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## Doing Business in Poland: Legal Aspects of Doing Business in Poland

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## Doing Business in Poland: Legal Aspects of Doing Business in Poland

### Abstract

[Excerpt] The transformation of Poland's economy from a centrally planned to a modern market economy continues apace. Successive governments have re-affirmed their commitment to privatization and the liberalization of the economy with the aim of encouraging private enterprise and attracting foreign investment. The Association Agreement with the European Union, which came into force in February 1994, and the acceptance by the member states of the Treaty of Nice, were important steps towards Poland's goal of full EU membership. In a referendum held on June 7 and 8, 2003, Poland voted in favour of joining the EU. Poland gained full EU membership on 1 May 2004. Poland is beginning to tap international capital markets. Against this background there has been, and continues to be, rapid legislative development. It is vitally important for the investor to keep abreast of new legislation. What follows is a brief guide to the more important legal issues likely to be relevant to the foreign investor.

### Keywords

Poland, foreign investment, trade, commerce, business, law, imports

### Disciplines

Business | International Business

### Comments

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# Baker & McKenzie Warsaw

Doing Business in Poland —  
Legal aspects of doing business in Poland

Warsaw

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## Introduction

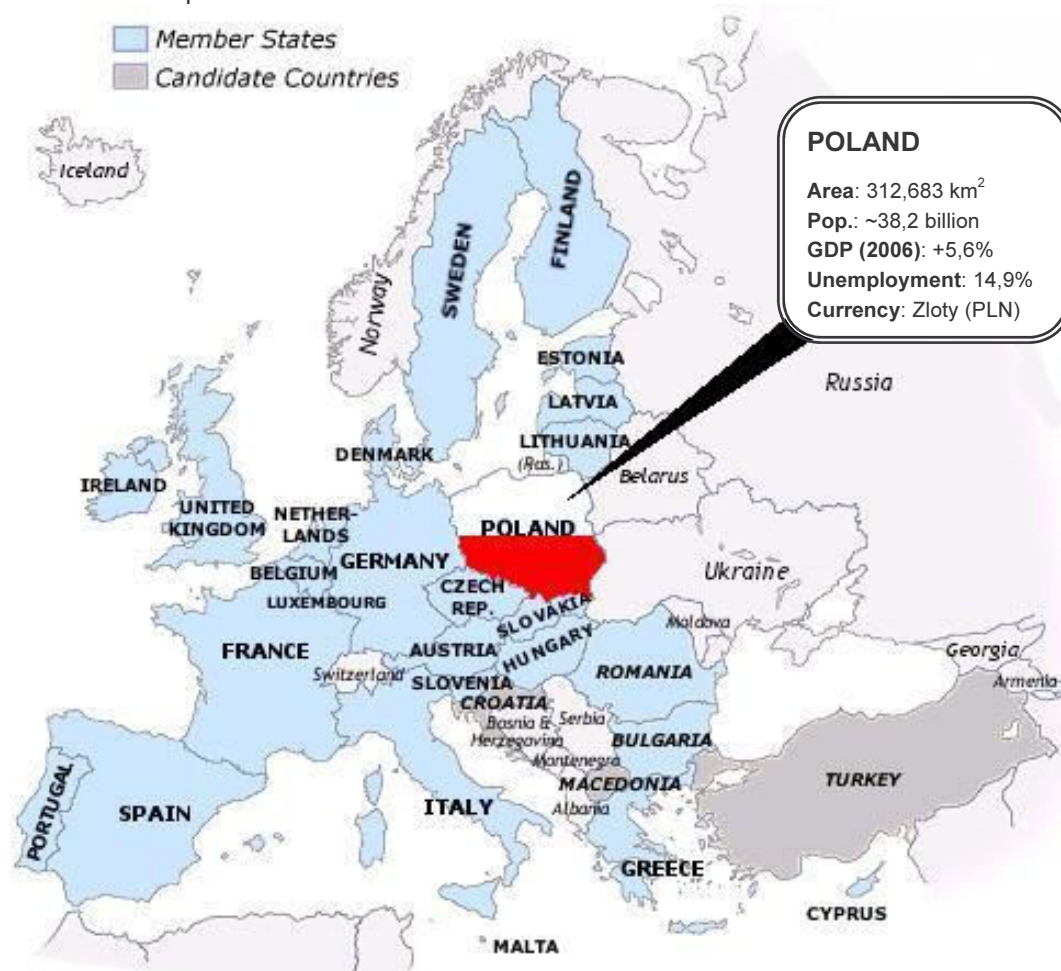
The transformation of Poland's economy from a centrally planned to a modern market economy continues apace. Successive governments have re-affirmed their commitment to privatization and the liberalization of the economy with the aim of encouraging private enterprise and attracting foreign investment. The Association Agreement with the European Union, which came into force in February 1994, and the acceptance by the member states of the Treaty of Nice, were important steps towards Poland's goal of full EU membership. In a referendum held on June 7 and 8, 2003, Poland voted in favour of joining the EU. Poland gained full EU membership on 1 May 2004. Poland is beginning to tap international capital markets. Against this background there has been, and continues to be, rapid legislative development. It is vitally important for the investor to keep abreast of new legislation. What follows is a brief guide to the more important legal issues likely to be relevant to the foreign investor.

