certain exceptions to the above rules, specified in the applicable regulations, such as:

- limited joint-stock partnerships have a general meeting of shareholders and appoint a supervisory board,
- limited partnerships and limited joint-stock partnerships have two categories of partners: partners that are not liable for the partnership's obligations and that do not take part in management activities, and partners who are liable for its obligations without limit and are in charge of its management.

Business activities performed by an individual

A widely used form of doing business in Poland is known as individual business activity (sole proprietorship), which is performed directly by an individual, without creating a separate legal structure, only on the basis of a relevant notification.

The essence of this form of performing business activities is that there is no difference between the property used to do business and personal property. It does not protect the personal property against creditors of the sole proprietor.

Even though this form is rarely used by foreign investors, many businesses in Poland (even those

reaching medium size) are conducted in that manner. In the long-term, such businesses are usually transformed into companies or partnerships.

Branch

A branch is a very convenient form of conducting business activities by foreign investors in Poland. This structure is not legally separate from the entity that created the branch. In other words, all the liabilities of the branch constitute also the liabilities of the entity that created it.

Although a branch is not a separate entity, it must keep separate accounting records in Poland. It is also subject to Polish taxation as regards income generated in Poland, as well as to Polish VAT. It should be noted that a branch cannot perform any activities exceeding the scope of business activities carried out by the entity that created it.

The branch does not have any share capital.

Representative office

A representative office is a simplified form of entering the Polish market by foreign investors. As in the case of a branch, the representative office does not have separate legal personality or share capital.

Its creation is the most simplified of all the forms of entering the Polish market (the creation of a representative office requires only entry into a register kept by the Minister of the Economy), however, the scope of its activities is the narrowest. Representative offices cannot perform any gainful activity. The scope of their activities can include only representation and advertising for the entity that created it.



COMMERCIAL AGREEMENTS

Freedom of contract

Even though all commercial agreements in Poland are concluded on the basis of the Civil Code which came into force in the nineteen-sixties, modern forms of contracts were developed in trading, and the binding regulations are adjusted on a regular basis to ensure that the standards of international trade are applicable in Poland.

The general principle of freedom of contract is binding in Poland, permitting parties to freely formulate the content of contracts, ensuring that their clauses do not violate the law, and that they do not contradict the nature of the affected legal relationship or the rules of social conduct.

The manner of concluding contracts

Polish law provides for elaborate regulations concerning the manner of concluding contracts by the parties. This issue currently has increased importance due to the rapidly evolving forms of communication, which leads to a situation whereby many agreements (including commercial contracts) are concluded without physical presence of the parties.

One of the typical manners of concluding agreements is sending an offer to a business partner and the subsequent acceptance of that offer by the business partner. It should be noted that, in specific circumstances, in particular, in relations with regular business partners, the lack of any reply may sometimes be deemed as tacit acceptance of the offer.

Under Polish law, only certain agreements must be in writing or a different specific form (such as a notarial deed or with signatures certified by a notary).

Most contracts can be concluded in any form, even orally. Obviously, for evidentiary reasons, it is recommended that contracts are concluded in writing.

Due to the increasing computerisation of business transactions, the conclusion of contracts in a very informal manner is currently an important issue, for instance, by way of exchanging email correspondence, or even text messages.

Prudence is recommended when formulating any electronic messages (**emails, text messages, popular instant messengers, etc.**), as their content may be used to demonstrate that an agreement was concluded between the parties.

Liability

The liability of the parties for a failure to perform an agreement is an essential issue when discussing commercial contracts in Poland. Polish law does not distinguish between agreements of results and duty of care agreements.

In general, Polish contract law is based on the principle that each of the parties, when performing the agreement, is obliged to **act with due diligence**. The criterion for evaluating whether the requirement of due diligence was met should be based on high standards, in line with the professional character of the activities carried out by commercial partners. If the entity demonstrates that it failed to perform its obligations but acted with due diligence, it will not be liable for the loss suffered by its business partner.

The parties to an agreement can, in principle, tighten or alleviate the rules of liability for a failure to perform an agreement. They can replace the general principle of liability with what is known as the warranty liability.

If they want one of the parties to be liable, or to essentially **guarantee** the performance of its obligations, it is necessary to introduce the relevant provisions into the agreement.

Under Polish law, the parties to an agreement cannot effectively exclude liability for intentional failure to perform an agreement.

Effects of a failure to perform a contract

In the case of the liability of a business partner for a failure to perform a contract, the other party may demand that the contract be performed, or that the damage resulting therefrom be redressed.

