Hogan Lovells

CELEBRATING
22 YEARS
IN POLAND

Doing business in Poland

2022

Contents

Introduction

Doing business in Poland is regulated in the same way as in other European Union countries. It allows business activities to be conducted in various legal forms and on various bases including the freedom of services, and the freedom of establishment for entities among the EU states. Entities from outside the EU also have a very wide range of possibilities for conducting their business activities in Poland.

Foreign investors who wish to conduct business in Poland may be required to meet certain conditions, obtain permits or licenses. These additional requirements are usually connected to the scope of activity to be undertaken, for example: banking, or insurance, etc. The forms and scope of conducting business in Poland, apart from general corporate issues, usually requires the involvement of tax, real estate, employment, and other areas of law.

Hogan Lovells is pleased to present 2022 edition of Doing business in Poland. This publication is intended to provide an overview of the legal and tax framework and regulatory procedures most likely to be relevant to foreign investors considering establishing a business in Poland. It also identifies certain legal, tax and practical issues and risks that should be considered by companies planning to invest, or do business, in Poland.

It is our hope that this publication will be able to serve as both a starting point for those unfamiliar with the Polish market, as well as a convenient reference for more experienced participants.

This publication is not intended to be a comprehensive guide, but to provide an overview of some of the important issues that investors should consider and discuss with counsel.

Corporate structures

Corporate structures

Investors from countries that are EU and EFTA members or investors from other countries who enjoy the freedom of economic activity under the agreements concluded with the EU or EU member states can conduct economic activity on the same terms as Polish citizens.

Foreign Investors pursuing business activities in Poland

The rules for foreign investors (both entities and natural persons) conducting business activities in Poland are different for investors from the EU and EFTA member and non-member countries.

Establishing business activities

Investors who wish to conduct their business in Poland in a continuous and stable manner can do so by establishing their economic activity in the form of a subsidiary — a company or partnership, or through other types of business entity such as a branch or representative office.

Investors from countries that are EU and EFTA members or investors from other countries who enjoy the freedom of economic activity under the agreements concluded with the EU or EU member states can conduct economic activities on the same terms as Polish citizens.

The same rules apply to foreigners who are natural persons from countries other than those mentioned above and who possess a permit legalising their stay in Poland, i.e.:

(a) have received a permanent residency permit,

(b) have received a long-term resident's EU residency permit,

(c) have received a temporary residency permit for the purposes of obtaining higher education or for the purposes of family reunification,

(d) have received consent for a tolerated stay or refugee status granted in the Republic of Poland,

(e) enjoy temporary protection within this territory,

(f) hold a valid Polish Charter (*Karta Polaka*),

(g) have received a temporary residency permit to conduct business activity,

(h) have arrived legally in the territory of Poland in the period as of 24 February 2022 from Ukraine and have declared their intention to stay in Poland (in the case of Ukrainian citizens and their non-Ukrainian spouses who arrived in Poland in connection with war in Ukraine – if they obtain a Polish Civil Identification Number (*PESEL*)), as well as

(i) not having yet obtained a residency permit but have begun the procedure to obtain one before 24 February 2022 (in the case of Ukrainian citizens).

Ukrainian citizens who arrived in the territory of Poland from Ukraine have the above rights as set out in points (h) and (i) temporarily, as of the date of this newsletter before 23 August 2023.

The abovementioned investors are not subject to any limitations on the form of their economic activities and can conduct their business through:

(a) a registered partnership (*spółka jawna*),

(b) a professional partnership (*spółka partnerska*),

(c) a limited partnership (*spółka komandytowa*),

(d) a limited joint-stock partnership (*spółka komandytowo-akcyjna*),

(e) a limited liability company (*spółka z ograniczoną odpowiedzialnością*),

(f) a joint-stock company (*spółka akcyjna*),

(g) a simple joint-stock company (*prosta spółka akcyjna*),

(h) sole proprietorship (*indywidualna działalność gospodarcza*),

(i) a civil law partnership (*spółka cywilna*) — this partnership is not a separate business entity — its participants act as registered individuals jointly pursuing economic activities.

Investors from countries that are not members of the EU or EFTA and who do not enjoy the freedom of economic activity under the agreements concluded with the EU or EU member states, or have not received a permit legalising their stay in Poland (unless international agreements state otherwise) have the right to establish and conduct business activities only in the following forms:

(j) a limited partnership (*spółka komandytowa*),

(k) a limited joint-stock partnership (*spółka komandytowo-akcyjna*),

(l) a limited liability company (*spółka z ograniczoną odpowiedzialnością*),

(m) a simple joint-stock company (*prosta spółka akcyjna*), and

(n) a joint-stock company (*spółka akcyjna*).

They also have the right to enter these types of partnerships or companies and acquire their shares.

Permits and licences

Operations in certain business areas require obtaining a licence or a permit granted by the Minister competent for the subject of the economic activity, or from the relevant authority, regardless of whether the company is domestic or foreign.

A licence is the most rigorous type of permission for an economic activity that relates to projects that are of particular importance to the security of the state or citizens or important public interest. The application for a licence is required for the pursuit of economic activity in the following fields:

(a) the exploration, identification, and excavation of minerals and mineral materials from deposits, and the non-tank storage of waste in mounds or underground mines, including carbon capture and storage projects,

(b) the manufacturing and trading in explosives, weapons and ammunition, and goods and technology for military or police usage,

(c) the manufacturing, processing, storing, transmitting, distributing and trading in fuels and energy,

(d) transmission of carbon dioxide for the purposes of underground storage,

(e) the provision of protection for persons and property,

(f) the broadcasting of radio and television programmes,

(g) air transport activities,

(h) the operation of casinos.

A permit is less rigorous than a license, and it requires the entrepreneur to comply with the legal conditions and rules for the performance of this activity. Obtaining a permit is required in order to perform activities in a number of economic sectors including, but not limited to:

(a) insurance activity,

(b) banking,

(c) gambling,

(d) trading of financial instruments,

(e) production and distribution of pharmaceuticals,

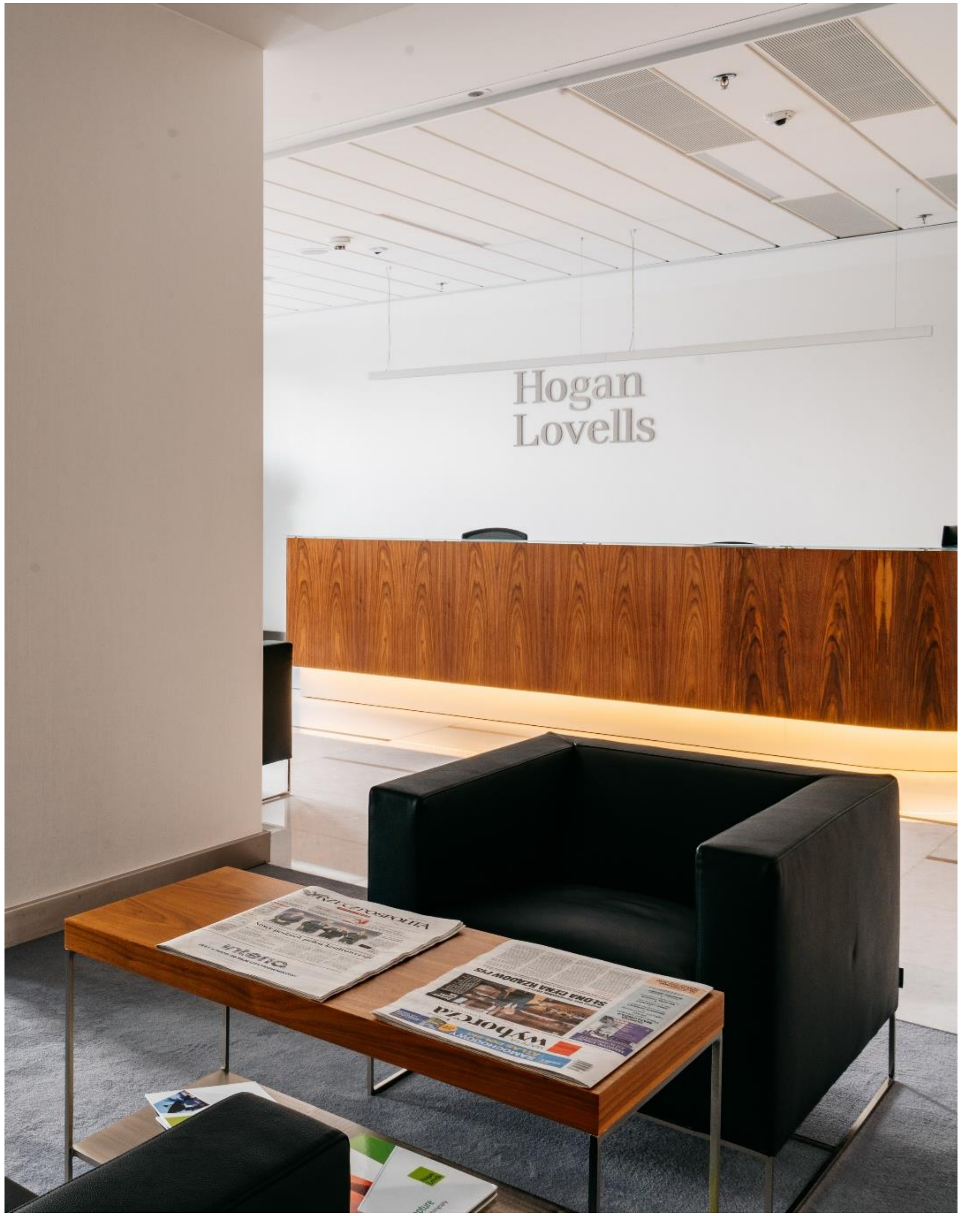
(f) wholesale and retail of alcoholic beverages.

Companies and partnerships

The Code of Commercial Partnerships and Companies dated 15 September 2000 (the “CCPC”), stipulates three types of companies: limited liability companies, simple joint-stock companies, and joint-stock companies, as well as four types of partnership: registered partnerships, professional partnerships, limited partnerships, and limited joint-stock partnerships.

The main difference between the companies and partnerships is that only companies are considered to be separate legal entities.

In practice, the four most common and at the same time most favourable legal forms of company and partnership for foreign investors include: limited liability companies, joint-stock companies, limited partnerships, and limited joint-stock partnerships.



- **Limited liability company (*spółka z ograniczoną odpowiedzialnością*)**

General information

A limited liability company is the most common form of doing business in Poland and is suitable for a small number of shareholders. Both natural and legal persons can be founders. A limited liability company can also be formed by a single shareholder with the exception of another single-person limited liability company. A limited liability company can be formed for any legitimate purpose (not only in order to conduct business activities).

The company's articles of association, as a rule, need to be executed in the form of a notarial deed. As of the moment of their execution, the company can start operating as a company “in organisation”.

A limited liability company acquires its legal personality upon being entered in the Registry of Entrepreneurs of the National Court Register and, as of that moment, is solely liable for its obligations - its shareholders are generally not liable for the obligations of the company.

Share capital

The minimum share capital amounts to PLN 5,000 and, as a rule, must be paid up in full by the company's shareholders before registration. The nominal value of one share must be at least PLN 50. Contributions towards the share capital can be made either in cash or in kind.

Generally there is no requirement for a reserve fund.

Governing bodies

The mandatory bodies of a limited liability company are the Shareholders' Meeting and the Management Board. A Supervisory Board or Audit Committee is optional, unless the share capital exceeds PLN 500,000 and the number of shareholders is greater than 25.

The Shareholders' Meeting is the supreme body of a limited liability company and generally elects the members of the Management Board.

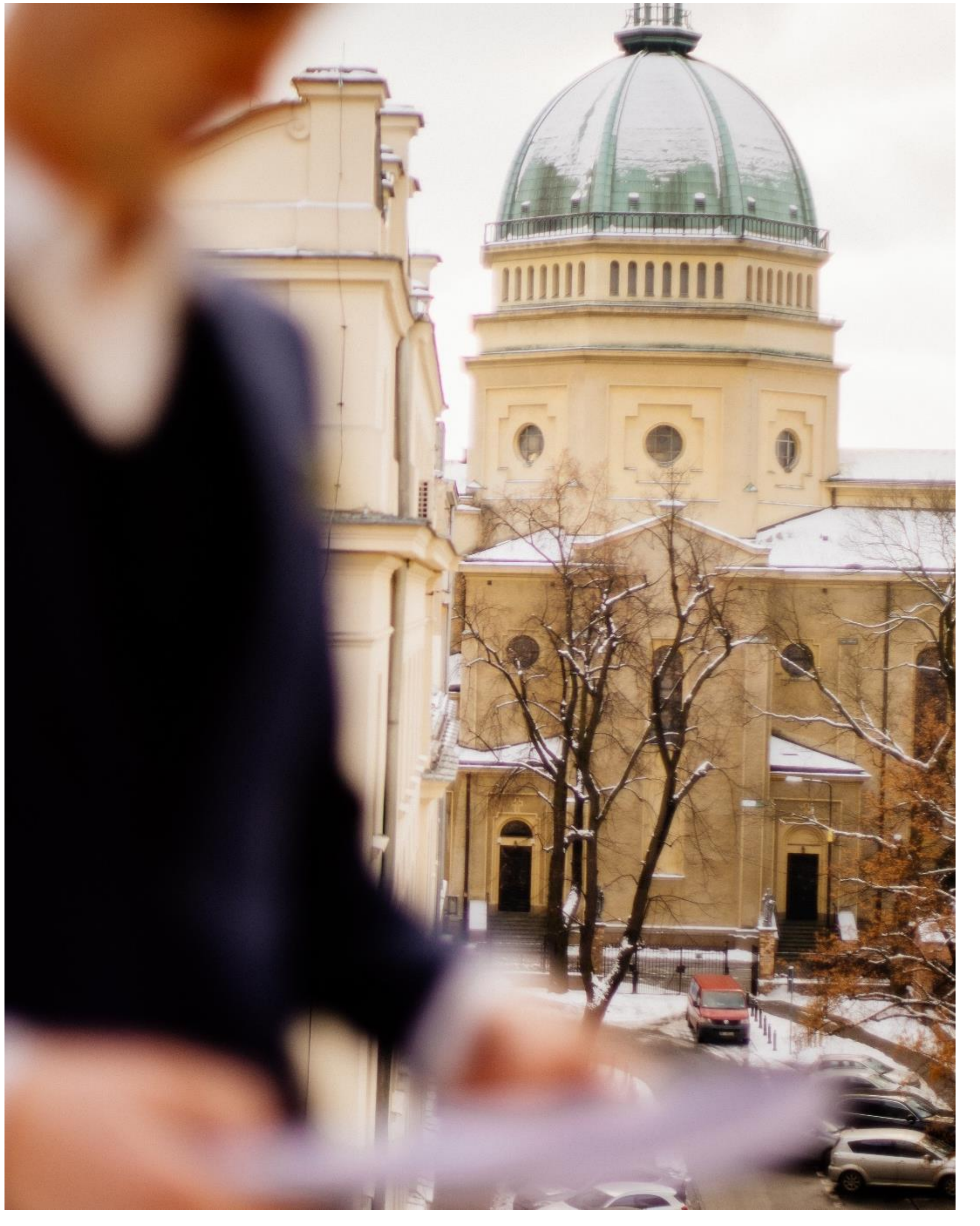
The members of the Management Board represent the company and conduct its business.