## Poland - a brief survey

### Geography

Poland, officially the Republic of Poland, is situated in Central Europe bordered by Germany to the west, the Czech Republic and Slovakia to the south, Ukraine and Belarus to the east, and the Baltic Sea, Russia (in the form of the Kaliningrad Oblast exclave) and Lithuania to the north. It also shares a maritime border with Denmark and Sweden. The total area of Poland is 312,683 sq km making it the 69th largest country in the world with population over 38.2 million people concentrated mainly in large cities, including the historical capital of Poland, Kraków, and the present capital, Warsaw. Beside Warsaw and Kraków other major cities are Łódź, Wrocław, Poznań, Gdańsk, Szczecin.

### Poland in European Union



**Population and Language**

Today Poland has more than 38 million inhabitants, 96.74% of the population considers itself Polish, 471,500 (1.23%) declared another nationality. 774,900 people (2.03%) didn't declare any nationality. The officially recognized ethnic minorities include: Germans, Ukrainians, Lithuanians, Jews and Belarusians.

The Polish language, a member of the West Slavic branch of the Slavic languages, functions as the official language of Poland.

The vast majority of Poles are Roman Catholic, 89.8% are Catholic (according to church baptise statistics) with 75% counting as practicing Catholics. The rest of the population consists mainly of Eastern Orthodox (about 509 500), Jehovah's Witnesses (about 123 034) and various Protestant (about 86 880 in the largest Evangelical-Augsburg Church and about as many in smaller churches) religious minorities.

Poland has the largest working population in Central Europe. It is also one of the youngest populations on the continent:

- 50% of the Polish society is under the age of 34 years
- and 35% is under 25 years of age.

This means that about 13 million young and well-educated people will enter the labour market in the near future.

**Government, Political and Legal Systems**

The government system of the Republic of Poland is based on the separation of and balance between the legislative, executive and judicial powers.

Today, Poland is a parliamentary democracy headed by a President elected in general elections. The Presidential term of office is 5 years from the date of swearing in. The President's role, the election procedures, the functions and responsibilities of the Parliament and Government are determined by the provisions of the national constitution, rewritten in 1997. In accordance with the current Constitution, the President of the Republic of Poland is the head of state, the supreme representative of Poland and the guarantor of the continuity of government.

The President has a free choice in selecting the Prime Minister, and has the opportunity to directly influence the legislative process by using his veto to stop a bill, however vetoes can be overruled by a minimum of a three-fifths vote in

the Sejm (the lower house of Parliament). The President is also the Supreme Commander of the Armed Forces.

Poland's current President is Lech Kaczynski, the twin brother of Prime Minister Jaroslaw Kaczynski.

The government structure centers on the Council of Ministers, led by a Prime Minister. The President appoints the cabinet according to the proposals of the Prime Minister, typically from the majority coalition in parliament.

Poland's last Parliamentary elections were in September 2005 and gave seats to 7 parties. Parliamentary election was won by the right-wing Law and Justice party (PiS). After months of governing without a parliamentary majority, the PiS formed a government coalition in May 2006 with the populist Samoobrona (Self-Defence) and the Catholic nationalist League of Polish Families (LPR) to secure a stable parliamentary majority.

Judicial authority is vested in the independent courts and tribunals. The Supreme Court is the highest body supervising the judiciary, which ensures that the judicature of courts and military tribunals is uniform and in accordance with law.

