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INVESTING IN POLAND

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INTRODUCTION

In terms of prospective investments, Poland is often indicated as one of the most attractive European countries. It has one of the most rapidly developing economies in Europe and also population of 38.5 million people, which constitutes a serious potential market. Years of reforms have ensured stability and relative resistance to economic crises. We invite you to read this brochure, which aims to make you acquainted with certain Polish legal solutions. Such knowledge is essential for a potential investor, planning on starting a business in Poland.

I

INTRODUCTION INTO THE POLISH LEGAL SYSTEM

The political transformations after 1989 allowed the newly restituted Republic of Poland to emerge as an independent and democratic state under the rule of law. The Polish law belongs to the continental system (civil law), which developed in Western Europe under the influence of Roman law. The continental system is divided into families of German and Roman law, with the subgroup of Scandinavian law distinguished as well. Due to historical reasons, the German and French legislation had the greatest impact on the current shape of the Polish law. The institutions of both of these legal systems were incorporated with certain modifications into the Polish law. The basic feature that distinguishes the continental law system from the common law system is the fact that the power to make law belongs solely to legislative bodies (parliament), whereas in the common law system, law is made, as a rule, on the basis of court decisions (precedents).

The Constitution

The Constitution of the Republic of Poland of 7 April 1997 is the supreme law among other sources of law. From the perspective of an investor, one of the most important principles guaranteed by the Constitution is the principle of freedom, which includes economic freedom. Economic freedom can be limited only by a statute and only when it is required in a democratic state for its safety or public order, or for protection of the environment, public health, morality or to safeguard the freedom and rights of others. These limitations cannot violate the essence of freedom and rights. The principle of equal treatment prohibits discrimination both in public and in economic life. Moreover, the Constitution guarantees the right to property (ownership) and other property rights, which are subject to equal protection for everyone. The right to property may be limited only by a statute and only as far as such a regulation does not violate the essence of that right. The Constitution also ensures basic rights of the employees, including the right to a minimum wage, the amount of which is statutory prescribed, the right to form trade unions, the right to safe and hygienic working conditions, limitations on the maximum working time and statutory days off work.

The Constitution obligates state authorities to safeguard consumers, users, and tenants from any actions that would pose a threat to their health, privacy and safety and to protect them from unfair market practices. It is also a duty of the authorities to provide protection of the environment. Everyone has a guaranteed right to a fair and open examination of their case without undue delay by a competent, independent, impartial and sovereign court. Furthermore, the Constitution establishes the obligation to pay public levies (taxes).

The specific application of the principles expressed in the Constitution is prescribed in the legislative acts of a lower level, i.e. statutes and regulations. The Constitutional Tribunal rules on the conformity of statutes and regulations with the Constitution and international treaties.

The Constitutional Tribunal delivers its decisions in an impartial, independent and very prudent manner and, what is of crucial importance, specifically without yielding.

Membership in the European Union

Poland became a member state of the European Union on 1 May 2004. The accession to the Community provided new impetus for the development of the legal system, the provisions of which for the purpose of the accession had to be

DUTIES OF THE EMPLOYER

The duties of the employer and employee are regulated by the Labour Code of 26 June 1974. An employment contract cannot stipulate conditions less favourable for an employee than those indicated in the Code. Ten employees or more can establish a trade union, whose task it is to represent and protect the rights of the employees as well as their professional and social interests. Trade union competences also include: negotiating and concluding collective agreements or participating in consultations in the matter of labour regulations.

Poland also has a general and mandatory national social insurance system. Retirement insurance is provided for persons ending their professional activity after achieving the eligible age. The reform of 1999 introduced three pillars of the retirement system: Pillar I, managed by the Zakład Ubezpieczeń Społecznych (Social Insurance Institution); Pillar II, managed by private institutions, i.e. open pension funds which task is to collect monetary funds from insurance contributions and to invest them on the financial market, Pillar III – the only non-mandatory one – ensuring above-standard benefits in exchange for an additional contribution within the so called employee pension plans (PPE) or individual retirement accounts (IKE).

The reform of regulations of 2013 substantially altered the operating principles of this system, introducing voluntariness of transfer of future retirement contributions to open pension funds (a possibility of choosing whether a part of the contribution previously transferred to open pension funds is to be transferred thereto as before or whether it is to remain in the Zakład Ubezpieczeń Społecznych (Social Insurance Institution) and a decreased fee on contributions collected by open pension funds. From 1 April to 31 July 2014, the insured parties were able to choose whether a part of their retirement insurance contribution is to be paid into open pension funds. The insured parties who opted for this solution were required to notify the ZUS of their decision, in the lack of such a declaration, future contributions will be transferred onto the ZUS in full. From 1st September 2017 the retirement age for men is 60 years for women and 65 years for men. The national insurance system also includes disability insurance, accident and health insurance.

harmonized and restated to conform with the European law. Hence, the following European Union legislative acts are in force in Poland to the same extent as in e.g. Germany or France: directives, which the national legislator must implement into the national legal system, regulations, that are directly effective, as well as recommendations and opinions.

As of 21 December 2007 Poland also belongs to the Schengen Zone, which guarantees the free crossing of borders of signatory states. Foreigners from European Union member states – following the principle of the free movement of goods, capital, and services – as well as from the states associated in the European Free Trade Association (EFTA) are authorized to undertake and conduct business activities on the territory of Poland on the same terms as Polish entrepreneurs.

The most important legislative act with regards to the economic law is the Act on Freedom of Economic Activity of 2 July 2004 which regulates the establishment, operation and closing of business activities.

The forms of conducting business activity are regulated in the Code of Commercial Companies and Partnerships of 15 September 2000, and also, to some extent, in the Civil Code of 23 April 1964.

The Act on the National Court Register (KRS) of 20 August 1997 regulates the operation of the information database kept by the district courts. The National Court Register database enables public access to the Register of Entrepreneurs and the Register of Associations. It is mandatory to disclose in the National Court Register information on the formation of a new entity (specifically a commercial law entity, branch, or representative office) as well as changes to the data of the entrepreneur.

Banking, administrative and tax law

Poland is proud of its stable banking system and its banking law, which was shaped under the influence of the European regulations. The basic elements of this structure are: the National Bank of Poland, the Polish Financial Supervision Authority, the Bank Guarantee Fund as well as commercial and cooperative banks. Poland has committed to accept the Euro as its currency, however due to the world financial crisis, the adoption date has been postponed.

Administrative law in Poland is very complex. However, the legislator certain reforms which are aimed at decreasing the administrative encumbrances in order to facilitate conducting business activity.

Furthermore, tax law is an autonomous field of law, with its own case law and administrative practices. Within the framework of this branch of law, the following taxes can be differentiated:

- direct taxes:
    - personal income tax (PIT),
    - corporate income tax (CIT),
    - real estate tax,
    - agricultural tax,
    - forest tax,
    - inheritance and donation tax,
    - tax on civil law transactions,
    - tax on means of transport,
    - tonnage tax,
    - tax on extraction of certain minerals.
- indirect taxes:
    - the tax on goods and services (VAT),
    - excise tax,
    - gambling and lottery tax.

The positive achievements of the legislator include the introduction of a linear tax for legal and natural persons conducting non-agricultural business activity. The linear tax rate in 2017 amounts to 19%.

Poland has also entered into a series of international agreements on the avoidance of double taxation with countries in which the tax-payers have their registered offices, seats, or management boards.

Judiciary

The judiciary is an authority separate and independent from other branches of the government. The Supreme Court, common courts of law, and administrative courts manage the administration of justice system in Poland.

Court proceedings have at least two stages. The common courts of law are divided into district courts, regional courts, and courts of appeal. The district court is by principle a court of first instance. The regional court may, however, be both a court of first instance and an instance of appeal. The court of appeal is solely an appeal instance. The Supreme Court is the supreme body of the judicial power in Poland. It exercises judiciary supervision over the activities of the common courts of law in civil, economic, labour and criminal matters. The highest instance in administrative matters is the Supreme Administrative Court, which examines appeals from the decisions of regional administrative courts. Each of these courts acts *ex officio* or in particular cases as the result of a challenge of a decision with a cassation complaint. Moreover, they provide answers to legal queries of the courts of lower instance. Operation of both of the supreme courts to a significant degree shapes the application and interpretation of the law.

The nature of the case as well as the value of the subject of the dispute decide whether a given case will be heard in the first instance by the district or regional court. As a rule, the case should be heard in the first instance by the district court. However, the regional court will decide in the first instance on claims concerning property rights with the amount in dispute higher than PLN 75,000, in matters on the repeal, ascertainment of invalidity or establishment of the non-existence of resolutions of bodies of legal persons or organizational units not being legal persons to whom the statute grants legal capacity. The regional court is competent in the first instance also in matters of preventing and counteracting unfair competition as well as in the matters regarding the protection of copyrights and related rights and those regarding inventions, utility designs, industrial designs, trademarks, geographic

marks, and other intangible property rights. Due to the need for specialization, the Court of Competition and Consumer Protection (Division of the Regional Court in Warsaw) was established. This court is competent to hear appeals from the decisions of the President of the Office of Competition and Consumer Protection. The court proceeds in regular proceedings and in proceedings on securing the claims, conducted on the basis of the provisions of the Act on Competition and Consumer Protection of 16 February 2007. The Court of Competition and Consumer Protection also rules on complaints against the decisions issued in enforcement proceedings conducted for the purposes of execution of the duties resulting from the decisions and regulations of the President of the Office of Competition and Consumer Protection. Moreover, the Court has jurisdiction on the cases on recognition of the standard agreements as prohibited and cases concerning energy, telecommunications and postal services.

The Community Trademark Court (also a division of the Regional Court in Warsaw) and the Patent Office operate in Poland as well.

In case of doubts as to the conformity of the domestic law with provisions of the European law, a court may turn to the Court of Justice of the European Union with a legal query. Moreover, as of 1991, Poland is a member of the Council of Europe and in 1993, it signed the European Convention on Human Rights. In relation thereto, upon the exhaustion of the means to hear the case in Poland, it is possible to submit a complaint to the European Court of Human Rights. The complaint should be made within six months as of the date of the final decision that constitutes the basis for initiating the complaint.

The Polish law allows for the conclusion of an arbitration agreement. The chosen court of arbitration may be seated both in Poland and abroad. Awards issued by the arbitration courts (several permanent courts of arbitration exist in Poland) are recognized by the Polish common courts of law. The parties may also resort to alternative dispute resolution mechanisms.

The provisions of the Polish civil procedure also provide for a possibility of conducting mediation proceedings, both prior to initiating a court action and to the parties consent in the course thereof. A settlement concluded as a result of court mediation, upon being approved by the court, acquires the legal force of an in-court settlement, which means that it may constitute an enforcement title providing the grounds for initiation of execution, if it is not executed voluntarily. Obviously, mediation and settlement may occur also entirely out of court and outside of court proceedings. The provisions of the Polish civil procedure also regulate special conciliatory proceedings where the other party is summoned to conclude an in-court settlement prior to initiating an action. In the case of such a summons, even if the adversary party is unwilling to conclude a settlement, the summons to conclude the settlement results in an interruption of limitation of the claim to which it pertains. According to the Act of 23 September 2016 on the Out-of-court Settlement of Consumer Disputes, which came into force in 2016, such disputes may now be settled online by specialised, certified entities.

It is worth noting, that from 1 January 2016 a party filing a lawsuit has to indicate, whether an attempt on amicable settlement of the matter was undertaken.

ECONOMIC ZONES

Special economic zones – separate administrative parts of the territory of the state where business activity is conducted on preferential terms (e.g. tax incentives) – also function in Poland. In their present structure, the special economic zones will be in operation until at least the year 2020. However, the extension of their operations is already being taken into consideration. If the special economic zones are maintained, then investing in them may be an ideal solution for a foreign investor debuting on the Polish market.

International agreements

Poland is a party to many international agreements, including those of special importance from the business perspective of an investor.

The Constitution of the Republic of Poland includes a regulation, among the provisions regarding the hierarchy of the sources of law, under which a ratified international agreement – upon its promulgation in the Official Gazette of the Republic of Poland (which as of 1 January 2012 is published in digital format at the following web address http://www.dziennikustaw.gov.pl/) – constitutes a part of the domestic legal system and is applied directly. This is not the case when its application is dependent on the issuance of a separate statute. An international agreement, ratified with a previous statutory consent, takes precedence over a Polish statute, should the content of both acts exclude each other.

Additional investment protection is guaranteed by international treaties on the protection and support of investments (bilateral investment treaties) concluded between the Republic of Poland and the country of the investor's origin. Poland is a party to over 50 such agreements. It is also worth remembering that Poland is not a party to the International Centre for Settlement of Investment Disputes Convention.

II

SETTING UP A BUSINESS IN POLAND

The following persons can set up and conduct business activity on the same principles as Polish citizens and Polish entities: foreigners, who are citizens of member states of the European Free Trade Association (EFTA), parties to the agreement on the European Economic Area, as well as foreigners, who are citizens of states which are not parties to the agreement on the European Economic Area who can enjoy the freedom of economic activity on the basis of agreements concluded by such states with the European Community and its member states, as well as family members of foreign natural persons joining the citizens of the above-mentioned states or staying with them.

The same rules for launching business activity in Poland apply to citizens of states other than those listed above, who:

- in the Republic of Poland are holders of:
  - a permanent residence permit,
  - a long-term European Union residence permit,
  - a fixed term residence permit granted in connection with special circumstances referred to in the Act on Foreigners of 12 December 2013,
  - refugee status,
  - subsidiary protection,
  - a residence permit on humanitarian grounds or a tolerated stay permit - a fixed term residence permit and who remain in a marital relationship with a citizen of Poland residing in the territory of the Republic of Poland,
  - temporary residence permit issued for the purpose of conducting economic activity, granted in relation to the continuation of the already registered business on the grounds of the entry in the CEIDG (Centralna Ewidencja i Informacja o Działalności Gospodarczej [Business Activity Central Register and Information Record]),
- enjoy temporary protection in the Republic of Poland,
- are holders of a valid Polish Card,
- are family members in the meaning of the Act of 14 July 2006 on the entry into, residence in and exit from the Republic of Poland of nationals of the European Union Member States and their family members.

A FOREIGNER IS:

- a natural person, non-holder of Polish citizenship,
- a legal person seated abroad,
- an organisational unit not being a legal person and enjoying legal capacity, seated abroad.

What is more, the following persons can engage in business activity on the territory of Poland on the same terms as Polish citizens: citizens of other states than EU Member States, European Free Trade Association Member States - parties to the agreement on the European Economic Area as well as foreigners from the states not being parties to the agreement on the European Economic Area and foreigners who can enjoy the freedom of economic activity on the basis of agreements concluded by such states with the European Community and its member states who reside in the territory of Poland in connection to special circumstances referred to in the Act on Foreigners, if immediately prior to the filing of an application for the granting of a fixed term residence permit, permanent residence permit, or a long-term European resident permit they were entitled to set up and conduct business activity on the grounds of the fixed term residence permit in connection to special circumstances referred to in the Act on Foreigners.

Foreigners other than those mentioned above shall have the right to start and conduct business activity exclusively in the form of the following companies: limited partnership, partnership limited by shares, limited liability company, and joint-stock company as well as the right to access such companies and to take up or acquire shares or stocks of such companies insofar as international agreements do not provide otherwise.

The remaining foreign entrepreneurs can start and conduct business activity on the same principles as Polish citizens (and other Polish entities) provided they obtain an appropriate permit for conducting business activity or they legalize their stay in Poland.

Under the Act on Freedom of Economic Activity, the business activity in Poland can be conducted by entrepreneurs who, under the Act, include:

- natural persons,
- partners of partnerships in the scope of their business activity,
- legal persons and organisational units that are not legal persons and that are awarded legal capacity by virtue of a separate statute – pursuing business activity on their own behalf.

Foreigners can set up business activity:

- as self – employed entrepreneurs,
- in form of a civil law partnership,
- by establishment of a branch or representative office of an already existing foreign entrepreneur,
- by establishment of a new commercial partnership,
- by accession to a partnership,
- by the acquisition of stocks or shares, in existing corporations, including state-owned enterprises undergoing transformations into companies (privatized and commercialized).

By principle, Polish law distinguishes two types of persons – natural persons and legal persons. Legal persons are organizational units – the State Treasury, corporations (limited liability company, joint stock company), etc. vested with legal personality by virtue of a statute. The third category of participants of transactions consists of organizational units that are not legal persons, so-called “flawed legal persons”. The provisions on legal persons apply to them respectively. This category includes, first and foremost, so called personal partnerships (a registered partnership, professional partnership, limited partnership, partnership limited by shares) and corporations in organization. Members of these units, e.g. partners of a partnership, hold subsidiary liability for obligations of the unit they form. This liability is triggered when the enforcement proceedings towards this unit proves to be ineffective.

Self-employed entrepreneur /civil law partnerships

To register a business as a natural person, the entrepreneur should file an application for the entry into the Central Register and Information on Economic Activity (CEIDG), which simultaneously constitutes:

- a tax identification application to the Head of the Tax Office (NIP),
- a declaration on the selection of the PIT taxation form,
- a notification of a contribution payer to the Social Insurance Institution (ZUS),
- an application for the entry in the REGON (National Business Register) statistical register kept by the Central Statistical Office.

The registration can be performed:

- online (however, if the person representing the company does not possess an authorised digital signature, they will have to visit the office to sign the documents in person),
- traditionally by:
  - filing an application in the municipality office (the municipality office transfers it into the electronic format), or
  - sending the application by registered mail to the selected municipality (in such a case, the signature must be certified by a notary).

In principle, registration in the Central Register and Information on Economic Activity (CEIDG) and modification of the entries are free of charge (only the Tax Office registration is subject to a fee of PLN 170 in 2017, only regarding the VAT payer) and takes couple of hours. The entrepreneur can begin business on the date of the filing of the CEIDG entry application.

To register a civil law partnership, partners must first register their own business activity and then notify the tax office of the fact of conclusion of the civil law partnership. A civil law partnership is then registered in the Central Statistical Office where it is allocated a REGON number, indispensable for filing a tax identification application in the competent tax office and the allocation of the Tax Identification Number (NIP).

Provisions of the Code of Commercial Companies and Partnerships provide for a possibility of transforming the mode of conducting economic activity from sole proprietorship or activity conducted in the form of a civil law partnership into a commercial company. In order to transform the mode of conducting business, it is necessary to:

- draw up a plan of transformation, submit a declaration (or in the case of a civil law partnership - adopt a resolution) on transformation,
- appoint members of bodies of the company being established (if after transformation a company managed by supervisory bodies and not managed directly by its shareholders is formed), sign the articles of association,
- enter the transformed company in the National Court Register and delete the entrepreneur subject to transformation from the Business Activity Central Register and Information Record (CEIDG).

The company formed as a result of transformation is entitled to all the rights and obligations of the entrepreneurs subject to the transformation; in particular, it remains an entity subject to permits, concessions, and exemptions the entrepreneur was granted prior to the transformation, unless a statute or permit decision provide otherwise. This rule, however, does not apply to tax obligations. On the day of transformation, the entrepreneur subject to the transformation or shareholders of a civil law partnership acquire the status of shareholders or stockholders of the transformed company.

CIVIL LAW PARTNERSHIP

The civil law partnership is regulated by the Polish Civil Code. The civil law partnership has neither a legal personality nor legal capacity with exception of the tax law, in the frames of which in many cases a civil law partnership is regarded a taxpayer. It is a contractual civil law relationship, and more precisely, an obligation by virtue of which the partners commit to a performance, aiming at achieving a common economic goal by acting in a designated manner and in particular by making certain contributions. It is worth noting that the partners bear joint and several liability for the obligations of the partnership. Nonetheless, one has to bear in mind that both in the contractual and judiciary practice, as well as in the practice of tax bodies, the civil law partnership raises many controversies. In particular, the most problematic issue is the relationship of the civil law partnership with its partners.

Commercial Companies

An entrepreneur commencing business activity in Poland can, depending on the type of business, select the company type that is most suitable for their purposes.

The notion of a commercial company is formed by: articles of association (including a deed of formation of a single-member company) made in writing or in the form of a notary deed (depending on the commercial company type) and the organizational relationship arising as a result of the incorporation of the company.

The following company types fall into the category of commercial companies: a registered partnership (in Polish: "spółka jawna"), professional partnership (in Polish: "spółka partnerska"), limited partnership (in Polish: "spółka komandytowa"), partnership limited by shares (in Polish: "spółka komandytowo-akcyjna"), limited liability company (in Polish: "spółka z ograniczoną odpowiedzialnością"), and joint-stock company (in Polish: "spółka akcyjna").

Commercial companies engage in business activity upon obtaining an entry in the National Court Register (KRS). However, it is worth highlighting that corporations in organization (i.e. not yet registered in the KRS) can engage in business activity also prior to obtaining the entry in the KRS. However, they can do so only in a limited scope.

An application for an entry into the National Court Register (KRS) is filed on an official form. It is mandatory to attach the documents providing the grounds to the application form. These include:

- a company deed (articles of association or, alternatively, a founding deed of a sole proprietorship capital company); in the event the founding deed was drawn up as a notary deed, an abstract thereof should also be attached,
- a document regarding the consent of a member of the company body for their appointment; consents for appointment of the people representing the entity entered in the Register, receivers, and holders of commercial power of attorney should also be attached to the application (this requirement is not applicable if the entry application is signed by a person subject to such entry or who granted a power of attorney to file an application for the entry, or whose consent has been expressed in the minutes of a session of the body appointing a given person in the articles of association),
- a document regarding the appointment of members of the management board of a company (applies to a limited liability company, a joint stock-company, and a professional partnership, as long as a management board was established), alternatively of the remaining bodies; moreover, full names, and addresses of members of the management board as a separate document,
- a list of shareholders (partners, general partners, limited partners) along with their addresses (addresses for service), or a list of shareholders of a limited liability company, in a separate document,
- a list of members of the management board of a limited liability company,
  a management board's declaration on the contribution of capital (applies to partnership limited by shares, limited liability company, joint-stock company),
- first and last name or company name and registered office as well as address of the sole shareholder (stock-holder) - in the case of a sole proprietorship limited liability or joint-stock company, in a separate document,
- the company deed, declaration on contribution of capital and the list of members of management board should be signed by each member of the management board.

The application for the entry into the register of entrepreneurs is subject to a court fee (in 2017 – in the amount of PLN 500) and to a fee for the announcement of the entry in the Court and Commercial Gazette (in 2017 – in the amount of PLN 100 – since the entry in the register of entrepreneurs requires to be publically announced).

Along with the application for the entry in the register of entrepreneurs, the applicant also files a notification of a contribution payer to the Social Insurance Institution (ZUS).

Under the Act on the National Court Register, the Registry Court examines the application for the entry not later than within seven days as of the date when the motion was filed to the court. Nevertheless, in practice this deadline can be prolonged even up to 30 days. Directly after the company's registration in the KRS, it is registered in National Business Register (REGON) under a specific number. The company is also granted a tax identification number (NIP) by the Head of the Tax Office.

Moreover, EU countries currently operate under a unified VAT payer identification system. As a result, each entrepreneur can easily check whether their counterparty is a VAT payer in their country and whether, for example, application of the 0% rate is possible in intra-community trade. In principle, the European Tax Identification Number (NIP) is formed by adding an appropriate symbol to the national number (in Poland: PL). The application for the granting of the European Tax Identification Number is submitted in the tax office competent for the place of business registration.

Since 2012, the incorporation and registration of a limited liability company in a simplified online mode is possible. This mode of incorporation of a limited liability company is labelled as S24 and it requires the registering party to use a template of articles of association made available in the ICT system (therefore it may be used only if at the moment of incorporation the company is to have only standard and basic articles of association; it is not a suitable mode in the case of "tailor-made" articles of association). In this mode, the articles of association and other required documents are generated directly within the ICT system and sent to court. As of 15 January 2015, this mode of incorporation of a company has been made possible also for a registered company and limited partnership. As of 1 April 2016, amendment form to the company deed, as well as resolution specimens are available in the ICT system. The fundamental characteristics of the above-mentioned types of companies are described below.

PARTNERSHIPS (IN POLISH: SPÓŁKI OSOBOWE)

Partnerships do not possess a separate legal personality. Nevertheless, they can, in their own name, acquire rights, including real estate ownership and other property rights, incur obligations, sue and be sued.

Under a general principle, at least a part of partners is held personally liable for the obligations of the partnership with all their assets and at least in a subsidiary manner (in the event of the ineffectiveness of enforcement addressed to the company). The partnerships are subject to entry in the National Court Register.

REGISTERED PARTNERSHIP (IN POLISH: "SPÓŁKA JAWNA")

A registered partnership is a partnership which conducts business activity under its own brand and is not another commercial company. A deed of formation of a registered partnership should be made in writing to be valid.

Each partner of the registered partnership holds unlimited liability for the obligations of the company with all their assets, jointly and severally with the remaining partners and the company itself. Each partner is entitled to represent the company both in the scope of the judicial and extra-judicial activities of the company. What is more, a person acceding to the company is liable for the obligations of the company which arose prior to their accession. The partners can contribute to the company by transferring or encumbering the ownership of objects or other rights as

well as by making other performances for the company. In principle, each partner has the right to equal participation in the profits and participates in the losses in the same ratio, regardless of the type or value of their contribution.

Since 15 January 2015, online registration of a registered partnership is possible. The model is set by the regulation of the Minister of Justice and is not subject to modifications by potential partners. However, it is possible to modify this simplified version of the articles of association at a later date to give it the nature of a "classic" limited liability company. The articles of association are signed with the use of the digital signature.

PROFESSIONAL PARTNERSHIP (IN POLISH: "SPÓŁKA PARTNERSKA")

This is a partnership formed by partners to pursue a liberal profession within the frames of the company conducting business activity under its own brand. In principle, a partnership can be formed to pursue more than one liberal profession.

The following professions can form a professional partnership: attorney-at-law, pharmacist, architect, construction engineer, expert auditor, insurance broker, tax advisor, securities broker, investment advisor, accountant, physician, dentist, veterinarian, notary, nurse, legal counsel, patent attorney, appraiser and certified translator (or other to be indicated in separate future statutes). The deed of formation of the partnership must be concluded in writing to be valid.

The partner is not liable for the obligations of the company which arise in relation to the pursuit of a liberal profession by other partners as well as resulting from actions or omissions of persons employed by the company who have been supervised by another partner. The deed of formation may stipulate that one or more partners consent to be held liable on the same principles as a partner of a registered partnership. Each partner has the right to independently represent the company unless the deed of formation provides otherwise. The deed of formation of a partnership can provide for the creation of a management board that has delegated powers to manage the company and conduct its affairs. In case a partner loses the entitlement to pursue a liberal profession, they should leave the company at the latest at the end of the financial year during which they lost the right to pursue the liberal profession.

LIMITED PARTNERSHIP (IN POLISH: "SPÓŁKA KOMANDYTOWA")

A limited partnership is a partnership the goal of which is to conduct business under its own brand and in which at least one partner holds unlimited liability (general partner) towards creditors for the obligations of the company and at least one partner holds limited liability (limited partner). The limited partner is liable for the obligations of the company towards its creditors only up to value of the declared amount. A deed of formation of a limited partnership should be concluded in the form of a notary deed. If the contribution of the limited partner to the company is non-monetary performance, in full or in part, the deed of formation of the

company determines the subject of such a performance (a contribution-in-kind, its value as well as the person of the partner delivering such non-monetary performance). The obligation to deliver the work or to render services to the benefit of the company as well as remuneration for the services rendered during the formation of the company cannot constitute the contribution of the limited partner into the company unless the value of their other contributions into the company is lower than the declared sum up to which the partner is liable towards the creditors.

Unless the deed of formation provides otherwise, the contribution of the limited partner can be of a value lower than the declared sum describing their liability. The resolution of the partners releasing the limited partner from the obligation to make a contribution is invalid. The limited partner is free of liability within the limits of the contribution made into the company. Whoever accedes to the company as a limited partner is also liable for the obligations of the company existing at the moment of their entry into the register. The company is represented by those general partners who are not deprived of the right to represent the company by virtue of the deed of formation of the company or a final court judgment. The limited partner can represent the company only as a proxy.

Since 15 January 2015, online registration of a limited partnership is possible. The model is set by the regulation of the Minister of Justice and is not subject to modifications by potential partners. However, it is possible to modify this simplified version of the articles of association at a later date to give it the nature of a "classic" limited liability company. The articles of association are signed with the use of the digital signature.

PARTNERSHIP LIMITED BY SHARES (IN POLISH: "SPÓŁKA KOMANDYTOWO-AKCYJNA")

A partnership limited by shares is a partnership the goal of which is conducting business activity under its own brand and in which at least one partner holds unlimited liability (general partner) towards creditors for the obligations of the company and at least one partner is a shareholder. The articles of association of the partnership limited by shares should be concluded in the form of a notary deed.