Compensation may be pursued only if damage was caused, and Polish courts require that the damage be precisely calculated by the party to the agreement. In the case of a breach of certain agreements, this may be very difficult.

It is recommended that, in the case of contracts whose breach results in a damage that cannot be easily calculated or demonstrated, the parties should introduce provisions concerning **contractual penalties**. In that way, the compensation is fixed, and the amount of the damage suffered does not have to be demonstrated.

In the case of a delay in payment, Polish law provides for statutory interest due to the creditor, in the amount of 7% per annum (2017).

CONCESSIONS AND PERMITS

Freedom of performing business activities

The principle of the freedom of performing business activities, under which performing business activities does not require any permit, is applicable in Poland. However, there are many exceptions from this rule, and in practice it may be necessary to obtain:

- a concession to perform specific types of activities,
- a permit to perform business activities,
- specific personal qualifications to perform certain activities.

Concessions

Certain types of business activities require a concession. This requirement applies to specific sectors of the economy where the state reserves close control.

In the Polish legal system, a concession is not an agreement (as it is in certain countries), but is rather a kind of administrative decision. In principle, concessions are issued by the relevant ministers (with a few exceptions).

Administrative bodies can limit the number of concessions issued. If the concession is applied for by a larger number of companies than the number of concessions that may be issued, the actual issue of the concession may be preceded by a tender.

Example activities requiring a concession:

- exploration, appraisal and production of minerals
- production and trading of weapons and explosives
- production, processing, warehousing and handling of fuels
- protection of people and property
- distribution of radio and television programmes
- air transport

Permits

The regulations requiring a permit to perform business activities are provided for in many legal acts, and therefore, when considering business activities in Poland, it is advisable to verify what specific requirements should be met. In principle,

permits are issued to any entity that meets the conditions set out in the relevant regulations.

Examples of activities requiring a permit:

- waste management
- banking activities
- telecommunications
- insurance activities
- activities of insurance agents and brokers

It should be noted that, if an entrepreneur from the European Union intends to perform business activities in Poland without creating a separate company or partnership for this purpose (for instance, by creating a branch in Poland), it may apply for certain documents obtained abroad to be recognised by the Polish authorities (certificates, attestations), confirming that the conditions for commencing and performing activities have been met.

Personal qualifications

When planning the performance of business activities in Poland, there are a number of professions that are regulated, and a personal licence is required to carry out such professions. This issue is essential to remember when recruiting employees.

Examples of professions requiring specific qualifications:

- medical professions
- brokers
- translators
- architects
- geologists, land surveyors
- operators and maintenance professionals of mechanical equipment
- professions connected with appraisals (various specialisations)
- engineers (various specialisations)

As regards citizens of other EU Members States, there is a system of recognising qualifications obtained in other legal systems. Depending on the situation, the recognition of qualifications permitting the performance of a specific profession in Poland may be conditional upon:

- successfully passing an ability test, and/or
- completing an adaptation traineeship.

LABOUR LAW

General principles

As in the case of the majority of other developed countries, Polish labour law regulates the mutual rights of employers and employees in a detailed manner. These rights result from individual employment contracts and from company labour law acts (work rules, remuneration rules, collective agreements, etc.).

Labour law is based on the following principles:

- prohibition of discrimination,
- equal treatment,
- privileging the employee (expressed in the principle that the provisions of the employment contract cannot be less favourable than the applicable general legal provisions and the company's labour regulations).

The common use of other forms of employment not subject to labour law is an important issue in Poland. These include mandate contracts, specific task contracts and contracts for the provision of services with sole proprietors.

Types of employment contracts

In the Polish legal system, three main kinds of employment contract can be distinguished:

- concluded for an indefinite period,
- concluded for a definite period,
- concluded for a probationary period.

An employment contract for an indefinite period provides the employee with the widest scope of rights and protection.

Polish law aims to limit the cases of concluding many subsequent employment contracts for a definite period with the same employee. In the case of a violation of these restrictions, a contract for a definite period is transformed by virtue of law into an indefinite employment contract.

Termination of an employment contract

Every employment contract may be terminated with notice. The notice period differs depending on the type of contract and the employee's length of service within the company. It ranges from a period of three days to three months.

It is worth emphasising that there are a number of restrictions on terminating employment contracts under Polish law.

Examples of employees protected against termination of their employment contracts:

- pregnant women
- employees with less than four years before reaching retirement age
- employees during an excused absence
- management board members of trade unions
- social labour inspectors

The termination of an employment contract concluded for an indefinite period must be justified. If the justification specifies reasons attributable to the employer, the employee has the right to additional severance pay.