Each shareholder has the right of inspection (i.e. to inspect the books and documents of the company and to request that the Management Board provides explanations). This right can be excluded if a Supervisory Board or Audit Committee has been established in order to exercise permanent supervision over the company's activity in all branches.

- **Joint-stock company (*spółka akcyjna*)**

General information

A joint stock company is a company suitable for a larger number of usually passive shareholders, but it can be established by a single shareholder, if necessary, with the exception of the single shareholder being a single-person limited liability company. Generally, running a joint-stock company is more formalised than a limited liability company (e.g. the Shareholders' Meetings always need to be recorded by a notary).



Joint-stock companies are the compulsory form required when conducting business in a number of regulated sectors (e.g. banking, insurance, etc.) and can be suitable for investors planning to raise equity on the stock exchange.

The company's articles of association must be executed in the form of a notarial deed. As of the moment of its execution the company can start operating as a company "in organisation".

A joint-stock company acquires its legal personality upon being entered in the Registry of Entrepreneurs of the National Court Register and, as of that moment, is solely liable for its obligations - its shareholders are not liable for the obligations of the company.

Share capital

The minimum share capital is PLN 100,000 and the minimum nominal value of a share is PLN 0.01 (one grosz). Shares acquired through a contribution in kind should be fully paid up no later than one year after the registration of the company, whereas shares acquired through a cash contribution must be paid up to the amount of 25% prior to the registration of the company.

As a general rule, in kind contributions to a joint-stock company have to be audited.

A reserve fund for potential losses must be created through the transfer of 8% of the annual profits of the joint-stock company until the reserve capital amounts to ⅓ of the share capital.

Governing bodies

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

The Shareholders' Meeting is the supreme body of a joint-stock company. The members of the Management Board represent the company and conduct its business. The Supervisory Board exercises permanent supervision over the company's activities in all branches of the enterprise and performs other tasks such as appointing the members of the Management Boards (unless otherwise stipulated in the company's articles of association).

- ## Simple joint-stock company (*prosta spółka akcyjna*)

General information

Simple joint-stock companies were introduced on 1 July 2021. The purpose of this introduction was primarily to create a legal form more suitable for the development of innovative businesses (start-ups), however the regulations do not limit the use of this legal form for other purposes. A simple joint-stock company is a new, hybrid form, of conducting business, having elements characteristic of both of a joint-stock company and a limited liability company.

The formation of a simple joint-stock company requires, as a rule, the form of a notarial deed for its articles of association. A simple joint-stock company can be formed by a single shareholder with the exception of another single-person limited liability company.

Share capital and shares

The share capital of a simple joint-stock company is allocated for non-cash or cash contributions. The share capital is the company's basic capital which is not divided into shares. The company's shares have no nominal value and are separate from it in the sense that they are not part of it. The share capital must be a minimum of one zloty. In a simple joint-stock company, no reserve capital is created.

Governing bodies

In a simple joint-stock company, there are two organisational models.

In the monistic model, management and supervisory functions are concentrated in one body - the board of directors.

In the dualistic model, management and supervisory functions are divided between the classic management board and an optional supervisory board.

Establishing a limited liability, simple joint-stock company, or joint-stock company

Cost and timeframe

The procedure for establishing a limited liability, simple joint-stock company, or joint-stock company, starting from the execution of the articles of association until its registration in the National Court Register, takes about three weeks. The cost for establishing and registering a company with a minimum share capital should, as a rule, not exceed PLN 3,000 (approximately EUR 750) in the case of a joint-stock company, and PLN 2,000 (approximately EUR 500) in the case of a simple joint-stock company or limited liability company.

Procedure

The following steps must be taken in order to establish a company in the form of a limited liability, simple joint-stock company, or joint stock company:

(a) signing of the articles of association in the form of a notarial deed,

(b) appointing the governing bodies of the company,

(c) executing the bank account and lease agreement for the company's registered office,

(d) paying up the contributions towards the share capital,

(e) applying to the National Court Register to register the company in the Register of Entrepreneurs of the National Court Register, to obtain a statistical number (REGON) and a tax identification number (NIP), and making the relevant announcements in the Court and Economic Monitor,

(f) providing additional information for the local statistical office and the local revenue office (NIP), and applying for a VAT number,

(g) applying to the Social Security Office (ZUS) (applicable if the company employs any employees).

A limited liability company and simple-joint stock company having standard articles of association and having no contributions in kind can also be established and registered through online registration which can be completed within 24 hours.

Other forms of conducting business activity in Poland

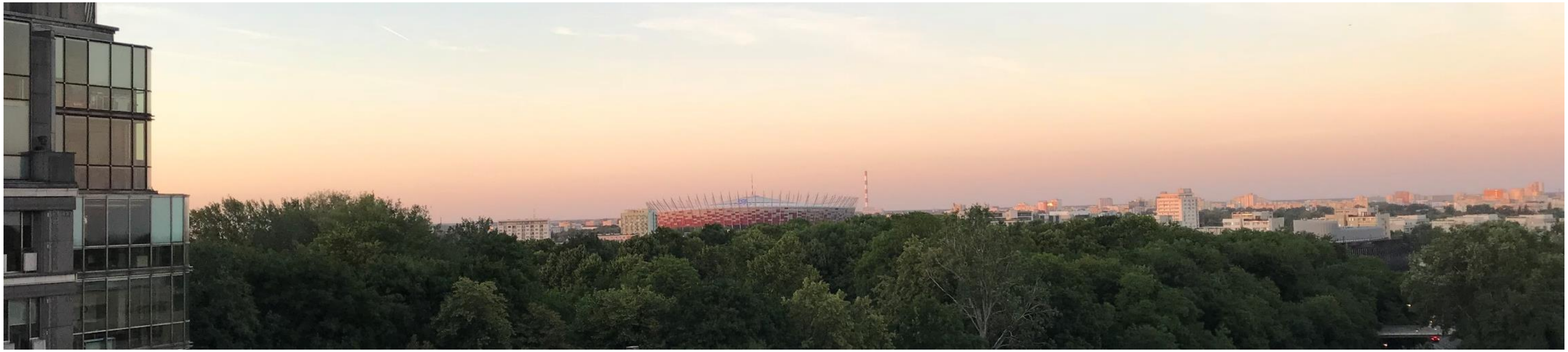
- **Limited partnership (*spółka komandytowa*)**

A limited partnership is a partnership where at least one partner is subject to unlimited liability for the obligations of the partnership (the general partner), and at least one partner is liable only up to the amount specified in the deed of the partnership (the limited partner).

Articles of association made in the form of a notarial deed are, as a rule, required in order to establish a limited partnership.

Upon registration in the Registry of Entrepreneurs at the National Court Register, a limited partnership acquires the right to conduct an enterprise under its own name despite the lack of legal personality.

A limited partnership can also be established and registered through online registration which can be completed within 24 hours.



- **Limited joint-stock partnership (*spółka komandytowo-akcyjna*)**

  A limited joint-stock partnership is a hybrid of a joint-stock company and a limited partnership where at least one partner - the general partner - bears personal liability with their personal property for the partnership's debts, and at least one partner is a shareholder bearing no personal liability for the obligations of the limited joint-stock partnership.

  Articles of association made in the form of a notarial deed are required in order to establish a limited joint-stock partnership.

  Upon registration in the Registry of Entrepreneurs at the National Court Register a limited joint-stock partnership gains the right to conduct an enterprise under its own name despite the lack of legal personality.

  A limited joint-stock partnership is the only partnership which requires a minimum share capital to be established in the amount of PLN 50,000.

  A limited joint-stock partnership is represented by the general partner, whereas the shareholder can represent the partnership only on the basis of a power of attorney granted by the general partner. A Supervisory Board is obligatory if the number of shareholders exceeds 25.

- **Branch office (*oddział*)**

  Branch offices can be established by investors from:

  (a) the EU and EFTA countries, as well as from non-EU or EFTA countries who enjoy the freedom of economic activity under the agreements concluded with the EU or EU member states,

  (b) other countries under the rule of reciprocity, i.e. under the same rights with respect to undertaking and conducting business activity as any Polish entrepreneurs would possess in the foreign country concerned (including Ukraine).

  A branch office is a part of a foreign company which does not have its own legal personality and is obliged to use the name of the mother entity in the language of the country where it is registered, with the words "*oddział w Polsce*" (branch in Poland) added.

  A branch office can conduct its activities exclusively within the framework and to the extent of the scope of activities of a foreign entrepreneur. Branch offices are obliged to maintain separate accounting books in Polish, in accordance to Polish accounting regulations. A branch office can employ Polish and foreign individuals, but the foreign entity creating its branch office is obliged to appoint a person at the branch who is authorised to represent this entity.

  A branch office can conduct business activities in Poland only upon having been entered into the National Court Register.

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Merger control and Foreign Direct Investment control

Merger control and Foreign Direct Investment control

Mergers and acquisitions performed with the participation of Polish companies (or, in particular instances, non-Polish companies which conduct business operations in Poland) might require various regulatory notifications and approvals provided that certain conditions have first been met. This specifically refers to the merger control consent from the relevant competition authority which is granted if a given transaction does not pose a threat to any effective competition on the market. In addition, these transactions might also require a notification under the foreign direct investment (the "FDI") regime in which case the parties can proceed with the transaction if the relevant authority decides not to oppose to it.

As a general rule, the authority relevant in both of the abovementioned instances is the President of the Office for Competition and Consumers Protection (*Prezes Urzędu Ochrony Konkurencji i Konsumentów*, the "UOKiK"). The only exception to this rule applies to the largest mergers and acquisitions for which the relevant competition authority is the European Commission rather than the UOKiK.

Merger control notifications to the UOKiK

Transactions effected through (i) the mergers between two or more companies, (ii) the acquisitions of (sole or joint) control by one or more companies over another one or more companies, as well as (iii) the acquisitions of assets, or (iv) the establishment of a joint venture, can be subject to a mandatory notification to the UOKiK.

As a general rule, the abovementioned transactions require the UOKiK's prior approval if at least one of the following conditions have been met:

(a) the combined worldwide turnover of all the parties involved in the transaction exceeded the equivalent of EUR 1 billion, or

(b) the combined turnover achieved by the participants of the concentration in Poland exceeded the equivalent of EUR 50 million.

At the same time, transactions meeting at least one of these conditions are exempt if:

(c) the target (the acquired company and its subsidiaries, or the acquired assets) did not generate a turnover of more than EUR 10 million in Poland in either of the two financial years prior to the notification, or

(d) where the transaction was in the form of the establishment of joint venture if the Polish turnover of none of the capital groups taking part in the given transaction exceeded the threshold of EUR 10 million in either of the two previous financial years.

The implementation of a transaction which has met at least one of the conditions as specified in points (a) and (b) above and, at the same time, does not benefit from the exemptions described in points (c) and (d) cannot take place until the UOKiK has granted its clearance, or that the statutory period has lapsed without any decision from the UOKiK.

The UOKiK will clear a transaction provided that the transaction does not cause a significant impediment to competition on the market, in particular, if it does not create or strengthen a dominant position on the market. This dominant position is generally presumed if the combined market share of the parties after the implementation exceeds 40%, however, in certain instances a dominant position could also arise if the market shares were lower. In some instances, instead of prohibiting a transaction which poses a threat to competition on the market, the UOKiK can issue its clearance subject to certain conditions designed to remedy any identified competition concerns (such as a divestment of part of the business).

Merger control in Poland is a two-phase procedure. The first phase is intended for simple and non-problematic transactions and is usually completed within one month. For complex transactions, transactions where competition concerns arise, or for those that require the conducting of a market survey, a second phase is opened (following the first phase) and the deadline for the UOKiK to issue its decision is extended for an additional four months.

Please note that should the UOKiK request additional information or documents, or if the parties' views concerning remedies have been sought by the UOKiK, the stop-the-clock rule applies, and the statutory deadline is on-hold until the requested information and documents have been submitted. In practice, transactions which do not raise competition concerns are usually dealt with within six weeks.