The general partner can make a contribution into the company towards its share capital or towards other funds. The contribution towards the share capital does not exclude his unlimited liability for the obligations of the company. The shareholder is not liable for the obligations of the company. The company is represented by general partners who are not deprived of the right to represent the company by virtue of the articles of association of the company or a final court judgment. The shareholder can represent the company only as a proxy. Each general partner has the right and duty to manage the affairs of the company. However, the general partner is not entitled to conduct the affairs of the company which were delegated to the competence of either the general assembly of shareholders or the supervisory board by provisions of the Code of Commercial Companies and Partnerships or by the articles of association of the company.

Supervisory Board	A supervisory board can be established in a partnership limited by shares. If the number of shareholders exceeds 25 people, the establishment of a supervisory board is mandatory. Members of the supervisory board are appointed and dismissed by the general assembly. The general partner or their employee cannot be members of the supervisory board. The supervisory board exercises permanent supervision over the activities of the company in all areas of its operation.
General meeting of share-holders	A general meeting of shareholders can be ordinary or extraordinary. Every shareholder and general partner have the right to participate in the general meeting also in the event they are not shareholders of the partnership. Resolutions of the general meeting of shareholders are, first and foremost, required for: the examination and approval of the report of the general partners of the operation of the company and its financial report for the previous financial year, granting the general partners managing the affairs of the company and the members of the supervisory board a discharge for the fulfilment of their duties, the selection of an expert auditor, unless the articles of association stipulates the competence of the supervisory board in this respect, or the dissolution of the company.

Each share taken up or acquired by a person who is not a general partner gives the title to one vote unless the articles of association provides otherwise. The shareholder cannot be fully deprived of the right to vote. However, each share taken up or acquired by a general partner gives the title to one vote only.

The general partner and the shareholder participate in the profits of the company proportionally to their contributions to the company unless the articles of association provide otherwise.

Termination of the articles of association of the company by the general partner and their withdrawal from the company is admissible if the articles of association provide so. The shareholder is not entitled to terminate the articles of association.

CORPORATION (IN POLISH: "SPÓŁKA KAPITAŁOWA")

Corporations acquire legal personality at the moment of entry in the KRS (National Court Register).

In principle, it is the corporation itself (not its partners, shareholders, or

representatives) that is liable for its own obligations. However, there are certain extensions which are discussed below. On the contrary, the liability for obligations of the corporation in organization rests jointly and severally with the company and the persons who have acted in its name.

Participatory rights of corporations are covered by monetary or non-monetary (in-kind) contributions. They create the capital of the corporation. An inalienable right or performance of work or provision of services cannot be a subject of a contribution into the corporation. The capital may undergo changes, it is the joint stock company that offers particularly numerous possibilities in this scope.

Corporations act through their bodies. The legal basis for the organization, operation, and functioning of a corporation is its articles of association as well as the Code of Commercial Companies and Partnerships. The corporation can be voluntarily dissolved and liquidated by virtue of an appropriate resolution of its partners (shareholders) whereas under certain circumstances the court may dissolve the corporation. The limited liability company also entertains a possibility of the forcible exclusion of partners.

A limited liability company, the most popular company type in Poland, is a corporation with strong personal elements, designed to conduct rather small and medium business operations. The structure and organization of a joint stock company, purely capital in its nature, is more complex and thus designed to conduct larger scale operations.

The Code of Commercial Companies and Partnerships also prescribes the rules in the situation of domination and subordination of companies within a group. It is worth noting, however, that the Polish concern law is underdeveloped.

Shares and stocks in a limited liability company are disposable; stocks of publically listed companies are subject of public transactions on the stock exchange.

LIMITED LIABILITY COMPANY (IN POLISH: "SPÓŁKA Z OGRANICZONĄ ODPOWIEDZIALNOŚCIĄ")

A limited liability company can be formed by one or more persons for each legally admissible purpose, unless the statute provides otherwise. However, it cannot be formed only by another single-member limited liability company.

Shareholders of a limited liability company are only obligated to provide the performance provided for in the articles of association and they hold no liability for the obligations of the company. The share capital of the company should amount to at least PLN 5,000.

The nominal value of a share must not be lower than PLN 50.

The articles of association of a limited liability company should be concluded in the form of a notary deed.

In order to establish a limited liability company, the following steps are required:

- conclusion of articles of association,
- contribution of the shareholders to

Management Board

The management board of the company manages its affairs and represents the company. It is presumed that the management board is entitled to perform any action that was not delegated to another body by virtue of a statute or articles of association. The management board can consist of one or of more persons. Its members can be appointed from among the shareholders or from the outside. The manner of representation of the company is determined by the articles of association or by a statute. What is more, under exceptional circumstances, members of the management board can be held liable for the obligations of the company.

Without the consent of the company, a member of the management board cannot engage in competitive business activity or participate in a competitive company as a shareholder of a civil law partnership, partnership or as a member of the body of a corporation or participate in another competitive legal person as a member of its body. This ban also extends to a competitive corporation in the event the member of the management board holds at least 10% of shares or stocks of such a company or has the right to appoint at least one member of the management board. If the articles of association do not provide otherwise, the consent is granted by the body authorized to appoint the management board.

Supervisory Board and Audit Committee

The articles of association can establish a supervisory board or an audit committee or both of these bodies. However, the establishment of one of these bodies is obligatory if the share capital exceeds PLN 500,000 and the number of shareholders exceeds 25. The supervisory board consists of at least three members appointed and dismissed by the resolution of shareholders. The articles of association can stipulate a different manner of the appointment and dismissal of the members of the supervisory board.

The audit committee consists of at least three members, appointed and dismissed under the same rules as in the case of the supervisory board.

The supervisory board exercises permanent supervision over the activities of the company in all the fields of its operations. Nonetheless, it has no right to give the management binding instructions related to the management of the affairs of the company. The specific tasks of the supervisory board include: the assessment of management reports on the operations of the company and the financial report for the previous financial year in the scope of their compliance with the books and documents and with the factual status. What is more, the competence of the supervisory board includes also ruling on the motions of management board as to the distribution of profit and covering of losses and, moreover, presentation of the annual written report before the general meeting of shareholders on the results of this assessment. The board may examine all of the documents of the company, demand reports and explanations from the management board and employees as well as perform audits of the status of the assets of the company. The articles of association can extend the competence of the supervisory board and, in particular,

they can provide that the management board is obligated to obtain the consent of the supervisory board before performing certain activities determined in the articles of association. Moreover, they can confer on the supervisory board the right to suspend specific or all members of the management board for important reasons.

Meeting of Shareholders

A meeting of shareholders can be ordinary or extraordinary. It mandatory adopts decisions in the form of resolutions in the matters laid down in the statute. These are: examination and approval of the report of the management board on the operations of the company and its financial report for the previous financial year and granting the members of the body of the company discharge for the fulfilment of their duties; decisions on claims for the repair of damage inflicted at the incorporation of the company or the exercise of management or supervision; disposal or lease of an enterprise or an organized part thereof and establishment of a limited property right thereon, purchase and disposal of real estate, perpetual usufruct or a share in real estate if the articles of association do not provide otherwise; return of subsidies; conclusion of a management agreement with a subsidiary company. The consent of the meeting of shareholders is also required for the agreement on the purchase of a real estate for the company or a share in a real estate or fixed assets for the price exceeding one fourth of the share capital not lower, however, than PLN 50,000, concluded before the lapse of two years as of the registration of the company, unless the articles stipulated the conclusion of such an agreement. What is more, disposing of the right or incurring of the obligation to deliver a performance with the value two times exceeding the value of the share capital also requires a resolution of shareholders unless the articles of association provide otherwise. Finally, the articles of association can extend the competences of the meeting of shareholders in further respect.

24-HOUR LIMITED LIABILITY COMPANY

Since 2012, by virtue of the amended provisions of the Code of Commercial Companies and Partnerships, it is possible to register a limited liability company electronically via the Internet. Due to the quick time of registration, it is commonly known as a “24-hour company”. The introduction of an electronically available model of the deed of formation which does not require the form of a notary deed was one of the most substantial changes to the provisions previously in force. The model is set by the regulation of the Minister of Justice and is not subject to modifications by potential shareholders. However, it is possible to modify this simplified version of the deed of formation at a later date to give it the nature of a “classic” limited liability company. The deed is signed with the use of the digital signature. Another characteristic feature of such a company is the necessity to make only monetary contributions to cover the share capital. Contributions-in-kind are therefore excluded. The contribution in the amount of PLN 5,000 must be made within 7 days as of the entry of the company into the National Court Register (KRS).

defray the entire share capital and in the event a share is taken up at a price higher than the nominal value, also contributing the surplus,

- appointment of the management board,
- appointment of the supervisory board or the audit committee if it is required under the statute or the articles of association,
- entry into the register (KRS).

The management board notifies the competent registry court of the establishment of the company with the view of making an entry into the register. The application for the entry into the register is signed by all of the members of the management board.

JOIN STOCK COMPANY (IN POLISH: “SPÓŁKA AKCYJNA”)

A joint stock company can be established by one or more persons (natural or legal). A commercial partnership can also be a founder of a joint stock company. However, it must not be established just by a single-member limited liability company (although a single-member limited liability company may successively be a sole shareholder of joint stock company).

Shareholders do not hold personal liability for the obligations of the company. In certain exceptional situations, the representatives of the company may be held liable for the obligations of the joint stock company.

The minimum share capital amount is PLN 100,000. The share capital is divided into stocks, the value of which constitutes the result of dividing the share capital into the number of stocks. The capital can be contributed in cash or in-kind. The articles of association can stipulate the necessity for the stocks to be paid in full. Stocks taken up in exchange for contributions-in-kind should be fully covered no later than before the lapse of one year after the registration of the company. The stocks taken up in exchange for monetary contributions should be paid for prior to the registration of the company at least in one fourth of their nominal value.

BODIES

Management Board

A management board manages the affairs of the company and represents the company before third parties. It consists of one or more members. Persons to sit on the management board are appointed from among the shareholders or from the outside. The members of the management board are appointed and dismissed by the supervisory board unless the articles of association provide otherwise. A member of the management board can be dismissed or suspended also by the general meeting of shareholders. The period of discharge of the function of the member of the management board must not exceed five years. Re-appointment of the same person to the position of the member of the management board is admissible for terms not exceeding 5 years each. The articles of association can also contain other provisions, in particular, they can limit the right to dismiss to important reasons.

If the management board consists of many members, all its members are obligated and entitled to jointly manage the affairs of the company, unless the articles of association provide otherwise.

Supervisory Board

In a joint stock company, a supervisory board must be always appointed. Its existence is vital for this type of company. The supervisory board is appointed by the general meeting of shareholders. The supervisory board exercises permanent supervision over the functioning of the company in all areas of its operations.

Particular duties of the supervisory board include: the assessment of management reports on the operations of the company and the financial report for the previous financial year in the scope of their compliance with the books and documents and with the factual status and, also, the motions of the management board regarding the distribution of profit and covering of losses and, moreover, presentation before the general meeting of shareholders of the annual written report on the results of this assessment.

The supervisory board consists of at least three members, appointed and dismissed by the general meeting of shareholders. The term of the member of the supervisory board cannot exceed five years.

General meeting of shareholders

A general meeting of shareholders exercises its competences by adopting resolutions.

Its exclusive competences include, among others: examination and approval of the report of the management board on the operations of the company and the financial report for the previous financial year, adoption of resolutions on distribution of profit and covering of losses, granting the members of the company bodies discharge from the fulfilment of their duties, an increase or decrease of the share capital (with the exceptions stipulated by the Code of Commercial Companies and Partnerships), granting consent for conclusion of an agreement on the purchase of any assets for the company at the price exceeding one tenth of the share capital paid in, from the founder or a shareholder or a company or cooperative dependent on the founder or shareholder of the company, concluded before the lapse of two years as of the registration of the company.

Extraordinary general meeting of shareholders

An extraordinary general meeting of shareholders takes place in the cases indicated by the Code of Commercial Companies and Partnerships or the articles of association. Moreover, convening the extraordinary general meeting is obligatory if the management board, supervisory board, court, or persons authorized by the court deem it advisable. Shareholders representing at least half of the share capital or at least half of all the votes in the company can also convene an extraordinary general meeting of shareholders.

CONCERN AND HOLDING

The Polish Code of Commercial Companies and Partnerships enacts the principle of transparency of domination and dependency with the participation of companies.

Under this statute, a dominant company means a company or partnership which:

- it holds, directly or indirectly, a majority of votes in the shareholders' meeting or general meeting of shareholders, also in the capacity of a pledgee or usufructuary, or in the management board of another company (dependent company) or under agreements with other persons, or
- it holds, directly or indirectly, a majority of votes in the shareholders' meeting or general meeting of shareholders, also in the capacity of a pledgee or usufructuary, or in the management board of another company,
- it has the power to appoint or recall a majority of members of the management board of another company (dependent company) or cooperative (dependent cooperative), also under agreements with other persons; orc),
- it has the power to appoint or recall a majority of members of the management board of another company (dependent company) or cooperative (dependent cooperative), also under agreements with other persons; orc),
- it itholds, directly or indirectly, a majority of votes in the dependent partnership or in the general meeting of the dependent cooperative, also under agreements with other persons; orf),
- it has the decisive influence on the activity of the dependent company or dependent cooperative.

A related company – a company in which another commercial company or cooperative holds, directly or indirectly, at least 20 per cent of the votes in the meeting of shareholders or the general meeting, also in the capacity of a pledgee or usufructuary, or under agreements with other persons, or which holds directly or indirectly at least 20 per cent of the shares in another company.

The Polish Code of Commercial Companies and Partnerships introduces an obligation of the dominant company to notify the dependent company on the emergence of the domination relationship within two weeks as of the emergence of such a relationship under pain of suspension of the exercise of the right of vote from stocks or shares of the dominant company representing more than 33% of the share capital of the dependent company.

It is also worth highlighting that the acquisition or exercise of the rights from stocks or shares by a dependent company is regarded as the acquisition or performance of the rights by the dominant company.

At the same time, it is worth to note that Polish law does not include the principle of piercing of the corporate veil – in force in the US or in Germany, also known as Durchgriffshaftung.

The above-mentioned principles apply appropriately in the event of the cessation of the dependence relationship.

Merger, Division, and Transformation of Companies

The Code of Commercial Companies and Partnerships provides for a possibility of transformation of each of the aforementioned type of companies into companies of another type. A transformed company retains the title to all the rights and obligations of the company subject to transformation; in particular, it remains a subject of permits, concessions, and exemptions the entrepreneur was granted prior to the transformation unless a statute or decision on the granting of a permit, concession, or exemption provide otherwise.

Mergers of companies are also possible:

- by transferring all the assets of the (acquired) company onto another (acquiring) company in exchange for shares or stocks which the acquiring company issues to shareholders of the acquired company (merger by acquisition), or
- by forming a corporation to which the assets of all merging companies are transferred in exchange for the shares or stocks of the new company (merger by formation of a new company).

However, in the case of a merger of a corporation and a partnership, the partnership may be neither the acquiring nor the newly formed company. On the date of the merger, the acquiring company or the newly formed company subrogates the acquired company or the companies merging by the formation of a new company. On the date of the merger, the acquiring company or the newly formed company assumes in particular all the permits, concessions, and exemptions granted to the acquired company or any of the companies merging by the formation of a new company unless a statute or decision on the granting of a permit, concession, or exemption provide otherwise.

Provisions also allow for the division of a company:

- by transferring all the assets of the divided company onto other companies in exchange for shares or stock of the acquiring company, to be taken up by shareholders of the divided company (division by acquisition); by forming new companies onto which all the assets of the divided company are transferred in exchange for shares or stocks of new companies (division by formation of new companies); by transferring all the assets of the divided company onto an existing and a newly formed company or companies (division by acquisition and formation of a new company), or
- by transferring a part of the assets of the divided company onto an existing or a newly formed company (division by separation). Acquiring companies or newly formed companies established as a result of division, on the date of division or separation subrogate the divided company in terms of the rights and obligations specified in the plan of the division.

On the date of the division or separation, the acquiring company or the company newly formed in connection with the division assumes in particular all the permits, concessions, and exemptions related to the asset components of the divided company allocated thereto in the plan of the division, which were granted to the divided company unless a statute or decision on the granting of a permit, concession, or exemption provide otherwise. The liability for obligations and liabilities allocated in the plan of the division to the acquiring company or the newly formed company is jointly and severally held by the remaining companies for three years as of the date of announcement of the division. This liability is limited to the net value of the assets allocated to each of such companies in the plan of the division. Transformation, merger, or division of a company, in terms of principle, require:

- a shareholders' resolution (sometimes this resolution must be adopted by the qualified majority of votes),
- drawing up a plan of transformation,
- division, merger,
- submitting such a plan to an expert auditor for evaluation (it does not apply to all cases),
- registering the transformation, division, or merger in the National Court Register.

Depending on the type of a company and type of transformation (merger, division), the provisions of the Code of Commercial Companies and Partnerships also stipulate additional requirements, aimed in particular at the protection of minority shareholders and creditors of the company.

Cooperative

A cooperative is a voluntary association of an unlimited number of persons with a changeable personal composition and changeable share fund which conducts business in the interest of its members. Cooperative members participate in its losses only up to the amount of the declared shares. The principles of conducting a cooperative are regulated by the Act on Cooperative Law of 16 September 1982. The number of founders must not be fewer than ten, if the founders are natural persons, and three, if the founders are legal persons. In agricultural cooperatives, the number of founders – natural persons must not be fewer than five. The cooperative is subject to a mandatory entry in the National Court Register. What distinguishes the cooperative from commercial companies is the fact that its members do not have to make share capital contributions. Moreover, the change of the personal composition and the change of the share fund constitute internal affairs of the cooperative. Additionally, in the case of the cooperative, the "open door" principles applies, which means that whoever fulfils the prerequisites established in the statute of the cooperative can be its member.

European Company, European Economic Interest Grouping, European Cooperative Society

Polish law, similarly to the legal systems of other EU countries, allows for the

possibility of the establishment of a European company as a form of trans-border merger of companies as well as the European Economic Interest Group (EEIG) as an institutionalized form of cooperation between entrepreneurs from various EU member states. One of the main advantages of the European company is the possibility to transfer its seat from one EU member state to another while keeping its legal personality. The detailed regulation for the establishment and operation of a European company is included in the Act of 4 March 2005 on the European Economic Interest Grouping and European Company. However, both the European Company and the EEIG were established by virtue of Council Regulation (EEC) No. 2137/85 of 25 July 1985 on the European Economic Interest Grouping and in Council Regulation (EC) No 2157/2001 of 8 October 2001 on the Statute for a European Company.

It is also worth noting that in the scope unregulated by Regulation 2137/85, the provisions of the Polish Code of Commercial Companies and Partnerships on a joint-stock company shall apply.

What is more, the Act of 22 July 2006 on the European Cooperative Society regulates the functioning of the European cooperative, which enables cooperative operations in the cross-border dimension in the scope unregulated in Council Regulation no. 1435/2003/EC of 22 July 2003 on the Statute for a European Cooperative Society.

Branches and representative offices

Foreign entrepreneurs can also pursue business activity by establishing:

- a branch of their enterprise, or
- a representative office of their enterprise.

BRANCH OF A FOREIGN ENTREPRENEUR

Under the provisions of the Act on Freedom of Economic Activity, a foreign entrepreneur establishing a branch:

- can conduct business exclusively in the scope of the subject of the operations of the foreign entrepreneur,
- is obligated to appoint in the branch a person authorized to represent the foreign entrepreneur,
- after the entry of the branch into the KRS, can launch business operations within the frames of the branch.

Moreover, a foreign entrepreneur who has established a branch is obligated:

- to use its original name along with the Polish translation of the legal form of its business followed by the words “oddział w Polsce” [Polish Branch] to designate the branch (it needs to be indicated that the branch can operate under a different brand name than the company),
- to conduct separate accountancy for the branch, in Polish and in compliance with the accounting provisions,
- to notify the minister responsible for economic affairs, within 14 days, of all changes in the factual and legal status if the liquidation proceedings of a foreign entrepreneur who established the branch have been initiated or if such an entrepreneur has lost the right to conduct business activity.

SPECIFIC POWERS OF THE STATE TREASURY IN STRATEGIC SECTORS

The State Treasury is still partly a shareholder or stockholder in strategically significant companies. It can be entitled to specific powers, however only on exceptional grounds. It is so despite the fact that the Code of Commercial Companies and Partnerships does not allow for granting the State Treasury special privileges going beyond the standards adopted for general participants of transactions.

Such powers can originate from the Act on Special Powers of the Minister of Energy and Their Exercise in Companies or Groups of Companies in the Field of Electricity, Oil and Gas of 18 March 2010. The objective scope of this statute is very limited; it extends to the entities in the energy sector. These are companies of strategic importance for public policy or public safety with their assets falling in the category of “critical infrastructure” in the meaning of the Act on Crisis Management of 26 April 2007. The Minister of Energy, is entitled to raise an objection against the actions or resolutions of the management board of the company pertaining to the disposal of strategic assets in case of a real threat for the functioning, continuous operation, and integrity of the critical infrastructure. The State Treasury can also object against the resolution of the company on the dissolution of the company, a change of the designation or desisting from the exploitation of certain assets, change of the subject of the enterprise of the company, disposal or leasing the enterprise of the company or an organized part thereof and the establishment of a limited property right thereon, the adoption of a material and financial plan, investment plan, or a long-term strategy plan and the transfer of the seat of the company abroad.

REPRESENTATIVE OFFICE

Foreign entrepreneurs can establish representative offices seated in the territory of the Republic of Poland. The scope of their operation can extend exclusively to conducting operations in the scope of advertising and promotion of the foreign entrepreneur.

The establishment of a representative office requires an entry in the register of foreign entrepreneurs (representative office register). A foreign entrepreneur who has established a representative office is obligated:

- to use the original name of the entrepreneur along with the Polish translation of its legal form followed by the words “przedstawicielstwo w Polsce” [Representative Office in Poland],
- to conduct separate accountancy for the representative office, in Polish and in compliance with the accounting provisions,
- to notify the minister responsible for economic affairs, within 14 days, of all changes in the factual and legal status if the liquidation proceedings of a foreign entrepreneur who established the branch have been initiated or if such an entrepreneur has lost the right to conduct business activity.

STATE-OWNED ENTERPRISE

State-owned enterprises are entities solely owned by the State Treasury. A state owned enterprise is an independent, self governing, and self-financing entrepreneur with a legal personality. State enterprises can be created as enterprises operating according to general principles and as public service companies. The task of the latter is the permanent and uninterrupted satisfaction of the needs of the population, e.g. in the area of sanitary engineering, public transport, electricity and gas supplies. The state-owned enterprise is subject to the obligatory entry into the National Court Register (KRS). The bodies of the state-owned enterprise are: general meeting of employees (delegates), employee council, and the director of the enterprise.

A large number of state-owned enterprises has been transformed into commercial law companies (commercialized) and then their stocks/shares have been disposed of in full or in part to the benefit of private investors (privatized).

III

FURTHER STEPS AFTER REGISTERING A COMPANY

Entrepreneurs' Disclosure Obligations

Each entrepreneur entered into the National Court Register is obligated to notify of substantial data pertaining to their business. In written declarations addressed to designated persons and bodies, the entrepreneur should include the following:

- the brand or the name,
- the designation of the legal form of pursued business,
- the seat and address,
- Tax Identification Number (NIP),
- the designation of the registry court in which the registration files are kept and the registry number of the entity.

For corporations, provisions of the Code of Commercial Companies and Partnerships also require the designation of the share capital.

Basic duties connected with the emlployment of employees

Regardless of the fact whether they employ employees or not, the entrepreneurs intending to engage in catering businesses or the sale of food products should also notify the State Sanitary Inspection.

In case the entrepreneur employs employees, they are obligated to identify employees by name and file the information to the Social Insurance Institution. This is necessary for obtaining social and health insurance. The entrepreneur is also obligated to register as the payer of such contributions. The registration is free-of-charge and is effected on the notification date. The social insurance covers the retirement insurance, illness insurance, accident insurance, and health insurance.

In specific cases, this obligation also pertains to persons employed on the grounds of contracts for specific services or other civil law agreements.

THE FUNDAMENTAL LEGAL ACTS REGULATING THE SCOPE OF BUSINESS ACTIVITY ARE THE FOLLOWING:

- The Constitution of the Republic of Poland enacting the economic freedom and freedom of engaging in business activity,
- The Act of 2 July 2004 on Economic Freedom – indicating the fundamental principles for conducting business in Poland,
- The Civil Code of 23 April 1964 regulating the most important principles for commercial and economic transactions in Poland,
- The Code of Commercial Companies and Partnerships of 15 September 2000,
- The Act of 16 February 2007 on Competition and Consumer Protection,
- The Act of 30 May 2014 on Consumer Rights,
- The Act of 23 August 2007 on Counteracting Unfair Market Practices,
- The Act of 18 July 2002 on Electronic Provision of Services,
- The Act of 12 May 2011 on Consumer Credit,
- The Act of 16 April 1993 on Counteracting Unfair Competition,
- The Act of 9 May 2014 on information on prices of goods and services,
- The Act of 27 April 2001, the Environmental Protection Act,
- The Act of 27 April 2001 on Waste, regulating obligations of the entrepreneur in the scope of environment protection,
- The Labour Code of 26 June 1976 and specific acts in the area of labour law, inspections, and social insurance containing regulations related to employee relations,
- The Tax Ordinance Act of 29 August 1997 and other tax acts related, among others, to the CIT, PIT, rules for registration and identification of taxpayers, tax on goods and services, tax audit, excise tax, real estate tax, tax on civil law activities, or a treasury fee,
- The Act of 7 October 1999 on the Polish Language,
- The Act of 8 March 2013 on Time Limits for Payment in Commercial Transactions,
- "Inspection" acts – the Act of 13 April 2007 on the State Labour Inspection, the Act of 14 March 1985 on State Sanitary Inspection, and the Regulation of the Minister of Interior and Administration of 7 June 2010 on Fire Protection of Buildings, Other Structures, and Areas,
- Acts specific for a given branch,
- Act of 16 December 2016 on the Change of Certain Acts in Order to Improve the Entrepreneur's legal surroundings,
- Act of 23 September 2016 on the Out-of-court Settlement of Consumer Disputes.

THE WORKS ON DRAFTS OF STATUTE

The law on Entrepreneurs and the Act on the Central Register and Information on Business Activity, and the Entrepreneur Service Point are currently under way (April 2017). As follows from the assumptions of the draft' author – the Ministry of Finance and Economic Development – the new laws are expected to enter into force on 1 September 2017.

The Law on Entrepreneurs Act is meant to replace the Act on Freedom of Economic Activity, which hitherto regulated engaging in, conducting, and winding up of business activity on the territory of the Republic of Poland (but only by domestic entities). The draft of the act includes provisions establishing general principles of conducting business activity, i.e. the principle 'what is not prohibited by the law, is admissible', the fair competition principle, and the principle of adherence to good practice as well as consideration for legitimate interests of other entrepreneurs and consumers, the principle of the presumption of an entrepreneur's honesty.

The principle of setting factual doubts in favour of the entrepreneur, the in dubio pro libertate principle, the principle of deepening of trust, principles of proportionality, impartiality, and equal treatment, the principle of officers' liability for the violation of the law, the principle of legal certainty, the principle of access to information, the principle of the amicable settlement of disputes, as well as the right to evaluate the quality of service in offices.

Moreover, by virtue of these acts, the Central Register and Information on Business Activity will be established – a register of entrepreneurs who are natural persons. The act also regulates the manner of bodies' proceeding in the areas of particular importance in connection with the security of the state or its citizens, or another grave public interest, as well as principles regarding a limit on control of the pursuit of business activity (providing for, among others, a possibility of obtaining redress by an entrepreneur who sustained damages as a result of control activities conducted with the violation of the law).

The act on principles of participation of foreign entrepreneurs and other foreign persons in business transactions on the territory of the Republic of Poland is to regulate the manner of engaging in and conducting business activity by foreign persons on the territory of the Republic of Poland, temporary offer and the provision of services on the territory of the Republic of Poland by foreign persons, as well as principles for the establishment, by foreign persons who are entrepreneurs, of branches and agencies on the territory of the Republic of Poland.

In terms of the principle, foreign persons from EU Member States and states which are parties to the European Free Trade Agreement (EFTA) – parties to the agreement on the European Economic Area, and parties which concluded agreements regulating freedom of entrepreneurship with the European Union and its member states may engage in and conduct business activity on the territory of the Republic of Poland on the same principles as Polish citizens.

Citizens of other countries may also engage in and conduct business activity on such principles insofar as they comply with the requirements laid down in the act. Persons other than those listed above may conduct business activity only in the form of a limited partnership, a limited joint-stock-partnership, a limited liability company, and a joint-stock company, they also accede to such companies or acquire shares and stocks in them, insofar as international agreements do not provide otherwise.

Separate regulations are introduced in terms of prerequisites for the temporary provision of cross-border services without the need for entry into the register of entrepreneurs.

Moreover, the act regulates the establishment of branches of foreign companies in the Republic of Poland, which is admissible under the mutuality principle and insofar as the ratified international agreements do not provide otherwise, unless such entrepreneurs come from the member states of the EU, EEA, or other states which concluded agreements regulating freedom of entrepreneurship with the European Union and its member states.