**Regional and administration structure**

Poland is divided into 16 provinces (voivodeships). Each of the provinces is headed by a provincial governor (voivode) appointed by the central Government. The provinces are further divided into 308 counties (powiaty) and 2,489 communes (gminy). The local governments of the provinces, counties and communes are elected in general local elections;

Local government's decision-making and supervisory bodies are the councils, which operate at all three levels. The councils make basic decisions on matters affecting their respective jurisdictions. They set local by-laws, pass budgets and inspect their execution, decide on local taxes and charges on the grounds of existing legislature and adopt resolutions on property rights. The councils appoint

and dismiss the following local administrative officers: the wójt, the chief administrator in a gmina; the mayor (burmistrz in small boroughs and prezydent miasta in large municipalities); the starosta the chief administrative officer at powiat level; and the marszałek sejmiku, the speaker of the sejmik voivodeship council. Council members are elected in general, direct elections on the secret ballot and "one person-one-vote" principle.

## Economy and currency regulations

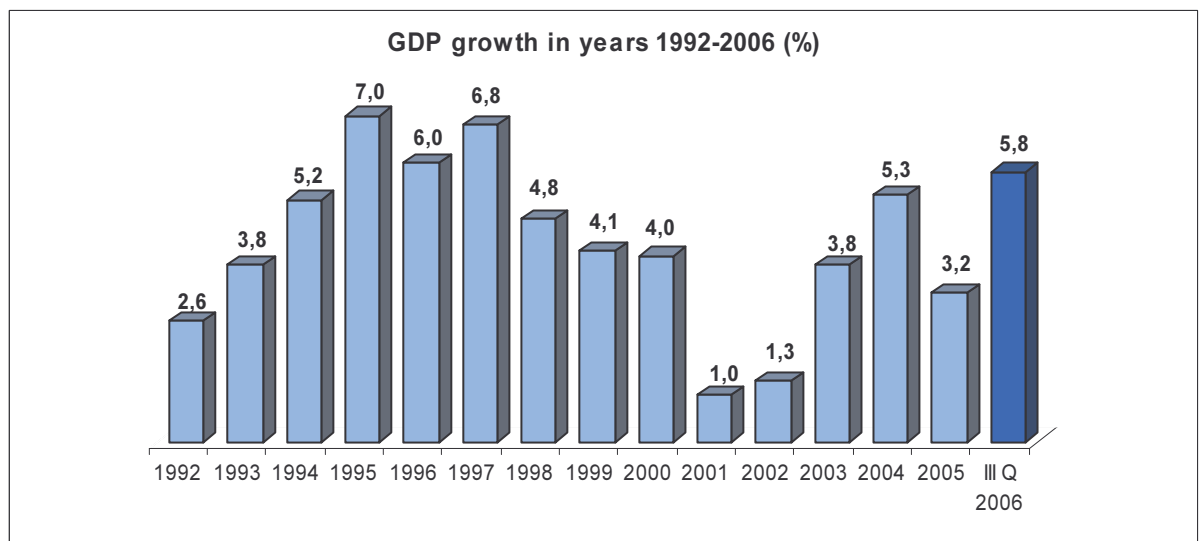
Since the collapse of communism in 1989, Poland has dramatically transformed its economy and has enjoyed unsurpassed success in terms of economic growth, financial stability and investment attractiveness as demonstrated by more than USD 91 billion of direct foreign investment, as of December 2005. Following a successful referendum on European Union accession and subsequent approvals of the EU member countries, Poland joined the EU on 1 May 2004.

The official currency in Poland is Zloty (PLN) which is divided into 100 groszy.

Although the Polish economy is currently undergoing economic progress, there are many challenges ahead. The most notable task on the horizon is the preparation of the economy (through continuing deep structural reforms) to allow Poland to meet the strict economic criteria for entry into the European Single Currency. There is much speculation as to just when Poland might be allowed to join the Eurozone, although the best guess estimates put the entry date somewhere between 2009 and 2013.

Annual growth rates broken down by quarters:

\* 2003: Q1 - 2.2% | Q2 - 3.8% | Q3 - 4.7% | Q4 - 4.7%  
 \* 2004: Q1 - 7.0% | Q2 - 6.1% | Q3 - 4.8% | Q4 - 4.9%  
 \* 2005: Q1 - 2.1% | Q2 - 2.8% | Q3 - 3.7% | Q4 - 4.3%  
 \* 2006: Q1 - 5.2% | Q2 - 5.5% | Q3 - 5.8%



Source: Central Statistical Office

## Foreign Investment

### Introduction

The law governing Polish business activity has recently undergone significant changes. On January 1, 2001, the new Commercial Companies Code of 2000 and on August 21, 2004 the new Act on the Freedom of Business Activity came into force.