Should the parties close a transaction which requires the UOKiK's prior consent without said consent, the UOKiK has the authority to impose a fine of up to 10% of the turnover achieved in the previous financial year by the party which was obliged to submit the notification. Finalising a transaction without the required consent of the UOKiK does not, of itself, invalidate the transaction.

If, however, a transaction significantly restricts competition and there is no other way in which to restore competition, the UOKiK can take steps aimed at restoring competition such as, for instance, ordering the sale of assets or shares (de-merger).

Foreign Direct Investment notifications to the UOKiK

Apart from the merger control performed on the basis of competition law, since the outbreak of COVID-19 the UOKiK has also been the authority relevant for the scrutiny of most Polish laws concerning foreign direct investments.

Each acquisition or the achievement of a significant participation, as well as the acquisition of dominance over a “protected entity” based in Poland by an entity from outside of the European Union, the European Economic Area, or the OECD, must be notified to the UOKiK. Such a transaction can only be effected if the UOKiK does not object to it. Failure to make this notification, or closing a transaction despite the UOKiK’s objection, can result in the invalidity of the acquisition/disposal and is subject to severe sanctions of up to PLN 100 million.

A “protected entity” is very broadly defined as an entrepreneur based in Poland whose revenues exceeded (in any of the two fiscal years preceding the notification, and within the territory of Poland) the equivalent of EUR 10 million and is, among other things:

(a) a public company within the meaning of the Public Offering Act (a company listed on the Warsaw Stock Exchange, or New Connect),

(b) an entrepreneur that owns property that is disclosed in the unified list of facilities, installations, equipment, and services comprising critical infrastructure,

(c) an entrepreneur, developing or modifying software for essential facilities and public services (e.g. power plants, district heat, management of installations for potable water or wastewater treatment, facilities or systems used for voice and data transmission, equipment or systems used for the provision of cash, card payments, the provision of insurance services, or the operation of hospital information systems), or

(d) an entrepreneur engaged in business activities whose objects include: (i) the generation of electricity, or (ii) the production, transportation, storage, handling, and distribution of motor gasoline, diesel fuel, natural gas, or heat, or (iii) the production of chemicals, fertilizers, or chemical products, or (iv) the manufacturing or marketing of explosives, weapons, or ammunition, or technological products for military or police purposes, or (v) the regasification or liquefaction of natural gas, or (vi) the manufacturing of equipment, instruments, or medical devices, or (vii) the processing of meat, milk, grains, fruits, or vegetables.

The Polish FDI regime covers transactions which involve the achievement of significant participation as well as the acquisition of dominance over the abovementioned protected entities. “Significant participation” is understood as a situation which enables the exercise of influence over the activities of a protected entity through (a) the ownership of shares representing at least 20% of the total number of votes, or (b) holding an equity interest in a partnership with a value of at least 20% of the value of all the contributions made to the partnership, or (c) holding a share in the profits of another entity amounting to at least 20%. The “acquisition of dominance” is understood as, among other things, having the ability to otherwise decide the direction of an entity's activities, in particular under an agreement providing for the management of that entity or for the transfer of profits by that entity.

The notification to the UOKiK is submitted by the entity that intends to acquire or achieve a significant participation or acquire dominance. As a general rule, the notification must be made prior to the conclusion of any agreement giving rise to the obligation to acquire, or prior to the execution of any other legal act or any acts leading to the acquisition or achievement of a significant participation, or of the acquisition of dominance.

However, in the case of a tender offer for the sale or exchange of shares in a public company within the meaning of the Public Offering Act, this notification can take place prior to the publication of the tender offer.

After receiving the notification, the UOKiK performs an initial examination the purpose of which is to decide whether protection is justified. Decisions at this stage are made, as a rule, within 30 days. However, if there are formal or substantive doubts in the first phase of the proceedings that have not been resolved, the authority will decide to initiate an inspection proceeding which can last for an additional 120 days.

The UOKiK can object to a notified transaction if:

(a) the entity submitting the notification has not, within the prescribed period, supplemented the formal deficiencies in the notification or the documents or the information attached to the notification, or

(b) the entity submitting the notification has not provided additional written explanations within the time limit as set by the control authority, or

(c) there is at least a potential threat to the public order or public security of the Republic of Poland, or to public health in the Republic of Poland in connection with the transaction, or

(d) it is impossible to determine whether the acquirer has the nationality of a EU Member State (in the case of natural persons), or has or has had for at least two years since the day preceding the notification a registered office in the territory of a EU Member State - in the case of entities other than natural persons, or

(e) the acquisition or achievement of a significant participation or the acquisition of dominance could have a negative impact on projects and programs of interest to the European Union.

There are only a limited number of entities which are listed on the special list of protected entities (currently 13 companies) which belong outside the scope of the UOKiK's jurisdiction. These 13 companies are determined by the decree of the Council of Ministers and for which other Polish authorities have jurisdiction.

Non-EU/EEA/OECD investors making acquisitions of:

(a) ≥20%, ≥40%, or ≥50% of the shareholding or voting rights of a protected entity, or the ability to hold decisive influence on a protected entity by other means, or

(b) shares in a public company (regardless of the sector in which the target operates), or

(c) an enterprise or an organised part of an enterprise of a protected entity (or the lease of this enterprise or its organised part).

Note: the notification obligation arises if the protected entity's Polish turnover in at least one of two financial years preceding the notification exceeded the equivalent of EUR 10m.

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Employment

Employment

The most important principle of the Polish labour law is that the terms and conditions stipulated in an employment agreement cannot be less advantageous for an employee than the conditions set out by statutory law. Provisions of an employment agreement which are less advantageous than the provisions of the Polish labour law are invalid; the appropriate rules of the labour law apply instead.

General information

The basic form of employment in Poland is the employment agreement which is regulated under the Polish Labour Code. The Labour Code specifies the rights and duties of employers and all employees regardless of their work category. The provisions of the Polish Labour Code do not apply to a person engaged under a civil law agreement (e.g. service contract, specific-task contract, or managerial contract, etc.). Such flexible, civil law forms of employment are possible in Poland; however, they must be applied in accordance with certain requirements.

A feature of the Polish labour law is that it does not allow for the discretionary formation of an employment relationship, and generally aims at protecting the employee as the weaker party to an employment relationship against any disadvantageous regulations.

The parties to the employment agreement are free to choose the law of another country to govern the employment relationship. However, if the work is to be performed in Poland, certain employee entitlements, as imposed under Polish law, would, regardless, need to be recognised by the employer.

Types of employment agreements

In Poland employment agreements are concluded for:

(a) a probationary period (no longer than three months), cannot be repeated for the same position at the given employer),

(b) a definite period (up to 33 months, up to three agreements, the conclusion of a fourth agreement turns the contract into a permanent agreement for an indefinite period),

(c) an indefinite period.

A regular (non-senior-level) employee is usually employed under an employment agreement for a probationary period first, and then under an agreement for a definite period.

An employee in a senior level position typically receives a permanent agreement for an indefinite period already from the beginning of their employment.

The employment agreements must be in writing and in the Polish language unless the employee, who is not a Polish citizen, requests that the execution of the employment agreement be in a different language. The written form requirement will also have been met if the document is signed electronically using a qualified electronic signature.

Termination of employment agreements

Employment agreements can be terminated:

(a) through the mutual agreement of the parties,

(b) with a notice period (based on a notice submitted by one of the parties' observing the notice period),

(c) without a notice period (based on a statement submitted by one of the parties without a notice period),

(d) upon the expiration of the term for which it was concluded.

Statements from both parties concerning the termination of their employment agreement (with or without notice) must be made in writing. Any declaration by an employer of the termination upon notice of an employment agreement concluded for an indefinite period, or of the termination of an employment agreement without notice, should provide reasons for the termination of the agreement. The employee can appeal against the termination before a labour court.

Notice periods

The termination notice periods for probation employment agreements are as follows:

(a) three business days – if the probation period is less than two weeks,

(b) one week – if the probation period is longer than two weeks,

(c) two weeks – if the probation period is three months.

The termination notice periods for an employment agreement for a definite and indefinite period are as follows:

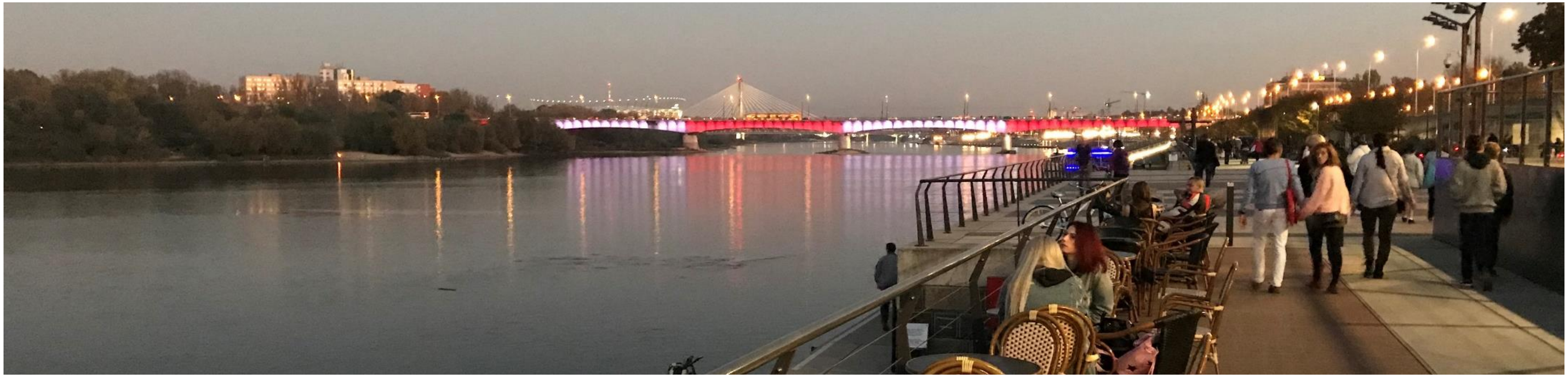
(a) two weeks – if the employee has been employed at the employer for less than six months,

(b) one month – if the employee has been employed at the employer for at least six months,

(c) three months – if the employee has been employed at the employer for at least three years.

Non-competition agreements

A non-competition agreement can be concluded in parallel with the employment agreement for the duration of the employment relationship. It is also possible that the employer and employee conclude a non-competition agreement which applies to the employee after the termination of the employment relationship.



The parties are free to determine the duration of such an agreement, but typical post-termination bans last for three to 12 months. During the term of the non-competition agreement the employer is obliged to pay the employee compensation in the minimum amount of 25% of the remuneration received by the employee before the termination of the employment agreement.

Non-solicitation Clauses – Enforceability/Standards

Non-solicitation clauses with reference to clients and customers are allowed under Polish law. These non-solicitation clauses typically cover the term of employment and/or a defined period after their termination (usually one to three years).

Unlike post-employment non-competition covenants, Polish law does not require the employer to pay the employee any compensation for non-solicitation in order to be considered enforceable.

Non-solicitation clauses concerning customers in certain circumstances can actually be considered to be non-competition clauses that require compensation.

Working time

In general, working time cannot exceed eight hours per day, and an average of 40 hours per week, within a five day week on average, within a reference period not exceeding four months.

The total weekly working time with overtime hours cannot, on average, exceed 48 hours within the reference period. The Labour Code includes many provisions modifying this general rule depending on the system of working hours applied by the employer.

Overtime work

Work performed in excess of the working time applied to a given employee constitutes overtime work. Such work is permissible in the case of an employer's special needs (the most common situation when overtime work occurs). Employees working overtime are entitled to overtime pay amounting to:

(a) 100% of their remuneration for: overtime work at night, on Sundays, during holidays which are not considered working days for the employees according to their applicable work schedule, or during the days which were the employees' days off granted instead of work on Sundays or during holidays,

(b) 50% of their remuneration for overtime work at any other time.

In consideration for any overtime work carried out upon the employee's request, the employer can grant the employee time off in lieu equal to their overtime. In this situation, the employee is not entitled to receive any overtime pay. Time off can also be granted by the employer without the employee's request. In this case the employee is entitled to one and a half times the number of overtime hours worked. The employer has to grant time off from work before the end of the applied settlement period. In any case of granting time off to the employee for overtime work, the employee is not entitled to an overtime allowance.

Overtime work cannot exceed 150 hours per calendar year unless the internal by-laws stipulate different limits of up to 416 hours per year.

Social security

Employees in Poland are covered by the Polish Social Security System ("ZUS"). The obligation to register with ZUS and pay Polish social security contributions applies not only to employers who have their registered office in Poland and employ their employees on the Polish territory, but also to foreign companies who employ employees on the territory of Poland, even if they do not have their registered seat in Poland, or do not conduct their business on the Polish territory. However, a foreign employer can be released from the obligation to remit social security contributions. For this purpose, it is necessary to conclude an agreement between the foreign employer and the employee on taking over the obligation to remit the social security contributions or add this provision to the employment agreement. The contributions are paid by both the employer and the employee. The contributions are made for the following types of social security: retirement funds, disability funds, sickness funds, and accident funds. The contributions are calculated from the employee's gross remuneration. For more detailed information on the social security contributions, please see the table at the end of this section.

When the total remuneration of an employee, starting from the beginning of the year, exceeds 30 times the average monthly remuneration as anticipated for the coming year, the employer and the employee cease to pay the retirement and disability fund contributions for that employee. In the year 2022 the aforementioned release applies to amounts exceeding PLN 177,660 (approximately EUR 37,755). The employer is also obliged to make regular payments to the National Disabled Persons Rehabilitation Fund. This obligation depends on the amount of the average monthly pay, the total number of employees, and the number of disabled employees.