The employer can terminate an employment contract without observing the notice period (with immediate effect) in the case of a prolonged absence of an employee (even if it is excused) or in the case of a flagrant violation of the employee's obligations.

Working time

In principle, the working time amounts to eight hours per day and forty hours per week in a five-day week.

Polish law attempts to provide for a flexible working time and manner of performing work. Employers may therefore introduce (under certain conditions) different working time systems, depending on their needs, such as:

- teleworking,
- interrupted working time,
- flexible working time,
- task-based working time,
- weekend work system,
- individually determined work system.

Trade unions

In Poland, the level of unionisation is relatively low. In the private sector, trade unions are less frequently established than in enterprises controlled by the state.

The role of trade unions and their impact on the functioning of enterprises depends on the situation of the specific entity.

In certain companies, this impact is significant, while in others it is marginal.

REAL PROPERTY

General principles

The Polish real property market is developing rapidly, and therefore, investors enjoy a wide range of legal forms enabling them to use real properties. The most popular legal titles to real property include ownership, perpetual usufruct (being a characteristic institution of Polish law) and the rights resulting from a relationship of obligations: lease, tenancy or granting for use (for no consideration).

Ownership

The transfer of the ownership right to real property (as well as the obligation to transfer the ownership of the real property) must be in the form of a notarial deed. A failure to meet these requirements in terms of form results in the absolute invalidity of the contract.

Perpetual usufruct

Perpetual usufruct is a legal title to real property that is typical of Polish law.

In practical terms, the right of perpetual usufruct is similar to the ownership right. It should be noted, however, that there are certain elements distinguishing this legal right from full ownership.

Perpetual usufruct – specific features

- perpetual usufruct may only be established on land belonging to the State Treasury or to local authorities
- perpetual usufruct is limited in time, in principle it is established for a period of ninety-nine years
- the perpetual usufructuary pays the owner (the State Treasury or local authorities) a fee determined as a percentage rate of the value of the real property
- perpetual usufruct is established and transferred at the time of making an entry to the land and mortgage register

The contract or the decision establishing the right of perpetual usufruct may impose specific obligations or conditions that, if not met, may result in the early revocation of the right (such as the obligation to construct specific facilities). The establishment and transfer of the perpetual usufruct right must be in the form of a notarial deed.

Legal titles resulting from contracts

The most common legal titles to real properties resulting from contract relationships include lease (*najem*) and tenancy (*dzierżawa*), where these two legal relationships are quite similar from a practical point of view and the main difference consists in the right to derive profits from the object of the agreement.

In reality, lease is concluded for shorter periods (the agreement can be concluded for a definite period of up to ten years, and where both the lessor and the lessee are business entities then for up to thirty years, or for an indefinite period. In principle, if the provisions of the agreement do not provide otherwise, the lessee may sublease the object of lease to a third party.

The object of tenancy may consist of real properties that generate proceeds due to their nature or intended purpose, such as agricultural land. A tenancy agreement may be included for a much longer definite period (of up to thirty years) or for an indefinite period. Unlike with lease agreements, the tenant cannot transfer the object in question into sub-tenancy without the consent of the landlord.

Verification of the legal status of the real property

It is possible to verify the legal status of a real property by consulting the land and mortgage register (available on the internet page of the Minister of Justice (www.ms.gov.pl)). Land and mortgage registers contain information on the owner, perpetual usufructuary, specific rights connected with a real property, obligations (for instance, easements) as well as other encumbrances such as mortgages.

When acquiring real property, it is necessary to verify the potential legal risks resulting from the expropriation of owners after WWII. The question of the claims of pre-war heirs has not been effectively resolved, despite the lapse of time, which complicates real property trading and results in the fact that it is essential to check the legal status of the real property and secure against the effects of third party claims in the purchase agreement.

Certain detailed data concerning the legal status of real properties are also available in the land register kept by borough authorities. It is possible to check there, among others, the borders of real properties or their intended purpose in the local zoning plan.

Acquisition of real properties by foreigners

The acquisition of real property by entities from the European Union and the European Economic Area does not require any specific permits.

This is not the case when real property is purchased by non-EU entities – then the acquisition requires the consent of the Minister of the Interior and Administration in order to be binding. This also applies to situations in which an investor from outside of the European Economic Area intends to purchase shares in a company or partnership being the owner or perpetual usufructuary of real property. There are very few exceptions to the above rule.