Business activity in Poland may take one of the following forms:

- joint-stock company (*spółka akcyjna* - S.A.);
- limited liability company (*spółka z ograniczoną odpowiedzialnością* - Sp. z o.o.);
- registered partnership (*spółka jawna* - sp. j.);

- limited partnership (*spółka komandytowa - sp.k.*);
- professional partnership (*spółka partner ska - sp. p.*);
- limited partnership by shares (*spółka komandytowo-akcyjna - S.K.A.*);
- general partnership (*spółka cywilna*);
- branch (*oddział*);
- representative office (*przedstawicielstwo*);
- sole proprietorship (*indywidualna działalność gospodarcza*).

Foreign individuals who have a permit to settle, permission for tolerated residence, refugee status obtained in Poland, exercise temporary protection within its territory, or have long-term EC residential status or a temporary residence permit may undertake and conduct business activity in any of the above forms on the same basis as Polish citizens.

The same rule applies to foreigners from the EU, from EEA countries which are not members of the EU, or from NON-EEA country foreigners entitled to freedom of economic activity on the basis of international agreements with the EU or its Member States, or the family members of those persons who join these persons or live with them.

Foreigners other than those listed above may operate businesses in Poland in the form of joint-stock or limited liability companies, limited partnerships, and partnerships limited by shares, and invest in such companies and partnerships, unless otherwise provided for in an international agreement ratified by Poland.

The new regulations are the result of the harmonization of Polish law with European Union legal standards, and especially with respect to the principle of national treatment and free movement of services.

## Forms of operations in Poland

### Companies

The fundamental aspects of the formation and operation of companies are governed by the Commercial Companies Code of 2000 (the "Commercial Code"), which replaced the Commercial Code of 1934 (the "Code"). Provisions regulating entrepreneurs (*przedsiębiorcy*) business names (*firma*) and commercial representation (*prokura*) have been recently incorporated into the Civil Code.

The limited liability company (*spółka z ograniczoną odpowiedzialnością - Sp. z o.o.*) and the joint-stock company (*spółka akcyjna - S.A.*) are the two main corporate forms in Poland, and are based on German models. Both have legal personality and the economic liability of shareholders is limited to the amount of their equity contribution. Shares in these kinds of companies are freely transferable unless their statutory documents provide otherwise.

Of the principal legal differences between the two types of companies, two are fundamental. Firstly, the share capital in joint-stock companies may be raised by public subscription whereas limited liability companies may not engage in public share issues. Secondly, shares in joint-stock companies are issued in the form of share certificates, while the issue of share certificates by limited liability companies is forbidden.

The new Commercial Code raised the minimum amount of share capital required in a limited liability company from PLN 4,000 to PLN 50,000. In - joint-stock companies the level was raised from PLN 100,000 to PLN 500,000. Therefore the share capital of all newly established companies cannot be lower than PLN 50,000 and PLN 500,000 respectively. With respect to companies already in existence the share capital must be increased according to the new requirements by December 31, 2005.

A foreign investor may make a contribution to the company's share capital either as a cash contribution, or as a non-cash contribution. Debt to equity swaps and dividend reinvestment are also available as forms of equity contributions.



The structure of Polish companies will be familiar to any businessperson. Every company is managed by a management board and by shareholders through resolutions adopted at shareholders' meetings. In addition, a supervisory board which is selected by the shareholders of the company and which performs a non-executive role must oversee the management of a joint-stock company. The establishment of a supervisory board in a limited liability company is generally optional and mandatory only if the company has more than 25 shareholders and share capital in excess of 500,000 PLN. Generally, a limited liability company has fewer formalities and external controls than a joint-stock company; for example, a limited liability company must only have an external audit of its balance sheet and annual accounts performed in certain cases, whereas in a joint-stock company this audit is required annually. A company is incorporated in two stages. First, the articles of association (in the case of a limited liability company) or statute (in the case of a joint-stock company) are signed by the shareholders before a notary in the form of a notarial deed. As of that moment a so-called company "in organization" is created. The articles of association or the statute, together with additional documentation, which includes proof of the establishment of the governing bodies of the company, a declaration that the share capital has been either fully contributed in cash or in kind, and specimen signatures of persons authorized to represent the company, are then submitted to the National Court Registry. The Court reviews the documentation and issues its decision regarding registration. If the decision is positive, the company is incorporated and registered by the Court in the registry of business entities of the National Court Registry.

After registration each company is obliged to notify the Court of any modification to the documents filed with the Court or evidenced in the excerpt from the register. This is because third parties are deemed to have constructive knowledge of the information registered with the National Court Register. The Court has to be notified, for example, of any amendments to the company's articles of association or statute, or changes in the composition of the governing bodies, the company's shareholder, or the address of the company. In addition, companies must publish certain announcements in the official Court and Economic Journal (*Monitor Sądowy i Gospodarczy*).