It is also worth noting that within the frames of a branch, a foreign entrepreneur may conduct business activity only in the scope in which it conducts such an activity abroad. The establishment of agencies on the territory of the Republic of Poland is also possible, however the scope of their operation may extend solely to activities in the area of advertising and promoting the foreign entrepreneur.

SELECTION OF THE MOST APPROPRIATE FORM OF EMPLOYMENT

The entrepreneur also face challenges following from the labour law. The Labour Code regulates the issue of employment in a comprehensive manner. It enacts a number of principles of the labour law and fundamental rights of the employees which, finding their backbone in the Constitution, are protected by a number of mechanisms. Polish labour law is based on the following principles: equality of employees and ban on discrimination, the right to equitable remuneration, rest, safe work, and the principle of employee participation in the work place management.

Furthermore, the form of employment of workers by the foreign entrepreneur may also raise some difficulties. The Labour Code knows only one main type of agreement – an employment contract. Other types of contracts, such as the contract for the provision of services or the contract for specified task are civil law agreements, not subject to protection under the Labour Code. It should be noted that as of 1 January 2017, a minimum wage in the amount of PLN 13 is in force for all mandate and service contracts.

Nevertheless, the employment relationship is an objective notion. This is because, if one person commits to perform a specific work to the benefit of another person, under the management of this person and at the time designated by them, against remuneration – this can qualify as an employment relationship regulated by the labour law. The designation of the agreement is not important in this regard.

In consequence, the foreign investor should focus on their HR policy in detail, paying special attention to the form of employment/cooperation.

The employment contract, the minimal contents of which are regulated in detail by the Labour Code, can be:

- a contract for specific period of time,
- a trial period contract,
- a contract for non-specified period of time,
- a contract for the absent employee replacement.

Under the Labour Code, the conclusion of a third contract for a specific period of time results in the conclusion of a contract for a non-specified period of time.

The differences between the specific types of employment contracts can be spotted with regard to the duration and terminantion of the agreement.

Contract for a specific period of time may be concluded with an employee for a period no longer than 33 months. The same rule applies to total duration of more than one contract for a specific period of time. Upon the lapse of this period, only contract for an unspecified period of time may be concluded. There are also some exceptions from these rules e.g. pertaining to contracts for the absent employee replacement or fixed term contracts.

The notice period for contract for a specific period of time and contract for an unspecified period of time are the same. When the period of service is shorter

than six months, the notice period should be two weeks, when it is longer than six months but shorter than three years - one month, and three months if the period of service is at least three years.

Regarding trial period contracts, the employer will be able to conclude a trial period employment contract only once and only to verify the employee's qualifications and their ability to perform a specific work; however, in specific cases, it is possible to re-employ the employee for a trial period.

Termination of the employment contract by notice is regulated separately for individual contract types. The issue requiring particular focus in this scope is the notice period during which the parties are still bound by the contract (graphic on the next page).

The provisions on the termination of an employment contract provide for certain exceptions from the general rules. First and foremost, if the employee is represented by a trade union, the employer should consult the termination of a given employment contract with such a trade union. The protection of employees within the period of 4 years prior to their reaching retirement age goes even further – as a rule, no notice of termination can be handed to such an employee. What is more, the employee cannot be served with a notice of termination during their justified absence from work.

The bankruptcy of the entrepreneur results in the application of a special legal regime. In such a situation, the notice period may be reduced while the above-mentioned rules related to the protection of employees against termination of the employment contract (pre-retirement protection and ban on handing a termination notice to an absent employee) do not apply.

Poland allows also for the so-called notice of termination amending the contract of employment. It consists of an offer to the employee of new conditions of employment or remuneration. If the employee (duly instructed as regards their rights) before the lapse of half of the notice period does not submit a declaration on

the refusal to adopt the conditions offered, they are considered to have agreed to such conditions.

It is worth noting that the employee is entitled to appeal against the termination of the employment contract before the Labour Court. The Labour Court, depending on the outcome of the case, can rule on the ineffectiveness of the termination or, if the contract was already terminated, on restoring the employee to work or on compensation. The compensation in such a case is limited. In the event of certain types of contracts (trial period, for specific period of time, or for the period required to perform a specific work), the employee is entitled only to compensation.

The employment contract can be also terminated by the employer without notice:

- due to the employee's fault in the event of a flagrant violation of their basic obligations, committing a crime that renders further employment of the perpetrator impossible, loss of qualifications indispensable to perform work on a given position,
- without the employee's fault in the event of their long-term absence from work due to an illness.

The employee can also terminate an employment contract without notice. This is a rule when a doctor issues an opinion stating the harmful influence of the performed work on the employee's health or if the employer flagrantly violates their fundamental obligations towards the employee.

In the case of the termination of the contract without notice, the employee is also entitled to claim restoration to work on previous conditions or to claim compensation (compensation only and exclusively in the event of termination of the employment contract concluded for a specific period of time or for the period required to perform a specific work).

In the event the employee terminates the employment contract without notice and without substantiation the employer is also entitled to compensation only.

The group redundancy regime is regulated by the Act of 13 March 2003 on Special Principles for Terminating Employment with Employees for Reasons not Attributable to Employees. This act applies when the employer providing employment to at least 20 persons dismisses, by principle, approximately 10% of their staff (depending on the number of the employees). In such an event, the special regime of their protection is stipulated along with consultations with trade unions and the obligation to pay severance.

The employment of staff directed to work for a specific period of time by an employee seated in an EU member state is also possible in Poland. In such a case, the employer is obligated to guarantee minimum standards following from the Polish Labour Code and pertaining to, among others, norms and working time, holidays, remuneration, as well as the Occupational Safety and Health standards.

Moreover, the so-called remote work is an interesting solution. This form of employment can be used, first and foremost, in such sectors as: customer service, IT, call centers, etc. The teleworker performs their work outside of the workplace, taking advantage of means of electronic communications and equipment received from the employer.

The Labour Code also allows for the so-called "lending" of employees. Employers can conclude an agreement under which an employee of one shall receive an unpaid leave and an employment opportunity with the other employer. It must be emphasized that this institution should be limited in time and it is not possible to conduct activities consisting in the lending employees to other companies. Such services are provided by temporary employment agencies.

REMUNERATION

Employee remuneration constitutes an extremely significant element in the HR policy of each prospective Investor. It must be taken into consideration that employee remuneration enjoys protection (it is partly free of deductions, it is inalienable and it cannot be transferred to another person). What is more, even in cases of downtime for which the employer is responsible, the employee has the right to their salary. Remuneration is also payable during the period in which the employee is incapable of working due to an illness (in certain cases, only in part and only for a certain period of time; it is worth noting that after a certain period, 33 days maximum, the burden of disbursement of an incapacity allowance is shifted to the Social Insurance Institution).

The Labour Code also stipulates a number of duties of both employers and employees. Employees are subject to disciplinary and financial liability. What is more, the financial liability of employees, save for cases of premeditated damage, is limited only to the loss suffered by the employer (without lost profits) and it cannot exceed a total of 3 month remuneration of the employee.

WORKING TIME

The right to rest is also one of the rights of the employee. The Polish regulation of the working time system is somewhat complicated although it offers the employer a number of possibilities of convenient forms of employment. In principle, working time must not exceed 8 hours per day and 40 hours on average (48 hours with overtime) in an average 5-day working week over the reference period no longer than 4 months. This period can be prolonged in certain sectors, e.g. in agriculture or security. However, in each working time system, if it is substantiated with objective or technical reasons or reasons related to the organization of labour, the settlement period may be prolonged, however it may not exceed 12 months, with the observance of general rules concerning protection of health and safety of the employees. Furthermore, in the principle, the employee is entitled to at least 11 hours of rest per each day and 35 hours per each week.

In the event the employee performs work exceeding the working time standards in force, they are recognized as providing overtime labour. In relation thereto, the employee is entitled, next to regular remuneration, to an overtime bonus

(from 50% to 100% of the remuneration due). At their request, this bonus can be exchanged, for holiday.

The Labour Code also regulates the issue of holiday. Employees are entitled to holiday in the amount of 20 to 26 days, depending on the period of service of the employee. This period can be extended by the period of the employee's education.

In turn, employees who are parents, especially pregnant women, are entitled to special rights. It is illegal to terminate an employment relationship with a pregnant woman (unless there are reasons to terminate the contract without notice due to the employee's fault and the trade union representing the employee consents to the termination). Pregnant women cannot work overtime and at night. The employer should also adjust the working conditions to the status of the pregnant employee, make it possible for her to feed the baby and give her extra child care leave.

What is most important, a woman after childbirth is entitled to maternity leave. In 2017, it ranges from 20 to even 45 weeks (with taking the additional non-mandatory maternity leave) – depending on which consecutive childbirth it is and whether it is a multiple pregnancy. Employees who are fathers also have the right to a leave connected with the birth of a child. Having utilized at least 14 weeks of maternity leave since the birth of a child, the employee has the right to give up on the remaining part of this leave; in such a case, the unused part of the maternity leave is given, upon his written request, to the father-employee raising the child.

OCCUPATIONAL SAFETY AND HEALTH

Polish labour law regulates occupational safety and health and the issue of accidents at work in detail. The obligations of the employer pertain not only to the maintenance of safe working conditions, but also to employee training and accident at work procedures. The State Labour Inspection and State Sanitary Inspection exercise supervision and control over adherence to the provisions of labour law.

COLLECTIVE LABOUR AGREEMENTS AND TRADE UNIONS

The last, but not least important, issue pertaining to the labour law are the rules on so-called collective labour agreements and trade unions. The collective labour agreement is a type of labour rules in force in a workplace. It is binding for all employees of a given employee represented by a given trade union or even all employees of various employers represented by a given trade union. The agreement is negotiated and concluded by trade unions and employers. The procedure for concluding a collective labour agreement is long-lasting, but so is the procedure for its amendment, even in the event the enterprise is sold to another entity.

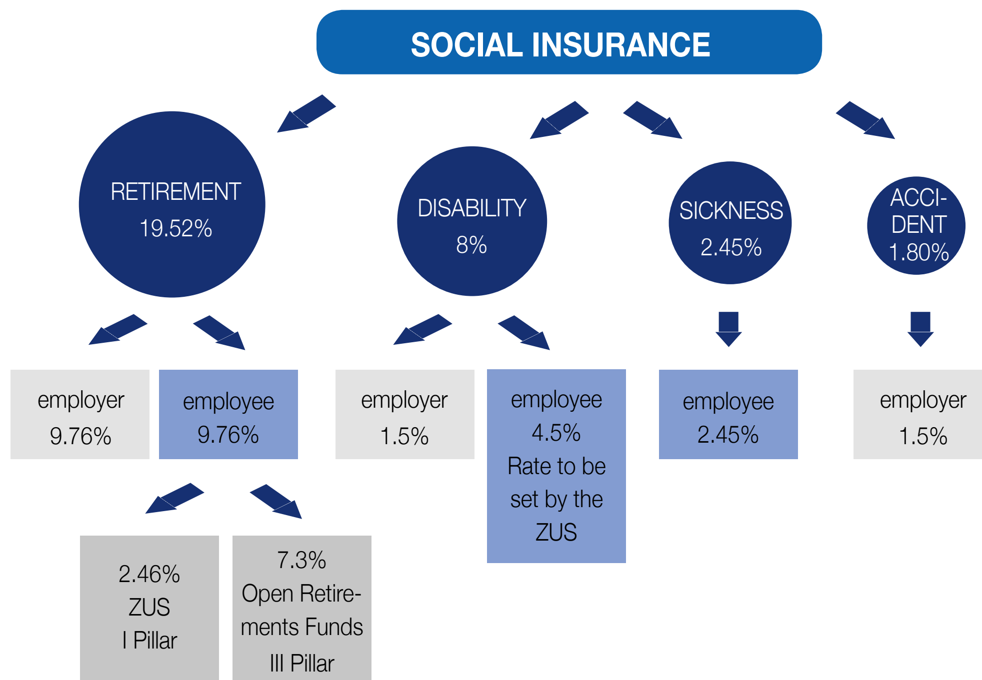
Trade unions still constitute a relatively strong institution defending employee rights. Their operation is regulated by the Act of 23 May 1991 on Trade Unions. The scope of their operation is rather broad and employers must take cooperation with trade unions into account, especially in large production plants. It is particularly difficult to discharge an employee belonging to trade union authorities. What is more, trade unions can represent the rights of the employees in collective disputes. The rules on such disputes, and the right to strike in particular, are regulated by the Act of 23 May 1991 on Collective Labour Dispute Resolution.

SOCIAL AND HEALTH INSURANCE AND OTHER CONTRIBUTIONS DEDUCTED FROM REMUNERATION

An investor commencing business activities in Poland must also take into consideration that its expenses on an employee do not consist of only remuneration paid into an account or in cash to the hands of the employee (partner) (this is the so-called net remuneration amount). The employer is also obligated to pay social insurance contributions of the employee (i.e. retirement, disability, illness, and accident), health insurance, and contributions for Labour Fund or Guaranteed Employee Benefits Fund. The scope of this duty differs depending on the form of employment – e.g. whether it is an employment contract, service contract, or contract for specified task.

In principle, a part of the contributions is borne by the employer and part by the employee (they are included in so-called gross (pre-tax) remuneration, its minimal statutory value in 2017 is PLN 2,000).

CONTRIBUTION TYPE \ AGREEMENT TYPE	EMPLOYMENT CONTRACT	CONTRACT FOR SPECIFIC WORK	CONTRACT OF MANDATE
RETIREMENT	yes	yes	Only when concluded with an own employee
DISABILITY	yes	yes	Only when concluded with an own employee
HEALTH	yes	yes	Only when concluded with an own employee
ACCIDENT	yes	YES, if performed at the contracting party's seat	no
SICKNESS	yes	voluntary	no



CHANGES IN LEGISLATION

It is fitting to indicate here recently increasingly more popular (as in 2017) postulates on limiting employment on the grounds of contracts of mandate or contracts for specified task. One of the results brought about by these postulates is the change in the legislation in compliance with which as of 1 January 2016, social insurance contributions are also due from contracts of mandate (the fact that previously in many cases, by concluding such a contract in place of an employment contract, avoiding the necessity to pay such contributions was possible, constituted one of the causes for the popularity of this form of employment). Further changes of the legislation can be expected in the area of limiting the heretofore practice of replacing employment contracts covered by the protection provided for in the Labour Code with contracts of mandate and contract for specified task which do not provide for such employee protection in situation when ***de facto*** conditions of performing the work are closer to those under the employment contract rather than those characteristic of classic contracts of mandate or contract for specified task. E.g. a preferential treatment in public tenders of those entities which employ their emplyees on the grounds of employment contracts (instead of contracts of mandate or contract for specified task) is pointed to. It can be also expected that the National Labour Inspectorate will exert a greater emphasis on concluding employment contracts instead of contracts of mandate or contract for specified task in situations where conditions indicate the an employee performs services characteristic of employment contracts.

For all insured parties, the specific insurance contributions are as follows:

- retirement insurance – 19.52% of the assessment basis,
- disability insurance – in principle, 8% of the assessment basis,
- illness insurance – 2.45% of the assessment basis,
- accident insurance – from 0.40% to 3.60% of the assessment basis,
- health insurance – 9% of the assessment basis.

The assessment basis is, in principle, the revenue in the meaning of rules on personal income tax, obtained by employees within the frames of the employment relationship. The health insurance assessment basis is not subject to uniform regulations.

Accountancy

Entrepreneurs are also obligated to keep accounts in various forms. The so-called full accounting is required, among others, for entities with seats or places of management located on the territory of the Republic of Poland and with the status of:

- a commercial company (a partnership or a corporation) or a civil law partnership (with the reservation contained below in point b.) as well as other legal persons, with the exception of the State Treasury and the National Bank of Poland,
- natural persons, civil law partnerships, registered partnerships, professional partnerships, and cooperatives if their net revenues from sales of goods and financial transactions for the previous turnover year is at least EUR 2,000,000 after conversion into Polish currency (status as of 2017),
- foreigners, branches, and representative offices of foreign entrepreneurs.

The accounting books are kept in the Polish language and currency. They need to be accessible to audit bodies at the appropriate time and in the appropriate manner. In the case in which the accounting books are kept outside the seat or the place of management of the entity, the head of such a unit is obligated to notify the competent Tax Office of the place of keeping the books within 15 days as of the date of their issuance and guarantee access to them along with the accounting certificates to authorized external audit or supervision bodies at the seat of an entity or the place of its management or in another location at the consent of the auditing or supervisory body.

It is worth highlighting that taxpayers conducting business activities on a smaller scale, apart from keeping their accounts in a full manner described above, also enjoy the possibility of settling accounts by means of single-entry book-keeping – the so-called revenue-and-expense ledger.

In principle, this rule is applicable to natural persons, civil law partnerships, registered partnerships, and professional partnerships conducting business activities whose business activity revenues for the previous turnover year did not exceed EUR 2,000,000.

The amendment of the Accounting Act made on 11 July 2014 introduced also additional further simplifications for the so-called micro units that is, among others, entities (branches of foreign companies) which in the accounting year in which they commenced their business did not exceed at least two of the three following values:

- PLN 1,500,000 - in case of the asset balance total for the end of the accounting year,
- PLN 3,000,000 - in case of net revenues from sale of goods and products for the accounting year,
- 10 people - in case of year average employment in conversion to full time positions.

Additionaly, the amendment of the Accounting Act made on 23 July 2015, which entered into force on 1 January 2016, has introduced, among others, certain simplifications for so called small units. According to the amendment, small units are, among others, entities (branches of foreign companies) which in the accounting year in which they commenced their business and in the year preceding, did not exceed following limits:

- PLN 17,000,000 - in case of the asset balance total for the end of accounting year,
- PLN 34,000,000 - in case of net revenues from sale of goods and products for the accounting year,
- 50 people - in case of year average employment in conversion to full time positions.

Entities commencing business on financial market and public finance sector units are excluded from small units catalogue.

Taxes

In keeping with the rules contained in the Constitution of the Republic of Poland, everyone is responsible to incur public duties, including the payment of taxes, as specified by the statute. The Polish tax system is rather complicated and in relation thereto, this part of the brochure contains only the basic information.

The issues of tax proceedings, tax obligations, tax information, and tax audit are regulated in the Tax Ordinance Act of 29 August 1997.

Tax bodies, in keeping with their competence, are:

- Head of Tax Office, Head of Customs Office, village-mayor, mayor (president of a city), *starosta* (a governor of the medium-level unit of local government in Poland) or province marshal (a governor of the upper-level unit of local government in Poland) – as the first instance authority,
- Head of Tax Chamber, Head of Customs Chamber – as:
  - an appeal authority, respectively, from the decision of the Head of Tax Office or Head of Customs Office,
  - first instance authority, under separate provisions,
  - an appeal authority from decisions issued by this authority in the first instance,
- Local Government Appeals Board – as the appeal authority from decisions of village-mayor, mayor (president of the city) starosta or province marshal.

In relation to the enactment of the Act of 16 November 2016 on National Tax Administration, which entered into force on 1 March 2017, the following changes occured in the tax authorities structure:

- head of tax and customs office will replace the head of the customs office,
- directors of tax administration chambers will replace directors of customs and tax chambers,
- the majority of the competences of the minister in charge of public finance as a tax authority will be taken over by the Head of National Tax Administration.

The appointment of National Tax Administration resulted in the fusion of tax administration, tax audit, and customs service, the aim of which is to maximize the use of the tax services potential.

The offices shall respect the rules of the Business Constitution (i.e. Act of 16 December 2016 on changes of certain laws in order to improve the legal environment for entrepreneurs) when handling cases concerning entrepreneurs, such as “what is not prohibited by law, is allowed”, presumption of honesty of entrepreneur, provision of information, friendly interpretation of provisions, proportionality (the office shall not impose unjustified administrative burdens, e.g. request documents that it already has).

On the other hand, the National Tax Administration will be allowed to carry out tax and customs inspections without prior warning and requests to review decisions of the head of tax and customs office will have to be made to the same authority. According to the new rules, the taxpayer will have 14 days from the delivery of authorisation to carry out a tax and customs inspection to correct the declaration within the scope of the inspection. In certain cases, the minister competent for public finances affairs also acts as a tax authority. This is true, for example, in case of agreements on determining the transaction prices or interpretation of the tax law provisions.

It is worth emphasizing that by principle, the final decisions of tax authority can be challenged before administrative courts. In turn, substantive regulations, directly pertaining to each of the taxes, are to be found in specific legal acts.

The Polish tax law system distinguishes indirect taxes:

- excise tax,
- tax on goods and services (VAT),
- tax on gambling,

and direct taxes:

- personal income tax (PIT),
- corporate income tax (CIT),

Amendement of Tax Ordination

On 1 January 2016, an amendment of Tax Ordination entered into force. On this basis:

- the rate of late-payment interest was lowered to 50% of the base rate. Such preferential interest rate will be used in the case of payment of a tax liability disclosed by self-correction of a settlement made within 6 months from the end of the time limit of the submission of the declaration. On the other hand, the interest rate was increased to 150% in some cases regarding VAT and excise tax,
- several changes were introduced to facilitate the communication between taxpayers and tax authorities and improve tax collection and procedures. The changes concern among others: the way of delivering documents: one can now indicate a correspondence address (other than the address of the place of residence), request the delivery to a post office box, directly to professional representatives (attorneys, legal counselors, tax advisers); issuing general tax interpretations instead of copying individual interpretations issued in identical cases; general interpretations will be incorporated into the tax interpretation system by confirmation of use of the general interpretation in the event presented in the application for individual interpretation — individual interpretations contrary to the general interpretation will be removed from legal circulation; unification of the electronic form of tax records and accounting documents; allowing the use of payment cards for tax payment.

Moreover, on 15 July 2016, the tax-sparing clause entered into force.

In relation to the enactment of the Business Constitution, on 1 January 2017, provisions establishing two new instruments providing legal protection to the taxpayers if they follow the standpoint of the tax authorities expressed therein entered into force. These instruments are:

- tax clarifications issued *ex officio* by the minister in charge of public finance, i.e. general clarifications of tax law provisions regarding the application of these provisions and their changes (new wording of art. 14a § 1 and art. 14e § 1 of the Tax Ordinance).
  They will be published in the Public Information Bulletin of the Ministry of Finance under the name "Tax clarifications" with the date of their publication,
- settled interpretation practice of the minister in charge of public finance (added art. 14n § 4-7).

- tax on inheritance and donations,
- tax on civil law acts,
- agricultural tax,
- forest tax,
- real estate tax,
- tax on means of transport,
- tonnage tax,
- tax on extraction of certain minerals.

The necessity to pay specific taxes shall depend on the form of engagement of the potential Investor and on the type of conducted business. It is worth mentioning that the Republic of Poland is a party to more than 80 agreements on the avoidance of double taxation.

PERSONAL INCOME TAX (PIT)

The personal income tax is calculated according to the following scale:

The tax assessment basis in PLN, in the scale of a year	The Tax is
Up to 85,528	18% minus a tax reduction (from PLN 1,188 for the tax assessment basis not exceeding PLN 6,600 to less than PLN 556.02 for the tax assessment basis between PLN 85,528 and 127,000).
Above 85,528	PLN 14,839.02 + 32% surplus over PLN 85,528

The act provides for many tax concessions and deductions, however, any attempt to present them in full would exceed the scope of the present study.

It is worth adding that persons operating a sole proprietorship, instead of the main taxation form, can opt for the linear tax (flat rate) in the amount of 19% and, sometimes, also other special forms (e.g. lump sum tax on registered income or a tax deduction card).

However, it is worth highlighting that the turnover limit of EUR 250,000.00 per year is the upper limit for the possibility to use the lump sum tax system. Moreover, entrepreneurs commencing their economic activity only in a given tax year and not using the tax deduction card - may pay lump sum regardless of the value of their revenues until the end of this year (even if they exceed turnover of EUR 250 thousand within this year, although a substantial number of limitations exists in the case of choosing this form of taxation. In turn, the lump sum income tax in the form of a tax deduction card (a simplified settlement method) can be paid by taxpayers conducting, under the conditions strictly defined by the law, activities consisting, in particular, in provisions of services for the populace, with a very low number of employees and contractors.

In principle, with regard to persons remaining in various forms of employment, monthly income tax advance contributions are collected and paid by the employer. It is also the employer who, upon the end of the tax year, is obligated to issue an appropriate form for the purposes of the annual tax settlement. Self-employed

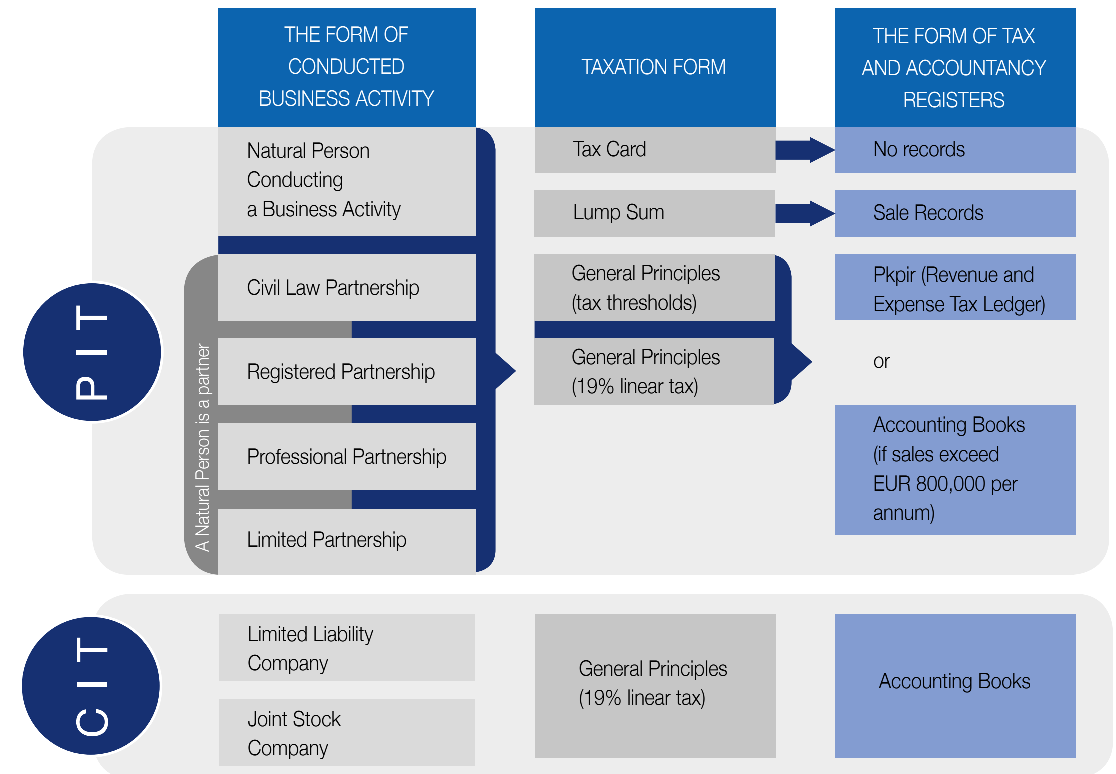
persons are responsible for their tax affairs.

CORPORATE INCOME TAX (CIT)

In the case of corporate income tax, the 19% rate applies to the income of the entrepreneur established on the basis of general principles adopted in the Act on Corporate Income Tax of 15 February 1992 as well as the income from dividends and other revenues on the grounds of the participation in the profit of legal persons seated within the territory of the Republic of Poland. Taxpayers, if they are seated or if their place of management is located in Poland, are subject to a tax obligation from the entirety of their income, regardless of the place of its origin. The subject of taxation is the income, irrespective of from which sources the tax payer obtained its revenue. In principle, the income consist of the surplus of the revenues over the expenses achieved within the tax year. In turn, a loss occurs if the expenses are higher than the revenues.

Groups of at least two commercial companies with a legal personality remaining in capital relationships can be taxpayers. A tax capital group is a taxpayer, among others if the following conditions are met jointly: the companies comply with the statutory premises required for the emergence of a tax capital group in the meaning of the tax law, the dominating company and subsidiary companies concluded an agreement on the establishment of a tax capital group for a period of at least three years in the form of a notary deed and such an agreement was registered by the head of the tax office. Upon the establishment of the tax capital group, the companies constituting this group do not take advantage of income tax concessions on the basis of separate acts and do not remain in relationships with income tax payers not included in the tax capital group. Moreover, the tax capital group must achieve at least a 3% income share in the revenues for each tax year. In basic tax capital groups, the subject of income tax taxation is the income achieved in the tax year and constituting the surplus of the total income of all the companies in the group over the total of their losses. If the total loss per tax year exceeds the total income of the companies, the difference constitutes the loss of the tax capital group.