Trading in agricultural property

The regulations amended in 2015 severely restricted the scope of trading in agricultural property. The acquisition of agricultural property currently requires meeting very stringent conditions, which in practice makes the acquisition of agricultural property more difficult. Currently, agricultural property can only be acquired by a person qualified as an individual farmer. Anyone who does not meet this requirement must obtain a special permit of the President of the Agricultural Property Agency (ANR).

Trading in shares in companies that own agricultural property is also subject to special requirements. Where shares in such companies are for sale, the ANR has a right of first refusal.

Public burdens connected with real property

The main public burden connected with holding real property is real property tax. In addition, the entities holding land under the right of perpetual usufruct pay the relevant fee to the owner. A discussion is underway concerning the introduction of a new tax on commercial real property, which would be charged on the value of the real property.



PUBLIC PROCUREMENT

Public procurement contracts are regulated in Poland in accordance with EU regulations, which do not leave much space to national authorities as regards the adoption of solutions different from community regulations.

Formalised procedures

It should be noted that the legal provisions on public procurement in Poland are very formalised. Even though regulations aimed at making the procedure less formalised have been in place for many years, success in that regard has only been partially achieved. Numerous facilitations have already been implemented, and therefore, submitting offers is much easier than before. Nevertheless, a relatively minor error on the part of the bidder may still result in its offer being rejected. For this reason, it is recommended to complete and draw up tender documentation with the utmost prudence and accuracy.

Acceleration of proceedings – limiting appeals

The award of public procurement contracts has been accelerated, among others, by limiting the possibility of submitting appeals. Currently, a dissatisfied contractor may submit an appeal against the ordering party to the National Board of Appeals (KIO). Even though in the case of an unfavourable decision of the Board, the contractor still has the right to submit a complaint to the regional court, the proceedings before the court do not result in suspending the conclusion of the contract for the award of public procurement.

Another method of limiting the number of unjustified complaints against the rulings of the Board (KIO) is determining high fees and discouraging contractors from questioning them. The above regulations result in the fact that very few contractors file a complaint to the court against unfavourable rulings of the Board (KIO).

Limited possibilities of renegotiation of the contract

An important issue in terms of the Polish public procurement law is the limited possibility of introducing changes to the contract concluded as a result of public procurement.

Contractors submitting an offer must therefore remember that if their offer is selected by the ordering party, they will not be able to effectively apply for its renegotiation, even in the case of a material change of the market environment.

COURTS AND ADMINISTRATION

Civil court proceedings

The common courts of law in Poland are divided into three instances:

- district courts,
- regional courts,
- courts of appeal.

Court cases are resolved in two instances, whereby, depending on the type of the case and the value of the dispute, the first instance court will either be the district or the regional court.

A cassation appeal can be filed with the Supreme Court against some final and enforceable judgements issued by these courts.

According to independent research on vulnerability to corruption, the Polish system of common courts of law meets the same standards adopted in other Western European countries, such as France or Germany, and corruption in courts is considered a less severe problem in Poland than, for instance, in Spain or in Italy.

Poles believe that court proceedings are too lengthy. Even though official statistics show that their duration has shortened significantly (the latest data show that court proceedings in the first instance currently last around 4.7 months on average), a party wishing to prolong a dispute may do so very effectively in practice.

In order to counteract lengthy court proceedings, a number of obligations were imposed on the parties in the Polish judicial system, including the obligation to present specific statements and evidence in the proceedings within set deadlines, without the possibility to file them later.

As a result, professional legal advice is even more necessary in court proceedings, to ensure that the dispute is not lost for purely formal reasons.

One of the ways in which foreign investors may be able to overcome the excessive formalism and prolixity of the Polish judicial system is to use arbitration courts. There are a number of renowned arbitration courts in Poland.

The arbitration court at the National Chamber of Commerce, whose rules of arbitration are based on the rules binding at the International Chamber of Commerce in Paris (ICC), is the most prestigious and the longest operating institution of that kind in Poland.

Administrative proceedings

Most proceedings before administrative authorities are carried out according to a unified scheme, and potential differences result from various aspects of the subject of the proceedings.

The proceedings take place in the form of exchange of correspondence. Foreign investors may sometimes be surprised by the reluctance of Polish clerks to get in touch with them directly. In reality, many offices introduce restrictions hindering or preventing the parties to the proceedings from contacting the clerks directly.