The following forms of partnership exist in Poland:

#### Partnerships

- registered partnership (*spółka jawna - sp. j.*);
- limited partnership (*spółka komandytowa - sp. k.*);
- professional partnership (*spółka partner ska - sp. p.*); and
- partnership limited by shares (*spółka komandytowo-akcyjna - S.K.A.*).

The last two on the list are new investment vehicles introduced by the new Commercial Code. None of these partnerships has legal personality and the liability of every general partner is, with certain exceptions, personal and unlimited. Shares in a partnership are transferable only if the articles of association provide so.

**A REGISTERED PARTNERSHIP** (*spółka jawna - sp. j.*) is the simplest form of partnership. A registered partnership is established by the articles of association signed by the partners in ordinary written form. The form of a notarial deed is not required. The articles of association, together with additional documentation which includes the partners' names and surnames or business names, the names and surnames of persons authorized to represent the partnership, their specimen signatures, and the address of the partnership, are then submitted to the National Court Registry. The Court reviews the documentation and issues its decision regarding registration. A general partnership whose turnover in the preceding year exceeded EUR 800,000 must apply for entry into the National Court Registry as a registered partnership. The partnership is established upon registration.

A registered partnership is managed by all, several, or one partner as provided for in the articles of association. Each partner has the right to represent the partnership individually unless the articles of association provide otherwise. Each partner shall be liable for the obligations of the partnership without limitation for all its assets jointly and severally with the remaining partners and the partnership. However, a creditor of the partnership may conduct enforcement proceedings from the partner's assets only if enforcement proceedings from the assets of the partnership prove ineffective.

**A LIMITED PARTNERSHIP** (*spółka komandytowa - sp. k.*) is a hybrid of a registered partnership and a limited liability company. A limited partnership has two types of partners: at least one of the partners has unlimited liability for the partnership's obligations (general partner) and at least one

partner has limited liability (limited partner). The limited partner's liability is limited to a specific sum as indicated in the articles of association (*commandite sum*).

As far as the management and representation of a partnership is concerned, partners' powers can vary. The status of general partners is similar to the position of partners in a registered partnership. Limited partners can represent a partnership as proxies only.

The incorporation procedure is similar to the one applicable to a registered partnership. However, the articles of association require the form of a notarial deed. Then, the articles of association of the limited partnership together with additional documentation, which includes the names and surnames or business names of all partners, the names and surnames of persons authorized to represent a limited partnership, their specimen signatures, information on the *commandite sum*, and the address of the partnership, are submitted to the National Court Registry. The partnership is incorporated upon registration.

**A PROFESSIONAL PARTNERSHIP** (*spółka partnerska - sp. p.*) is a new concept in Polish corporate law and it is based on the American model. Two main characteristics distinguish a professional partnership from a registered partnership: (i) the fact that only individuals authorized to exercise a free occupation (such as lawyers, doctors, architects, auditors, etc) may form such a partnership, and (ii) the scope of the partners' liability.

Each partner has the right to manage a partnership unless the articles of association provide otherwise. The articles of association may however create a management board modeled on a limited liability company management board, which then manages and represents the partnership to the exclusion of the partners.

All partners bear personal and unlimited liability for a partnership's liabilities and liabilities related to their individual practice of a free occupation. It should be stressed that a partner shall not be liable for the obligations of the partnership which arise in connection with practice of a free occupation by another partner and his/her subordinates' actions unless the articles of association provide otherwise.

A professional partnership is formed in two stages. First, the articles of association are signed in the form of a notarial deed. Then the articles of association, together with additional documentation, which includes the partners' names and surnames, the names and surnames of the partners authorized to represent the partnership or management board members' names and surnames (if established), their specimen signatures (as certified by a notary public), the names and surnames of general partners, documents confirming all partners' professional qualifications, and the address of the partnership, are submitted to the National Court Registry. The Court reviews the documentation and issues its decision regarding registration. The partnership is established upon registration.

**A LIMITED PARTNERSHIP BY SHARES** (*spółka komandytowo-akcyjna - S.K.A.*), a new type of partnership in Polish corporate law, has features of both a limited partnership and a joint-stock company. This is the only form of partnership that is obliged to meet minimum share capital requirements (i.e. PLN 50,000, which may be raised also by public subscription). Shares in this type of partnership are issued in the form of share certificates. In a partnership limited by shares there are two types of partners: at least one of the partners has unlimited liability (general partner) and at least one of the partners is a shareholder with limited liability.