It is fitting to point to the amendments to the Act on Corporate Income Tax related to the so-called CFC Rules, introduced by the act of 29 August 2014 on amendments to the Corporate Income Tax Act, Personal Income Tax Act and certain other acts which entered into force in 2015, among others pertaining to the obligation to consider the incomes of controlled foreign companies with their registered office or management located in a country with a tax level lower than in the country of residence of the dominant entity in the tax basis of the domestic resident (both a natural person or a payer of the Corporate Income Tax). The amendment also introduced substantial changes and restrictions in terms of provisions related to inadequate capitalization, changes increasing the scope of documentation duties in drawing up documentation of transfer prices between affiliated entities. Generally speaking, the most important changes implemented by means of this



amendment were related to the tightening of the income tax system by limiting tax evasion possibilities consisting in creating subsidiary structures. These solutions are similar to those used by multiple European countries.

It is also fitting to indicate that in principle as of 1 January 2014, partnerships limited by shares are subject to the CIT (previously incomes obtained from activity of such partnerships were subject to taxation according to the principles provided for in the Act on Personal Income Tax, similarly as incomes obtained from activities of other partnerships).

TAX ON GOODS AND SERVICES (VAT)

The Tax on Goods and Services applies to, among others, the delivery of goods against remuneration and the provision of services against remuneration on the territory of the state as well as to the export and import of goods. Legal persons, organizational units without a legal personality, and self-employed natural persons can be VAT taxpayers regardless of the purpose or result of such activities. A tax obligation arises, in principle, at the moment of the delivery of a product or the provision of a service. In principle is harmonized with the law of the European Union and EU directives in

the scope of the VAT, which has this effect that it is a system similar to the one used in other EU countries. Numerous judgements of the European Court of Justice are used in the VAT taxation practice.

In principle, from 1 January 2011 the VAT rate is 23%; certain goods specified in the act are subject to an 8% or an 5% rate whereas in the event of intra-community delivery of goods the VAT rate is 0%.

It is worth highlighting that taxpayers whose total taxable sale values in the previous tax year did not exceed the amount of PLN 200,000 are exempt from VAT. However, the sale value does not include the tax amount and the delivery of goods against remuneration and the provision against remuneration of tax exempt services and goods which, under the income tax provisions, are considered by taxpayers as tangible assets and intangible assets subject to depreciation.

Amendment of the VAT Act that entered into force on 1 January 2017 provides among others the so-called reversed VAT for construction services, processors, etc. (in such a case, it is the purchaser, not the supplier, who accounts for the VAT). The reason of use of this mechanism are irregularities observed on the construction services market, including invoices that do not reflect actual transactions.

The administrative penalty for unreliable VAT settlement was restored. It means that when one declares lower liability or higher excess or refund of input tax, an administrative penalty of 30% of the over- or understatement will be imposed.

An increased tax penalty of 100% for taxpayers committing tax fraud, e.g. deducing taxes from the so-called empty invoices was provided.

Additionally, the Act introduces the obligation to submit electronic VAT declarations for some entities (from 1 January 2018, all VAT payers will be obliged to do so).

EXCISE TAX

The excise tax applies to production and trade of energy products, alcoholic beverages, tobacco products, and electricity. Any natural person, legal person, or an organizational unit without a legal personality can be an excise taxpayer if they perform activities subject to excise tax or in relation to which a factual status subject to excise tax emerged. An entity conducting business activity, prior to the date of the performance of the first activity subject to excise tax or the first activity with the use of excise products exempt from excise tax due to their designed use is obligated to file a registration application to the competent head of the customs office.

It is worth adding that the excise tax, in principle, has been harmonized within the frames of the European Union, however, there are groups of products in relation to which no harmonization was implemented.

REAL ESTATE TAX

The real estate tax constitutes a burden for commercial real estate. It is a local tax collected by commune authorities. The real estate tax applies to real estate or structures: land, buildings or their parts, structures related to conducting business activity.

Any natural person, legal person, organizational units, including companies without a legal personality can be a real estate tax payer if they are:

- owners of real estate or buildings,
- autonomous possessors of real estate or buildings,
- perpetual usufructors of land,
- owners of real estate or parts thereof or buildings or parts thereof constituting the property of the State Treasury or local government units.

The taxation basis is:

- for land – total area,
- for buildings or their parts – usable floor space,
- for buildings or their parts related to conducting business activities, in principle, their value set as on 1 January of the tax year and constituting the basis for depreciation calculation undiminished by depreciation deductions whereas in the case of fully depreciated buildings their value as of 1 January of the year in which the last depreciation deduction was performed.

The commune council sets the real estate tax rate values in a resolution. These rates, however, cannot exceed the maximum limit set by a statute.

Administrative duties

It is also worth highlighting that in conducting a business, one must take into account the number of administrative duties. A special issue here is the obligation to adhere to occupational health and safety provisions, the handling of waste in the manner compliant with rules on waste management, environmental protection requirements and waste management plans as well as the standards related to the processing of personal data.

Compliance with these rules can be subject to an appropriate inspection of administration bodies. Offences in this regard can be punished with a fine and – in extreme cases – also with the ban on engaging in business activities.

The State Sanitary Inspection was established to pursue public health tasks. Among others, it exercises supervision and control of compliance with the rules on the occupational health and safety as well as working environment conditions. It also exercises supervision over the health conditions of food products and alimentation.

In case any violations are detected, the State Sanitary Inspection is authorized to call for cessation and desistance from them and even to shut the enterprise down.

Moreover, the Trade Inspection, a specialized control body, was established to protect consumer rights and economic interests of the state. Its tasks include, among others, controlling the legality

and honesty of operations conducted by entrepreneurs engaged in business activities in the scope of production, trade, and services; controlling products in distribution as far as compliance with standards (including marking and forgeries) is concerned, undertaking mediation with the view of the protection of consumer interests and rights; organizing permanent consumer courts of arbitration, providing consumers with consultations.

The Trade Inspection does not engage in controlling electricity producers or entrepreneurs engaged in wholesale and retail distribution of electricity, fuels, banks, insurance activities, postal and telecommunications services, financial intermediation services, IT services, research-and-development services, educational services, healthcare and social care services, fertilizers and plant conditioners. There are other specialized agencies empowered to do that.

In case any violations are detected, the Trade Inspection is authorized to issue decisions on limiting trading in products or banning the product from being introduced on the market or banning the provision of a certain service.

Competition law

The rules for the functioning of entrepreneurs on the Polish market are defined further by Competition Law which is divided into public and private competition law. The President of the Office for Competition and Consumer Protection is the body safeguarding competition.

Public law is intended to protect competition by stipulating a ban on practices threatening and infringing competition between entrepreneurs. Among the bilateral practices, there are horizontal agreements (in particular those pertaining to market division or price fixing) and vertical agreements (in principle distribution-related) which substantially limit competition on the relevant market. In turn, unilateral practices (which can, however, be exercised by more than one entity) are connected to abuse of the dominant position. Next to competition limiting practices, public competition law regulates the concentration principles which means that these provisions apply in the cases related to mergers and acquisitions of entities of a specific size, which as a rule is measured by turnover values.

The violation of the public competition law, similarly as in most countries, entails severe administrative sanctions, including heavy fines. The basic provisions of this area of law have been collected in the Act on Competition and Consumer Protection of 16 February 2007 and specific regulations.

In turn, the private competition law regulates the relations between market players, banning the so-called acts of unfair competition, especially in the form of a misleading designation of the company, false or deceitful indication of the geographical or regional origin of products, indication of products misleading as to the origin, quantity, quality, ingredients, manner of production, usability, possible application, repairs, maintenance or other essential characteristics of products or services as well as the concealment of the risks connected with the use of goods, the violation of business secrets, or blocking access to the market. Infringement of the private law rules of competition can entail compensation liability for tort. In principle, these rules are regulated in the Act on Combating Unfair Competition of 16 April 1993.

Advertising

The Act on Combating Unfair Competition (and in the case of several sectors of industry – also specific acts described below) imposes restrictions on the advertising of business. The violation of the rules laid down therein also constitutes an act of unfair competition.

The rules concerning advertising practices include, in particular, the following: ban on advertising contrary to the provisions of law, good practices, or offending human dignity; ban on advertising misleading the consumer, thus susceptible to influence their decision to purchase a product or service; ban on advertising appealing to the emotions of consumers by provoking fear, exploiting superstitions or credulity of children; ban on statements encouraging the purchase of products or services, creating the impression of neutral information; ban on advertising significantly interfering with privacy, in particular, the importuning of consumers in public places, sending unsolicited products at the expense of the consumer or abusing the use of technical means of communication, and also ban on comparative advertising where it is contrary to good practices.

Regardless of the above-mentioned principles regulating rules of advertising in the context of fair competition between entrepreneurs, additional principles concerning advertising and commercial practices in relations with consumers stem in particular from the Act of 23 August 2007 on Combating Unfair Commercial Practices. The said act constitutes an implementation of Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market.

The act at issue bans the use of unfair commercial practices, i.e. such practices which are contradictory with requirements of professional diligence and simultaneously substantially distort or may distort a product-related economic behaviour of an average consumer reached by such a practice or at whom such a practice is addressed, or of an average member of a group of consumers if the commercial practice is addressed at a specific group of consumers.

The act in particular bans misleading commercial practices, among others - advertising including false information and as such non-compliant with truth or which in any manner, including also all circumstances in which it is presented, misleads or may mislead an average consumer, as well as aggressive commercial practices, i.e. such as which through harassment, coercion, including coercion with the use of physical force, or unlawful pressure limit or may limit the average consumer's freedom of choice or their behaviour towards the product, and

thus make or may make the consumer adopt a transaction-related decision which they would not adopt otherwise.

By means of an example, the act at issue imposes a ban on, among others, the following commercial practices:

- claiming to be a signatory to a code of conduct when the trader is not,
- using a certificate, quality mark, or equivalent marking whilst not being authorized to do so,
- bait advertising which consists in inviting to purchase a product at a specific price without disclosing that the entrepreneur may have reasonable doubts to believe that he will be unable to deliver or order from another trader delivery of such or equivalent products at the price specified over the period and in substantiated quantities considering the product, the scope of advertising of the products and the price offered,
- bait and switch advertising which consists in inviting to purchase a product at a specific price and then refusing to present the advertised item to consumers, or refusing to accept orders for the product or to deliver it within a reasonable time, or demonstrating a defective sample of the product with the intention of promoting a different product,
- presenting rights given to consumers in law as a distinctive feature of the trader's offer,
- advertorial consisting in using editorial content in the media to promote a product where a trader has paid for the promotion without making it clear in the content or by images or sounds clearly identifiable by the consumer,
- establishing, operating or promoting pyramid promotional schemes where a consumer delivers a performance for the opportunity to receive material benefits dependent primarily from the introduction of other consumers into the scheme rather than from the sale or consumption of products,
- claiming that the trader is about to cease trading or move premises when he is not,
- creating the impression that the consumer cannot leave the premises until a contract is formed,
- making persistent and unwanted solicitations by telephone, fax, e-mail or other remote media except in circumstances and to the extent justified under applicable provisions to enforce a contractual obligation,
- including in an advertisement a direct exhortation to children to buy advertised products or persuade their parents or other adults to buy advertised products for them,
- creating the false impression that the consumer has already won, will win, or will on doing a particular act win, a prize or other equivalent benefit, when in fact either there is no prize or other equivalent benefit or claiming the prize or other equivalent benefit is subject to the consumer paying money or incurring a cost.

The subject Act on Combating Unfair Commercial Practices grants a number of rights to consumers subject to such practices, including the right to demand invalidation of the agreement, compensation, cessation and desistance from the unlawful practice, and removal of effects thereof.

One must also remember that depending on the sector, restrictions on advertising can reach even further. This pertains in particular to the pharmaceutical industry and to free professions.

POLISH LANGUAGE IN BUSINESS ACTIVITY

According to the Constitution of the Republic of Poland, Polish is the official language in Poland. This means the general obligation to use Polish on the territory of Poland whereas any departures from this rule should be subject to a narrowing interpretation.

Detailed regulations regarding the protection and use of Polish in the completion of public tasks are to be found in the Act on Polish Language of 7 October 1999 under which on the territory of the Republic of Poland, the Polish language shall be used in transactions with the participation of consumers and in the execution of the provisions of the labour law if, at the moment of the conclusion of an agreement, the consumer or person works or has permanent residence on the territory of the Republic of Poland and if the agreement is to be performed in the territory of the Republic of Poland.

Warnings and information for consumers, required under other provisions, manuals, and information on product characteristics do not require a description in Polish if they are expressed in a commonly understood graphic form; if the graphic form is accompanied by a description, this description should be drafted in Polish.

Under the Act on Freedom of Economic Activity, the entrepreneur introducing goods into market transactions on the territory of the Republic of Poland is obligated to place written information in Polish, specifying the company of entrepreneur and address as well as facilitating product identification, on the product, product packaging, label, manual or to deliver such information in another customary manner.

IV

DOING BUSINESS IN POLAND

Polish civil law system

Conducting trade exchange with Poland is inseparably connected to the practical application of the Polish civil law. The Polish civil law system does not have an equally long and uninterrupted tradition as French, Austrian, or German systems. Nonetheless, it uses solutions featured in all of them. The Civil Code is the fundamental act of Polish law with regard to the transactions in goods and services. Therefore, knowledge of at least its most fundamental institutions is indispensable in order to enable the Investor to trade freely with Poland.

The Civil Code regulates the general issues of civil law (e.g. statute of limitations, legal capacity, forms of acts in law, defects of a declaration of will, withdrawal, termination, deadline and condition, forms of powers of attorney, including representation), the issues of property law (ownership, joint ownership, very popular institution of perpetual usufruct, so-called limited property rights), the law of obligations, and inheritance law. However, specific issues are frequently regulated in separate legal acts while the case-law plays an important role in application of the law.

Agreements under the Polish law

An agreement constitutes a fundamental instrument used by every entrepreneur. The conclusion of an agreement under the Civil Code does not have to be made in the formal act of signing a document. “Oral” agreements, or even agreements concluded in a tacit manner are by principle valid and effective under the Polish law insofar as the provisions or the agreement itself do not provide otherwise. One must bear that in mind, especially in the exchange of correspondence with counterparties, including electronic correspondence.

This stems from the fact, that Polish law uses the notion of a “declaration of will”, i.e. such an act of the participant of transactions which sufficiently materializes their will and intention to perform a given act in law. As a rule, this will can be expressed in any manner. It shall be interpreted and understood in a manner required by the circumstances under which a given declaration was given, principles of social coexistence, and established practice. In the case of agreements, it is the common intent of the parties that should prevail, rather than the verbatim wording.

The principle of freedom of agreements constitutes a fundamental principle of civil law. If the content or objective of the agreement does not contradict the nature of the relationship, the statutory law, or principles of social coexistence, parties can shape provisions of the agreement at their own discretion. What is more, a number of Civil Code provisions is not mandatory in their nature and can be changed by agreement between the parties.

The Polish civil law adopted the principle of double effect, known in the French law. As a rule, the agreement on the sale, exchange, donation, transfer of real estate or another agreement obligating to transfer the ownership of the object indicated as to its identity, transfers the ownership onto the acquiring party unless a specific provision provides otherwise or the parties decided otherwise. In other words, no separate act of disposal, for example known in German law, is required. Parties can dispose of real estate ownership by means of a single act, but they can also, for a variety of reasons, divide the transaction into two agreements (a commitment agreement and a disposition agreement or the final agreement can be preceded by concluding a preliminary agreement). This principle is also in force, for example, in the scope of assignment of rights and alienation of inheritance.

Due to the significant influence of the European legal systems on the Polish Civil Code, many institutions contained therein will not be new to foreign investors. These institutions include, in particular, *force majeure, culpa in contrahendo*, exploitation, condition, time limit, joint and several liability of debtors and creditors, withdrawal, termination, preliminary agreement, reservation of ownership of a sold item, contractual penalties, statute of limitations, unjust enrichment, assignment, deduction, renewal, debt relief, actio pauliana, *ius ad rem*.

The so-called safety valve of civil law, i.e. principles of social coexistence are also worth mentioning. This is the Polish equivalent of the “good faith” or “good practices” notion. The legislator refers to principles of social coexistence, for example, while assessing the validity of an act in law or the limits of the exercise of ownership rights and the limits of freedom of agreements.

Applicability of the Polish law

Whether an agreement with some “foreign component” (counterparty, place of conclusion, etc.) is governed by the Polish law or by a foreign law is decided by rules of the Private International Law which, in principle, grant precedence to the will of the parties (with certain limitations).

In the context of commercial agreements, two legal acts containing these rules are of key importance: the Polish Private International Law Act of 4 February 2011 and the Regulation (EC) of the European Parliament and of the Council no. 593/2008 of 17 June 2008 on the law applicable to contractual obligations (“Rome I”).

The Rome I Regulation binds EU countries in a direct and absolute manner. What is more, in the scope of the law applicable to contractual obligations, the Polish Private International Law refers precisely to the

provisions of the Rome I Regulation. Under its provisions, by principle, the agreement is governed by the law of the state chosen by the parties. Where the parties have not chosen the applicable law, the agreement is governed, as a rule, by the law of the state where the party providing goods and services, but not cash, has its customary residence (that is, for example, by the law in force in the state of the vendor/service-provider). In the scope of the agreements pertaining to real estate property rights, the agreement is governed by the law of the state where the real estate is located. Rome I also features a number of protective rules, which safeguard the "weaker" parties to transactions, e.g. with regard to consumer or insurance agreements.

It is worth indicating that EU countries are parties to numerous bilateral and multilateral agreements without prejudice to the Rome I Regulation. Nevertheless, the regulation takes precedence in relationships between the member states.

The form of acts in law

The Polish Civil Code provides for several different forms of performance of an act in law. As mentioned above, (compare: chapter IV – Agreement under the Polish law), the principle of freedom of contract is in force. In relation thereto, an agreement can also be concluded by email, fax, or other similar means of communication.

Specific provisions, however, may require the agreement to be concluded in writing, i.e. in the form of a document signed by

B2B, B2C AND C2C TRANSACTIONS

The Polish law distinguishes business-to-business transactions (B2B), transactions between entrepreneurs and consumers (B2C) and transactions between consumers (C2C).

In the frames of the B2B transactions, the Polish law assumes, on the one hand, increased diligence of entrepreneurs, especially in the performance of obligations while it also has a number of facilitations on the other. For example, the regime of acts in law is less rigorous for entrepreneurs. Nonetheless, for example the course of prescription of certain claims in the case of entrepreneurs is shortened (compare: chapter IV – Statute of limitations).

B2C transactions provide for special consumer protection. The legislator has rendered it easier for consumers to prove conclusion of an agreement before the court, a number of specific types of consumer sales have also been introduced (compare: chapter IV – Sales agreement and related agreements).

First and foremost, however, a foreign investor ought to pay attention to the protective regime of the so-called unfair contract terms, introduced into the Polish law by virtue of Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts. This regime is similar in all EU countries. If the consumer concluded an agreement containing (by virtue of reference from a contractual template or entrepreneur's form) a provision shaping their rights and obligations in a manner contradictory with good practices or grossly violating their interests, then such a provision is not binding for the consumer. The Civil Code contains a sample catalogue of such clauses. It is not possible to qualify a term or clause as unfair if it unambiguously determines the main obligations of the parties, including the price or remuneration.

The consumer may demand such an abusive clause to be recognized ineffective in proceedings before the court in an individual case. However, everyone can demand the special Consumer and Competition Protection Court in Warsaw to issue a ban prohibiting entrepreneurs the use of a given type of an abusive clause in their general terms and conditions. In practice, such actions are instigated mostly by the Consumer Protection Ombudsman and social consumer rights protection organizations. The Office on Competition and Consumer Protection keeps a Register of Prohibited Clauses containing clauses that have been found abusive in contractual templates used in relation to consumers. The register is updated on current basis and it is available at the following web address https://uokik.gov.pl/rejestr_klauzul_niedozwolonych2.php

However, according to recent amendment to the Act of 16 February 2007 on Competition and Consumer Protection, which came into force on 17 April 2016, the compliance of such contractual clauses with the provisions of law is no longer investigated by the Consumer and Competition Protection Court in Warsaw, but by the Chairman in administrative procedure.

The existing register will be repealed as of 18 April 2028. Another register was established to collect the decisions issued by the Chairman of the Office on Competition and Consumer Protection in cases pertaining to contractual clauses. It is available at the following address: http://decyzje.uokik.gov.pl/bp/dec_prez.nsf. Nevertheless, it must be noted, that these decisions are not binding in other cases.

Next to the existence of the above-mentioned obligations towards consumers, it is worth indicating that in Poland, not only the state bodies, but also entrepreneurs are obligated to comply with the specific regulations in the processing of personal data. First and foremost, consent is required to process the personal data of a given person and they enjoy the right to control their data in the database as well as to motion for the supplementation or change thereof. The Inspector General for Personal Data Protection exercises control over the adherence to the personal data protection regulations.

the parties themselves. The Civil Code recognizes the electronic form, requiring the use of a digital signature, to be equivalent with the written form. A recent amendment to the Civil Code introduced the so-called document form. To preserve the document form of an act in law, it is now sufficient to submit a declaration of will in the form of a document in a manner making the identification of the person submitting the declaration possible.

Nonetheless, certain acts in law require certain specific forms, a written form with signatures certified by a notary (e.g. to dispose of the enterprise), a written form with a fixed date, or a form of a notary deed (first and foremost, acts of property law, real estate transactions in particular).

Failing to comply with the form can have various effects – from evidentiary difficulties in court proceedings to the invalidity of an act in law.

Finally, it is worth indicating that Poland is a party to the Hague Convention of 5 October 1961 abolishing the requirement of legalization of foreign official documents. This convention allows, upon obtaining the so-called apostille clause, for the use of documents drafted in one country (e.g. commercial register abstracts required in corporate acts concerning commercial law companies) also in another country.

Sales agreement and related agreements

SALES AGREEMENT AND RELATED AGREEMENTS

The fundamental agreement concluded between entrepreneurs is a sale agreement. By means of this agreement, on the grounds of the Civil Code, the selling party commits to transfer the ownership of an object onto a buyer and transfer the object onto the buyer while the buyer commits to collect the object and pay the selling party the price. This means that parties have two groups of obligations (related to transfer and collection of the goods, and the payment). They are obligated to perform each of them.

However, the sale agreement cannot be identified with other similar agreement types such as contracts of exchange (each of the parties commits to transfer the ownership of an object onto the other party in exchange for the commitment to transfer the ownership of another object), contract of delivery (the supplier commits to produce items designated only by kind and to deliver them in partial shipments or periodically while the recipient commits to collect these items and pay the price for them), or contract farming (an agricultural producer commits to produce and deliver a designated quantity of agricultural products of a specific type to the contractor, while the contractor commits to collect these products at the date agreed, pay the price agreed, and to deliver a specific extra performance if the agreement or specific provisions stipulate the delivery of such a performance).

As far as the sales agreements are concerned, one of the most important elements of the legal regime is the issue of warranty for physical and legal defects of the object. This refers to the situation of improper performance of the agreement by the seller through the delivery of defective products as well as means of buyer protection in such a case, in a detailed manner (compare: chapter VIII – Civil and commercial disputes).

Special principles of sale pertain to contracts concluded between an entrepreneur and consumer. The Act of 27 July 2002 on the Specific Terms and Conditions of Consumer Sale and Amendments to the Civil Code and the Act of 2 March 2000 on Certain Consumer Rights and Liability for Damages Caused by Harmful Products previously in force have been replaced with the Act of 30 May 2014 on Consumer Rights.

The above-mentioned act introduced amendments to the Civil Code on a statutory warranty at sale of goods (liability for the non-compliance of the goods with the contract). The provisions on statutory warranty apply both to entrepreneurs and to consumers, but the protection stipulated for consumers is substantially more extensive and may not be excluded or limited by way of an agreement to consumer's detriment (also by way of choosing a foreign law).

It provides for the extensive information obligations of the entrepreneur towards the consumer and liability of the seller for non-compliance of consumer goods with the agreement. If the goods are not compliant with the agreement, in principle the buyer may submit a declaration on lowering the price or on withdrawal from the agreement unless the seller immediately and without excessive inconvenience for the buyer replaces the defective item with a non-defective one or removes the defect. This limitation does not apply if the item has already been replaced or repaired by the seller or the seller did not comply with the obligation to replace the item with a non-defective one or to remove the defect. If the buyer is a consumer, then instead of the removal of the defect offered by the seller, he may demand the defective item to be replaced with a non-defective one unless making the item comply with the contract in the manner chosen by the buyer is impossible or would generate excessive costs when compared with the manner offered by the seller. In assessing the excessive nature of costs, the value of a non-defective item as well as the type and significance of the detected defect are taken into consideration next to the inconvenience that another manner of satisfying the buyer would generate for him. The buyer, however, may not withdraw from contract if the defect is insubstantial.

Moreover, if a sold item is defective, the buyer may demand replacement of the item for a non-defective one or removal of the defect. The seller is obligated to replace the defective item with a non-defective one or remove the defect within a reasonable period of time without excessive inconvenience for the buyer. The seller may refuse to comply with the buyer's demand if making the item comply with the contract in the manner chosen by the buyer is impossible or would generate

excessive costs when compared with another possible manner of making the item comply with the agreement. If the buyer is an enterprise, the seller may refuse to replace the item with a non-defective one also where the costs of complying with this obligation exceed the price of the item sold.

The seller is liable on the grounds of a statutory warranty if a physical defect is detected before the lapse of two years, whereas in the case of defects of real estate - before the lapse of five years as of the date on which it was issued to the buyer. If the buyer is a consumer and the object of the sale is a second-hand movable asset, the seller's liability may be limited, to not less than a year as of the date on which it was issued to the buyer.

The subject Act on Consumer Rights also regulates special rights of consumers related to remote contracts (which also applies to B2C sales in the Internet) and contracts concluded out of the company office.

The entrepreneur who proposes to conclude an agreement outside the seat of the enterprise, must present a document confirming the fact of conducting business activity and a proof of identity prior to the conclusion thereof to the consumer. What is more, in the case in which agreements are concluded on the behalf of the entrepreneur, the person acting on their behalf presents a document confirming their authorization. In the case in which the agreement is concluded outside the seat of the enterprise, the consumer who signed the agreement may withdraw from the agreement without giving reasons, by means of an appropriate declaration of will submitted within 14 days of the conclusion of the agreement (in the case of contracts concerning items to be issued, and in particular sales of physical objects, in principle this time period is counted as of the date on which the consumer took possession of the item).

The above-mentioned act also regulates the regime of distance contracts, i.e. such actions which are performed without the simultaneous presence of both parties, with the use of distant communication means, in particular by phone, fax, radio, TV, email, or Internet. In the case of such an agreement, the entrepreneur has a number of information obligations while the consumer can withdraw therefrom without providing a reason within 14 days as of the conclusion thereof (in the case of contracts concerning items to be issued, and in particular sales of physical objects, in principle this time period is counted as of the date on which the consumer took possession of the item). Such a protection system, favourable for consumers, follows from Poland's membership in the EU and the implementation of a number of European rules related thereto.

It is also fitting to indicate that an entrepreneur conducting sales outside of the enterprise premises or remote sales has the duty to inform the consumer of the above-described right to withdraw from the agreement. In the case of non-compliance with this duty, the right to withdraw expires only after the lapse of 12 months as of the date of the lapse of the above-indicated 14 days period (if the entrepreneur informs of the right to withdraw, but after the agreement was concluded, the time limit for the withdrawal from the agreement lapses after 14 days as of notifying the consumer of this right).

The act also provides for a number of exceptions where the consumer does not have the right to withdraw as hereby discussed; these exceptions include, among others, a service provision agreement if the entrepreneurs delivered the service in full at the express consent of the consumer who prior to the commencement of the performance was notified that upon the delivery of the performance by the entrepreneur they will lose the right to withdraw from the agreement; an agreement where the price or remuneration depend on fluctuations on financial markets beyond entrepreneur's control and which may occur prior to the expiry of the deadline for the withdrawal from the agreement; an agreement where the object of the performance is a non-prefabricated item, manufactured to the consumer's specifications and serving to satisfy their individualized needs; an agreement where the object is an item subject to rapid decay or having a short use-by date; an agreement where the subject of the performance is audio or video recordings or computer software supplied in a closed package if the package was opened after the delivery or an agreement on provision of digital data not fixed on a material carrier if the delivery of the performance commenced to the consumer's express consent prior to the lapse of the time limit for the withdrawal from the agreement and after the consumer was notified by the entrepreneur about the loss of the right to withdraw from the agreement.

INTERNATIONAL SALES OF GOODS

Knowledge of international law is also relevant in the scope of sale agreements. Poland is a party to the UN Convention of 11 April 1980 on Contracts for the International Sale of Goods signed in Vienna (CISG).

The convention, which is in force in most of countries worldwide, regulates transactions in goods conducted by entities from different countries. The convention does not apply to contracts for specified task and agreements with consumer or auction sales.

The Vienna Convention does not regulate all the principles concerning the sale of goods, in particular it omits the issue of ownership of goods and the validity of the agreement. Instead, it regulates the process of the conclusion of the agreement, obligations of the parties (e.g. extremely rigorous duties pertaining to the inspection of goods by the buyer) and protective means in the event they are violated.