Administrative proceedings are aimed at observing the rights and interests of the parties. Each administrative decision must contain a precise justification. Any violation of the rights of the parties may result in the revocation of the decision by an appeals board, or to the decision being invalid.

In principle, proceedings are always conducted on two instances. However, the structure of the Polish administrative system is rather complicated, and therefore, the body of first instance may either be a local authority or governmental administration.

In relatively few cases, the minister or a different body of central administration is the first instance body (in such cases, it is possible to submit an application for the case to be re-examined instead of an appeal).

A characteristic feature of the proceedings is that it is relatively easy to file an appeal against a decision. The applicant does not have to justify the appeal, the mere fact that it challenges the issued decision is sufficient. This may sometimes be surprising to foreign investors, as the parties participating in proceedings initiated at their request (for instance, the owners of neighbouring real properties) may easily question the accuracy of the decisions issued by first instance authorities.

Decisions issued in the framework of proceedings carried out at two instances are final and enforceable. However, this does not prevent the parties from submitting further complaints – to the Provincial Administrative Court and to the Supreme Administrative Court.

Given the above possibilities, even though administrative bodies usually settle cases rapidly, due to a large number of potential appeals, the whole case may last quite a long time.

HOW TO INVEST IN POLAND?

From the many years of professional experience gained by lawyers at the Robert Jędrzejczyk i Wspólnicy law firm, the majority of foreign investors can be divided into two main groups:

- businesses interested in commencing business activities in Poland “from scratch”,
- businesses intending to enter the Polish market by acquiring an existing company or partnership.

Commencing new business

The majority of investors commence their activities by creating a new legal structure, usually in the form of a limited liability company. This legal form is considered the least formalised, and in terms of company image it matches well the range and expected scope of the new business.

Even though the construction of a limited liability company in Poland allows for single-shareholder companies, in order to make their entry into the Polish market more effective, foreign investors often decide to invite a local partner to their new company.

The regulations concerning limited liability companies are flexible, and it is relatively easy to adjust the provisions of the company’s articles of association to a range of situations, depending on the amount of the share of the Polish partner and the scope of its competencies.

Another frequent form of entering the Polish market is commencing co-operation with a Polish entity active on this market. In this case, such co-operation may take the following forms:

- distribution agreement,
- agency agreement, under which the local partner is entrusted with intermediary services such as concluding agreements on behalf of the foreign investor,
- franchise agreement.

Acquisition of an existing enterprise

The acquisition of an existing enterprise may be an alternative to incorporating one from scratch.

The Polish standards of M&A transactions are fully adapted to international standards. Agreements for the acquisition of enterprises do not differ much from similar agreements concluded in other countries.

Contracts can be divided into two basic types:

- contracts concerning a company’s shares, known as share deals,
- contracts concerning a company’s assets, known as asset deals.

Under Polish law, a share deal significantly differs from an asset deal. The subject of the latter includes an enterprise (*przedsiębiorstwo*), within the meaning of Polish law. Considering the specific definition of an enterprise, an asset deal must contain separate provisions concerning the liability of the purchaser for the obligations connected with running the acquired enterprise.

As regards other provisions, both contracts are similar. When conducting negotiations with Polish business partners, investors will see that similar areas are negotiated as on the international scene.

Contracts can be concluded in the form of a single transaction (the ownership is transferred on the same day) or in the form of a preliminary or conditional agreement. In the two last cases, the transfer of the ownership of shares (or the enterprise) depends on whether additional conditions and specific formalities are met.

Sometimes the performance of the transaction depends on meeting additional requirements (for instance, obtaining the consent of the President of the Office of Competition and Consumer Protection, the non-performance of the right of first refusal by the Agricultural Property Agency, or obtaining the consent of the Minister of the Interior and Administration).

Typical elements of contracts:

- determining the price and adjustment mechanisms after the conclusion of the transaction (possibly also conditions of paying an additional price)
- conditions that must be met to ensure that the legal title to shares or the company or partnership is transferred
- representations and warranties of the seller concerning the factual and legal circumstances of the object of sale
- the mechanism of the buyer taking over control of the object of sale
- determining the rules of liability and pursuing claims against the seller
- determining the manner of securing claims

Legal note

This publication is only a brief presentation of the general outline of Polish law. It may not serve in any case as a basis for making business decisions. Before deciding to commence business activities in Poland, we recommend that you obtain detailed advice concerning the legal conditions applicable to specific industries and sectors of the economy. Robert Jędrzejczyk i Wspólnicy Law Firm, its employees or co-operating entities are not liable for the effects of decisions taken on the basis of this publication.

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