The formation and operation of a partnership limited by shares is regulated partly by provisions regarding a limited partnership and partly by provisions regarding a joint-stock company.

A limited partnership by shares has no management board: all partners with unlimited liability manage and represent the partnership unless the statute provides otherwise. A shareholder may represent this partnership only as a proxy. Certain actions may require the consent of the partners and shareholders' meeting ("General Meeting"). In addition, a supervisory board, selected by the partners and shareholders through the General Meeting, which performs a non-executive role, may oversee the management of a limited partnership by shares. The establishment of a supervisory board is generally optional although it is mandatory if a partnership has more than 25 shareholders.

A partnership limited by shares is incorporated in two stages. First, the statute is signed by all partners

with unlimited liability before a notary in the form of a notarial deed. The statute, together with additional documentation, which includes proof of the establishment of a supervisory board (if applicable), a declaration that the share capital has been either fully contributed in cash or that the contribution of the capital has been secured as a contribution in kind, the names and surnames or business names of general partners and names and surnames of persons authorized to represent a limited partnership by shares, types of shares, and the address of the partnership are then submitted to the National Court Registry. The Court reviews the documentation and issues its decision regarding registration. The partnership is incorporated upon registration.

Other filing, notification and official publication requirements for all types of partnerships are the same as those regarding limited liability companies and joint-stock companies.

### Branch

The Act on the Freedom of Business Activity and the Act on the National Court Registry govern procedures and requirements for the establishment of a branch.

With respect to foreigners that may act freely on the basis of freedom of economic activity, a branch, may be established on the basis of reciprocity. The principle of reciprocity means that Polish business entities are treated in the same manner as business entities in the foreign country either in fact or pursuant to an international agreement. This rule may be provided for in bilateral treaties signed between Poland and other countries regarding support and mutual protection of investments.

Foreign companies intending to set up a branch in Poland are treated in the same manner as Polish companies. The only formal requirement is that the branch be registered in the National Court Registry. Branches do not have a separate legal personality distinguishing them from their foreign parent company. A branch may not conduct any economic activity beyond the scope of its parent company.

The parent company must file an application with the National Court Registry to register the branch.

The application must include the following information and documents:

- the business name, address of the registered office and legal form of the parent company (e.g. limited liability company, joint-stock company);
- the name of the branch, consisting of: the name of the parent company including the legal form of the parent company (translated into Polish) and supplemented with "Oddział w Polsce" ("Branch in Poland");
- the scope of business activity of the parent company;
- the full name of the person who will represent the parent company in Poland, and the address of that person in Poland;
- the address of the branch in Poland (address at which the branch office will pursue its activity);
- the articles of association or certificate of incorporation of the parent company and an excerpt from the foreign commercial register, and information on the type and name of that register (if any); resolution of the board of directors / management board of the parent company on the establishment of a branch in Poland;
- specimen signatures, certified by a notary, of persons authorized to represent the parent company in Poland;
- a power of attorney granted to persons authorized to represent the parent company in Poland;
- the full names of the members of the management body authorized to represent the parent company;
- the full names of the members of the supervising body of the parent company (if established);
- if the parent company is not incorporated under the law of one of the member states of the European Union, then the law under which it is incorporated.

Branches are required:

- to keep the branch's financial records in Polish consistent with Polish accounting regulations;
- to inform the Ministry of Economy within 14 days if any of the following events should occur: the liquidation of the parent company or the loss of the right to conduct business activity by the parent company;
- to notify the National Court Registry of all changes with respect to the information included in the application for registration;
- additionally, branches of foreign insurers, banks, and credit and financial institutions are obligated to publish annual financial reports. The financial reports of branches must be published if the credit or financial institution is not based in the European Economic Area (EEA) and the financial credit or financial institution's financial statement is not prepared according to the rules of the EEA or the principle of reciprocity is not observed in relation to the EEA.

### *Representative office*

Procedures and requirements for the establishment of a representative office are regulated by the Act on the Freedom of Business Activity. A representative office may be established without a permit from the Ministry of Economy even if there is no reciprocity between Poland and the country of the foreign company. The only formal requirement is registration in the records of representative offices maintained by the Ministry of Economy.

Representative offices, like branches, do not have separate legal personality distinguishing them from their foreign parent company. However, once established, a representative office is only entitled to conduct advertising and promotion activities in relation to its parent company.

A representative office may also be established by foreign persons authorized to promote the economy of the country in which they have their seat. The scope of activity of such a representative office may only include the promotion and advertising of the economy of that country.