By principle, the party injured by the violation of the agreement, under the Convention is entitled to damages, the claim for the performance of the agreement, lowering the price. In extreme cases, it can even avoid the contract. What is important, on the grounds of the Convention, liability is based on the principles of risk, not of guilt. An incontestable advantage following from the application of the Convention is prolific

case-law and international literature of the subject which facilitates becoming acquainted with the convention's regulations.

OTHER BASIC TYPES OF AGREEMENTS

A foreign entrepreneur will also conclude a number of other agreements. Under the Polish law, agreements can be standardized, described in detail in the Civil Code. The fact that the Civil Code does not regulate certain types of agreements does not change the fact that parties can conclude such contracts. They can do so under the principle of the freedom of agreements.

First and foremost, investors, in the event their operations are conducted in the territory of Poland, shall have to secure a place for their seat, production, or provision of services.

Apart from purchasing real estate, it is possible to obtain a temporary right of use of the real estate on the basis of a rental agreement. Through a lease agreement, the landlord commits to hand an object over to the tenant to hold and use for a specified or non-specified period of time whereas the tenant commits to pay the landlord the agreed rent.

The Polish law also stipulates a number of specific rules pertaining to the renting of premises. From the point of view of the owner of a real estate, the issue of renting premises to private persons for residential purposes is particularly complicated. However, some facilitations were recently introduced by the institution

CONTRACTOR VERIFICATION

The files of the National Court Register (KRS) – the register of entrepreneurs kept by the commercial divisions of district courts – are public. Anyone can examine the files and become familiar with the contents of documents constituting the basis for entries into the National Court Register, hence, for example, deeds of formation and articles of association, financial reports, resolutions, etc. This allows for the basic verification of credibility of a business partner.

The National Court Register is available online. The Central Register and Information on Economic Activity (CEIDG) is also available online.

Prior to the commencement of transactions with an unknown counterparty, it is worth checking whether or not they are in debt. The Act on the National Court Register has introduced the register of insolvent debtors (first and foremost – bankrupt parties).

A number of other institutions have been created, including private ones regulated by the act, (e.g. the National Register of Debtors which makes it possible to enter onto a public list a debtor who breaches their obligations).

Moreover, both parties to a credit agreement, e.g. the bank and the borrower can respectively check in the Credit Information Bureau the creditworthiness of the other counterparty or rights they are entitled to.

of the so-called occasional lease. This does not change a general remark that tenant protection is high and procedures are time-consuming. One must bear this in mind when, for example, deciding to invest in buildings occupied by tenants. Legal due diligence is indispensable in such situation.

An agreement type similar to the rental agreement is the lease agreement under which the lessor commits to hand the object over to the tenant to use and collect benefits for a specified or non-specified period of time whereas the tenant commits to pay the lessor the agreed rent.

Leasing of movable assets and real estate alike is also a very common. This type of an agreement shall be presented in more detail in chapter V – Tenancy/ rental/ leasing.

What is more, the entrepreneur may have to adapt the real estate for their own purposes and also may choose construction for the subject of their business activity. In both cases, the need to conclude various agreements arises: an agreement for the provision of services, a contract for specified task, or a construction works agreement.

In the scope of financing the business activity, bank credit, bank loan, and also factoring agreements are of fundamental significance. They are discussed below.

INTERNATIONAL TRANSPORT

Since Poland is a party to the Convention of 19 May 1956 on the International Road Carriage of Goods (CMR), foreign entrepreneurs wishing to engage in carriage and shipment activities in Poland face an easier task. In relation to the above, the legal regime for conducting such activities is similar to the one in force in tens of other CMR signatory states. After all, the CMR is an absolutely mandatory law and applies regardless of the will of the parties.

The CMR specifies, among others, the minimum content of the waybill constituting proof of the conclusion of the agreement, terms and conditions thereof, and the receipt of goods by the carrier as well as the detailed principles of the liability of the carrier for the loss or damage of the goods.

By enacting complaint proceedings and the extensive competence of the courts, the Convention also facilitates the pursuit of claims. On the other hand, claims arising against the CMR are subject to a short, one-year period of limitation.

Poland is also a party to other relevant international law acts concerning transport, e.g. the Convention of 9 May 1980 on International Carriage of Goods by Rail (COTIF) or the Convention of 28 May 1999 for the Unification of Certain Rules for International Carriage by Air.

It is also worth indicating that carriage and forwarding are also regulated in the Civil Code which, in this scope, is

of significance first and foremost in the frames of domestic transactions.

Securing claims

The risks related to performing transactions can be minimized by securing them. The Polish law offers a number of methods for securing liabilities, in relation to which the entrepreneur, also foreign, can choose from an entire spectrum of possibilities, depending on the sector, required characteristics of the securing mechanism. The most popular of these include:

MORTGAGE

A mortgage is a limited property right on a real estate (but also on perpetual usufruct, debt secured by mortgage, or in certain cases a part of a real estate) by virtue of which the encumbrancer can pursue enforcement from the real estate regardless of the fact whose property it has become, with precedence over the personal creditors of the owner of the real estate. The securing function of the mortgage can be reinforced by the mortgagor submitting to enforcement in the notary deed (compare chapter V - Mortgage).

PLEDGE

A pledge is a limited property right which can be established on movable assets and disposable rights (particularly popular on stocks and bonds) to secure claims (not only cash). In specific cases, it arises by the force of law itself, but most frequently the agreement must be concluded between the owner of the object and the creditor whose claim is to be thus secured. The pledge is regulated by the Civil Code. The creation of the pledge, by principle, requires handing the pledged item over to the creditor (or an agreed third party). Moreover, the pledge, if the creditor acts in good faith, in principle makes it possible to pursue execution from the object of the pledge prior to those entitled from other limited property rights.

The Act of 2 April 2004 on Certain Financial Collateral Arrangements provides for, also in B2B relations (with exclusion of natural persons), a possibility of establishing specific collaterals on financial instruments, including the so-called financial pledge. The Act introduces collateral instruments constructed in such a manner as to comply with specific characteristic of the object of the collateral that financial instruments, cash, or credit liabilities are (among others, special duties of brokerage houses keeping securities accounts, possibility of replacing the object of the collateral with another financial instrument without the need to amend the agreement, etc.).

REGISTERED PLEDGE

A registered pledge is a special type of pledge stipulated by the Polish law. Analogically as the above-mentioned regular pledge, its purpose is to secure a claim. The rules on the registered pledge are to be found in the Act of 6 December 1996 on Registered Pledges and the Pledge Register. The registered pledge agreement should be concluded in writing. Also the scope of registered pledge objects is limited – it can be established on movable assets and disposable property rights with the exception of the rights which can be the subject of a mortgage, debts on which mortgage was created,

seafaring vessels and seafaring vessels under construction which can be subject of a marine mortgage. The choice of the registered pledge, as a method for securing a claim, is particularly reasonable when it is purposeful to leave the debtor with the possibility to make use of the subject of the pledge. This is possible as the object of a registered pledge does not have to be handed over to the creditor (or an agreed third party). Handing the pledge object over is replaced by placing an appropriate annotation in the public register of pledges. It is worth adding that securing a claim by means of a registered pledge can render the enforcement of the claim easier. Firstly, a claim secured by registered pledge, by principle, takes precedence over other claims. Secondly, parties can specify in the pledge agreement that in the event the debtor fails to perform, the subject of the registered pledge (e.g. financial instruments, goods) shall become the property of the creditor.

BILL OF EXCHANGE

The bill of exchange is a document entailing the obligation of its issuer to pay (a promissory note) or a person indicated as obligated to pay (a bill of exchange/draft). It is an abstract obligation, that is, by principle, isolated from contractual relationships of the parties and charges which can arise between them against the background of the main agreement (period of limitation, set off, improper performance). This means that, by principle, the bill of exchange may be subject to transactions and each acquirer of the rights from the bill of exchange (an endorsee) can effectively pursue payment, regardless of the legal situation between the parties to the original act in law. Therefore, it is a very strong legal document. Pursuing a claim from a bill of exchange is very easy since in such a case the court issues, automatically in practice, an immediately enforceable writ of payment (compare: chapter VIII – Polish court proceedings). It is popular – in order to secure a transaction – to issue a so-called *in blanco* draft and to conclude an agreement (the so-called blank bill of exchange agreement) which authorizes the creditor to fill the bill of exchange to the specified amount. Yet, it is fitting to indicate that the Act of 12 May 2011 on Consumer Loan (which also applies, for example, to consumer sales on instalments, and more precisely to the agreement on the postponing of a financial performance delivery, if the consumer is obligated to bear any costs related to the postponing of the performance whatsoever) provides for certain limitations in the scope of securing promissory notes for certain liabilities of the entrepreneur towards the consumer, in particular such a promissory note should include a clause “not to order” or another equivalent.

BANK GUARANTEE

A bank guarantee is a written unilateral obligation of the bank (guarantor) stating that after the authorized entity (beneficiary of the guarantee) has complied with specific payment conditions, the said bank shall pay the beneficiary of the guarantee – directly or through another bank. There are at least several types of bank guarantees; they can be conditional, i.e. depending on the fulfilment of a specific action (e.g. submission of specific documents) or unconditional (also at first demand), i.e. payable to the beneficiary without the

fulfilment of any conditions whatsoever.

GUARANTEE

A guarantee is a written agreement concluded between the guarantor and the creditor by virtue of which the guarantor commits to perform and obligation for the creditor if the debtor fails to do so. The guarantor can raise all the charges the debtor is entitled to against the creditor; in particular, the guarantor can set off the claim the debtor is entitled to towards the creditor.

TRANSFER OF TITLE FOR SECURITY PURPOSES

The transfer of the title for security purposes is an agreement based on the principle of the freedom of agreements, under which the owner of an item transfers ownership thereof onto the creditor whereas the creditor commits to retransfer such an ownership title if the debtor performs their obligation. This agreement evokes significant controversies in the science of law and in the case-law since it is not regulated by the Civil Code and certain effects of concluding such an agreement remain unclear. In the case of the transfer of the title to financial instruments, the transfer of the title for security purposes is, however, subject to regulations of the Act on Certain Financial Collateral Arrangements.

NOTARY SUBMISSION TO ENFORCEMENT

Under the Code of Civil Procedure of 17 November 1964, the debtor can submit to enforcement and commit to pay an amount of cash or to hand over an object in the form of a notary deed. Such a notary deed, with the fulfilment of the conditions prescribed by law, after being granted the enforceability clause, can provide the basis for enforcement without recourse to the standard procedure of pursuing claims in court.

Claims trading

Claims trading takes place in Poland. It is made possible by the institution of assignment regulated in the Civil Code according to the rules similar to those of other continental systems. By means of an assignment of a claim, the claim is assigned from the assets of the previous creditor to the assets of the acquiring third party on the grounds of the agreement with the preservation of the features of the claim. If the claim stems from an act in law made writing, the agreement should also be made in writing for evidentiary purposes. However, the assignment of claims can be rendered impossible by a contractual reservation prohibiting the assignment, hence, it is necessary to become acquainted with the contents of the agreement with the original creditor and the debtor each time. The application of the institution of assignment is especially visible in the activities of debt recovery companies.

Statute of limitations

The period of limitation of claims, especially in commercial transactions, is relatively short in Poland when compared to other countries. By principle, it is 10 years, however, it is 3 years for periodic claims or claims related to conducting business activity. It is also worth indicating that this period can be shorter, e.g. two years (just as in the case of the prescription of claims of a professional seller) or, in some cases, one year or even shorter.

The course of limitation may be suspended (e.g. in the event of an act of force majeure), interrupted or its completion may be withheld. The course of limitation is interrupted by each act before the court or court of arbitration undertaken directly to pursue, establish, satisfy or secure a claim, by recognizing the debt or initiating mediation.

After the prescription of the claim, by principle, the claim cannot be pursued effectively when the other party raises

VAT INVOICES AND OTHER DOCUMENTS CONFIRMING TRANSACTIONS

The VAT invoice is the basic document related to commercial transactions. The Act of 11 March 2004 on Tax on Goods and Services specifies in a detailed manner the formal requirements for invoicing and all the procedures related thereto.

Each VAT payer is obligated to issue invoices in specific cases. This obligation pertains above all else to transactions with entrepreneurs. In the case of transactions between an entrepreneur and a consumer, an invoice is issued only upon request. The fiscal document documenting the transaction is, as a rule, a printout from the cash register possession of which is mandatory for most entrepreneurs.

A significant obligation related to invoices (and other fiscal documents as well) is the need to store them over 5 years as of the end of the year of the issuance of the invoice.

By principle, the invoice should contain the date of sale, net unit price, taxation basis, rate and tax amount, amount due, and taxpayer and the data of the buyer. Since 1 January 2014, the detailed principles regarding invoice contents are regulated by the Act on Tax on Goods and Services (previously these principles were regulated in a Regulation of the Minister of Finance).

What is more, as of 2011, issuing e-invoices is also admissible in Poland. The condition for the possibility to issue such an invoice is the earlier consent of a counterparty. The electronic form of the invoice means such a format which guarantees the authenticity of the origin and the integrity of the invoice contents (therefore, PDF format, for example). E-invoices should also be archived and presented at every request of the tax audit bodies. The above-mentioned issues described the significance of an invoice from the point of view of public law. The invoice documents a transaction and, hence, it can also be significant in terms of private law. It can, for example, constitute a proof of the conclusion of an agreement or, possibly, a call for payment if the parties did not set a time limit for the performance. However, its significance, and hence also the evidentiary value in a possible dispute before court, is lower if the creditor does not hold an invoice signed by the debtor.

the charge of prescription. However, even a prescribed claim can be set off in certain situations.

Currency issues

The only official currency in Poland is the Polish zloty. The introduction of the Euro is planned in the future. Until that time, foreign entrepreneurs must assume the risks related to fluctuation of exchange rates.

However, it does not mean that making payments in other currencies is impossible in Poland. Under the Civil Code, incurring a debt in a foreign currency is admissible. In such a case, the debtor can fulfil their obligation by using the Polish currency unless the statute, court ruling being the source of the obligation, or act in law (e.g. an agreement) reserves the fulfilment of the obligation in a foreign currency. The practice demonstrates that payments in foreign currencies and in Euro in particular, are very common. Cash payments in Euro are also accepted in significant numbers of shops.

However, it is worth indicating that the issue of enforcement is an important exception. Even if a court ruling (or other enforcement title) designate the debt amount in a foreign currency, while vesting the enforcement title with the enforceability clause, the court puts the bailiff under the obligation to convert the awarded amount into the Polish currency according to the average exchange rate announced by the National Bank of Poland.

In relation to the above, the use of the Polish zloty does not hinder commercial transactions with Poland. The approach to transactions effected in foreign currencies is liberal while practice shows that they are carried out on a substantial scale.

NON-CASH TRANSACTIONS AND MONEY LAUNDERING

Poland participates in international activities directed against money laundering. The fundamental principles related to documenting the transactions are laid down by the Act of 16 November 2000 on Counteracting Money Laundering and Terrorism Financing. The scope of the act is very extensive. In principle, each entrepreneur is obligated to register transactions exceeding the value equivalent to Euro 15,000. The General Inspector of Financial Information also enjoys vast powers in terms of obtaining information.

Failure to adhere to the rules stemming from the statute, among others those pertaining to registering transactions or notifying of performance thereof, entails severe sanctions, including prison sentences. The Penal Code also contains regulations penalizing violations of the law in relation to activities connected to financial or capital markets.

The system of counteracting practices of this type is made complete by the requirement for transactions to be conducted with the use of the entrepreneur's bank account if it pertains to B2B transactions and if the value of the transaction exceeds Euro 15,000. This requirement is included in the

Act on Freedom of Economic Activity as amended from 1 January 2017.

INTEREST RATES

In the event a cash obligation is not fulfilled, the creditor can demand interest. If the parties did not agree on any contractual rates, statutory interest rates are due, i.e. in 2017, 7% on an annual scale. It is also worth noting, that from 2016 on, the maximum level of contractual rates is two-fold value of statutory interest rates, which equals 14% in 2017.

The regime of agreements concluded by entrepreneurs is subject to substantial modifications on the grounds of the Act of 8 March 2013 on Time Limits for Payment in Commercial Transactions. In the event entrepreneurs conclude an agreement and specify the time limit for payment longer than 30 days (or no time limit is specified at all), the creditor can demand statutory interest rates for the period as of the 31st day after the delivery of their non-monetary performance and service of the invoice or bill onto the debtor – until the date of payment, but not longer than until the date of maturity of the cash performance.

An additional advantage for the creditor is the possibility to pursue interest rates in the amount of interest rates applicable to tax obligations (two-fold value of the Lombard rate announced by the National Bank of Poland, however not less than 8% on an annual scale) or higher, if the agreement provides for such a higher amount, if the following conditions have been met jointly: the creditor delivered their performance; the creditor did not receive the payment in the time limit specified in an agreement or summons.

The creditor is always entitled to a lump sum of EUR 40 as reimbursement of costs incurred to pursue his claim. What is more, by principle, the term of payment cannot be longer than 60 days and 30 days when the debtor is a state entity. The amendment sets also a maximum time limit for the examination of goods – 30 days.

What is even more important, in the event of the application of the regime of the Act on Time Limits for Payment in Commercial Transactions, pursuing the claim of a creditor is easy. In such an event, the court issues a writ of payment (compare: chapter VIII – Polish court proceedings).

DISPUTES ARISING FROM COMMERCIAL TRANSACTIONS

Court disputes are basically inevitable in commercial practice. Awareness of one's rights and mechanisms for their enforcement is of key importance in this regard. In Poland, the creditor enjoys a wide spectrum of possible actions, both before a common court of law (which extends also to electronic proceedings where, in principle, all court documents are drawn up and sent electronically) and a court of arbitration and, more and more often, also in the frames of ADR (compare: chapter VIII – Arbitration and alternative dispute resolution methods in Poland).

V

INVESTING
MANUFACTURING
PROVIDING SERVICES

Real estate

In the Polish law, real estate is understood as a part of the land surface constituting a separate subject of ownership (land) and buildings permanently connected with the land as well as parts of such buildings, if under specific provisions they constitute a separate object of ownership. There are thus several types of real estate: land real estate (e.g. farmland), buildings and commercial and residential units (e.g. a flat).

PURCHASE OF REAL ESTATE

The Civil Code contains regulations concerning real estate-related agreements, including real estate sale agreements while the Act of 11 April 2003 on Management of Agricultural System regulates agricultural real estate. The agricultural real estate held by the State Treasury is regulated by the Act of 19 October 1991 on the Management of Agricultural Assets of the State Treasury. In turn, the Act of 24 March 1920 on the Acquisition of Real Estate by Foreigners regulates the rules for the acquisition of real estate by foreigners.

In Poland the acquisition of real estate by a foreigner requires a permit of the Minister competent for internal affairs. In principle, this requirement does not apply to persons and entities from EEA countries and Switzerland. According to Act of 27 April 2016 on suspending the purchase of real estate of the Treasury Agricultural Property Stock, real estates owned by the Treasury Agricultural Property Stock (with some exceptions) can be purchased solely by individual agriculturists in 5 years period from its entrance into force.

The real estate sale agreement is concluded in the form of a notary deed. Failure to adhere to this form renders the agreement null and void.

LAND AND MORTGAGE REGISTER

The land and mortgage register illustrates the legal status of the real estate and constitutes the form of a public register. It consists of four divisions which provide information regarding the designation of the owner and potential perpetual usufructor, indicate encumbrances on the real estate, and established mortgages. An entry in the land and mortgage register is required for certain property rights to emerge. The manner of keeping and the organization of land and mortgage register is regulated by the Act of 6 July 1982 on the Land and Mortgage Register as amended.

The official nature of the land and mortgage register entails several fundamental principles securing the transactions. First, there is a presumption that the legal status of the real estate disclosed in the register complies with the factual status. This results in the guaranty of public trust in the land and mortgage register, which protects the buyer in good faith, on the grounds of an action for the consideration, ownership, or another property right in compliance with the legal status of the real estate disclosed in the register, even if it did not comply with reality. This means that if, while acting in good faith, a person purchases real estate from a person disclosed in the land and mortgage register as its owner, the buyer shall acquire the ownership of the real estate even if it were to turn out untrue.

The contents of the land and mortgage registers are public. Presently, the process of migration of land and mortgage registers into the digital system is underway, however, a significant part of them is already available online.

CLAIMS OF FORMER OWNERS, NATIONALIZATION, AND REPRIVATISATION CLAIMS

Poland seems to be an attractive country in terms of real estate market investments. However, due to its history and issues related therewith and the subsequent reprivatisation process and the claims of former real estate owners related thereto, prior to investing funds in purchasing a specific real estate, it is advisable to carry out a due diligence examination and to guarantee professional handling of the transaction.

This pertains, in particular, to the so-called Warsaw land, but also to other land that became the property of the State Treasury or communes after 1945, i.e. after the end of World War II and the Communist takeover of Poland.

PERPETUAL USUFRUCT

Analogically to purchasing the ownership of real estate, the establishment of perpetual usufruct for foreigners or the acquisition of perpetual usufruct by foreigners requires a permit of the Minister competent for internal affairs. In principle, this requirement does not apply to persons and entities from EEA countries and Switzerland.

Perpetual usufruct is a form of the right to real estate that is characteristic for the Polish legal system. It is an intermediary form between ownership and a limited

Due to the political transformations after 1989 and the systemic legacy, specific social groups continue to struggle with issues related to regulating the ownership of real estates. In turn, in relation to churches and religious associations which during the times of the People's Republic of Poland had been deprived of the property (real estate in particular), the attempts at regulating the issue took on the form of property commissions (the Property Commission for the Claims of the Catholic Church, for the Claims of Jewish Communes, and others). Moreover, the process of restitution of expropriated properties is underway – in many cases, due to the lack of universal restitution solutions, the only solutions of the injured parties is the individual recourse to court or pursuing claims in administrative proceedings.

property right. The application of this right facilitates access to state and local authority-owned real estate. This right is, in principle, established for a period of 99 years (exceptionally, for the period not shorter than 40 years).

The issues related to perpetual usufruct are regulated first and foremost in the Civil Code and in the Act of 21 August 1997 on Real Estate Management. The regulations related to the acquisition of perpetual usufruct of real estate by foreigners are contained in the Act on the Acquisition of Real Estate by Foreigners as amended. Presently, a gradual (yet slow) process of transforming the perpetual usufruct into the ownership right is underway.

Perpetual usufruct pertains to land properties, by the principle, located within the city administrative limits and moreover being the property of the State Treasury or local government units (and associations of such units). It can be established to the benefit of natural persons, persons awarded legal personality by virtue of an act, and legal persons as well.

The emergence of perpetual usufruct takes place, as a rule, by virtue of an agreement concluded in the form of a notary deed and, moreover, it requires the entry of this right in the land and mortgage register. Due to the duration and the scope of the rights of the perpetual usufructor, perpetual usufruct is close to ownership. It can be disposed of (then, the buyer is bound by the terms and conditions of the agreement by virtue of which the right was established) while prices are most often a relevant part of the value of the real estate itself. Perpetual usufruct is established with a specific goal in view (real estate development) and is usually connected with the obligation to build on the property. The usufructor becomes the owner of the erected structures (a separate developed real estate thus emerges). They are also obligated to pay an annual fee prescribed in a statute.

SEPARATE OWNERSHIP OF A PREMISES

The Polish law, as mentioned above, also distinguishes commercial and residential real estate – the ownership of such real estate is defined as separate ownership of a premises.

The subject of the separate house unit ownership can be premises constituting separate property, i.e. complying with the technical requirements specified by the provisions of law, while the compliance with this requirement is stated by a *starosta* (a governor of the medium-level unit of local government in Poland) in the form of a certificate. The establishment of a separate ownership of a premises can take place through the conclusion of an agreement, but also as a unilateral act in law performed by the owner of the real estate or by virtue of a court ruling dissolving co-ownership. The agreement by virtue of which the separate ownership of a premises is to be established must be concluded in the form of a notary deed.

Furthermore, the creation of ownership of a separate house unit is contingent upon an entry in the land and mortgage register. The Act of 24 June 1994 on Ownership of House Units contains fundamental

regulations pertaining to commercial and residential premises.

DEVELOPER AGREEMENT

The Act of 16 September 2011 on the Protection of the Rights of a Purchaser of a Housing Unit or Detached House introduced a new agreement into the Polish legal order, labelled a developer agreement. By developer agreement, the developer commits, upon completion of the developer investment, to establish separate ownership of a housing unit and to transfer the ownership of such premises onto the buyer or to transfer onto the buyer the ownership of the real estate developed with a detached house erected thereon and constituting a separate real estate while the buyer commits to pay the developer as an advance for the price of acquisition of this right. The developer agreement must be concluded in the form of a notary deed.

The introduction of the developer agreement regulations was aimed at increasing the protection of buyer rights which is realized, among others, by the introduction of the obligation to guarantee one of the following means of buyer protection: closed housing escrow account, open housing escrow account and insurance guarantee, open housing escrow account and bank guarantee, open housing escrow account, and also by specifying in a detailed manner the required agreement elements and by regulating the right to withdraw from the agreement.

COOPERATIVE OWNERSHIP RIGHT TO THE PROPERTY

The cooperative ownership right to the property is a limited property right which can be subject to transactions. This right, in commercial terms, is similar to ownership; it can be a subject of transactions. The cooperative cannot deny cooperative membership to a buyer of a cooperative ownership right to the property, provided the buyer complies with the conditions prescribed in the cooperative statute.

The entity holding a cooperative ownership right to property can address the cooperative with a written motion for concluding the agreement on the transfer of the ownership right to the property. In principle, the cooperative is obligated to conclude the agreement on the transfer of the ownership right to the property.

The main regulations related to the cooperative ownership right to the property are included in the Act of 15 December 2000 on Housing Cooperatives.

LIMITED RIGHTS TO PROPERTY AND CONTRACTUAL RIGHTS TO PROPERTY

Under Polish law, it is not necessary to be an owner of the property to use it. Any person can possess, use and profit from a property of another person under so called limited rights to property and contractual rights to property.

The main difference between those two types of rights is that limited rights to

property are effective towards everyone. Contractual rights to property – as, by principle, every contractual right – are effective only between the parties of a certain contract. The most important limited rights to property are mortgage and usufruct. The most relevant contractual rights, to the contrary, are rental, tenancy and leasing.

MORTGAGE

A mortgage is a limited property right and – as it was stated above – it constitutes one of the most frequently selected forms of securing cash claims. Mortgage related issues are regulated, first and foremost, in the Act on the Land and Mortgage Register.

Most often, it is a real estate or a part thereof that can be the subject of a mortgage. However, also the perpetual usufruct right can be encumbered with a mortgage (along with the buildings constituting the property of usufructor), cooperative property right to a property and the claim already secured with a mortgage.

A mortgage can arise by virtue of an act, court ruling, and on the basis of an agreement. In commercial transactions, a mortgage is, as a rule, established on the basis of an agreement. The declaration of the owner of the real estate encumbered with the mortgage must be concluded in the form of a notary deed. Furthermore, the creation of mortgage is contingent upon an entry in the land and mortgage register.

The popularity of mortgage as a way of securing a cash claim follows from the fact that the encumbrancer can be satisfied from the subject of the mortgage taking precedence over the personal creditors of the debtor and, what is more, such an encumbrancer can pursue execution from this subject even when it is disposed of. Mortgage secured claims also enjoy higher priority in the case of enforcement, especially in the event of the liquidation of assets of a bankrupt entrepreneur.

USUFRUCT

Usufruct, regulated in the Civil Code, is a limited property right which can be established, in principle, on an object (it can be also established on a right) on the grounds of an agreement. In the event usufruct is established on a real estate, the notary deed form is required only for the declaration of the owner. Usufruct permits to use of an object and the collection of benefits thereof.

TENANCY/RENTAL/LEASING

The tenancy relationship is an agreement by virtue of which the tenant obtains the right to use an object, including real estate, in exchange for rent paid to the landlord. The fundamental regulations pertaining to the tenancy agreement are to be found in the Civil Code.

As far as the rental of residential premises is concerned, there are additional regulations laid down in the Act on the Protection of Rights of Tenant, Communal Housing Stock and the Civil Code Amendments of 21 June 2001. In principle, the tenancy agreement can be concluded in any form, also orally. In the event of the premises or real estate tenancy agreement concluded for a specified period of time longer than

one year, it should be concluded in writing. If such an agreement was not concluded in writing, it is deemed as concluded for a non-specified period of time.

Leasing in professional transactions (B2B) in Poland can prove very profitable and safe for the tenant since the principle of freedom of agreements is retained here in its widest extent.

In renting residential premises to private tenants (not for business activity-related purposes), one must remember about the special protection of tenants. Due to this circumstance, in the event of a decision on investing funds into a real estate to be rented, it is advisable to guarantee professional handling of the transaction.