Breakdown of Contributions			
Type of fund	**% contribution**	**Employer**	**Employee**
Retirement	19.52% of the gross remuneration	9.76% of the gross remuneration	9.76% of the gross remuneration
Disability	8% of the gross remuneration	6.5% of the gross remuneration	1.5% of the gross remuneration
Accident	from 0.67% to 3.33% of the gross remuneration depending on the occupational risk in a given industry if the employer employs ten or more employees	0.67% to 3.33% of the gross remuneration	--
Sickness	2.45% of the gross remuneration	--	2.45% of the gross remuneration
Additional Contributions			
Labour Fund	2.45% of the gross remuneration	2.45% of the gross remuneration	--
Guaranteed Employee Benefit Fund	0.10% of the gross remuneration	0.10% of the gross remuneration	--
Social Benefits Fund	All employers employing at least 50 employees are obliged to set up a Social Benefits Fund. The employer has to make a write-off equal to 37.5% of the average monthly national pay in Poland in the preceding year, or in the second half of that year (whichever amount is higher) (in 2021 the average monthly national pay in Poland was PLN 5,662 (approximately EUR 1,202) multiplied by the average number of employees with the relevant company which is planned in a given calendar year and then revised at the end of that year to reflect the actual average number of people employed.		

In addition to the above social security contributions, the employee has to pay a mandatory health insurance contribution in the amount of 9% of the basis for this contribution; the basis is calculated as the gross revenue of the employee minus the social security contributions paid by the employee.

The mandatory health insurance entitles the employee to receive state medical care.

Employee Capital Plans *(Pracownicze Plany Kapitałowe — PPK)*

A PPK is a mandatory additional long-term saving programme (co-funded by the employer, the employees, and partially by the state). The employer's compulsory contribution rate is 1.5% of the employee's remuneration (minimum level).

The enrolment into the pension plan is automatic for all employees of applicable age; however, employees have the right to opt out from it at any time. Failure to set up a PPK can result in fines imposed on the management board of the company amounting to up to 1.5% of the employer's remuneration fund from the previous year.

Holiday leave

In general, the length of holiday leave is:

(a) 20 working days in every year - for less than ten years of work,

(b) 26 working days in every year - for ten or more years of work.

When establishing the length of holiday leave, the work periods for previous employers and periods of education (under the rules stipulated in the Labour Code) are also taken into account.

Remuneration

The parties are free to agree the amount of remuneration. However, the remuneration cannot be lower than the officially announced statutory minimum remuneration. This minimum remuneration for employees is established and adjusted every year by the government. As of 2022, this amounts to PLN 3,010 (approximately EUR 630) gross a month for full-time employment. Remuneration has to be paid at least once a month on a pre-determined date. In the case of civil law contracts such as service contracts, the minimum remuneration amounts to PLN 19.70 (approximately EUR 4.15) gross per hour.

Work and Remuneration Bylaws

If a company employs at least 50 employees, it is obliged to adopt work and remuneration bylaws which should regulate the organisation of work and remuneration rules applied by the employer.

Work and residency permits for employees from non-EU or EFTA countries

(Does not apply to citizens of Ukraine who arrived in Poland after 24 February 2022 and are governed by the provisions of the Act on Assistance to Citizens of Ukraine in Connection with the Armed Conflict; for more details see the section below).

Polish law distinguishes between the legal situation of citizens of EU and EFTA countries and the legal situation of non-EU or EFTA countries. Generally speaking, foreigners from EU and EFTA countries, as well as their family members have unlimited access to employment in Poland.

Employing non-EU or EFTA citizens generally requires obtaining a work permit in the following situations:

(a) the foreigner performs work on the territory of Poland on the basis of an agreement with an entity that has its registered seat in Poland,

(b) the foreigner is a member of the management board of a Polish company and stays in Poland for a period exceeding six months within 12 consecutive months,

(c) the foreigner employed by a foreign entity has been delegated to perform work in Poland in a branch or plant of the foreign employer, or in an entity associated with the foreign employer for a period exceeding 30 days in each calendar year,

(d) the foreigner is employed by a foreign entity which does not have its branch, plant, or other organised form of business in Poland, but has been delegated to work in Poland for the performance of temporary or occasional services (export of services),

(e) the foreigner employed by a foreign entity has been delegated to Poland for another purpose for a period exceeding 30 days within six consecutive months.

A work permit is issued at the request of the employer by the relevant voivodeship (*wojewoda*) for that particular employee. Applying for a group work permit is not allowed. The work permit for a foreigner who will be employed by an entity which has its seat or branch office in Poland can only be issued after the completion of the so called labour market test by the local foreman/supervisor (*starosta*), which confirms the lack of eligible Polish or EU citizens who could be employed in the position offered to the foreigner. In practice this entire process can take up to three months. There are exceptions for certain professions where the law does not require a work permit for non-EU or EFTA citizens.

Irrespective of the work permit, the foreigner has to apply for a residency permit. Foreign employees who have already arrived in Poland can apply for a unified permit which includes a work and residency permit.

Legal stay and access to the labour market for Ukrainian citizens who arrived in Poland after 24 February 2022

As mentioned in the section above, as a rule, a citizen of Ukraine can legally stay in Poland if he or she has a valid residency permit (permanent or temporary residency permit, passport in the case of their entry and stay in the territory of Poland in visa-free travel, or a certificate showing temporary protection as issued by the Office for Foreigners). Additionally, Polish law under the Special Act of 12 March 2022 concerning assistance to Ukrainian citizens in connection with the armed conflict in the territory of that country (the "Special Act") grants extraordinary protection for Ukrainians who have arrived legally on the territory of Poland in the period from 24 February 2022 due to the hostilities which are being conducted in Ukraine, and have declared the intention to stay in Poland. They are entitled to stay legally in Poland for a period of 18 months from the outbreak of the war (i.e. until 24 August 2023). The protection granted by the Special Act also covers Ukrainian citizens who, due to the ongoing armed conflict, came to the territory of Poland from a country other than Ukraine, as well as spouses of Ukrainian citizens who do not have Ukrainian citizenship, provided that they entered the territory of Poland from the territory of Ukraine in connection with the hostilities being conducted in Ukraine. A Ukrainian citizen who has been protected under the Special Act and then leaves Poland for a period exceeding one month will lose their right to legally stay in Poland.

A citizen of Ukraine, in order to benefit from the protection and rights provided by the Special Act, must obtain an individual PESEL identification number. A paper-based application can be submitted to any commune or city office in the territory of the Republic of Poland. Ukrainian citizens to whom the provisions of the Special Act apply are entitled to medical care provided in Poland on the same terms and conditions as Polish citizens covered by health insurance.

Citizens of Ukraine who are covered by the provisions of the Special Act, and other citizens of Ukraine whose stay is legal on a basis other than that specified in the Special Act, can legally undertake work in Poland under an employment or civil law agreement provided that:

(a) they have PESEL number,

(b) the employer reports the employment of the Ukrainian citizen to the poviat labour office within 14 days from the date of the commencement of work,

(c) the employer registers the employee to the relevant social security and health insurance office within seven days from the date of the commencement of work (thanks to this the Ukrainian employee acquires the right to benefits: in the event of sickness, an accident at work, as well as in the event of maternity).

The remuneration paid to a citizen of Ukraine cannot be lower than the minimum remuneration in a given calendar year. As mentioned above, in 2022 this amounts to PLN 3,010 (approximately EUR 630) gross per month, and PLN 19.70 (approximately EUR 4.15) gross per hour.

Posting of Workers to Poland

The Posting of Workers to Poland in the framework of the provision of services takes place in accordance with Directive 2018/957 which was implemented into Polish law in 2020.

All persons posted to Poland are guaranteed remuneration (understood as all of its components) at a level not lower than that guaranteed to Polish workers. Employees posted to Poland for more than 12 (exceptionally 18) months must also be provided with the other terms and conditions of employment applicable in Poland, with the exception of those concerning the termination of employment contracts, non-competition agreements, or pension schemes.

Collective labour law and trade unions

In Poland, employees have the right to establish a work council in companies employing more than 50 employees. A work council consists of three to seven persons elected by the employees for a four year term of office.

The management board is obliged to inform the work council about the economic activity of the company, and any expected changes in the employment situation or organisation of the work. A work council can issue its own regulations, resolutions, standpoints, and opinions.

In Poland, employees also have the constitutional right to form and join a trade union. Trade unions are voluntary and self-governing organisations of employees, and are founded in order to represent and protect employees' rights and their professional and social interests.

Trade unions also have the right to conduct collective negotiations and enter into collective labour agreements. A trade union can be formed by a minimum of ten employees.

If an employer, who employs at least 20 employees, plans to proceed with a group dismissal of their employees for reasons not attributable to those employees, the special procedure of a group redundancy will apply and the employer is, among other things, required to follow the consultation procedure with the company's trade unions, work council, or other employees' representatives.

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Tax regime

Tax regime

The Polish tax regime consists of solutions and institutions typical for developed European states. A significant amount of tax legislation is continuously adjusting the Polish tax system to EU standards.

With 1 January 2022, legislation that is part of the comprehensive tax reform currently being carried out by the Polish legislator became effective.

As part of the amended legislation, among many other things, the PIT free amount was increased, and the threshold of income taxed at the basic PIT rate (currently 12%) was increased.

The Polish legislator is currently working on further amendments to the tax regulations. Some of them will already take effect from the beginning of 2023.

Under the Polish tax system there are several types of taxes which can be divided into direct taxes (where the actual tax burden is placed on the taxpayer) and indirect taxes (where the actual tax burden is placed on the consumer).

The direct taxes are:

(a) Personal Income Tax (PIT),

(b) Flat-Rate Income Tax on Selected Incomes Earned by Individuals,

(c) Corporate Income Tax (CIT),

(d) Inheritance and gift tax,

(e) Tax on civil law transactions (PCC),

(f) Agricultural tax,

(g) Forest tax,

(h) Real property tax,

(i) Transport vehicles tax,

(j) Tonnage tax,

(k) Tax on certain financial institutions,

The indirect taxes are:

(a) Value Added Tax (VAT),

(b) Excise tax,

(c) Gambling tax.

Register of taxpayers

The following entities are obliged to register as taxpayers in Poland: natural persons, legal persons, and organisational units not having a legal personality which are taxpayers under tax law.

Taxpayers are obliged to register with the tax authorities in order to obtain a NIP (Tax Identification Number). The relevant application needs to be filed only once, irrespective of the type or number of taxes levied on the taxpayer.

Each taxpayer can hold only one NIP number. This number is used by taxpayers in their commercial transactions.

Individual tax rulings

Taxpayers who are unsure of the tax consequences of their actions can apply to the tax authorities for an individual interpretation. This interpretation can refer to their current or future factual state.

In general, the tax authorities are obliged to issue an individual ruling within three months. However, due to the current state of the COVID-19 epidemic emergency, the time limit for issuing an individual tax ruling has been extended from three to six months.

An individual interpretation of the tax law protects the taxpayer from any negative tax consequences resulting from their actions.

In particular:

(a) compliance with the interpretation, cannot, as a rule, harm the taxpayer,

(b) if the interpretation changes, the taxpayer does not incur any additional costs (interest).

A motion can be filed by multiple applicants. As a consequence, the binding effect of one tax ruling can cover the tax consequences for all the parties of a single transaction, provided they were indicated in the motion.

Under the current regulations none of the entities are allowed to apply issues focusing on any anti-avoidance rules (i.e. the General Anti-Avoidance Rule, or different abuse clauses) in their applications.

In addition to individual interpretations of tax law, taxpayers can also apply for advance (protective) tax rulings. An advance (protective) tax ruling is issued by the Head of the National Fiscal Administration at the request submitted by the interested party. A request for an advance (protective) tax ruling may relate to a planned activity, an accomplished activity or an activity that has begun. An advance (protective) tax ruling protects the taxpayer from a challenge to actions taken or planned through a GAAR clause. The request for a ruling is subject to a fee of PLN 20,000, and the deadline for issuing an opinion is six months.

Implementation of EU law

Currently, EU legislation fully regulates tax issues in connection with:

(a) Value Added Tax,

(b) Excise tax.

EU law also applies, to a limited extent, to issues concerning Corporate Income Tax (CIT).

With respect to tax issues governed under EU law, taxpayers can apply to the European courts for a clarification of any ambiguities existing under the legal systems of particular EU Member States.

The decisions of the European Union Court of Justice are of key importance. In numerous cases, the Court's rulings lead to changes in the tax law provisions of EU Member States to the advantage of taxpayers.

The main taxes in Poland are:

Corporate Income tax (CIT)

The following entities are subject to CIT:

(a) legal persons (e.g., joint-stock companies, limited liability companies),

(b) limited joint-stock partnerships which have their seat or management in Poland,

(c) limited partnerships which have their seat or management in Poland,

(d) certain general partnerships,

(e) certain entities without legal personality,

(f) tax capital groups (groups, registered with a tax office, consisting of at least two Polish commercial companies with legal personality, which operate in a capital association and meet certain conditions),

(g) partnerships without a legal personality which registered office or management are located outside Poland, providing that, in accordance with the regulations of their home country, these entities are treated as a legal person and taxed on their entire income in that country.

The scope of taxation is as follows:

(a) taxpayers who have their registered office or the location of their management office within the territory of the Republic of Poland are subject to taxation on their entire income, irrespective of the place where it was earned (unlimited tax obligation),

(b) taxpayers without having either their registered office or their management office within the territory of Poland are subject to taxation only on their income earned within the territory of the Republic of Poland (limited tax obligation).