The parent company must file an application to register a representative office that includes the following information and documents:

- the business name, address of the registered office and legal form of the parent company (e.g. limited liability company, joint-stock company);
- the name of the representative office consisting of: the name of the parent company including the legal form of the parent company translated into Polish and supplemented with "Przedstawicielstwo w Polsce" ("Representative Office in Poland");
- the scope of business activity of the parent company;
- the full name of the person who will represent the parent company in Poland, and the address of that person in Poland;
- the address of the representative office in Poland;
- the articles of association or certificate of incorporation of the parent company and an excerpt from the foreign commercial register and information regarding the type and name of such a register (if any);
- a resolution of the board of directors/management board of the parent company on the establishment of a representative office in Poland;
- a document confirming the legal title of the parent company to the premises where the activities of a representative office will be carried out;
- a power of attorney granted to persons authorized to represent the parent company in Poland.

Certified translations into Polish of all documents drawn up in a foreign language have to be submitted to the Ministry.

Representative offices are required:

- to notify the Ministry of the Economy about any changes to the information in the registration application;
- to inform the Ministry of the Economy, within 14 days from the date on which such an event occurs, if the parent company enters into liquidation proceedings or loses its right to pursue the activity;
- to keep all financial records in Polish in accordance with the Polish mandatory accounting regulations.

Individual business activity is regulated by the Act on the Freedom of Business Activity.

### Sole proprietorship

Foreign individuals who have a permit to settle, permission for tolerated residence, refugee status obtained in Poland, or exercise temporary protection within its territory, have long-term EC residential status or a temporary residence permit, may undertake and conduct business activity in any of the above-mentioned forms on the same basis as Polish citizens.

The same rule applies to foreigners from the EU, from EEA countries which are not members of the EU, as well as NON-EEA country foreigners entitled to freedom of economic activity on the basis of international agreements with the EU or its Member States, or the family members of those persons who join these persons or live with them.

Foreigners other than those listed above may operate businesses in Poland in the form of joint-stock or limited liability companies, limited partnerships and partnerships limited by shares, and invest in such companies and partnerships, unless otherwise provided for in an international agreement ratified by Poland.

### Registration of business entities in Poland

#### Organization of the National Court Registry

The new National Court Registry Act, introducing substantial changes in the system and procedures for the registration of entities conducting business activity in Poland, came into force on January 1, 2001. The Act created the National Court Registry to take over the functions of the majority of registers, including commercial registers, in operation up to January 1, 2001. This is a central nation-wide electronic database composed of three separate registries:

- registry of business entities;
- registry of associations, other social and professional organizations, foundations and public social assistance agencies; and
- registry of insolvent debtors.

The National Court Registry will contain important information not previously included in former registers such as information regarding customs, tax and social security arrears, a list of creditors and amounts of unpaid debt. The new registry of insolvent debtors is intended to provide information on persons with whom commercial cooperation involves a high risk.

#### Registration procedure for registration of new business entities with the National Court Registry

Entries into the National Court Registry are made on the basis of an official application form with attachments. All entries except for those regarding individuals conducting business activity are to be published in the Court and Economic Journal (*Monitor Sądowy i Gospodarczy*).

The court fee for registering a business entity for the first time is PLN 1,000 and the fee for the obligatory announcement in the *Monitor Sądowy i Gospodarczy* is PLN 500. The fee for subsequent changes to the data in the register is PLN 400 and the costs for publishing amount to PLN 250.

The required documents are:

- an official application form and attachments;
- the articles of association or statute;

- notarized specimen signatures of persons authorized to represent the business entity;
- other documents required by applicable law, such as the Commercial Code, the Act on the Freedom of Business Activity, etc.

Certified translations into Polish and originals of all documents drawn up in a foreign language have to be submitted to the Court. There is an obligation to submit all documents in their originals or at least submit copies certified by a notary public.

The procedures before the National Court Registry involve complex registration forms and are highly formal. Transfers of existing entities from the old registers to the new one may appear to be especially time-consuming.

*Transfer of existing registrations and obligations of registered entities*

The old registers will operate until all existing entries are transferred to the National Court Registry. All existing entries made on the basis of the previous regulations are valid until they are re-registered to the National Court Registry, which should have been completed by December 31, 2003.

Entities entered in the commercial register are obliged to apply for re-registration in the register of business entities of the National Court Registry. This re-registration was free of charge. As of December 31, 2003, an entity will have to pay a registration fee of PLN 1,000.

**Restrictions on foreign investments**

Restrictions on foreign ownership have generally been lifted except for certain types of telecommunications and broadcasting activity.