It is also worth mentioning a special type of tenancy that the so-called occasional tenancy provided for in the Act of 21 June 2001 on Protection of Tenant Rights is. It pertains solely to premises used to meet residential needs. Only natural persons not conducting economic activity may take advantage of this form of tenancy. In turn, an owner of premises leased under the occasional tenancy conditions must be a natural person and may not engage in an economic activity in the area of lease of premises.

Provisions of the above mentioned act contain a regulation offering maximum efficiency and effectiveness in emptying premises in a situation where the tenant loses the legal title to hold them. This is so since at the conclusion of the occasional agreement tenancy, the tenant is obligated to submit a declaration in the form of a notary deed in which they commit to empty and deliver the premises. Such a deed simultaneously constitutes an enforcement title which upon being appended with an enforcement clause shall become a writ of execution providing the basis for the execution thereof. This way, the entire stage of court proceedings initiated in order to obtain a writ of execution is avoided.

On the grounds of an occasional tenancy agreement, premises may be leased for the period of ten years maximum, however, this period may then be extended.

An occasional tenancy agreement must be concluded in writing under pain of invalidity. The rental and leasing of real estate are discussed in other parts of the present study (compare: chapter IV – Other basic types of agreements).

REAL ESTATE DEVELOPMENT AND MANAGEMENT

ADMINISTRATIVE ISSUE

The fundamental regulations concerning construction investments are prescribed in the Building Law Act and the Act on Spatial Planning and Land Management. Proceedings before administration bodies are further regulated by the Code of Administrative Procedure. If the real estate is located in an area for which an area development plan was issued (a document deciding the designation of a given area), potential investments conducted within it must comply with the outlines of the plan. In turn, in the situation in which the real estate is not covered by the area development plan, engaging in construction works thereon requires

AGREEMENT ON CONSTRUCTION WORKS AND RELATED AGREEMENTS

The entrepreneur may require the adaption of the real estate for their own purposes and also opt for construction as the subject of their business activity. In both cases, the conclusion of variety of agreements may prove necessary: an agreement on the provision of services, a contract for specified task, or, most frequently, a contract for construction works.

By virtue of the latter agreement, the contractor commits to hand over the facility stipulated in the agreement, compliant with the design, and principles of technical knowledge whereas the investor commits to perform the activities stipulated by the appropriate provisions and related to the preparation of the works, specifically the transfer of the construction site and design as well as the commissioning of the facility and payment of the agreed remuneration.

At the consent of the investor, the contractor (general contractor) may conclude an agreement with subcontractors. In such an event, the contractor and the investor hold joint and several liability for the payment of remuneration of subcontractors. This is not a standard solution, but one constituting a huge burden on the investor.

The regime of the construction works agreement stipulates the increased protection of the general contractor and subcontractors at the expense of the investor – e.g. by the possibility of demanding a payment guarantee each time.

On the other hand, however, on this difficult and competitive market, it is usually the general contractors and subcontractors that encounter problems, if only due to the frequent failure to comply with very tight deadlines and contractual penalties related thereto and facilitations for the investor (e.g. uncomplicated ways to withdraw from the agreement and hire another contractor.

Recapitulating, each party to the construction process ought to ensure the professional legal and technical services already at the stage of investment planning and at the conclusion of the agreements.

a decision issued by a village-mayor, mayor, or city president. Obtaining the land development conditions, in principle, does not require one to hold the legal title to the real estate and in relation thereto, it can take place prior to the final investment of funds for the purchase of the real estate.

Subsequently, a building permit is required for commencing construction or other construction works, whereby the construction project must comply with the outlines of the area development plan or land development conditions.

Upon completion of the construction of a building, by principle, an occupancy permit is required prior to its being transferred into use. Such a decision is issued after an inspection, in particular related to the compliance of the edifice with the plot or area management design, architectural and construction design, and after the construction site had been tidied.

In keeping with the announcement of the Ministry of Infrastructure and Construction, a draft of the Code of Land Development and Construction is to be presented in Q2 2017, whilethe draft would be submitted before the Sejm in Q3. The Code is aimed at regulating both the issues of design and construction of buildings and principles of operation of public administration bodies in these areas, as well as principles for the adoption of local spatial development plans. According to the Ministry's communication, the Code provides for a resignation on issuing decisions on building and land development conditions. They will be replaced by a newly introduced institution of an investment permit, issued upon establishing an investment's compliance with the commune's spatial development study.

The Code is also supposed to determine principles of collaboration between local government bodies and investors. The Wójt (mayor or city president) will be capable of concluding a land development plan imposing on the investor, where a local plan facilitating the implementation of the venture planned by the investor is adopted, the obligation of financing the investments related to the venture planned by the investor and transferring them free-of-charge to the commune, first and foremost, the technical infrastructure.

Flexible investing compliant with the new provisions is to be guaranteed by Organised Investment Areas (OIA; PL: OZI), which will facilitate implementation of large ventures requiring the coordination of works at the stages of spatial planning, land development, and investment implementation. Areas secured in the plans as OIA are supposed to wait for companies or consortia which land development agreements will be subsequently concluded with – they will therefore operate on principles similar to those applicable to special economic zones.

BUILDING LAW

A few recent amendments to the Building Law changed the requirements to obtain a building permit or the notification of construction and the rules of conducting works thereunder. The investor is now able to commence all construction works already on the grounds of a decision issued by first instance bodies, instead of the final decision, as was the case before the 1 January 2017. The list of structures which may be given into use only on the grounds of the notification of an appropriate body of completion of the construction, instead of the decision of the Building Control on issuing a use permit was extended. Next to single-family houses, the "notification procedure" is applicable to other structures as well, e.g. craft workshops, service stations, carwashes, and others. Investment processes will also be accelerated due to shortening the period for objection to the notification of construction works from 30 to 21 days.

Investment in means of production, provision of services, and know-how

LEASING

In the situation in which it is necessary to supplement the technical infrastructure of the business, e.g. to obtain new machines or vehicle fleet whereas the purchase of tangible assets is not possible or practicable for financial or tax reasons, the conclusion of a leasing agreement is a frequent solution. The Civil Code lays down the regulations related to the leasing agreement.

Under the Polish law, the leasing agreement must be concluded in writing to be valid. By virtue of this agreement, the lessor purchases a specific object from a specific seller in order to give the object for use, or relatively to use and collect benefits to the lessee. In turn, the lessee adopts the obligation to pay the lessor a fixed remuneration in instalments.

The most often used forms of leasing are:

- operational leasing – the leasing subject is not depreciated for the lessee, consequently it is the lessor, who can rely in their balance sheets on the fact that the value of the subject of leasing is depreciating with time; the agreement may introduce an option allowing the user to buy the subject of leasing,
- financial leasing – the leasing subject is depreciated for the lessee, he can rely in their balance sheets on the fact that the value of the subject of leasing is depreciating with time; it entails the transfer of the ownership to the lessee after the payment of the last rate.

FRANCHISING

Franchising is an agreement which allows the entrepreneur, who is a franchisee, to take advantage of the established position and brand of the franchisor and, in particular, to minimize the know-how costs against payment of fixed remuneration. The possibility of concluding a franchising agreement on the grounds of the Polish law follows from the principle of freedom of agreements since its elements have not been formally regulated.

This agreement belongs to very popular forms of cooperation, both on the part of well-known global corporations and successful domestic brands, with Polish entrepreneurs. Over the period of more than two decades of free market operation in Poland, it has proven to be one of the most successful manners for business concept implementation in Poland.

Many types of franchising developed in global practice function in Poland, including among others, depending on the type of business, distribution franchise, service franchise and also, depending on the system organization, direct franchise, multiple franchise or master franchise.

Enterprise financing

OWN RESOURCES, BANK CREDIT AND LOAN AGREEMENT

The entrepreneur can finance their operations both from their own resources and from external sources. Depending on the form of the conducted activity, among the internal resources, one can mention the obtained profit, amortization deductions, or owner subsidies. In the case of companies, especially corporations, the principles for financing the business activity were determined by specific legal regulations.

Entrepreneurs seeking external financing sources can take advantage of a wide range of possibilities. A popular form of financing of enterprises on the Polish market is investment credits functioning also as mortgage loans and so called start-up credits.

In practice, obtaining a loan can be rather difficult due to strict crediting policies of the banks resulting from the financial crisis and European regulations.

Loans granted to entrepreneurs by so-called para-banking institutions have become very popular in recent years. However, financing business activities this way requires consideration and a detailed analysis as it can entail certain risks.

FACTORING

Factoring is a form of the short-term financing of activities consisting in the acquisition of a claim by a specialized entrepreneur (most frequently a bank). Depending on the form, it can also consist in the takeover of the risks of the insolvency of the debtor. In order to use this form of financing, it is necessary to draft the agreement being the subject of factoring carefully. Particular attention needs to be paid as to the possibility of assigning claims.

M&A and transformations

TRANSFORMATIONS

The Polish law regulates the following subjective transformations, in principle pertaining to companies: joining of companies, division of companies, and transformations. The principal regulations related to the transformations of companies are included in the Code of Commercial Companies and Partnerships and the Civil Code and, moreover, the Act on Competition and Consumer Protection as well as specific regulations in the field of competition.

The joining of companies, can be performed by means of a takeover where the acquired company transfers all its assets to the acquiring company while the shareholders of the acquired company receive shares or stocks of the acquiring company (so-called incorporation). Another method is the so-called merger. It consists in the transfer of assets of all merging entities into a newly established corporation in exchange for stocks or shares of the newly established company. Trans-border company mergers are also possible for companies from the EU and EEA countries.

In the case of the merger of companies, depending on the size of entities, it is sometimes necessary to: refer to the Competition Law in the scope of concentration procedure, announce the intent to perform the concentration, as well as obtain the decision on the consent for concentration from the President of the Office for Competition and Consumer Protection.

In turn, the division pertains to corporations and there are three manners for conducting this: by a takeover, by the establishment of new companies, by the takeover and establishment of new companies, and by spin-off.

In the case of the transformation of a presently functioning form of operation, any commercial company can be transformed into another commercial company type. A civil law company can also be transformed into a commercial company.

The possibility to transform a business activity conducted by an individual natural person into a single-member corporation was introduced in 2011. The very process of transformation due to a high number of statutory requirements is, nevertheless, complicated and time-consuming. It must also be noted that the succession rights and obligations do not pertain to the area of tax law. What follows, a company formed as a result of such a transformation holds with the natural person joint and severally liable for tax obligations which arose prior to the transformation.

ACQUISITION OF STOCKS OR SHARES

Next to the transformations above, the acquisition of share or stock of a company is also possible. In acquiring stocks of a specific joint-stock company, the buyer acquires the property of a stockholder and non-property rights. Among the former, one may distinguish:

- the right to dividends,
- the pre-emptive right (in the case of the issuance of new stocks, the right to acquire them in keeping with the number of already held stocks which is to guarantee the maintenance of the previous stock percentage structure),
- the right to a share in the assets of the company in case it is liquidated.

As regards the non-property rights (corporate), one can mention:

- the right to vote (active and passive),
- the right to challenge resolutions of the general meeting of shareholders,
- the right to participate in the general meeting of shareholders, control rights.

In the case of companies listed on the Warsaw Stock-Exchange, acquisition of stocks can take place, in particular, through Stock-Exchange members, i.e. brokerage houses and banks. Transactions in stocks take place on the so-called primary market and parallel market depending on the compliance of the entity with the parameters stipulated in the Detailed Exchange Trading Rules.

In turn, the acquisition of a share entails the acquisition of the total of rights and obligations connected with the participation in the company. In the case of a limited liability company, the share in principle is equivalent to the amount of the contribution made to the company.

> The process of privatization has been commenced in 1989 and is continued until today. During the past twenty years, Poland has managed to transform and become an important economy in Europe, which successfully withstood the most painful results of the recent crisis and is still successfully resisting its aftermath. Nevertheless, the process of reprivatisation has not been completed yet. Similarly, the issue of claims of pre-war owners has not been fully regulated. These circumstances must be took in consideration, especially when planning an investment concerning public property.

ACQUISITION OF AN ENTERPRISE OR AN ORGANIZED PART THEREOF

With regard to the acquisition of an enterprise or an organized part thereof, such a transaction pertains to the acquisition of a material aspect of the enterprise understood as an organized complex of non-material and material components designed to conduct a business activity, in particular it covers:

- designation of an entrepreneur,
- ownership or movable and non-movable assets, including devices,
- materials, goods, and products,
- other property rights to non-movable and movable assets,
- rights arising from agreements on lease or rental of non-movable and movable assets,
- rights to use non-movable and movable assets arising from other legal relationships, claims,
- rights from securities and cash,
- concessions,
- licenses and permits,
- patents,
- other industrial property rights,
- copyrights and related property rights,
- enterprise secrets,
- books and documents related to the conducting of business activity.

The so understood whole or organized part of an enterprise can be disposed of by means of a single legal action.

It is worth remembering, however, that the party acquiring an enterprise together with the seller are jointly and severally liable for its obligations related to operating an enterprise. The buyer is not liable if, at the moment of the acquisition they had no knowledge of such obligations, despite the application of due diligence. However, this liability is limited to the value of the acquired enterprise; it is impossible to exclude or limit this rule without the consent of the creditor.

Similarly, as in most countries, transactions related to material transformations and to the acquisition of an enterprise or an organized part thereof are also very complex in Poland. In the case of companies with longer traditions, claims of former owners from before World

War II can be encountered. In each case of a planned transaction related to the subjective transformation or acquisition of a whole or a part of an enterprise as well as stocks or shares in the company, a due diligence audit is indispensable, as it guarantees professional handling of the transaction.

PRIVATIZATION

Privatization is understood as the transfer of ownership of assets from State Treasury onto private entities. The regulations related to privatization and commercialization are principally prescribed in the Act on Commercialization and Privatization of 30 August 1996.

Privatization is in principle understood as taking up stocks by private entities in the case of the increase of the share capital of the State Treasury single-member companies, the sale of stocks held in companies by the State Treasury, disposal of assets of state-owned enterprise (also of a company set up as a result of commercialization) in form of the sale of an enterprise, contribution of an enterprise into a company and transfer for use of an enterprise against remuneration.

In turn, commercialization is a process of transformation of a state-owned enterprise into a commercial law company.

Public procurement

Public procurement is an agreement against remuneration concluded with the entity subject to the public procurement law related to services, deliveries, or works, most often construction works. The Polish law provides for a specific regime of applying for public procurement, award thereof, and the resolution of disputes arising out of the procedure of public procurement. The Act on Public Procurement Law of 29 January 2004 sets forward the most important rules in this regard.

In principle, this regime, first and foremost, governs all contracts with units from public finances sector. They are, in particular: public authorities, courts and tribunals, local government units, public institutions of higher education, and local government cultural institutions. There are special modes for awarding public procurement, presently there are seven of them, however, the open and limited tender modes are preferred.

Contractors, tender participants, and other entities, if they have or had interest in obtaining a given procurement and suffered or may suffer damage as a result of the violation of the provisions of the Public Procurement Law by the ordering party, are entitled to legal protection measures. First and foremost, it is worth mentioning in this context that it is possible to file an appeal to the National Board of Appeal, against the action or an omission of a ordering party in the proceedings for the award of public procurement which is non-compliant with the provisions of the statute. The parties and participants to the appeal proceedings can challenge the judgment of the National Board of Appeal before the state court.

Although public procurement is a very desirable form of cooperation in business activities and frequently it involves the largest investments, the mode of its award is extremely complex and formalized. In relation to the above, a decision to apply for public procurement entails the necessity to guarantee support in the form of professional legal services.

Investment on the capital market

The capital market (and moreover, the banking, insurance, and retirement pension sectors) is supervised by the Financial Supervision Authority. Stock-exchange transactions constitute the fundamental element of the capital market.

The history of stock-exchange on Polish lands reaches back to 1817 with an interval from the beginning of WWII to the end of the communism era. Presently, the main capital market entity in Poland is the Warsaw Stock-Exchange S.A. (GPW) which is, at the same time, one of the largest stock-exchange in Central and Eastern Europe.

The following markets function specifically within the capital market:

- Warsaw Stock-Exchange Main Market,
- NewConnect – an alternative trading floor for new technologies start-ups,
- Catalyst - system of authorization and transactions in debt securities.

The shaping of the capital market is also the domain of the company under the name of BondSpot S.A., with the GPW as a leading stockholder. BondSpot organizes Regulated Off-Exchange Trade, Alternative Transactions System (one of Catalyst platforms), and also Treasury BondSpot Poland Market (wholesale market for bond and treasury bills).

Investing on the capital market in most cases entails the need to open a securities account and, what follows, the need to choose a brokerage house or bank providing such services. Only institutions holding a permit of the Financial Supervision Authority can engage in operations of this type.

Both treasury, municipal, and corporate bonds are listed on the Polish capital market. All of these bonds can be subject of transactions.

VI

DISPUTES AND LIABILITY WITHIN THE CORPORATION

In corporations, conflicts between shareholders or stockholders are frequent. Such disputes can occur in various configurations and either the company itself, members of its management board, stockholders or majority shareholders can be parties thereof. This chapter discusses the regulations specifying the methods of dispute resolution, but also the liability of the members of the management board in relation to the company.

Challenging resolutions

There are three forms of challenging a resolution:

- the action for the annulment of the resolution,
- the action for the ascertainment of the invalidity of the resolution,
- the action for the ascertainment of the non-existence of the resolution (not regulated in a direct manner in the Code of Commercial Companies and Partnerships, but permitted on general principles by case-law and legal literature).

In the first two cases, the following entities are entitled to challenge resolutions:

- management board, supervisory board,
- audit committee and its individual members,
- the shareholder who voted against the resolution and upon its adoption motioned for entering the objection into the minutes,
- the shareholder groundlessly barred from participation in the meeting of shareholders,
- the shareholder who did not attend the meeting, only in the case of a defectively convened meeting of shareholders or in the case of the adoption of a resolution not included in the session agenda.

In the event of an action for the ascertainment of the non-existence of the resolution, anyone with a legal interest in it has the right to lodge such a suit.

To effectively annul a resolution of a meeting of shareholders, the party should demonstrate that the resolution contradicts the articles of the company or good practices and at the same time either threatens the interests of the company or it is aimed at injuring a shareholder. Challenging the resolution does not suspend registry proceedings. Nonetheless, the registry court can suspend the proceedings upon holding a hearing. An action for the annulment of the resolution should be lodged within one month of receiving notification of the resolution, however, no later than six months as of the date of the adoption of the resolution.

The action for the ascertainment of the invalidity of the resolution is based on the assertion that the resolution contradicts the statute, not only the Code of Commercial Companies and Partnerships, but also each legal act in force. The right to lodge an action expires with the lapse of six months as of the date of receiving notification of the resolution, however, no later than three years as of the date of the adoption of the resolution.

The final verdict annulling the resolution or ascertaining its invalidity is binding in the relations between the company and all shareholders and in the relations between the company and members of the company bodies. In the cases in which the validity of an action performed by the company depends on the resolution of the meeting of shareholders, repealing such a resolution does not bear effects of the actions of the company towards third parties acting in good faith.

In a dispute concerning the annulment or the ascertainment of the invalidity of the resolution of shareholders, the challenged company is represented by the management board if no proxy was appointed for this situation by virtue of a resolution. If appointing a proxy is impossible, the court competent to rule in the case appoints a court administrator of the company.

In turn, the ascertainment of the non-existence of the resolution can be sought for if the defectiveness of the resolution is so blatant that it is even impossible to recognize it as a resolution of the body. The resolution adopted by persons who are not shareholders is an example of such a situation.

Liability of members of company bodies towards the company

Being a member of company bodies in Poland, similarly as in other jurisdictions, entails certain risks resulting from the so-called internal liability. On the other hand, it is a certain element of company protection and, indirectly, the protection of company shareholders or stockholders against the arbitrary actions of the managing bodies.

A member of a management board, supervisory board, audit committee, and liquidator is liable towards the company for the damage inflicted to it by acts or omissions contradictory with the law or provisions of the Articles of the company unless they are not guilty. In the discharge of their duties, members of the management board, supervisory board, audit committee, or liquidators should apply due diligence resulting from the professional nature of their activities. If the damage was caused by several persons, they shall be jointly and severally liable for such damage. The members of the management board can be held liable for damages inflicted by act or omission in the case of the merger process (division) of the company. In the case of a motion to hold members of the management board liable, a secret voting is ordered during the general meeting of shareholders.

It is also worth mentioning that the Code of Commercial Companies and Partnerships provides for the criminal liability of persons holding positions in company bodies for certain actions which are detrimental to the company. Their liability is also possible on the grounds of the Penal Code.

Demand for the exclusion of a shareholder

For important reasons concerning a given shareholder, the court may rule on their exclusion from the limited liability company on the demand of all the remaining shareholders. This is possible if the shares of the shareholders demanding the exclusion constitute more than a half of the share capital. The company deed may award the right to bring forth such an

action to a smaller number of shareholders if their shares constitute more than half of the share capital. In this case, all the remaining shareholders should be sued. The shares of the excluded shareholder must be taken up by the shareholders or third parties. The court establishes the take-up price on the basis of the actual value as on the date of service of the statement of claim. The court, ruling on the exclusion, sets the date by which the excluded shareholder shall receive the take-up price along with interest rates, counting as of the date of service of the statement of claim. If the price is not paid or deposited in escrow account within this set period of time, the ruling on the exclusion becomes ineffective. In the case in which the ruling on exclusion became ineffective due to the failure to pay the price, the ineffectively excluded shareholder has the right to demand that the plaintiffs repair the damage. In the case of a joint-stock company, no demand for the exclusion of a shareholder is stipulated.

General principles of "external" liability, lack of piercing the corporate veil

In principle, only the company, not its shareholders or members of bodies, is liable for the debts of a corporation. In capital companies, shareholders' "liability" is purely economic, i.e. it is the value of the contributions made to the company.

Due to the principle expressed in the Code of Commercial Companies and Partnerships that corporations possess a separate legal personality, by principle, entities controlling them do not hold liability for their obligations. Hence, the principle known as the "piercing of the corporate veil", also called "Durchgriffshaftung" used by American or German judicature, does not function in Polish company law.

However, it needs to be emphasized that both in the legal literature and in the case-law, the existence of the obligation of loyalty between shareholders or stockholders is becoming more prominent. This principle is also applicable in mutual relations within groups of companies – concerns or holdings. So far, the existence of the loyalty obligation has been confirmed in cases regarding the payment of dividends and extra-corporate transactions between the company and a shareholder, liquidation of the company, exclusion of the pre-emptive right, obligation of the cooperation of shareholders. The obligation of loyalty also binds minority shareholders towards the majority one.

In partnerships, the liability of the shareholders looks different. In a registered partnership, shareholders are held liable without limits with all their property, jointly and severally with other shareholders and in a subsidiary manner. The same principle applies to general partners in a limited partnership and in a partnership limited by shares. In a professional partnership, the liability of a partner is limited to liability for the obligations of the company resulting from the actions or omissions of this partner. Apart from this exception, partners have the same liability as registered partnership partners.

Liability of members of the management board for debts of the company

In principle, only the company, not its bodies or shareholders, holds liability for the debts of a company. However, it is worth mentioning a specific solution adopted by the Polish legislator in regard to the liability of members of the management board of a limited liability company (the most popular form of business activity). The Code of Commercial Companies and Partnerships stipulates a particular type of liability of the members of the management board in case the enforcement proceedings against the company prove ineffective. In such a case, the members of the management board are held jointly and severally liable for the obligations of the company. Each member of the body can, however, be exempt from liability if they demonstrate that the motion for a declaration of bankruptcy or composition proceedings was filed at the right time or that they are not culpable for the failure to petition for a declaration of bankruptcy or for the initiation of composition proceedings or that, despite the failure to petition for a declaration of bankruptcy and the failure to instigate composition proceedings, the creditor suffered no damage. This type of civil law liability is not stipulated for a joint-stock company at all.

What is more, the statute also provides for criminal liability of members of the management board and liquidators of both a limited liability and joint-stock company who, while discharging their functions, did not petition for a declaration of bankruptcy.

Actio pro socio

The Code of Commercial Companies and Partnerships tries to protect the interests of a company also in the case in which the company itself remains passive due to a variety of reasons. If the company does not bring forth an action for the repair of suffered damages within one year of the disclosure of the injurious action, each shareholder can bring forth an action for the repair of the damage inflicted to the company.

Actio pro socio is also possible against the members of company bodies. In such a case, to avoid liability, they cannot refer to the discharge from the fulfilment of their duties they were granted by the general meeting of shareholders or to the company's waiver of claims for compensation.

However, this institution is problematic in practical application. This is because a single shareholder does not enjoy direct advantages if they win the case – the damage is repaired in relation to the company. As a result, *actio pro socio* is applied infrequently in solving corporate disputes.

VII

LIQUIDATION AND INSOLVENCY

Liquidation

The following circumstances can provide reasons for initiating the liquidation proceedings of a company:

- reasons provided for in the company deed,
- a unanimous resolution of all shareholders,
- the company's declaration of bankruptcy,
- death of a shareholder or their declaration bankruptcy,
- the termination of the company deed by a shareholder or the shareholder's creditor,
- a final court judgment.

Liquidation is commenced as at the date on which the court judgment on the dissolution of the company becomes final or as at the date on which the shareholders adopted a resolution on the dissolution of the company, or as at the date of the emergence of another cause for the dissolution of the company.

During the course of the liquidation, the company maintains its legal personality. The name of the company is annotated with the designation "w likwidacji" [in liquidation]. The members of the management board become liquidators, unless the deed of formation or a resolution of the shareholders provide otherwise. The task of the liquidators is to wind up the current operations of the company, recover debts, fulfill obligations, and liquidate the assets of the company (liquidation activities). New operations can be started only when they are necessary to close the ventures already in progress. Liquidators are also obligated to close employment-related matters, which entail the need to terminate employment agreements and, at times, the need for collective lay-offs.

The real estate of a company in liquidation can be disposed only by way of a public auction or in a non-tender mode, but only by virtue of a resolution of the shareholders and at a price not lower than the one adopted by the shareholders in the resolution. During the liquidation period, payment, even partial, of profits to shareholders or the division of the assets of the company prior to the satisfaction of all liabilities is inadmissible.

The liquidators notify the registry court of:

- starting the liquidation,
- names, surnames, and addresses of the liquidators,
- the manner of representation of the company by the liquidators and all the changes in that regard, even if no change in the previous form of company's representation has occurred.

Each liquidator has the right and duty to dispatch the notification. Moreover, liquidators:

- should announce the dissolution of the company and the opening of liquidation and summon the creditors to raise their claims within three months as of the announcement date,
- draw up the liquidation opening balance which they submit to the general meeting of shareholders for approval,
- upon the lapse of each financial year, they should submit a report on their actions and a financial statement to the general meeting of shareholders.

General information about amended insolvency regulations in Poland

On 1 January 2016 the new Restructuring Law Act of 15 May 2015 entered into force, by the virtue of which substantial changes to the Bankruptcy and Rehabilitation Law Act of 28 February 2003, which has been renamed to the Bankruptcy Law, were introduced. Starting from 1 January 2016 the Bankruptcy Law pertains, in principle, exclusively to bankruptcy proceedings, whereas rehabilitation proceedings are be regulated by the new act – the Restructuring Law.

The introduced amendments resulted from a negative assessment of the previous regulation which did not create a positive environment for the entrepreneurs facing crisis to overcome the difficulties. The main problems of the functioning of the system of insolvency law to be improved were lengthiness and low efficiency of bankruptcy and proceedings. The change has also been dictated by the fact that the regulation of the rehabilitation proceedings resulted in the extremely rare application of such proceedings, since the risks related to the filing by an entrepreneur of a motion for initiating such proceedings in relation to them (stigmatization and loss of trust of potential counterparties) outweighed the advantages stemming therefrom. For the aforementioned reasons, entrepreneurs in a difficult financial situation did not opt for rehabilitation proceedings.

The new Restructuring Law aims to change this situation by introducing a number of new solutions serving the purpose of the entrepreneur's restructuring that is intended to sustain their activity and prevent bankruptcy, which is now treated as ultima ratio. Separating restructuring proceedings from the bankruptcy regulations in two acts shall also decrease the aforementioned stigmatization and encourage entrepreneurs to use the statutory tools to cope with difficulties. A restructuring motion now has priority over a bankruptcy petition.

Restructuring and bankruptcy proceedings will be conducted by commercial divisions of district courts whereas judicial acts will be performed by a judge-commissionaire.

By the amendment, the very definition of insolvency, which is relevant for both Bankruptcy and Restructuring Law, has been changed, for under the new provisions the debtor is insolvent if they lost the ability to deliver their mature financial obligations, whereby it is presumed that the debtor lost the ability to deliver their mature financial obligations if the delay in the performance of financial obligations exceeded three months. Moreover, a debtor being a legal person or an unincorporated organisational unit awarded legal capacity by a separate statute, is also insolvent when their financial obligations exceed the value of their assets, and this status continues for

a period exceeding twenty four months. The abovementioned definition contains an unspecified concept of the "ability to deliver mature financial obligations" but still it meets the needs of economic reality much better than the previous definition of insolvency, which was based on the sole fact that the debtor factually ceased to pay their outstanding financial obligations.