CIT is payable on income which is calculated as a surplus, earned in a given tax year, of the total revenues over the costs incurred in generating these revenues. Taxpayers are entitled to deduct all the typical costs from their revenue incurred in earning this revenue or maintaining the source of revenue. Exceptions to this rule are listed in the provisions of the tax law. The majority of costs are deductible on an accrual basis. Fixed assets and intangibles are subject to depreciation under statutory provisions.

If the costs incurred in generating revenues exceed the total revenues, the difference is referred to as a loss. The taxpayer can settle a loss made in a given tax year over a period of five subsequent years, by deducting it from the income earned during this five year period.

In the case where the revenues are greater than the expenses, the taxpayer earns income and must pay an advance on CIT. As a rule, advances towards CIT are paid by taxpayers on a monthly basis, based on the aggregate profits earned since the beginning of the tax year. Certain other taxpayers (e.g., those starting their business activity) can make advance payments on a quarterly basis. Long-established entities can pay advances in a simplified form, i.e., as a lump-sum payment.

Within three months from the end of the tax year, taxpayers are obliged to file a tax return to the tax office showing their revenues, costs, and profits/losses for a given year. Within the previously mentioned time limit, they should also finally settle their tax which is due for the given year.

In principle, the single, generally applicable CIT rate in Poland is 19%. Since 1 January 2019, the Polish CIT Act, stipulated the availability to apply a lower tax rate (9%), dedicated for entities which revenue in the current tax year does not exceed the PLN equivalent of EUR 2 million. The reduced rate is not applicable for income derived from capital gains. The 9% CIT rate is also not available to entities created as a result of certain restructuring measures. The restriction applies in the year in which such an entity started its activity and in the following year.

From 1 January 2021, CIT taxpayers can also choose to be taxed under the so-called Estonian CIT. Estonian CIT is beneficial for entities that reinvest their profits - the need to pay tax only occurs if the company decides to distribute the profit to shareholders (the concept of distribution is understood broadly and includes not only dividends, but also other situations which are identical in effect).

Moreover, the tax rate for Estonian CIT is lower than that for classic CIT (10% in the case of small CIT taxpayers, and 20% in the case of regular CIT taxpayers).

The following table shows how the CIT rate has been reduced since 1999:

1999	2000	2001	2003	2004
34%	30%	28%	27%	19%

Nevertheless, some revenue earned in Poland is taxed with a fixed-rate income tax (without deducting the income generating costs).

The rate of the tax on dividends is 19%. The abovementioned tax rate can be subject to a further reduction in accordance with the provisions of an applicable double taxation treaty. What is important is that dividends can be exempt from taxation if they are paid between domestic entities or within the EU, providing that certain conditions have been met.

The CIT Act stipulates a 20% tax on interest, as well as on royalties paid to foreign persons. Reduced tax rates are also stipulated in double taxation treaties. Certain taxpayers from within the EU can be exempt from this tax.

As mentioned in the introduction, the Polish legislator is currently carrying out a comprehensive tax reform. Accordingly, the following CIT-related changes entered into force in 2022:

(a) changes to withholding tax (the introduction of a pay-and-refund mechanism for interest, dividend, and royalty payments exceeding PLN 2 million during the tax year),

(b) change in the definition of a beneficial owner,

(c) changes to the recognition of debt financing costs as deductible expenses,

(d) changes to the regulations concerning the taxation of income earned through foreign controlled entities (CFCs),

(e) the introduction of a so-called minimum tax for taxpayers with losses or profitability below 2% (this change has been postponed until 2023),

(f) the introduction of the Polish Holding Company,

(g) the introduction of a tax on pass-through income to replace the regulations on the exclusion from deductible costs of certain categories of costs incurred for the benefit of related parties,

(h) favourable changes to Estonian CIT (including a reduced tax rate and the removal of the revenue limit),

(i) tax benefits for innovative entities (prototype relief, relief for robotisation, relief for the support of innovative employees, and favourable changes concerning IP Box relief and R&D relief).

VAT (tax on goods and services)

VAT is an indirect tax which means it basically burdens the final consumer. This tax is envisaged to be neutral towards entrepreneurs.

VAT was implemented in Poland in January 1993. Since 1 May 2004, it has been governed by a new law, introduced in connection with Poland's accession to the EU. Further amendments to the provisions of the VAT Act aim at bringing it fully into line with EU regulations.

The following transactions are subject to VAT:

(a) delivery of goods for a consideration and the provision of services within Poland for a consideration,

(b) import and export of goods,

(c) intra-community delivery and the purchase of goods for a consideration in Poland,

(d) intra-community supply of goods.

Transactions which are not VAT-able include, e.g., the sale of a company's entire business.

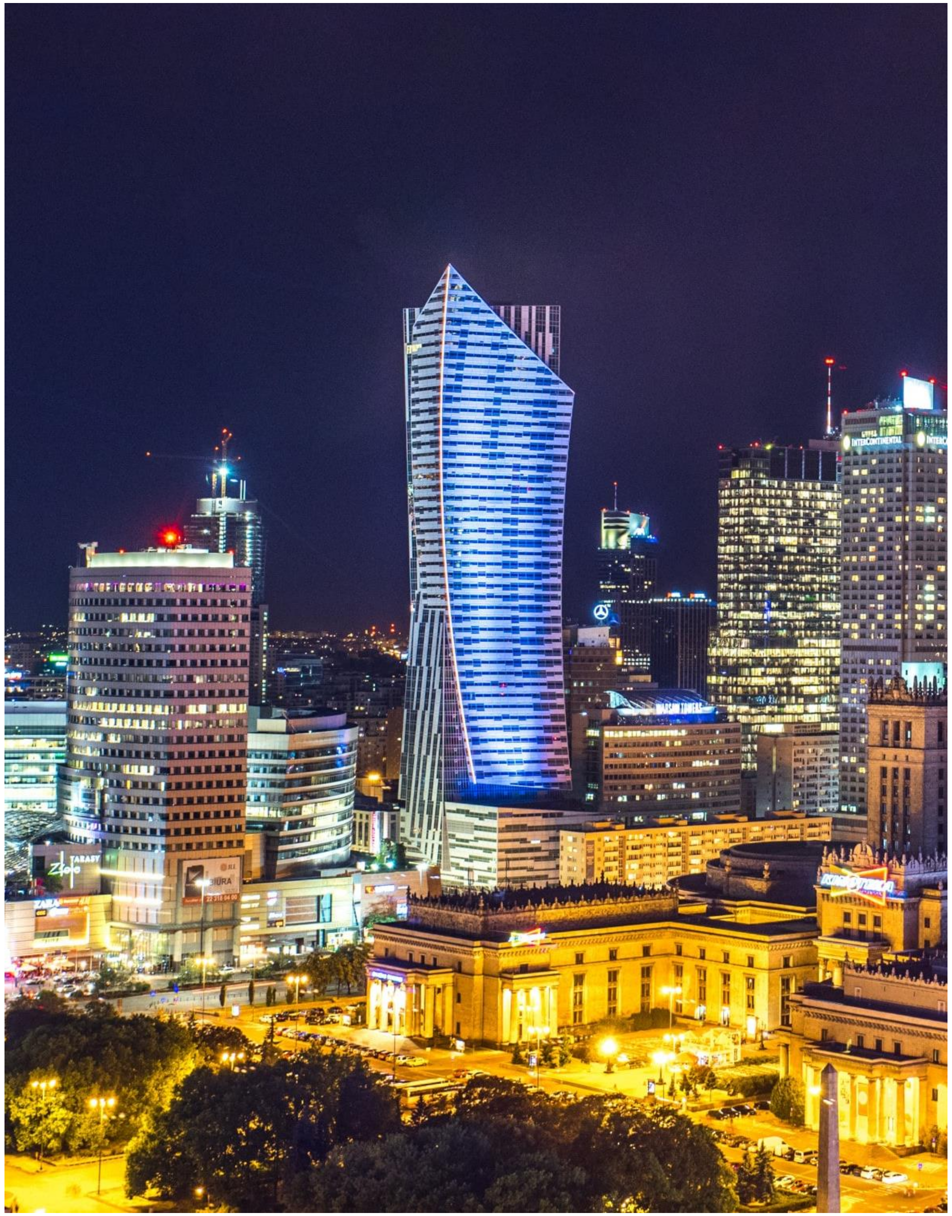
VAT-payers are:

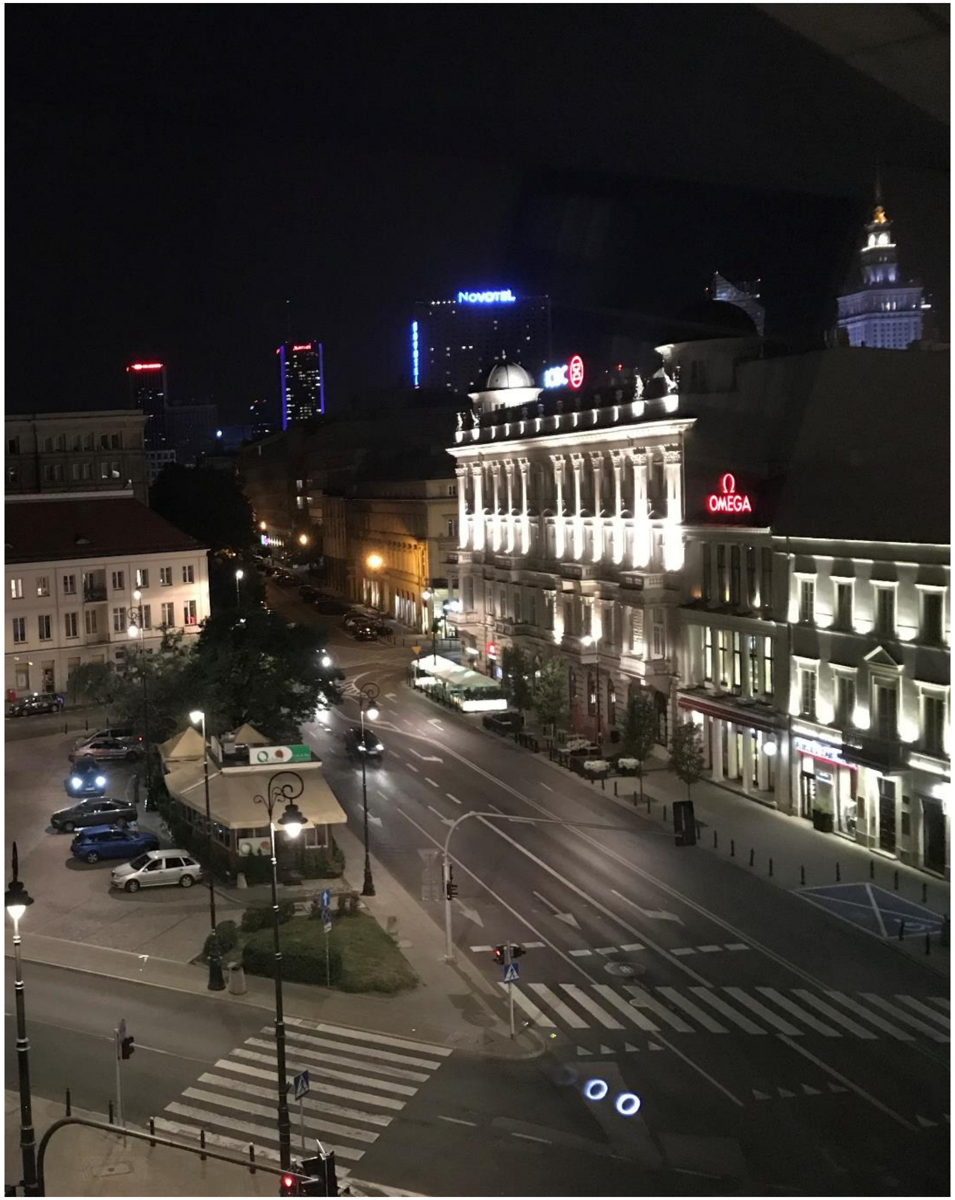
(a) legal persons,

(b) organisational units without legal personality,

(c) certain natural persons pursuing a business on their own.

The introduction of VAT Groups is also planned for the start of 2023. VAT Groups will be able to be formed by financially, organisationally, and economically related entities. The entities forming a VAT Group will account as a single taxpayer.





The basic VAT rate amounts to 23%. In relation to certain goods and services, preferential rates (i.e., 8%, 5%, and 0%) have been determined. The 0% rate has been determined, among other things, for the intra-Community supply of goods. In these cases, the purchaser of goods from another member state is obliged to settle the VAT on account of the intra-Community acquisition of goods, according to the tax rates which are in force in this state. The 0% VAT rate has also been determined for the export of goods which is understood as exporting goods outside the territory of the EU. According to the general principle determined in the VAT Act, the place of supply of the service rendered for VAT-payers is considered as the place of the registered office of the service recipient (or the service recipient's permanent place of conducting activity) irrespective of the place where these services were actually provided. In the case where the service is rendered for entities which are not VAT-payers, the place of supply is considered to be the place of the service provider's registered office (or the permanent place where the service provider conducts its activity). The VAT Act stipulates exceptions to this rule, as, for example, in the following cases:

(a) services connected with real properties - the place of the provision of service is the place where the real property is located,

(b) transportation services - as a rule, the place of the service provision is the place where the transportation is conducted,

(c) restaurant services – generally, the place of the service provision is the place where the service is actually rendered,

(d) as of the beginning of 2015, changes have been made when it comes to setting the place of supply for telecommunication, broadcasting, and electronically rendered services when rendered in favour of a non-taxpayer. Currently, these services are supplied in the place where the non-taxpayer recipient has their seat or their current place of living. There are also certain exemptions from the above rule that directly result from EU law and relate to services that can only be provided in those places where the recipient is present at a specific time (i.e., a hotspot). As a consequence of the abovementioned rule, service providers are obliged to register for VAT purposes in the place where their service is actually rendered. Since October 2014 they have been able to do so online, using the MOSS (Mini One Stop Shop) system, regardless of the country of their seat or where they provide their services.

The tax obligation with respect to VAT occurs, as a rule, at the time of the delivery of the goods or the provision of the service. Taxpayers settle their VAT on a monthly or quarterly basis.

If the amount of input VAT in a given settlement period exceeds the amount of output VAT, the taxpayer has the right to claim a refund of the surplus via a transfer to their bank account, or decide to settle the surplus in the period that follows. As a rule, an input VAT surplus is refunded within 60 days. The VAT Act also provides for shorter refund periods for surplus VAT: 15 days, 25 days, and 40 days, however, a VAT taxpayer who wishes to receive a refund within a shorter period must meet a number of conditions that are stipulated in the Act.

A number of changes have recently been made to the VAT Act. The most important of these are outlined below:

(a) the introduction of the National e-Invoicing System (KSeF) - from 1 January 2022, taxpayers can voluntarily use the system; the mandatory use of the KSeF is planned for January 2024,

(b) introduction of the possibility to apply VAT to selected financial services,

(c) reduction of time limits for refunding surplus VAT to 15 days for non-cash taxpayers,

(d) the introduction of VAT Groups - this change will take effect from 1 January 2023.

One of the most crucial amendments to the Polish VAT Act over the last few years was the introduction of the split payment mechanism. The split payment mechanism is a mechanism in which the amount of the VAT is separated from the total gross amount of remuneration which then goes into a separate bank account. The main objective of introducing split payment is to prevent VAT fraud - an entity that receives a transfer under the split payment mechanism cannot freely dispose of the funds received, and can only use them for strictly defined purposes (such as for the payment of taxes or insurance premiums).

In September 2019, the so-called VAT Taxpayers' White-List was also introduced which is a list of entities registered as VAT taxpayers maintained by the head of the National Tax Administration. The White-List enables the speedy verification of business partners and their bank accounts. Registration on the White-List is mandatory for all VAT taxpayers.

Personal income tax (PIT)

Natural persons (individuals) are subject to PIT.

PIT covers all types of income (revenue) of individuals, including the income of partners in partnerships which do not having the status of a legal entity. The income from participation in the abovementioned partnerships is taxed separately for each taxpayer, in proportion to their share in the partnership.

The scope of the taxation is as follows:

(a) individuals residing in Poland are subject to taxation in relation to their entire income, irrespective of the place where it was earned (unlimited tax obligation),

(b) non-residents are subject to this tax only on the revenue generated from their work performed in Poland, irrespective of the place of payment of the remuneration, or on any other income earned in Poland (limited tax obligation).

As a rule, the income of private individuals is taxed according to a progressive tax scale.

In 2022 the following tax scale will be applied:

Taxable base (in PLN)	Income tax (in PLN)
Up to 120,000	12% minus 3,600
Over 120,000	14,400 + 32% of income exceeding 120,000

Individuals conducting business activities can choose the 19% flat tax. In this option only the income, i.e., the difference between the revenue and the tax deductible costs is taxed.

Alternatively, individuals conducting business activities can opt for a Flat-Rate Income Tax . The flat rate tax depends on the type of business and can range from 2% to 17%. If a taxpayer opts for flat rate taxation, it is not possible to deduct any tax-deductible expenses.

Starting in 2023, a Flat-Rate Income Tax will be mandatory for income earned from private rentals, i.e. rentals conducted outside of business.

Taxation in the form of a Flat-Rate Income Tax on Selected Incomes can be used by:

(a) natural persons earning income from business activity,

(b) inherited enterprises,

(c) civil partnerships whose sole partners are natural persons,

(d) civil partnerships of natural persons and inherited enterprises,

(e) general partnerships whose sole partners are natural persons,

whose revenues in the previous tax year did not exceed the limit of EUR 2 million, calculated according to the average exchange rate of the euro announced by the National Bank of Poland on the first working day of October of the previous year.

Similarly to the CIT regulations, certain personal revenues earned in Poland are taxed with a fixed rate income tax (without the possibility of deducting revenue-generating costs). This concerns, for example, the income from a dividend which is taxed with a fixed rate of 19%.

Moreover, some of the income of non-residents, such as interest or license dues, is taxed with a fixed rate of 20%, unless double taxation treaties stipulate otherwise.

Taxpayers are, as a rule, obliged to make monthly advance tax payments (by the 20th day of the following month for the preceding month) and, after the end of a given tax year, pay the tax due in a final amount (no later than April 30th of the following year).

However, with respect to certain categories of revenue, the monthly tax advance payments or the tax itself is collected by tax remitters (who calculate and collect the tax advance payments with reference to, among other things, any income from employment relationships).

The following are the most significant recent changes concerning PIT:

(a) reduction of the basic PIT rate from 17% to 12%,

(b) increasing the tax-free amount from PLN 8,000 to PLN 30,000,

(c) raising the threshold of income subject to 12% PIT to PLN 120,000,

(d) exclusion of the deductibility of the health contribution from personal income tax (which in practice will mean an increase of 7.75% in the tax base for all those paying the contribution),

(e) changes in the area of Flat-Rate Income Tax on certain income earned by individuals (among other things, reduction of certain tax rates),

(f) tax benefits for innovative entities (prototype relief, relief for robotisation, relief for the support of innovative employees, and favourable changes concerning IP Box relief and R&D relief).

General anti-avoidance rules ("GAAR")

In July 2016 the GAAR was implemented into the Polish tax regime. In general, this means that the tax authorities are entitled to question the tax consequences of a particular taxpayer's actions if they find them artificial, and to determine the income tax liability on the grounds of the actual business substance of a transaction.

A similar regulation (Abuse of law) was implemented into the VAT Act.

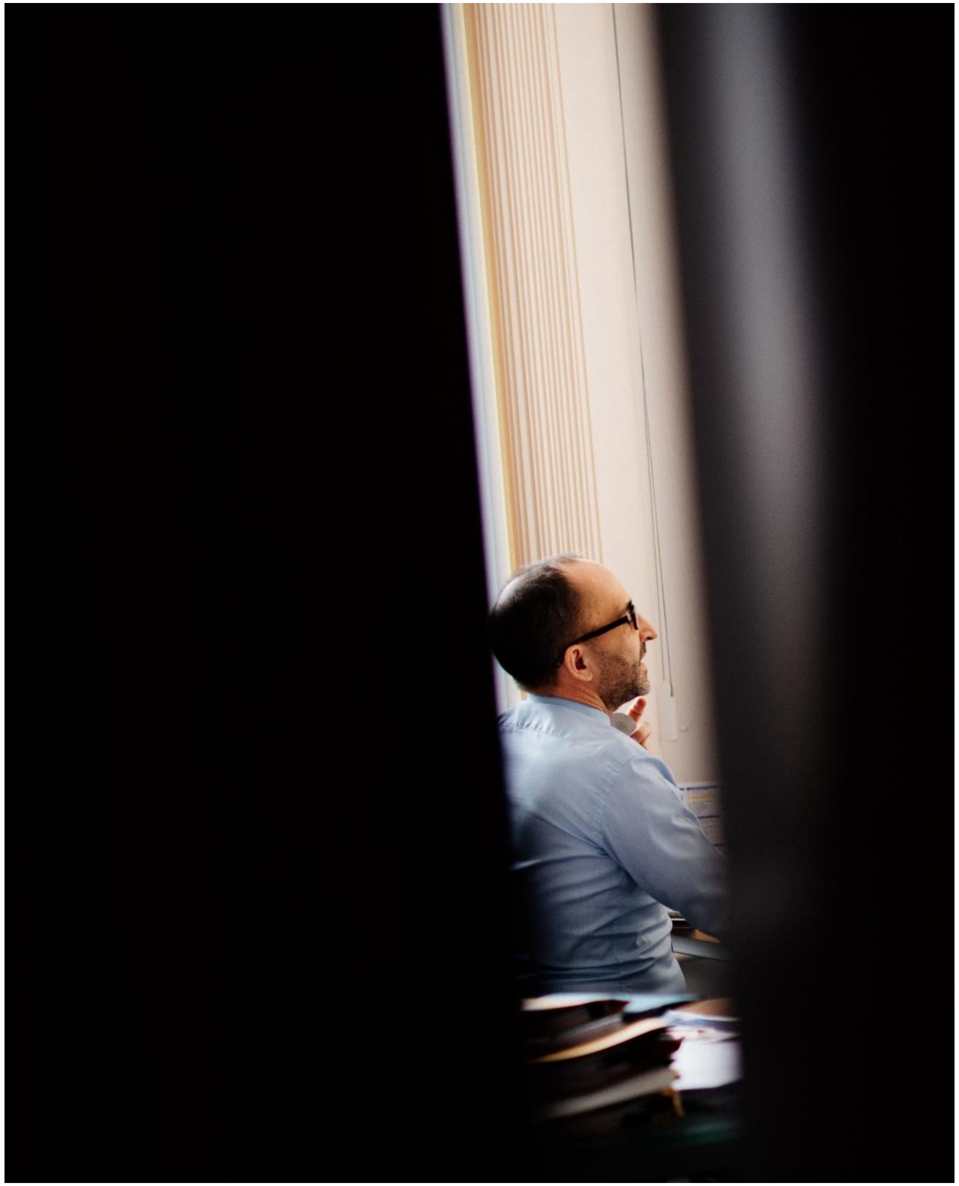
Tax audits, tax litigations, and penalties

In January 2018, the Information System of the Reconciliation Chamber (the "STIR") – entered into force in Poland.

The abovementioned mechanism entitles tax authorities to catch non-typical transactions which have been set up to avoid paying taxes. The STIR was mandatorily applied by financial institutions (including banks) which are obliged to report all the necessary information concerning specific taxpayers to the tax authorities.

The key mechanism focuses on blocking an entrepreneur's account for 72 hours, however, in the case of extortion valued above EUR 10,000, for an additional three months.

Apart from the proceedings based on anti-avoidance clauses, since 2019 the tax authorities in Poland have also been able to apply a new sanction in the form of an additional tax liability. This introduces an additional 10% (related to the PIT or CIT) or 40% (other taxes) of the tax liability in the case of applying the GAAR or other anti-avoidance clauses, as well as in withholding tax cases and transfer pricing settlements. In particular cases this fine can be further increased.



Mandatory Disclosure Rules

Under the new provisions there is the obligation to notify the Director of the National Tax Administration about any applied tax schemes. In general, the notification should be carried out by the taxpayers' advisors (tax advisors, legal advisors, attorneys or other experts (defined as promotors), or by the taxpayers themselves in particular cases (referred to as beneficiaries). The report should, in practice, underline the specific details of tax scheme and the estimated value of tax benefit.

Other taxes in Poland:

Solidarity levy

The income derived in a tax year by individuals exceeding PLN 1 million introduces the obligation to pay a solidarity levy at the rate of 4% over the amount of PLN 1 million (the tax threshold).

The new levy obliges those individuals who receive their income from specific income sources (i.e. employment, business activities, or capital gains). Despite the levy's connections with PIT, its nature of it being a tax is still somewhat unclear.

Excise duty

Irrespective of the taxation within VAT, excise products, as well as cars, are subject to excise duty.

According to the Excise Duty Act, excise products are:

(a) energy products,

(b) electrical energy,

(c) alcoholic products,

(d) tobacco.

Excise duty is applied to, among other things:

(a) the production of excise products,

(b) putting excise products into tax warehouses,

(c) the import of excise products,

(d) the intra-Community acquisition of excise products, excluding acquisition to tax warehouses.

Excise tax rates depend on the type of goods and are diverse.

Inheritance and gift tax

The acquisition, by private individuals, of items located in Poland, or property rights exercised in Poland, are subject to the tax on inheritance and donations. This encompasses: inheritances, donations, prescriptive acquisitions, and the gratuitous cancellation of joint ownerships and retention.

The taxation basis is the market value of the items and the property rights acquired, after the deduction of taxes and charges. The Act provides for a progressive tax scale and the amount of tax depends on the character of the relation between the parties to the act and the value of the subject of taxation.

Tax on Civil Law Transactions ("PCC")

A number of civil law acts, as well as court decisions and settlements which have the same effects as civil law acts are subject to the Tax on Civil Law Acts. This concerns, among other things, the following acts:

(a) sale agreements and the exchange of items and property rights,

(b) loan agreements,

(c) articles of association (and changes to articles of association).

The tax on civil law transactions is not liable in cases where at least one of the parties is subject to (or exempt from) VAT on account of this Act, excluding articles of association or changes made to articles of association.

The taxable basis is the market value of the subject of the agreement.

The tax rates depend on the type of agreement. For example, in the case of sale agreements the tax rate is from 1% to 2%; in the case of a loan agreement it is 2%; and in the case of articles of association it is 0.5%.

In 2019 the tax rate of loan agreements taxation was decreased from 2% of the value of the loan (tax base) to 0.5% of the tax base.

Local taxes

Basic local tax is the tax on real properties. The amount of tax on real properties can affect the costs of conducting economic activity. Local authorities are empowered to set the level of rates and the scope of relief in local taxes, however the amount of local taxes cannot exceed the maximum level as determined by Parliament.

The maximum tax rates for selected real estate types applicable in 2022 are indicated in the table below:

Type of real property	Max. annual tax rate per useable square metre
Residential buildings	0,89 PLN
Commercial buildings	25,74 PLN
Other buildings	12,04 PLN 5,25 PLN 8,68 PLN
Commercial land	1,03 PLN
Other land	5,17 PLN 0,54 PLN 3,40 PLN

Tax on certain financial institutions

As of 2016, banks, insurance companies, and loan firms must pay an additional tax on their assets. Banks are taxed provided that the value of their assets exceeds PLN 4 billion. For insurers the threshold is PLN 2 billion, and for loan companies it is PLN 200 million. The tax rate is 0.0366 % of the surplus and is equal for every taxpayer. The tax is collected on a monthly basis.