The regulation at issue assumes the establishment of the online Central Restructuring and Bankruptcy Register (Centralny Rejestr Restrukturyzacji i Upadłości – "CRRU"), which is probably the most important tool foreseen by the legislator to fulfil the goals of the amended regulation and is very much expected by the practitioners. The CRRU will contain all current information on pending bankruptcy and restructuring proceedings, as it shall be maintained in order to record and announce decisions, orders, documents and information relating to restructuring and bankruptcy proceedings and make the abovementioned data available. The CRRU will also enable the submission of papers and documents and serving thereof. Not only will the CRRU accelerate the conduct of the insolvency proceedings, it will also simplify the debtor's access to the information about the pending proceedings and as a result, enable the increased number of creditors to actively participate therein. The CRRU is scheduled to be established on 1 February 2018, but this date is unfortunately expected to be postponed till 2019.

The amended regulation is neither foreseen for the sole benefit of the debtor, nor for the sole benefit the creditors. The main aim of the reform is to enable the effective change of the entrepreneur's situation that has arisen, which has a negative impact on the economic reality – either by the restructuring or liquidation of the company after conducting the bankruptcy proceedings. On the one hand, the regulation was to introduce some measures for strengthening the position of the creditors within the course of the proceedings, however it shall be noted that the regulation promotes the active participation of the creditors, which becomes crucial in protecting their interests and may negatively impact the situation of those who do not opt-in for participation in the proceedings.

Although the CRRU has not been established yet, after over a year of functioning of the new regulation, it may already be stressed that the amendments introducing the "second chance" policy in Poland has been positively received by both – the entrepreneurs and the insolvency law practitioners – which results in a growing number of decisions on opening the restructuring proceedings.

The future changes to the Bankruptcy Law and Restructuring Law will probably have to be implemented after the Directive of the European Parliament and of the Council on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures and amending Directive 2012/30/EU ("the Directive"). The Directive proposal was published on 22 November 2016. The current Polish regulation, however, establishes a modern system of insolvency law and already meets most of the basic requirements of the Directive. Nevertheless, the harmonization of the material insolvency law within the European Union will most probably result in at least some changes to the current regulation (e.g. by introducing rules governing restructuring cross-border enterprise groups).

Restructuring Law

According to the new restructuring law, the restructuring proceedings may be conducted towards an insolvent debtor or one facing insolvency and are initiated by a motion for restructuring filed by the debtor. In the event a motion for restructuring and a motion for the declaration of bankruptcy are filed (also by a creditor or another entity), the motion for restructuring is examined in first order. In the restructuring proceedings, debtors assets become a composition estate from which, in compliance with the conditions of the composition with creditors, they are to be satisfied. In the case of remedial proceedings, a remedial estate is created in place of a composition estate. As regards the date of the opening of restructuring proceedings until the date of its conclusion, satisfying the performances arising against the liabilities by the debtor or bankruptcy officer, which by virtue of the law are covered by the composition, is inadmissible.

The purpose of the restructuring proceedings is to avoid a declaration of bankruptcy of the debtor by enabling him to restructure through an composition with creditors and, in the case of remedial proceedings, by carrying out remedial actions, whilst safeguarding the legitimate rights of the creditors.

The act at issue also predicts simplified principles for granting the entrepreneur support in the restructuring process by the state or using state resources.

The Restructuring Law provides for four types of restructuring proceedings: for the approval of a composition, express composition, composition, and remedial proceedings. The entrepreneur may choose a procedure matching their needs and switch - in the case of a change of circumstances - between procedures. The proceedings for the approval of the composition and express composition are only admissible, however, when the sum of the disputed claims which give the entitlement to vote on the composition does not exceed 15%.

The list of liabilities includes, in principle, personal liabilities towards the debtor arisen prior to the initiation of the restructuring proceedings. A composition with the creditors may be achieved upon obtaining consent from their relevant majority. The court shall refuse to open restructuring proceedings if the debtor's ability to pay the current costs of the proceedings and fulfil obligations arising after its opening has not been rendered credible.

During the course of restructuring proceedings the debtor, as the rule, maintains its power to manage the company, however has some specified obligations towards the court supervisor and the judge-commissioner and under the certain conditions the court *ex officio*

revokes the self-management of the debtor and appoints an administrator.

The restructuring of the debtor's obligations shall include, in particular: postponing the performance deadline, payment in installments, reduction of the amount, conversion of claims to shares and/or stocks, change, exchange and/or repeal of the law which provides security for the specific claim. The composition proposals may, however, indicate more methods of restructuring the debtor's obligations. After the adoption of the composition by the creditors' committee and its approval by the court, the composition shall be binding on the creditors whose claims under the Act are subject to the composition.

Restructuring proceedings for the approval of the composition provide for a simplified procedure for compiling the list of liabilities - by the debtor himself with active participation on the part of creditors and the composition supervisor. The debtor shall collect the votes in writing and submit them together with the application for the approval of the composition. The role of court is limited here to the issuance of a decision on the approval of the composition adopted by the creditors in the manner of the collection of votes by the debtor himself. The debtor may initiate the proceedings only after entering into a contract for exercising supervision with a licensed restructuring advisor.

The express composition and composition proceedings shall enable the debtor to conclude the composition after the table of claims under a court procedure has been prepared and approved. As of the date of the opening of the proceedings, the property which serves to run the venture and the property which belongs to the debtor shall become the composition estate. Enforcement proceedings concerning claims subject to the composition by virtue of the law and initiated prior to the opening of the abovementioned proceedings shall be suspended by the operation of law as of the date of the opening of the proceedings, which is one of the main immediate results of the initiation of restructuring proceedings. As of the date of the opening of the proceedings, fulfilment by the debtor of those obligations is also unacceptable and so is the encumbrance of the debtor's property. The other substantial effect of initiation of restructuring proceedings is the admissibility of termination by the landlord and/or lessor of the tenancy and/or lease agreement of the unit and/or real property in which the debtor's venture is run only by the consent of the creditors' committee. Those statutory provisions shall enable the debtor to further conduct his business.

Remedial proceedings are intended to enable deep economic restructuring of the debtor's assets and obligations. This kind of restructuring proceedings may be initiated not only by the debtor but also by the personal creditor interested in the continuation of the debtor's economic activity. The remedial actions shall include legal and factual acts which aim to improve the economic situation of the debtor and to restore the debtor's capacity to perform his obligations, while protecting him against debt enforcement proceedings. Within the framework of such proceedings, it will be possible, for instance, to adjust the employment level to the needs of the reorganized venture (the rules thus far reserved for bankruptcy proceedings will apply) or to rescind disadvantageous reciprocal contracts. As a rule, in remedial proceedings the debtor is deprived of its power to manage the company. Under certain conditions, the Act allows the debtor, however, to manage its assets within the scope of the debtor's ordinary management activities. Finally, after carrying out remedial actions, which should not last longer than twelve months from the date of opening the remedial proceedings, the creditors' commitee is to be convened in order to vote on the composition.

Bankruptcy Law

The bankruptcy proceedings are regulated by the Bankruptcy Law of 28 February 2003. It contains the rules on the collective pursuit of claims by creditors from insolvent debtors who are entrepreneurs, the rules on the collective pursuit of claims by creditors from insolvent debtors who are natural persons not conducting business activity, effects of a declaration of bankruptcy and the rules for cancellation of liabilities of a bankrupt entity who is a natural person. This act covers entrepreneurs, limited liability companies and joint-stock companies as well as shareholders of partnerships, liable for the obligations of the company with all their assets. The amended regulation has also introduced the principles for collectively enforcing creditor's claims from insolvent debtors who are natural persons not conducting business activity.

Any proceedings governed by this Act should be conducted in such a manner as to ensure the maximum possible satisfaction of claims and, where reasonable - to enable the continuation of the debtor's current enterprise. Only if the proceedings are conducted with respect to natural persons, the proceedings shall also be conducted in such a manner as to provide a reliable debtor with the possibility of debt reduction, ensure the cancellation of liabilities of the bankrupt entity which were not satisfied in the bankruptcy proceedings and, where possible - to satisfy the claims of the creditors to the greatest possible extent.

It is also worth noting that due to membership of Poland in the EU, the provisions of the Council Resolution (EC) of 29 May 2000, No. 1346/2000 on insolvency proceedings in the event of cross-border bankruptcy are also directly effective.

A motion for the declaration of bankruptcy can be lodged by a debtor or by each of their creditors. The debtor shall file a petition for bankruptcy with court no later than within thirty days from the day in which the grounds to declare bankruptcy occurred under the pain of possible responsibility for the damage caused as a result of their failure to file a petition within the established time limit. If the debtor is a legal person or an organizational unit without a legal personality that is granted legal capacity by a separate act of law, the obligation to file a motion to declare bankruptcy rests with each person who is authorized to represent the debtor and manage their affairs on the basis of this

Act, the company deed or the articles of association, either individually or jointly with other persons.

If one fails to submit a petition for bankruptcy within the time limit defined by law, despite being obliged to do so or significantly contributes to the failure to submit a petition, the court may issue a ruling depriving such a person of the right to conduct business activities on one's own account or as part of a civil-law partnership, and to act as a supervisory board member, audit committee member, representative, or attorney of a natural person pursuing business activity to the extent of this business, a commercial company, a state-owned enterprise, a cooperative, a foundation, or an association. The same ruling may be issued against a person who hindrances the pending bankruptcy proceedings by non-compliance with its obligation prescribed by law during its course:

- after a declaration of bankruptcy did not hand over or indicate the bankrupt's assets, accounting books, correspondence, or other documents, even though they were obliged to do so under statutory law,
- being the bankrupt - concealed, destroyed or encumbered the assets comprising the bankruptcy estate,
- being the bankrupt, failed to perform, other duties and obligations imposed on him by the statutory law or a court judgment or the judge-commissionaire, or in some other manner obstructed the proceedings.

Along with the regulation of the Code of Commercial Companies and Partnerships that stipulates the liability of members of bodies of the companies for debts of the bankrupt company, the provisions of the Bankruptcy Law constitute a strict law for entrepreneurs, which enforces adherence to deadlines and a high degree of cooperation in the bankruptcy proceedings.

The recent amendment introduced a rule that a restructuring motion has priority over a bankruptcy petition, which means that if a petition for bankruptcy and an application for debt restructuring are filed, the application for debt restructuring shall be examined first. What is more, an entrepreneur may not be declared bankrupt in the period from the commencement of the restructuring proceedings until their termination or final discontinuance.

The amendment has also introduced a rule which previously stemmed exclusively from the case-law into the Bankruptcy Law, and namely the duty to dismiss a motion for declaration of bankruptcy filed by a creditor if the debtor demonstrates that the liability is of a contentious nature while the dispute between the parties arose prior to the filing of the motion for the declaration of bankruptcy.

If a petition for bankruptcy is filed, the court shall, on request or ex officio and without undue delay take measures to secure the debtor's assets. The court may secure the debtor's assets e.g. by appointing a temporary court supervisor from the licensed restructuring advisor or even establishing compulsory administration over the debtor's assets.

The court shall however dismiss a petition for bankruptcy if the assets of an insolvent debtor are not sufficient to cover the costs of proceedings or are sufficient to cover these costs only. When dismissing a petition for bankruptcy, the court shall determine whether the material collected in the case provides the basis for dissolving the entity entered into the National Court Register without liquidation proceedings.

As of the date of the declaration of bankruptcy, the assets of the bankrupt, with certain exceptions, become the bankruptcy estate which serves to satisfy the creditors of the bankrupt. The bankrupt loses their right to manage the assets comprising the bankruptcy estate and the possibility of using and disposing of them. Acts in law concerning the assets in the bankruptcy estate with regard to which the bankrupt has lost the right of management are null and void. Upon the declaration of bankruptcy, the bankruptcy estate components cannot be encumbered by way of a: mortgage, pledge, registered pledge, treasury pledge, or maritime mortgage in order to secure the claims which arose prior to the declaration of bankruptcy.

The bankrupt is obligated to indicate and hand over all their assets to the bankruptcy officer and also to hand over all documents related to their business, estate, and settlements, in particular, accounting books and other registers and inventories kept for tax purposes as well as all of the correspondence. The bankrupt confirms the fulfilment of these obligations in writing on a document, which is then submitted to the judge-commissionaire. The bankrupt is obligated to provide the judge-commissionaire and the bankruptcy officer with all the necessary explanations concerning their assets. Having declared bankruptcy, the entrepreneur conducts transactions under their previous name annotated with the words "w upadłości" [in bankruptcy].

The financial obligations of the bankrupt that are not yet payable, become payable as of the date of the declaration of bankruptcy. As of the date of declaration of bankruptcy, non-monetary obligations change into financial obligations and become payable, even if their maturity date has yet to come.

Legal transactions executed by the bankrupt within one year before the day of submission of a petition for bankruptcy disposing of the bankrupt's assets are ineffective with respect to the bankruptcy estate, if they were performed gratuitously or non-gratuitously but the value of the benefit provided by the bankrupt grossly exceeds the value of the benefit received by the bankrupt or reserved for the bankrupt or a third person. It is also worth indicating that non-gratuitous legal transactions executed by the bankrupt within six months before the day of submission of petition for bankruptcy with persons closely related to the bankrupt, shall be deemed ineffective with respect to the bankruptcy estate ex officio or at the receiver's request, unless the other party to the transaction demonstrates that the transaction did not cause a detriment to creditors. The same rule applies to the related companies.

Any provisions of a contract or agreement to which the bankrupt is a party that obstruct or prevent the achievement of the purpose of the bankruptcy proceedings shall be ineffective with respect to the bankruptcy estate

The court, administrative and or administrative court proceedings concerning the bankruptcy estate can be initiated and conducted further only by the bankruptcy officer or against them. The bankruptcy officer conducts the proceedings on behalf of the bankrupt but in his own name.

If proceedings before arbitration court have not yet commenced on the day of the declaration of bankruptcy, upon obtaining the consent of the judge-commissionaire, a bankruptcy officer may withdraw from the provision concerning proceedings before arbitration court, if seeking a claim before arbitration court hinders the liquidation of the bankruptcy estate.

Enforcement proceedings (both court and administrative) pending against the bankrupt, involving the claim that is to be lodged to the bankruptcy estate, become, by virtue of the law, suspended as a result of the declaration of bankruptcy. The suspension by virtue of the law means that the proceedings become suspended without any need for a separate decision of the court or other authority. Such proceedings are terminated by virtue of the law after the coming into force of a bankruptcy order.

The creditors submit the declarations of claim in writing in two copies. A creditor will soon also have the opportunity to submit a declaration of claim via the CRRU. The bankruptcy officer verifies whether the declared claim is confirmed in the accounting books or in other documents of the bankrupt or in the entries in the land and mortgage register or registries. Then they summon the bankrupt to submit a declaration whether they recognize the claims within a prescribed period of time. If a lodged claim is not reflected in the bankrupt's accounting books or other documents, or in entries in the land and mortgage register or other registers, the bankruptcy officer orders the creditor to submit documents indicated in the declaration of the claim within one week under pain of refusal to acknowledge the claim. This time limit cannot be extended or restored. However, the bankruptcy officer may take documents submitted after the expiry of the aforesaid time limit into account if this shall not cause a delay in the delivery of the list to the judge-commissionaire.

Upon the lapse of the period for raising a claim and the verification of those raised, the bankruptcy officer shall prepare a list of claims without undue delay, but not later than within two months from the expiry of the time limit to lodge claims. A list of claims is submitted in electronic format. It shall be entered to the Register, however until the establishment of the CRRU, a list of claims is announced in the Court and Commercial Gazette.

Within two weeks from the day of announcement of the list of claims, a creditor may lodge an objection with the judge-commissionaire to the acknowledgement of a claim - if the creditor is included on the list of claims or as to the refusal to acknowledge a claim - if a claim lodged by that creditor has been dismissed.

The amendment also repeals the provisions on bankruptcy proceedings with a possibility of entering into a composition, which in the previous regulation constituted a separate type of bankruptcy proceedings, and introduced substantially simplified provisions on the conclusion of a composition in bankruptcy in its place. This means that currently no more bankruptcy proceedings with the possibility (per se) of entering into composition will be conducted, but only liquidation proceedings during which a composition may be concluded if creditors so decide.

The amendment has introduced a possibility to prepare and file along with the motion for the declaration of bankruptcy a motion for approval of conditions of sale of a part of debtor's enterprise or an organized part thereof or asset components constituting a significant part of the enterprise (the so-called "prepared liquidation" or "pre-pack"), the sale of which will mean a liquidation of the bankruptcy estate or a part thereof (this will allow for a faster liquidation of the bankruptcy estate, and may also result in obtaining a higher price for the entrepreneur's assets subject to sale). The pre-pack is seen as an effective opportunity to maintain the on-going activity of the company and is in fact deemed to be a far-reaching tool of restructuring proceedings despite being regulated in the Bankruptcy Law.

VIII

EXTERNAL DIFFICULTIES – DISPUTE RESOLUTION

In Poland, just as in any other democratic state in the world, Investors can encounter external difficulties. Obstacles, which are described below, do not substantially differ from those, that may be experienced by entrepreneurs in any other European country. As such, they do not change the fact that Poland seems to be an attractive place for investment.

Civil and commercial disputes

Napoleon Bonaparte is claimed to have said "Promise everything, deliver nothing." Unfortunately, this saying has become the motto of many entrepreneurs who do not perform their obligations.

It is the role of the Civil Code to equip those damaged by such actions with the possibility to pursue their rights. The Polish law adheres to the principle known as *pacta sunt servanda* – contracts must be observed. What is more, the entrepreneur should perform the contract properly and take the professional nature of such activity into account.

The Civil Code does not provide for a single general type of non-performance and improper performance of an obligation. Thus, the debtor can be delayed or in default (if the delay is due to their fault). The performance could have been or could become impossible to be fulfilled. What is more, the consequences of the delivery of a faulty item are also defined differently.

The fundamental principle of the Polish civil law is the possibility to demand the performance of the original obligation. Moreover, the debtor is liable for the damage inflicted by the non-performance of the agreement. The creditor should prove the fact of the non-performance of the obligation, the amount of the damage (understood as a loss or/and lost profits) and a causal link between them. In turn, the debtor can defend themselves by arguing that the non-performance of the agreement was not a result of their fault. The proof of the abovementioned preconditions is necessary for the creditor to be compensated. However, it is worth indicating that even in the case of the lack of the debtor's fault, the debtor is obligated to pay the interest rates for the non-performance of the monetary obligation – for the period when they were delayed. In contractual relations a change of the basis of liability for non-performance or improper performance of an obligation from liability based on guilt to liability based on risk is possible in principle; in such a situation, the debtor may not be exempt from compensation by demonstrating that non-performance of an agreement is not based on their guilt if it results from circumstances subject to risk which they adopted in the agreement (this solution cannot be applied to B2C agreements if it was to be disadvantageous to the consumer).

With regard to the non-performance of agreements concerning transactions of items (sales agreement, contract for specified task, etc.), the Polish law is supplemented by the regime of the warranty for physical and legal defects of an item. If the item has a defect, the buyer may submit a declaration on lowering the price or on withdrawal from the agreement,

unless the seller immediately and without excessive inconvenience for the buyer replaces the defective item with a non-defective one or removes the defect. This limitation does not apply if the item has already been replaced or repaired by the seller or the seller did not comply with the obligation to replace the item with a non-defective one or to remove the defect. If the buyer is a consumer, then instead of the removal of the defect offered by the seller, he may demand the defective item to be replaced with a non-defective one or, instead of replacement, demand the removal of the defect unless making the item comply with the contract in the manner chosen by the buyer is impossible or would generate excessive costs when compared with the manner offered by the seller. In assessing the excessive nature of costs, the value of a non-defective item as well as the type and significance of the detected defect are taken into consideration, next to the inconvenience that another manner of satisfying the buyer would generate for him. The buyer, however, may not withdraw from the contract if the defect is insubstantial.

Moreover, if a sold item is defective, the buyer may demand replacement of the item for a non-defective one or removal of the defect. The seller is obligated to replace the defective item with a non-defective one or remove the defect within a reasonable period of time without excessive inconvenience for the buyer. The seller may refuse to comply with the buyer's demand if making the item comply with the contract in the manner chosen by the buyer is impossible or would generate excessive costs when compared with the another possible manner of making the item comply. If the buyer is an enterprise, the seller may refuse to replace the item for a non-defective one also where the costs of complying with this obligation exceed the price of the item sold.

The seller is also liable for legal defects of the item, i.e. for situations where a sold item is a property of or is encumbered with the right of a third party. In such a case, the buyer is entitled to claims, first and foremost, for the reimbursement of the price and compensation for potential damage resulting from the item's legal defect.

There is also a separate regime of liability for unlawful acts, i.e. torts. It contains both general rules (providing for the liability of one person for the damage incurred by another person) as well as specific rules (regulating specific types of torts, e.g. car accidents). One of the specific types of torts is the compensatory liability of the State Treasury or territorial self-government. The state authorities are liable for damages resulting both from the issuance of a normative act (upon ascertainment of its unconstitutional nature), the issuance of a court judgment or administrative decision (upon ascertainment of their non-compliance with the law) and from the non-issuance of a normative act, judgment, or decision. The State Treasury is liable for such damages towards third parties, whereas state officials are liable for the damage inflicted by their actions to the State Treasury.

Polish court proceedings

The pursuit of claims in Poland is done by a recourse to a court (or a court of arbitration). The Polish civil procedure is strongly formalized. The content of legal briefs, their form, time limits – all these requirements are strictly adhered to by Polish courts. Failure to comply with any of the requirements frequently ends in a case lost on the procedural grounds.

The Polish civil litigation is conducted in writing. In other words, the dominant part of the dispute takes the form of legal briefs – the statement of claim, reply to the statement of claim, and further briefs. It is worth indicating that under the wording of the Code of Civil Procedure (as amended in 2012) it is the court that will draft the so-called schedule of proceedings and decide when parties are to submit their briefs. Consequently, outside of these court prescribed circumstances, it will not be possible, by principle, for the parties to file a brief. This is to serve the streamlining and expediting of the proceedings.

The written nature of the Polish litigation does not mean, however, that oral hearings are of no significance. To the contrary, questioning of witnesses and experts, opening statements and closing arguments are frequently of key importance for the case. Minutes are kept of all hearings in Poland. Presently, a hearing recording system is being introduced gradually, thanks to which each party shall be able to receive a faithful audio recording of the course of the entire hearing.

The court of first instance can reject the statement of claim (on the formal grounds) or it can settle the case as to its merits: dismiss the claim or rule in favour of the plaintiff. A party is entitled to challenge the judgment issued by the court of first instance by appealing to the court of a higher instance. The court of appeals can either dismiss or allow the appeal, by changing or reversing the judgment of the court of the lower instance or remit the case for rehearing.

In certain types of disputes (by principle where the value of the amount in dispute is at least PLN 50,000) an extraordinary means of appeal is admissible – a cassation complaint to the Supreme Court. However, there are categories of cases in which the possibility of conducting cassation proceedings is excluded (e.g. cases concerning rent, lease, or tenancy). The Supreme Court is the court of law – it does not evaluate facts, but possible violations of substantive or procedural rules by the lower courts. The cassation complaint is heard only in the case of the most grave violations of the law or if the case presents an important legal issue or there is contradictory case-law in regard to the examined matter. The Supreme Court independently decides whether to accept the case for examination, whereas this decision depends mainly on the fact whether the settlement of a legal issue in a given case is not only in the interest of parties to the dispute, but also in public interest (settling a dispute causing substantial interpretative problems results in discrepancies in the case law of courts of lower instances, etc.

The Code of Civil Procedure also provides special procedures for the pursuit of certain claims. Writs of payment may be issued in the two types of writ-of-payment proceedings: payment-order proceedings and writ-of-payment proceedings. In such proceedings, by principle, the courts will rule in favour of the plaintiff provided that the circumstances of the case do not raise doubts. The court first issues a writ of payment, and only later does it allow the defendant to raise charges or lodge objections. The proceedings continue only if means of appeal have been effectively lodged by the defendant. Then, the defendant has a chance to present its case.

Non-litigious proceedings are proceedings where the dispute (between parties who have contradicting interests) is not always required and frequently, next to the private interest, the public interest or security of transactions play a significant role. The types of non-litigious proceedings, which have a fundamental significance for the etrepreneur are those related to real estate – land and mortgage register proceedings, proceedings on acquisitive prescription or on the abolition of co-ownership and commercial registry proceedings.

The payment-order procedure in which the writ of payment constitutes a security title is particularly advantageous for the plaintiff. Thus, it enables the seizure of the bank account of the debtor or the undertaking of other means which will allow the claim to be satisfied at a later date (or at all). Nevertheless, issuing a writ of payment in the payment-order proceedings is reserved only to the most obvious cases where the claim is proven by, for example, an official document, a bill recognized by the debtor, bill of exchange, or cheque.

The provisions predict also a specific form of writ-of-payment proceedings in the form of electronic writ-of-payment proceedings in which cash claims which became mature within the period of three years prior to the date of filing the suit can be pursued. In such proceedings, the statement of claims is drawn up and filed with the court via electronic means. In the statement of claims, the claimant should indicate the evidence supporting their claims. The evidence is not attached to the statement of claims. Cases in this type of proceedings are heard by one court for the entire territory of the country, the so-called E-Court, which is the District Court Lublin-Zachód in Lublin, 6th Civil Division. The order of payment issued in this type of proceedings is issued in an electronic form, it is served onto the defendant who may raise an objection by email or in writing. In the event of effective and timely objection, the order of payment loses its force in full, whereas the court remits the case to the generally competent court. This type of proceedings, due to significant simplifications, is usually used by entrepreneurs pursuing mass payments in simple and standard cases (such as non-payment of phone and Internet bills, etc.) and it allows to obtain an enforcement title quickly.

Moreover, the Polish procedural law offers the plaintiffs the possibility to secure claims in general civil law proceedings. A motion for securing the claims can be filed along with the statement of claim or even prior to the initiation of proceedings. It is advisable especially when the financial standing of the debtor is uncertain and they are liquidating or will liquidate their assets. The Code of Civil Procedure offers a wide range of means for securing claims, from the seizure of movable property or of a bank account, encumbrance of the real estate with a mortgage, bans on engaging in various activities, to the establishment of an administrative receivership in the enterprise.

This description of Polish civil litigation leads to the conclusion that in case of each type of proceedings, it is advisable to appoint a professional counsel – an attorney at law or a legal counsel. The formalized procedure and severe sanctions for non-adherence thereto are the best reason for employing a lawyer. Furthermore, sometimes participation of a professional attorney in the proceedings is indispensable, e.g. a cassation complaint must be drawn up and signed by a professional attorney.

The introduction into the Polish civil litigation of new principles of proceedings, the so-called judge's discretional authority over the proceedings, requires a strong involvement in the dispute, especially in the initial stages thereof. Omissions perpetrated at this very moment can be of colossal significance for the outcome of the case and even decide whether the case is lost or not.

In Poland, lawyers (attorneys at law, legal counsels) provide the necessary knowledge in regard to substantive law and the required practical skills as far as the procedural law is concerned. They have five years of higher-education and at least three years of further professional training (bar training course) which ends in an examination organized together with the State and self-governments of legal professions.

They are also subject to obligatory civil liability insurance and a special ethical codes set by the self-governments of those legal professions.

Difficulties concerning the labour law

As indicated above, the Polish labour law system is complex and it guarantees numerous employee privileges. Employers may encounter difficulties especially with regard to the dissolution of employment contracts with the staff. Such disputes frequently have to be settled in the labour court. The proceedings in cases concerning labour law have a separate regulation in the Code of Civil Procedure, which gives an employee a privileged position in a dispute with the employer. Therefore, it is advisable to ensure professional legal representation. It is worth adding that the employer, apart from the claims of employees, can also face difficulties with regard to administrative law, following from the inspecting activities of State Labour Inspection.

Arbitration and alternative dispute resolution methods in Poland

Arbitration is an alternative to the resolution of disputes in court. In Poland, arbitration proceedings are becoming an increasingly popular form for the resolution of disputes between entrepreneurs. All disputes which have the feature of so called arbitrability (i.e. those which in principle can be subject to a settlement in court) can be submitted to jurisdiction of a court of arbitration.

The main advantage of arbitration is its flexibility. Parties can shape the rules of proceeding before the court of arbitration according to their will. They can also opt for one of the permanent courts of arbitration in Poland (the largest two are the Court of Arbitration at the Polish Chamber of Commerce in Warsaw and Court of Arbitration at the Polish Confederation of Private Employers Lewiatan) to settle the dispute according to their own rules of proceeding. Arbitration is also fully confidential.

The provisions of Polish arbitration law apply to proceedings before the court of arbitration with its seat in Poland. In certain circumstances, Polish (common) courts also apply the Polish Code of Civil Procedure when the forum of arbitration is located abroad. This pertains in particular, to the recognition and enforcement of arbitral awards (compare: chapter VIII – Recognition and enforcement of foreign arbitral awards).