Stamp duty

Stamp duty is paid both by natural and legal persons. It is paid on, among other things, applications, official acts, certificates, and permits, as well as documents such as powers of attorney, bills of exchange, and surety documents. The level of stamp duty is separately determined for each individual administrative procedure.

Double taxation treaties

Poland has signed double taxation treaties with more than 80 countries. Double taxation treaties are based on a reciprocity rule. In most cases, the treaties signed by Poland are based on the OECD Model Convention. However, there are also certain exceptions. Under the MLI (Multilateral Instrument to Modify Bilateral Tax Treaties) ratification, a number of the Double Tax Treaties were automatically amended, especially in the field of the PIT deductibility mechanism.

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Real estate

Real Estate

Companies and entrepreneurs based in the EU and EEA can freely purchase and lease land in Poland. Other entities can also freely lease land, but must obtain a special permit before purchasing any land in Poland.

Legal titles to real properties

Under Polish law, there are two types of property ownership and, thus, two basic forms of property rights:

(a) ownership (*własność*) - the exclusive and absolute right to the property and the land on which it is built, also known as "freehold" ownership. Once an entity obtains ownership rights to a property, these rights last forever until they dispose of the land or transfer ownership to another entity.

(b) perpetual usufruct (*użytkowanie wieczyste*) – a proprietary right unique to Polish civil law where a private entity is temporarily granted the unrestricted right to use a publicly-owned piece of land. Unlike ownership rights, perpetual usufruct rights expire after a specified period of time.

While ownership rights and perpetual usufruct rights differ in their permanence, they have many things in common:

(a) both ownership and perpetual usufruct rights are freely transferable and disposable, can be encumbered with a mortgage or easement, or can be subject to a lease or tenancy,

(b) no buildings can be transferred separately from the land on which they is located,

(c) both rights allow an entity to separate property into premises (*lokale*) that can be transferred, for commercial or residential use, to third-parties who are given partial rights to the land on which the premises are located. Both rights are subject to certain limitations concerning agricultural land, land located within special economic zones, or the acquisition of land by foreigners.

Third-parties may have certain rights to a property, even if another entity holds the ownership or perpetual usufruct rights. These include:

(a) usufruct rights (*użytkowanie*) - the right to enjoy or use property owned by another, within specified limits, which can be established on a contractual basis or claimed before a court. Usufruct rights can either be purchased or granted free of charge,

(b) easements (*służebność*) – a type of usufruct right where a non-owner of land, usually the owner of neighbouring property, is given the right to enter or pass through the land for a specified purpose,

(c) mortgages (*hipoteka*) - the right of a creditor to be repaid by a land owner for money lent to the owner for the purpose of purchasing the land, and

(d) co-operative rights (*własnościowe spółdzielcze prawo do lokalu mieszkalnego*) – quasi-ownership rights given to individual members of a co-operative that collectively owns a property.

Perpetual usufruct rights

As mentioned earlier, perpetual usufruct rights are unique to the Polish legal system. The idea of perpetual usufruct is that, despite the fact that a piece of land is owned by the State Treasury or local government, the perpetual usufructuary has rights to the property as if they were its owner. In most cases, this right is established through an agreement between the government and an individual or legal person. In certain cases, a perpetual usufruct can also be established "ex lege" - by virtue of law. This was common during the privatisation of Poland's economy in the early 1990s, where many legal titles to state-owned property were granted to private entities. .Such rights can also be established in the form of an administrative decision.

While perpetual usufruct and ownership rights are almost identical in practice, there are some key differences between them:

(a) perpetual usufruct rights are temporary. While ownership rights last forever, perpetual usufruct rights expire after a set period of time. This period can be anywhere between 40 and 99 years. In most cases, perpetual usufruct rights are granted for the maximum period of time. Upon expiration, the perpetual usufructuary can request a further 40 to 99 year extension. The public entity that owns the property is obligated to grant this extension except for when doing so would compromise important public interests. Perpetual usufruct rights give the usufructuary temporary ownership of any pre-existing property located on the land subject to the same expiration date,

(b) perpetual usufruct rights are not absolute. Unlike ownership, perpetual usufructuary rights are limited to use for the purpose specified in the agreement or administrative decision through which they were established. Use outside the scope of the specified purpose can result in termination of the perpetual usufruct before the expiration date. Under current Polish law, however, the perpetual usufructuary has the right to alter the specified purpose in the terms of the agreement.

Land and mortgage register

When disputes arise regarding whether an entity possesses the legal title to a real property, an enquiry is made into Poland's official land and mortgage registers. These registers are maintained by district courts in the jurisdiction where the property is located, but they are largely available online. The registers also contain information about any legal interests of third parties in the property, such as lease agreements or the right of first refusal or pre-emption. Any member of the public is able to obtain an extract from the land and mortgage register containing all of its listed information.

Any information contained in the land and mortgage registers is considered legally conclusive. This concept is referred to as the principle of reliance on the contents of the land and mortgage register. In other words, the status of the property as detailed in the register takes legal precedence over the status established by any other source, regardless of which is the "actual" status. For example, if an entity is listed as a real property's owner in the register, that entity will likely prevail in a property dispute. Likewise, only mortgages listed in the land and mortgage register are legally enforceable.

This principle creates a "legal fiction" where property rights belong to whomever they are assigned to in register; for example, if the register says the land is publicly owned, then a private entity surrenders all rights to the real property, even if there is other evidence that they are the "actual" owner. However, there is an exception in cases where information in the register was found to be entered gratuitously in bad faith, or as a result of an error of which the entity to whom rights were erroneously assigned had actual knowledge. For example, if an entity was made aware of such a discrepancy in writing, it cannot claim title to the property on the grounds that it is listed as its holder in the register.

The principle of reliance does not apply to all types of information in the land and mortgage register. For example, information in the register that can be easily disproven with physical evidence, such as the area measurements or the structures located thereon, is not considered legally conclusive. For such information, it is prudently to rely instead on the municipal land and building register, a parallel register maintained by municipalities.

Upon acquiring property rights, it is mandatory for all entities, including foreigners, to make an entry in the land and mortgage register. Failing to do so could result in a fine from the district court that maintains the relevant register. For an entry to be recognized by the district court, the entity acquiring the property rights must submit a notarial deed, which is entered into the register as evidence of the transfer of ownership.

Land registry

The Municipal Land and Building Registers, (the "Land Register"), are regulated by the Geodesy and Cartography Law of May 17, 1989 (the "Geodesy Law"). Land registers are maintained by the county authorities (*powiaty*) and contain the following data:

(a) regarding plots of lands; their location, boundaries and use, the soil type, and any reference to the relevant land and mortgage register for the given plot of land,

(b) regarding buildings; their location, function and use, and any general technical characteristics,

(c) the individual or entity (including the address or registered office) holding the title to the land and buildings.

The information contained in the Land Register constitutes the basis for parallel information in the relevant land and mortgage register.

Reprivatisation claims

The term “reprivatisation claims” (also known as “restitution claims”) refers to legally legitimate claims to restore private ownership of a previously nationalised property, or to obtain proper compensation for a nationalised property.

These claims are rooted in Polish history but, due to recent legislative developments, they are no longer relevant. The communist government, when taking control of Poland after World War II, expropriated privately-owned property in an attempt to liquidate private ownership in the country. However, many of these expropriations were executed without any valid legal grounds. In such cases, reprivatisation claims have been used to restore property to its legitimate owner, creating a risk that properly currently or previously owned by the state can be successfully reclaimed by its former owner, invalidating any subsequent transfer of ownership or establishment of perpetual usufruct.

These days, the risk of reprivatisation only exists in rare cases. Until recently, such claims could be made regardless of the lapse of time since the nationalisation decision; however, in 2021, the Code of Administrative Procedure was amended to prevent nationalisation decisions from being declared invalid if 10 years have passed since they were delivered or announced. Another provision states that, if 30 years have elapsed from the date of service or announcement of the decision, no proceedings for annulment of the decision shall be initiated at all. This amendment will effectively make it impossible to recover land or damages for property expropriated during the communist period, unless the former owner has already obtained a final decision granting their reprivatisation claim prior to the amendment. In other words, entities who initiated a reprivatisation claim prior to the amendment but were yet to receive a final decision can no longer reclaim property expropriated during the communist era. This amendment essentially removes the risk of property purchased from the state being reclaimed through reprivatisation except in rare cases where reprivatisation was granted prior to the amendment. Furthermore, purchase of rights to previously state-owned property from a private entity posed little risk to begin with, as the private entity was protected by the principle of reliance on the contents of the land and mortgage register and restoring ownership would require use of further administrative instruments. In such cases, the former owner may have been entitled to damages, but was unlikely to successfully reclaim rights to the property.

Development process

Any investor looking to develop real property in Poland should conduct an adequate enquiry into potentially applicable legal limitations imposed by, among others, zoning laws, environmental law and historical preservation laws.

Zoning requirements, in particular, are consistently part of the property development process in Poland. Any development plan must align with the principles of relevant local zoning laws. If no such law exists in the relevant jurisdiction, developers must instead obtain a zoning permit. After a permit is obtained, development is limited to the terms specified in the permit. For certain types of development, such as wind farms or large retain centres, a permit will not suffice and investment is limited to jurisdiction with a local zoning law.

After obtaining a zoning permit, an investor must obtain a building permit to begin construction on the property. In order to do so, the investor must possess ownership or perpetual usufruct rights to the property. Entities leasing property can only build on the property if the terms of the lease allow them to do so.

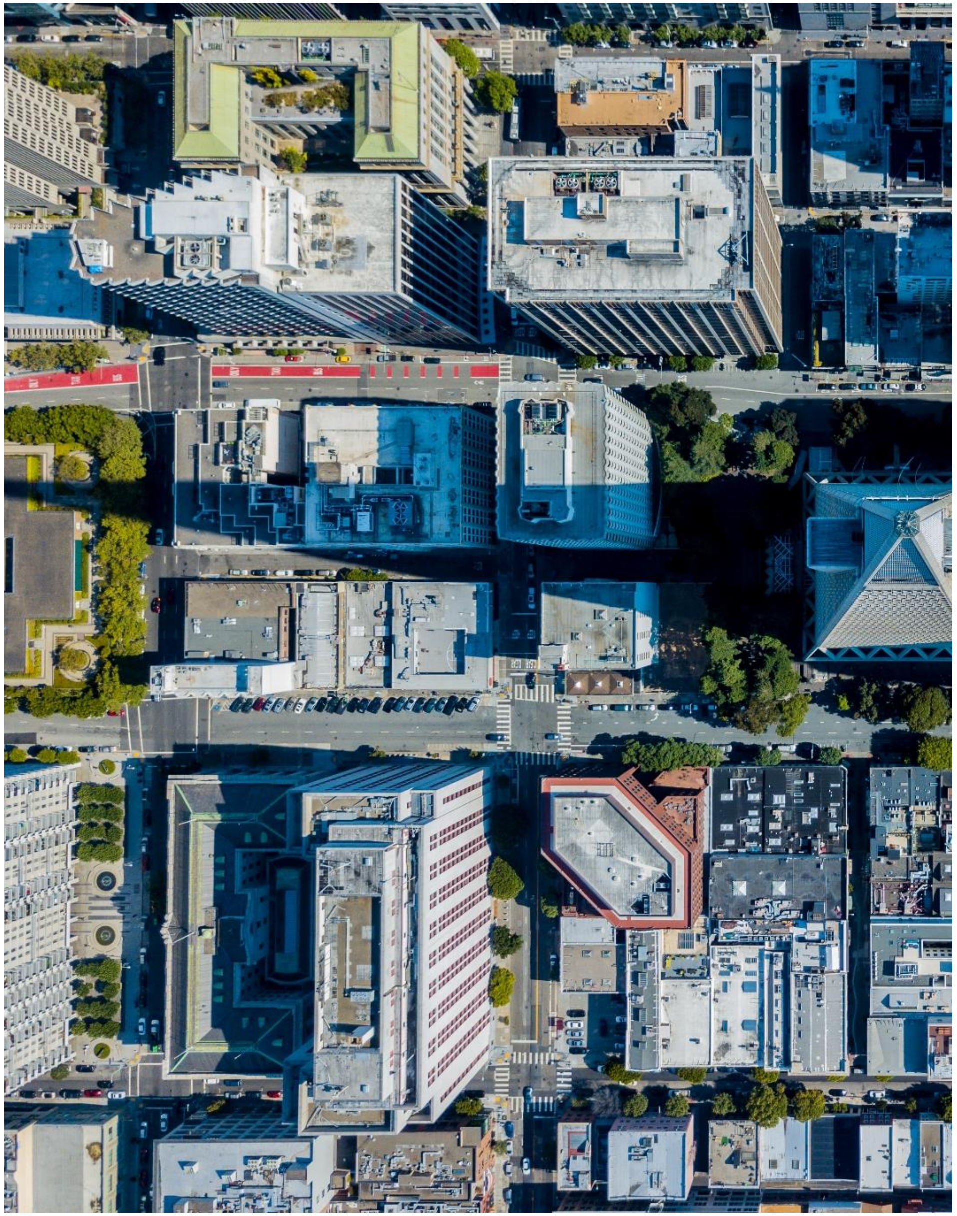
To apply for a building permit, the investor must submit a detailed construction plan that complies with any legal obligations set forth by applicable zoning laws or permits. In most cases, this requires hiring an architect.