The arbitration agreement constitutes the grounds for proceedings before a court of arbitration. This agreement has to indicate the subject of the dispute or the legal relationship which the dispute may arise from, or has arisen from (in this latter case, the agreement is called "compromise"). As the Polish Code of Civil Procedure indicates, the arbitration agreement must be made in writing. This requirement is also fulfilled if the agreement was included

> In 2005, Poland amended the part of the Code of Civil Procedure concerning arbitration. The legislator adopted the UNCITRAL Model Law on International Commercial Arbitration in a practically unchanged form. Hence, Polish solutions in regard to arbitration do not in any way differ from those of other countries. What is more, Poland is also a party to the European Convention on International Commercial Arbitration of 21 April 1961 (the so-called Geneva Convention) and to a very important act of international law regulating the issue of recognition and enforcement of foreign arbitral awards, i.e. the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958 (the New York Convention).

in the letters exchanged between the parties or declarations made by means of distant communication which allow their content to be recorded and preserved. In turn, under the New York Convention the term "written agreement" refers to both an arbitration clause included in the contract, as well as a compromise –

both signed by parties or included in the exchange of letters or telegrams. A similar effect is achieved by making a reference in an agreement to a document containing the decision on submitting the dispute to arbitration, provided this agreement is made in writing and the reference is such that it makes the arbitration clause an integral component of the agreement.

What is important, it is also possible to include an arbitration agreement in the articles of association of a commercial company (respectively also: a cooperative or association). In such a case, all disputes from the company relationship must be settled by the company and its shareholders in arbitration.

The arbitration agreement is binding for the parties. This means that if, despite the conclusion thereof, one of the parties files a suit in a common court of law and the other party objects, pointing to the arbitration agreement, the court should reject the statement of claim thus referring the parties to arbitration.

The award of a court of arbitration is, in principle, final and binding upon the parties. Nevertheless, if the award or proceedings were affected by serious defects, it is possible to file a recourse to the Court of Appeals for setting aside of the award.

Following the footsteps of the Model Law, the Code of Civil Procedure provides for the following grounds for the setting aside of an arbitral award:

- there was no arbitration agreement, the agreement is not valid, ineffective, or it lost the force of law under the law applicable thereto,
- the party was not given proper notice of the appointment of an arbitrator, of the arbitral proceedings or was otherwise unable to present its case before the arbitral tribunal,
- the arbitral award deals with a dispute not covered by or beyond the scope of the arbitration agreement, provided that, if the decision on matters submitted to arbitration can be separated from those not covered by the arbitration agreement or going beyond its scope, the award may be set aside only in regard to the matters not covered by this agreement or going beyond its scope; an award that goes beyond the scope of an arbitration agreement cannot be set aside if the party that participated in the proceedings did not raise objections in that regard,
- the composition of the arbitral tribunal or the fundamental rules of arbitral procedure were not in accordance with the agreement of the parties or with a statute,
- the award was obtained by way of a crime or the award was issued on the basis of a forged or falsified document,
- a final court judgment has already been made in the same case between the same parties,
- under the statutory law, the dispute cannot be settled by a court of arbitration,
- the award is contrary to the fundamental principles of the public policy of the Republic of Poland (public policy clause).

AMENDMENT OF THE CODE OF CIVIL PROCEDURE ACT

On 10 September 2015 an act on the amendment of the Code of Civil Procedure Act and certain other acts in connection with supporting amicable dispute resolution was adopted.

The main objective of this amendment is the popularization of the use of mediation and arbitration in civil cases, making it possible to solve conflicts faster, in a less costly and formalized manner, which in consequence will make pursuing economic activity easier.

The most important changes in the area of mediation include introducing an obligation for the claimant to notify in the statement of claims about an attempt at amicable resolution of the dispute prior to bringing an action in court. Directing the case for mediation is now possible at each stage of court proceedings, of which the court instructs the parties. The motion for approval of an out-of-court settlement concluded before a mediator is free of court fees. If settlement is concluded prior to commencing a hearing, the court fee is refundable in full.

The solutions introduced by the amendment are also aimed at increasing the scale of the use of arbitration in Poland as an alternative dispute resolution method. A single instance nature of cases for recognition or ascertainment of enforceability of awards of courts of arbitration was introduced. Such proceedings are conducted before common courts of law, with a possibility of filing a cassation complaint before the Supreme Court. The time limit for filing a complaint for setting aside of an award of a court of arbitration was reduced from 3 to 2 months.

Some changes concerning alternative dispute resolution in consumer disputes were also adopted by the Act of 23 September 2016 on the Out-of-court Settlement of Consumer Disputes. This act is aimed on accelerating the resolution of consumer disputes, as well as resolving them without engaging in court proceedings, by enabling certified, out-of-court entities to conduct such proceedings on-line.

Apart from arbitration, alternative dispute resolution methods are becoming popular in Poland. First and foremost, this pertains to non-litigious dispute resolution forms which assume the participation of a third party, i.e. mediation and conciliation. The Polish legislature, and to be more precise, the Code of Civil Procedure, regulates one of them, i.e. mediation.

Mediation can be initiated as a result of a mediation agreement of the parties and a dispute arising between them or referring the parties to mediation by the common court of law already after the dispute had arisen. Despite the fact that mediation is voluntary, the mediation agreement, similarly as the arbitration agreement, is also binding and may result, in the event a charge is raised, in rejection of the statement of claims lodged in court with the omission of earlier mediation.

An effective mediation can end with a settlement. If such a settlement concluded before a mediator is approved by the court, it can provide the basis for the initiation of enforcement proceedings.

Unless such situations occur, the arbitral award is final and upon its recognition and the ascertainment of its enforceability (compare: chapter VIII – Recognition and enforcement of foreign arbitral awards), it can be used as the basis for the enforcement of the awarded claims.

Recognition and enforcement of foreign arbitral awards

Each arbitral award, both issued in domestic and international arbitration, is subject to recognition or enforcement. However, the regime of the recognition of domestic awards differs from the recognition of foreign awards. First and foremost, no cassation complaint is allowed from the judgment of the common court of law issued in the proceedings on the recognition or ascertainment of the enforceability of a domestic arbitral award, whereas such a complaint is allowed in the case of judgments on recognition or enforcement of foreign arbitral awards. Moreover, the below-described acts of international law, which take precedence over the Polish statute, do not apply.

As a rule, Polish state courts rule in favour of petitioner who motions for the recognition or enforcement of a foreign arbitral award. However, the Code of Civil Procedure provides for the cases where the court refuses to recognize and enforce the arbitral award – they are almost identical to the preconditions for setting aside an arbitral award discussed above, namely:

- there was no arbitration agreement, the agreement is not valid, ineffective, or it lost the force of law under the law applicable thereto,
- the party was not given proper notice of the appointment of an arbitrator, or of the arbitral proceedings, or it was otherwise unable to present its case before the arbitral tribunal,
- the arbitral award deals with a dispute that was not covered by or going beyond the scope of the arbitration agreement, provided that, if the decision on matters submitted to arbitration can be separated from those not covered by the arbitration agreement or going beyond its scope, the court may refuse recognition and enforcement only in regard to those parts of the award which contain decisions the matters not covered by this agreement or going beyond its scope,
- the composition of the arbitral tribunal or the arbitral procedure were not in accordance with the agreement of the parties or the law of the country in which the arbitration took place,
- the arbitral award has not yet become binding for the parties or set aside or the enforcement thereof has been suspended by the court in which, or under the law of which the award was made,
- under the statutory law, the dispute cannot be settled by a court of arbitration,
- the enforcement and recognition award of the court of arbitration would be contradictory with the fundamental principles of the public policy of the Republic of Poland (public policy clause).

It is also worth reminding that Poland is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The provisions of the Convention take precedence over Polish statutes, in particular the Code of Civil Procedure. Similarly, just as in regulations discussed above, the court can refuse to recognize or enforce a foreign arbitral award, also on the grounds of the New York Convention, in particular cases, when:

- the parties to the arbitration agreement were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made, or
- the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case, or
- the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced, or
- the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place, or
- the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made,
- the subject matter of the difference is not capable of settlement by arbitration under the law of the country of enforcement or recognition, or
- the recognition or enforcement of the award would be contrary to the public policy of that country.

However, it must be remembered that Poland is not a party to the Washington Convention of 10 June 1965 on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID). Arbitral awards issued in investment cases against Poland have the nature of international commercial arbitral awards and are subject to the same rules on recognition and enforcement.

Recognition and enforcement of judgments of foreign state courts

Obviously, the recognition and the ascertainment of the enforceability of judgments of foreign state courts is possible in Poland. In relation to the above, as a rule, an investor can obtain a favourable ruling against a Polish counterparty in their domestic court and enforce it in Poland without any difficulties. Under the Code

of Civil Procedure judgments of foreign courts issued in civil cases in principle are recognized by virtue of law; judgments of this type are not subject to recognition only in strictly regulated cases, i.e. when the judgment:

- is not final in the country where it was issued,
- was passed in the case falling exclusively under the jurisdiction of Polish courts,
- the defendant who did not get involved in the case as to its merits was not duly served the letter initiating the proceedings in the time enabling them to take up defence,
- the party was deprived of the possibility to present its case in the course of the proceedings,
- a case concerning the same claim was pending before the courts of the Republic of Poland earlier than before the court of another country,
- stands in contradiction with a final judgment that was issued earlier by a Polish or foreign court, which satisfies the preconditions for recognition in the Republic of Poland, that was issued in the case concerning the same claim between the same parties,
- the recognition would stand in contradiction with the fundamental principles of the public policy of the Republic of Poland (public policy clause).

Anyone with a legal interest in it (hence parties to the proceedings in which such a judgment was issued, but not only them) may file with court a motion for establishing that a judgement of a foreign court is or is not subject to enforcement. Judgments of foreign courts issued in civil cases, fit for enforcement by execution, become enforcement titles upon ascertainment of their enforceability by a Polish court. The ascertainment of enforceability occurs when the judgement is enforceable in the country of its origin and when no aforementioned obstacles for the recognition of the judgment exist.

These principles apply with regard to the recognition of judgments issued in a non-EU country or a country with whom Poland has signed no agreement on the recognition of court judgments.

It has to be noted that the provisions of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters and Council Regulation [EC] no. 2210/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility are applicable in Poland. In particular, these two legal acts are of fundamental importance with regard to the recognition and enforcement of judgments on the territory of the European Union and make legal transactions significantly easier.

As regards judgments issued in EU Member States, it is fitting to indicate that in Poland **enforcement titles** are, among others:

- judgments of courts of EU Member States as well as settlements and official documents originating from these states, covered by the scope of application of Regulation no. 1215/2012, if they are fit for enforcement by way of execution,
- judgments of courts of EU Member States as well as settlements and official documents originating from these states, provided in these states with the European Enforcement Order certificate,
- European orders of payment issued by courts of EU Member States, whose enforceability was ascertained in these states on the grounds of the provisions of Regulation no. 1896/2006,
- judgments of courts of EU Member States issued in an European Small Claim Procedure, certified in these states on the grounds of provisions of Regulation no. 861/2007,
- judgments issued in maintenance cases in EU Member States which are parties to the Hague Protocol of 23 November 2007 on Law Applicable to Maintenance Obligations (OJ of the European Union L 331 of 16 December 2009, p. 17) and settlements and official documents issued in maintenance cases originating from these states, covered by the scope of application of Regulation no. 4/2009,
- judgments issued in the EU Member States covering protective measures included within the scope of application of Regulation no. nr 606/2013, if they are fit for enforcement by execution.

The system of enforcement of verdicts of courts of other EU Member States is based on the principle of automatic enforceability. Unlike in the traditional exequatur system previously in force, the present mechanism assumes that judgments and titles originating from one Member State are subject to enforcement in any other Member State where the execution is to be initiated, without the need for ascertaining their enforceability in this state. The change performed in 2014 consisted in abolishing the hitherto accepted in the Code of Civil Procedure requirement to obtain a clause of enforceability by court judgments, in-court settlements, and official documents from other Member States covered by the automatic enforceability system in favour of treating such judgments, settlements, and official documents as enforcement titles in Poland. The debtor is entitled to file a motion for the refusal of enforcement of a judgment of a court from another Member State in keeping with principles and for reasons expressed respectively in the above-mentioned EU regulations. Provisions of the Polish law provide that motions for the refusal of enforcement regulated by the EU law in Poland are heard by Regional Courts.

In turn, legal transactions between Poland and Norway, Switzerland, and Iceland are regulated by the convention on jurisdiction and the enforcement of judgments in civil and commercial matters of 30 October 2007 (the co-called Lugano Convention).

Poland is also a party to numerous international conventions which prescribe special rules of the recognition and enforcement of judgments in various types of cases. One must not forget numerous bilateral agreements on legal transactions which Poland is a party to, e.g. treaties with China.

Administrative difficulties

A state inspection of an enterprise can be a serious problem for the day-to-day activities of a businessperson. It has to be said that in Poland numerous sectors are regulated. Nevertheless, their number is decreasing as state authorities have engaged in a consequent deregulation policy.

The Act on Freedom of Economic Activity prescribes general rules and framework for inspection. Defaulting on them, e.g. by conducting excessive control operations, substantiates awarding the injured entrepreneur compensation. This act also provides for means of challenging the actions of the inspecting authorities. The fundamental principle for inspecting authority is the necessity to notify the entrepreneur of an intent to carry out the inspection. Obviously, there are exceptions from this rule, e.g. in regard to law enforcement agencies, tax audit, fuel quality control, or competition inspection. In such cases, inspections and controls are carried out between the 7th and 30th day as of the service of the notification.

Another principle is the rule saying that inspections and controls are to be carried out in the presence of the inspected party, at the place of their operations and during business hours. Taking minutes of the control is also covered by this rule. Activities embarked on by the inspecting authority must not interfere with the operations of the entrepreneur in the process of inspection.

The entrepreneur does not have to fear multiple inspections and controls taking place at the same time. With the exception of several specific types of inspections, it is not possible to conduct two or more inspections in one enterprise at the same time. The total duration of inspections per year is also limited, depending on the scale of entrepreneur's operations.

The ongoing digitalisation of court proceedings is to be viewed as a positive phenomenon. The growing number of administrative cases, in particular those related to economic activity, may be handled via the EPUAP system (http://epuap.gov.pl/) and there is no requirement for the applicant to possess a certified electronic signature (it may be replaced by setting a so-called trusted account in the EPUAP system). This allows to significantly facilitate and speed up proceedings, but also remote settlement of official matters without the need to appear in person.

On 7 April 2017 the Act amending the Code of Administrative Procedure and the Law on Proceedings Before Administrative Courts aimed at streamlining and improving both types of administrative procedures. The changes are to make the operation of the administration and administrative courts more effective while reducing the degree of administrative inconvenience for citizens. With that in view, amendments have been introduced into the general principles concerning the administrative procedure, consisting in, among others, introducing the principles of friendly interpretation of the provisions and the cooperation of public administration bodies, introducing definitions of such terms as inactivity and prolixity, as well as introducing the institution of the reminder as a means of challenging inactivity and prolixity (in place of the institution of complaint previously applicable in these situations).

The amendment also introduces a possibility of notification by making a pleading available in the appropriate body's Public Information Bulletin if a specific provision thus provides and where more than twenty parties participate in the proceedings. However, a notification is effective in such cases if the parties are notified beforehand in writing on the intention on notifying them in a specific manner. Principles concerning evidentiary proceedings have also been amended by introducing a possibility of certifying copies as identical with original by an authorised officer of the body conducting the proceedings. Further changes extend to the public administration body's obligation to indicate party-dependent prerequisites which were not met or demonstrated in the course of the proceedings and to the principles of settling in favour of the party of irremovable doubts concerning the factual status where the object of the proceedings consists in imposing an obligation on a party, as well as in limiting or withdrawing an authorisation. The principle above will not apply in cases with the participation of parties with conflicting interests or where the outcome of the proceedings directly impacts third party interests.

A substantial change consists in introducing the institution of mediation into the Code of Administrative Procedure, aimed at clarifying and considering factual and legal circumstances of the case and making arrangements related to resolving it within the limits of the applicable law, also by issuing a decision or concluding a settlement. Mediation will be voluntary. The course of the mediation will be recorded in the minutes. If mediation results in the making of arrangements related to resolving the case within the limits of the applicable law, a public administration body shall handle the case in keeping with these arrangements, included in the mediation minutes.

Other novelties also include the institution of a cooperative session aimed at speeding up the process of adopting a stance by the body which the body handling the case requested to present a stance as well as the institution of the tacit resolution of the case, i.e. finding the case to have been resolved tacitly in the manner recognising the party's demand in full if within a month as of the serving of the party's demand onto the appropriate public administration body or within another time limit provided for in a specific provision, such a body: (1) does not issue a decision or a final decision concluding the proceedings in the case (tacit conclusion of the proceedings) or (2) does not raise an objection by way of a decision (tacit consent).

The changes also extend to the scope of the appeal proceedings and the introduction of the simplified proceedings mode in which the application will be lodged in an official form.

As regards the changes to the administrative court proceedings, they will affect, among others, the principles of lodging complaints before administrative courts, as well as regulations concerning the lodgement and examination of objections to decisions.

The amendment will enter into force on 1 June 2017.

Penal difficulties

Provisions of the penal law constitute another group of provisions which can hinder (or protect) an Investor in Poland.

The Polish penal commercial law aims to protect the correct course of commercial transactions. In relation to the above, recognizing certain dishonest commercial operations as a crime, first and foremost, protects the Investor against such practices from other participants of transactions, but also requires the entrepreneur himself to abide by the law. An entrepreneur has the biggest chance to encounter penal law as an injured party. However, it is advisable to make sure not to engage in any risky operations which could draw the attention of law enforcement authorities.

The Penal Code of 6 June 1997 provides the foundations for the Polish penal law. The act describes the basic principles of criminal liability as well as types of specific offences and penalties for the perpetration thereof. The Polish penal law is based on the same principles which form the backbone of the majority of European legal systems, i.e. in particular on the principle of liability for an act prohibited by the statute, principle of respect for human dignity, principle of guilt, principle of individualization of liability, and the non-retroactivity principle.

It is also worth indicating that on the grounds of the Polish law, not only the perpetration of an offence is subject to penalty, but also attempting an offence, and in certain, not numerous cases also the preparation of an offence as well as aiding and abetting are punishable.

Apart from crimes, the Polish penal law also punishes for misdemeanours (they can be defined as offences of lesser significance). As a rule, they are punishable by fine, in exceptional cases by short detention.

From the perspective of an entrepreneur, the most important offences of a commercial nature are the following:

- fraud (causing another person to disadvantageously dispose of the property of their own or someone else by misleading them or by taking advantage of a mistake or inability to adequately understand the action undertaken),
- mismanagement (causing or endangering a company to suffer substantial damage by abusing one's authority or failing to perform one's duties),
- private bribery (both offering a bribe to a manager as well as accepting a bribe by the manager); it is worth adding that the corruption of officials (so-called public bribery) is also subject to severe penalties in Poland,
- extortion of a credit, loan, or guarantee, insurance fraud (premeditatedly causing an event resulting in disbursement of insurance by the insurer),
- money-laundering (transactions in cash and financial instruments originating from a prohibited act),
- obstruction of the pursuit of claims (depleting one's estate in order to render creditor satisfaction impossible), bankruptcy-related offences (both establishment of new economic entities and transfer of assets thereon, causing bankruptcy by recklessness, acting to the detriment of the creditors),
- keeping unreliable documentation,
- exploitation (conclusion of an agreement forcing a disproportionate performance),
- obstruction of a public tender,
- offences indicated in specific statutes, which are discussed in detail below.

What is more, the fundamental legal act in the scope of financial and fiscal nature is the Tax Penal Code of 10 September 1999. This code regulates both the principles of criminal liability for tax offences and misdemeanours as well as the proceedings in this regard. In the Tax Penal Code, the legislator provided for the liability for tax offences, i.e. among others evading taxation, concealment of business activity, non-invoicing of transactions, violations in excise transactions as well as other customs, currency, and gambling-related offences.

However, offences are described also in statutes other than the Penal Code and Tax Penal Code. These latter acts deal only with basic offences. As a rule, crimes and misdemeanours of a specific nature are included in statutes regulating specific issues in detail.

For example, the Code of Commercial Companies and Partnerships, described above, also contains penal provisions. However, a controversial provision was repealed in 2011, under which a person being a member in a body of a legal person and acting to the detriment of a company was subject to penalty (including imprisonment). Nevertheless, many actions previously subject to penal liability under the repealed provision can be punished under other, e.g. those listed above, commercial offences (mismanagement in particular).

Nonetheless, such actions as the failure to declare bankruptcy within the prescribed period as well as certain corporate actions such as permitting to purchase own stocks and offences related to unlawful voting at the general meeting of shareholders are still punishable.

Other relevant acts penalizing certain commercial actions include the act of 28 February 2003, the Bankruptcy Law, which defines such offences as filing an untrue motion for the declaration of bankruptcy.

Specific penal provisions are often also included in statutes regulating activities requiring permits or licences; penal provisions in such statutes pertain to particularly glaring violations in performing a given activity (this type of provisions are to be found, for example, in the Act on Production of Ethyl Alcohol and Manufacture of Tobacco Products, Pharmaceutical Law, or Act on Monitoring and Controlling the Quality of Fuels).

Moreover, it is also worth indicating that natural persons hold criminal liability not only for their own actions, but also for actions on behalf or in the interest of a collective entity, e.g. a company, including a foreign company. Rules for this liability are prescribed by the Act of 28 October 2002 on Liability of Collective

Entities for Acts Prohibited under Penalty. Generally speaking, the collective entity holds liability for a prohibited act perpetrated by a natural person managing the company which benefited or may have benefited the collective entity. However, the issue in this case is not any type of an offence, but the offences listed in the statutory catalogue (first and foremost, the above-described commercial offences). To hold a collective entity liable, the criminal liability of the natural person must first be confirmed by a court judgment. The liability on the basis of this act is rather strict and stipulates, apart from penalties and bans on conducting business activity in relation to persons managing collective entities, also a fine imposed upon the collective entity and amounting even up to PLN 5 million (however not higher than 3% of the revenue obtained in a financial year in which a tort constituting the grounds for the liability of a collective entity was perpetrated).

The violation of employee rights is also punishable (e.g. persistent violation of the rights of the workers, exposing workers to danger, failure to notify of an accident). Minor violations of these rights, such as misdemeanours, are punishable.

Recapitulating, the Polish penal law can be a challenge for the compliance departments of foreign Investors. Nevertheless, as indicated above, the compliance of conducted business operations with the law is regulated by the penal law in a degree comparable to other EU countries or other free market economy states. There is a visible tendency to deregulate (which, however, does not apply to tax offences, as in attempt to seal the tax system, the penalties are being raised). Also the number of penal provisions, hindering activities of entrepreneurs is growing lower. However, it still features prominently on the list of tasks of a foreign entrepreneur debuting in Poland.

OUR SERVICES

Dispute Resolution & Arbitration

We represent clients in proceedings before the Supreme Court, the Constitutional Court, courts of first and second instance as well as administrative courts. We also act as proxies for our clients before arbitration courts and cooperate with foreign law firms on trans-border arbitration cases, which allows us to exchange experiences and join forces with our foreign counterparts in the client's best interest. We prepare each lawsuit with utmost care and it is of fundamental importance to us to develop a long-term lawsuit strategy in consultation with the client that will yield the best results. Nonetheless, a lawsuit spanning many years is not always the best solution and for this reason, we negotiate and prepare conciliation scenarios for the termination of disputes in cases when circumstances allow and clients expect it. We find the fight for conciliation on favourable terms just as exciting as a court battle for victory, with the former often entailing significantly lower costs for the client.

Real Estate

By carrying out thorough analyses, we present investors with adequate and optimal solutions for them that helps reduce the risk associated with the purchase and sale of real estate properties to a minimum. We successfully represent our clients in proceedings aimed at the recovery of real estate and other assets unlawfully seized by the State Treasury under the previous regime. We also provide comprehensive support to entrepreneurs in their investment processes, especially related to construction investments. Our employees are experienced and continually further their knowledge, which enables us to tackle almost any legal issue concerning real estate. Their involvement and passion assure our clients that no case is viewed by us as a lost cause.

Banking & Finance

We support our clients in complicated projects that require expert knowledge. We prepare comprehensive legal documentation for bank products that are aimed at consumers as well as business owners. Our agreement templates and legal solutions find their applications in products worth hundreds of millions of zloty.

We possess extensive experience in dealing with legal issues related to internal bank operations, and particularly bank outsourcing. Our involvement and professionalism in conducting court proceedings is recognized by our clients, as especially reflected in our long-term cooperation with one of the leading banks in Poland.

Restructuring / Insolvency

We support business owners in negotiations, the preparation of documentation on restructuring agreements, bankruptcy proceedings with their participation (as the debtor or creditor) as well as at stages prior to the declaration of bankruptcy – ensuring that our clients take the right steps.

We possess a wealth of experience in the preparation and execution of restructuring processes, which we have gained by effectively advising entrepreneurs in difficult financial situations – usually brought about not through their own fault. This enables us to help our clients fulfil their plans while providing the management with maximum security. Our Partners Rafał Kos, attorney-at-law, and Dominik Gałkowski, attorney-at-law, participated in the works of the Minister of Justice's team for the amendment of the Bankruptcy and Rehabilitation Law which prepared recommendations in terms of specific changes in the Bankruptcy and Rehabilitation Law in Poland: legislative, IT, and institutional solutions.

Corporate / M&A

We support our business partners in complicated projects that require expert knowledge. We provide advice at all project stages, starting from the conception of the project's legal structure and strategy through to its final implementation. We guarantee comprehensive legal services based on an individual and inter-disciplinary approach to tasks carried out within the framework of our business relations with clients. The high level skills and dedication of our lawyers combined with our experience enable us to provide top quality legal services while adhering to the rule of: high quality at a reasonable price.

Class Action

Kubas Kos Gałkowski was materially involved in the process of implementing the possibility of pursuing claims in group proceedings into the Polish legal system, modelled after the American class action since the very beginning of the legislative process of the Act of 17 December 2009 on Pursuing Claims in Group Proceedings. Professor Andrzej Kubas and Rafał Kos, attorney-at-law, prepared a legal opinion on the drafted bill at the commission of the Bureau of Research Chancellery of the Sejm. Furthermore, Rafał Kos, attorney-at-law, participated in the sessions of the Sejm Justice and Human Rights Committee in the capacity of an expert. Moreover, Kubas Kos Gałkowski is also present in all major domestic initiatives aimed at class action assessment and an owner or ClassAction.pl portal.

International Desk

International cooperation is a vital part of our operations. Thanks to our ties with international industry and commerce chambers as well as cooperation with law firms around the world we are able to provide our clients with fast and effective legal solutions, also in large, complex cases.

Such cooperation also enables us to offer comprehensive legal services in the area of international transactions, while taking the specificity of foreign jurisdiction into consideration.

We specialise not only in providing legal services to foreign businesses but also in providing consultancy services to companies starting or intending to start operations in Poland. We know the specifics and mode of work of our clients very well.

With the former often entailing significantly lower costs for the client.

CONTACT DETAILS

Prof. Andrzej Kubas
senior partner
andrzej.kubas@kkg.pl

Dominik Gałkowski
managing partner
dominik.galkowski@kkg.pl

Kamil Zawicki
co-managing partner
kamil.zawicki@kkg.pl

Rafał Kos, PhD, LL.M.
partner
rafal.kos@kkg.pl

Barbara Jelonek-Jarco, PhD
partner
barbara.jelonek@kkg.pl

Grzegorz Pobożniak
partner
grzegorz.pobozniak@kkg.pl

Paweł Sikora
partner
pawel.sikora@kkg.pl

Agnieszka Trzaska
partner
agnieszka.trzaska@kkg.pl

Wojciech Wandzel
partner
wojciech.wandzel@kkg.pl

Julita Zawadzka, PhD
partner
julita.zawadzka@kkg.pl

WARSAW PL 00-609
Budynek „Focus”
al. Armii Ludowej 26
Tel: +48 22 206 83 00
Fax: +48 22 206 83 02
kontakt@kkg.pl

KRAKOW PL 31-511
Nowa Kamienica
ul. Rakowicka 7
Tel: +48 12 619 40 40
Fax: +48 12 619 40 52
kontakt@kkg.pl

www.kkg.pl

CONCLUSION

The aim of this brochure was to provide foreign Investors with general information about the Polish legal environment. It is clear that Polish law does not differ in principle form legal systems of other developed European countries. Consequently, having knowledge about opportunities and possible difficulties while doing business in Poland, foreign entrepreneurs should consider Poland as an interesting place to invest their capital.

DISCLAIMER

The study presented in this brochure is solely of an educational nature and due to its general character, must not be used in making detailed investment decisions. Each investment decision, and thus the choice of the best legal solutions, depends on the individual situation of the Investor and must be preceded by a detailed research and preparations. Kubas Kos Gałkowski holds no liability for actions engaged in (or actions refrained from) on the basis of the information presented in this brochure. Appropriate legal opinions can be obtained from a professional law firm.