The building permit application should contain proof of compliance with applicable health and safety, sanitary, and fire protection requirements. For certain types of development deemed to pose an environmental risk, the investor must obtain approval from the Environmental Health Inspector.

Once issued, a building permit expires if construction has not started within three years of the permit being issued, or if construction has started, but has been suspended for more than three years. In cases where multiple investors each obtain zoning permits to develop the same real property, the first investor to obtain a building permit gains the exclusive right to begin construction on the property. In other words, once an investor obtains a building permit for a real property, all other zoning permits to the property automatically expire.

In most cases, an occupancy permit must be also obtained upon completion of construction before use of a building can begin. This requires the building to be inspected by relevant authorities to confirm compliance with relevant safety and construction regulations, depending on the agreed-upon uses. Any additional unapproved use of a building is conditional on the issuance of an additional occupancy permit.

There are no specific legal limitations on the accessibility of zoning, building, and occupancy permits to foreigners. In other words, foreigners are subject to the same procedures as Polish citizens.



Acquisition of the title to real properties

Any valid transfer of an ownership or perpetual usufruct right requires the creation of a notarial deed between the involved parties. Ownership rights are legally transferred once the notarial deed, and any other documentation required for an agreement, has been signed. A transfer of perpetual usufruct rights, however, is complete once the deed and other required documentation has been entered into the land and mortgage registry, which tends to within certain amount of days of submission.

According to Polish law, the transfer of an ownership right or perpetual usufruct right must be unconditional. In other words, once rights have been transferred to a party, that party's ability to retain those rights cannot depend on the occurrence or non-occurrence of any future event. However, it is possible to enter a preliminary agreement where both parties agree to transfer property rights at a later date, subject to certain conditions. Under a preliminary agreement, the present holder of the property rights must transfer their rights to the other party under the terms of the agreement once the conditions are met. In most cases, the preliminary agreement should contain almost all of the legally relevant terms of the future final transfer agreement.

In the Polish real estate market, many acquisitions of real properties are structured as share deals. For economic and tax reasons, private entities often prefer to obtain property rights as a Special Purpose Vehicle (SPV). An SPV is a legal entity created specifically to fulfil the narrow objective of purchasing a particular property. In share deals, parties will often transfer shares of the SPV that holds the legal title to the property rather than directly transferring the right to the property itself, as it would in an asset deal. In the case of the transfer of an SPV, the structure of the transaction depends on the legal structure of the SPV in question, which tends to be a limited liability company (*spółka z ograniczoną odpowiedzialnością).* In share deals, the purchaser will obtain not only the shares of the SPV but all its rights and legal duties, such as the obligation to make future investments in the property. It is worth noting that, by nature, share deals require no changes to the land and mortgage register, because it is not the legal title that is transferred but the ownership of the SPV that holds the legal title.

Foreigners from EEA countries typically do not require a permit from the Minister of Internal Affairs to purchase ownership or perpetual usufruct rights. An exception for purchases of agricultural and forest land once existed but, as of 2016, the only limitation to such purchases is that they are subject to pre-emption and, effectively, approval by the National Centre of Agricultural Support. While this limitation exists regardless of the intended use, it only applies to purchases of over 5 hectares of agricultural or forest land. However, no equivalent restrictions apply for other types of acquisitions, such as the purchase of developed or industrial property.

Acquisition of real properties by foreigners outside EEA countries

Foreigners from non-EEA countries, including Ukraine, will always require a ministerial permit to complete any asset or share deal transfer of real property in Poland.

To obtain a ministerial permit, the entity must first submit an application to the Minister of Internal Affairs and Administration grants permission only on the basis of an application. The permit will be granted if it is deemed that the purchaser has sufficient ties to Poland (Polish nationality or origin, marriage to a Polish citizen, temporary residence permit or long-term EU resident status, etc.) and that the acquisition poses no threat to defence, state security or public order, and does not compromise social policy and public health interests.

However, there are certain types of purchases for which a ministerial permit is not required, even for entities outside the EEA. These include:

(a) apartments or other "self-contained" residential units – any premises within a building that provide adequate housing,

(b) garages located on land that the entity already holds partial title to – if the entity already holds title to premises on a land, no additional ministerial permit is required for separate purchases of garages on that real estate purchases by individuals who have lived in Poland for at least 5 years after obtaining a permanent or long-term EU residence permit,

(c) other exemptions.

However, these exceptions do not apply in cases where the property being acquired is located in a border zone and/or is agricultural land of more than 1 hectare. In such cases, a ministerial permit is still required.

Competition protection requirements

Depending on the monetary value of the assets or shares to be acquired in a property transaction, parties may have an additional obligation to notify the Office for Competition and Consumer protection. Transactions where the target (the acquired company and its subsidiaries, or the acquired assets) generated a turnover of more than EUR 10 million in Poland in either of the two previous fiscal years come with mandatory notification requirement.

If the target is a joint venture, the transaction is exempt unless any of the capital groups involved generated a turnover of more than EUR 10 million in Poland in either of the two previous fiscal years.

If the relevant target, assets, or at least one capital group in a joint venture generated a turnover exceeding EUR 10 million in Poland, and if, for the financial year preceding the year of notification:

(a) the combined worldwide turnover of all the parties involved in the transaction exceeded the equivalent of EUR 1 billion, or

(b) the combined turnover achieved by the participants of the concentration in Poland exceeded the equivalent of EUR 50 million,

the transaction cannot proceed without the OCCP's approval.

The OCCP will clear a transaction provided it does not significantly impede competition in the geographical area and the relevant market (e.g. retail, residential, alternative investment). In particular, the OCCP cannot clear a transaction that creates or strengthens a dominant position on the market, such as one that gives an entity a market share of over 40 percent. However, the OCCP can clear such transactions on the condition that the competition concerns are remedied prior to competition. For example, OCCP clearance may be conditional on the dominant entity decreasing its market share through divestment.

All transactions can eventually proceed if the OCCP does not issue a decision within a certain period of time. In most cases, this is one month, but the OCCP has five months to issue a decision when competition concerns are raised. For transactions pending approval, the OCCP can request documentation from the parties, including remedies to competition concerns, suspending the statutory deadline to issue a decision until documentation is submitted. Transactions that proceed without requisite OCCP approval are not necessarily deemed invalid but can be subject to fines or legally imposed obligations to fix competition concerns. Once the OCCP issues approval, the parties have two years to complete the transaction.

Statutory warranties and guarantees for defects

The Polish Civil Code establishes an implied warranty for physical defects. In the context of purchases of real property, this warranty is breached when:

(a) the property lacks qualities necessarily to fulfil its intended use, or any other purpose expressed by the buyer to which the seller did not object,

(b) the property lacks qualities that the seller promised it would have,

(c) the property is unfinished.

Even if the buyer has accepted the property, this warranty will apply when such defects were unknown to the buyer at the time of acceptance.

There is also an implied warranty for legal defects, where the seller is liable if:

(a) a third-party has ownership or perpetual usufruct rights to the property,

(b) a third-party has other rights to the property (e.g., easement, usufruct, mortgage) that restricts its intended use.

Since these warranties are implied, they are automatically part of the terms of the agreement even if they are not expressly added by the parties. However, parties have the ability to exclude these implied warranties from the agreement, in which case they become ineffectively unless the seller deliberately concealed a defect from the buyer.

If the buyer had prior knowledge of the defect and proceeded with the transaction, they are deemed to have accepted the risk and are no longer protected by the warranties. However, if the buyer had no knowledge of the defect and the seller does not immediately remedy they defect, they entitled to return the property for a refund. Alternatively, the buyer may demand a price reduction equal to the decrease in market value caused by the defect. However, in most cases, this reduction does not account for any other financial losses that arise from the defect, such as subsequent hindrance of the buyer's planned business operation.

In some cases, a buyer may surrender warranty protection if they fail to notify the seller of the defect within an adequate period of time or if they failed to do their due diligence to inspect the property for defects.

In major real property transactions, it is a common practise to for warranties to be explicitly addressed in the sales contract. Thus, the aforementioned rules regarding implied warranties only apply if the contract is silent on the issue. (CHECK) In all other cases, the terms specific in the contract override the statutory provisions on implied warranties, including the exclusion of implied warranties entirely or the modification of their terms (e.g. limiting liability to defects caused by the seller's actions or of which the seller knew). While this means warranties can be excluded from the agreement, express warranties not established by statute can be also be added to it.

Taxes on the transaction

Entities purchasing property in Poland are required to comply with Polish tax law and, thus, are strongly recommended to work with tax advisors on the agreement and seek approval from tax authorities prior to completion. With some exemptions, sales of both developed and undeveloped property are subject to Value Added Tax (VAT). Commercial property sales are subject to a much higher VAT rate than sales of residential property. If a transaction is VAT exempt, it is instead subject to a stamp duty at much lower rate.

Transaction costs

Property sales in Poland are often subject to court fees. Common fees include a notarial fee to cover the costs of preparing the notarial deed required to complete the transaction and an additional fee to cover the cost of entering the transaction into the land and mortgage register. The amount owed depends on the value of the transaction and whether it is an asset or share deal.

Property tax

Owners and perpetual usufructuaries of properties must pay local property taxes. The rate is determined annually by the local authority within the limits set out in the Local Taxes and Fees Act.

Owners of agricultural land, however, are required to pay an agricultural tax instead of a property tax. The amount owed depends of the size of the property, its intended use, the class of agricultural land, and the tax district in which it is located.

Title and Reps & Warranties insurance

It is common to purchase insurance policies alongside purchases of property in Poland. The most common is Reps & Warranties insurance, which covers the buyer's potential losses from false statements or misrepresentation by the seller. Less common is title insurance, which insures the buyer against losses resulting from a real property dispute. Due to the principle of reliance on the land and mortgage registry, property disputes are rare in Poland. Thus, title insurance is only recommended in transactions with a risk of restitution claims, "bad faith" register entry, or other cases where the principle of reliance would not secure the interests of the listed title holder.

Commercial leases in Poland

Entities that hold rights to a property have the ability to lease those rights to a third-party. This can be done by entering a lease agreement, where a landlord grants a tenant the right to use the property in exchange for rent. The Polish Civil Code establishes only the general framework for such lease agreements and parties largely have the freedom to decide the terms of the agreement.

The Polish Civil Code also recognizes tenancy agreements. Tenancy agreements are most commonly found in leases of agricultural land, where the tenant pays rent in exchange for not only the right to use the property but the right to collect revenue from that use. Like lease agreements, the parties have the freedom to negotiate the terms of the agreement, such as its duration. If the premises to-be-leased are yet to be constructed, parties may also enter a pre-lease agreement. Once construction is complete, the terms become binding on the parties and no further agreement is necessary. Until then, the seller is owed no rent.

As mentioned above, the duration of the lease is largely decided by the parties. Property can be leased indefinitely or for a set-period of time. However, lease agreements between entrepreneurs – entities that carry out economic or professional activity on their own behalf – are subject to a statutory maximum duration. Parties have the freedom to extend the lease upon expiration. If the lease expires, but both parties continue to perform, it is presumed that the lease has been extended indefinitely.

Terms regarding rent, including the amount due and the currency paid, are also largely left to the discretion of the parties. For example, parties can agree to a lump-sum for the whole premises or a per-square-metre rate. In tenancy agreements, rent may also be dependent on a tenants turnover from use of the leased premises. Rent can also be adjusted in accordance with changes to the cost-of-living as determined by the relevant Consumer Price Index, depending on currency. The Polish Civil

Code gives the landlord the right to increase the rent, requiring the tenant to pay the increased amount after one-month notice from the landlord. However, this right is often excluded by parties in the terms of the agreement.

Tenants may also be required to pay operating costs. No other operating costs are owed unless the terms expressly say so. In practice, the tenant can be required to pay costs of maintaining the premises and, in part, the land on which it is located. The terms may also require the tenant to pay property taxes or usufruct fees, either in part of in full. Parties are also free to set a cap on such expenses.

Tenants are prohibited from subleasing the premises to a third-party, either in whole or in part, without the landlord's consent. However, the parties are free to waive this limitation in the terms of the lease. If the tenant subleases in violation of the terms, both the tenant and the subletter are liable to the landlord.

The parties' right to terminate the lease depends largely on the lease's duration. Parties can always agree to terminate the lease by mutual consent. Leases with a set expiration date may only be terminated in accordance with the terms of the lease; if the lease is silent on termination, the agreed-upon duration will be enforced. Leases with an indefinite duration, however, may be terminated by either party. In such cases, the terminating party is required to give notice. Once notice is given, the lease will terminate after set period-of-time, the length of which depends on the frequency with which rent is paid. If termination is precluded by the agreement's terms or by statue (e.g. in the case of a specified duration), there are certain cases where parties may be entitled to termination regardless. For example, the landlord can terminate the agreement if the tenant has missed two full periods of rent and the rent remains unpaid one-month after the landlord has warned the tenant. The tenant has the right to terminate the lease if the premises have defects that make it unusable for its intended purpose or hazardous to the health of the tenant or its employees. Finally, if the landlord transfers rights to the property to a third-party, the third-party replaces the landlord on the lease agreement and can terminate the lease, subject to statutory notice requirements and exceptions.

Operating expenses chargeable to the tenant

Security

If the tenant has not paid overdue rent or any other overdue payments, the landlord has the statutory "right of pledge", giving the landlord the power to repossess moveable items brought by the tenant onto the property up to the value of the overdue payments for the preceding year. Once the landlord has repossessed items equal, in value, to the overdue debt, the landlord has no right to take any more items.

The parties may also, in the terms of the lease, require the tenant to pay a security deposit. The amount owed depends on the terms but is generally equal to three-month's rent plus VAT. The security deposit can be paid in cash or it can be secured in other ways (e.g. shares, bank guarantees, insurance policies).

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