Under the Act on Broadcasting of December 29, 1992, a license for broadcasting activities may only be granted to a company with its seat in Poland. Foreign investors cannot own more than 49% of the company's share capital and their voting rights cannot exceed 49%. The majority of management board and supervisory board members should be Polish citizens permanently domiciled in Poland. The above-mentioned restrictions do not apply to a foreign business entity or the subsidiary of a foreign business entity whose registered seat is in an EEA country.

**System of permits**

In principle, any person is allowed, on equal terms, to freely undertake and conduct business activity subject to fulfillment of the conditions defined by the provisions of law. The undertaking of economic activity by legal entities is not subject to notification, although the entities themselves must be registered in the relevant registers. In order for a natural person to undertake business activity, that person must be entered into the relevant register of business activity kept by the relevant local government body.

Undertaking and conducting economic activity may additionally involve the duty to obtain a license or to be entered in a register of regulated activity. The conducting of certain activities may require obtaining a permit.

*Licenses, regulated activity and permits*

The Act of the Freedom of Business Activity distinguishes between a license, regulated activity (*działalność regulowana*) and permits. Activities for which a license is required must be listed in the Act on the Freedom of Business Activity, whereas the regulated activities may be listed in any law. The Act on the Freedom of Business Activity also specifies certain activities that require a permit. The definition of a license and permit has generally not changed, whilst regulated activity is defined as economic activity which requires special conditions laid down in the provisions of law to be satisfied. An entrepreneur is entered in the register of regulated activity on the basis of his declaration stating that he satisfies the conditions required to conduct such activity.

Introduction of a new license requirement may be implemented only by a change to the Act on the Freedom of Business Activity and is only possible for fields with special importance for national security or other important public interests.

Any refusal to grant a license is subject to appeal in accordance with the Administrative Procedure Code.

Under the Act on the Freedom of Business Activity, a license is required for the following six fields of business activity:

- certain activities within the mining sector;
- production of and trading in explosives, arms and ammunition, and products and technologies for military or police use;
- production, processing, storage, delivery, distribution of and trading in fuel and energy;
- services for the protection of individuals and their property;
- air transport;
- broadcasting of radio and television programs.

Licenses are issued for a specified period of time of between 5 and 50 years unless the entrepreneur applies for a shorter period. The licensing authority may refuse to grant a license in any of the following cases:

- the business entity does not meet the conditions specified in the law or specific requirements imposed by the competent authority prior to the licensing procedure being commenced;
- national safety or security or safety and security of the citizens is endangered ;
- license has been granted to other entrepreneurs in the public tender;
- special provisions laid down in the law.

The rules and procedures concerning permits are laid down in the specific provisions of law that regulate them. The Act on the Freedom of Business Activity specifies 26 areas of business activities that require a permit.

If a provision of law specifies that a certain type of business activity is a regulated activity then an entrepreneur may conduct this activity if he satisfies the special conditions specified in those provisions and upon being entered into the register of regulated activity. Regulated activities include such activities as production of tobacco products, organization of professional sport competitions and detective services.

## Transaction permits

### *Transaction permits*

The Minister of the State Treasury should be notified of transactions exceeding EUR. 50,000 in value and involving state-owned companies or their assets. The Minister can submit an objection to the transaction. Moreover, real property transactions carried out in Poland may require administrative permits. See Section 7.4 for additional information.

### *Merger*

Poland's merger control regulations are contained in the Antimonopoly Act discussed in this document.

## Protection against expropriation

The rules of protection against expropriation are the same for both Polish and foreign entities.

Thus, according to the Polish Constitution, the State protects ownership and expropriation is admissible only for public purposes and in exchange for just compensation.

Expropriation may only take place in relation to public purpose projects such as are provided for by acts of Parliament. One such act is the Toll Motorways Act of 1994 which regulates in detail the procedure and the amount of compensation payable in the event of expropriation of private properties.

## Repatriation of profits and the transfer of proceeds from the sale of shares

A foreign investor may transfer its profits, after paying the taxes due, by purchasing foreign currency from a Polish bank in an amount equal to its profits and transferring that sum abroad.

A foreign investor is free to sell its shares either to foreign or to domestic investors. The Commercial Code introduced the rule that a share transfer agreement must be concluded in written form with signatures of the parties certified by a notary public. A sale agreement with a foreign purchaser may provide for payment to be made in a foreign currency or in Polish Zlotys (PLN). The PLN obtained as

a result of a sale to a foreign or domestic investor may be converted into other currencies and transferred abroad. A foreign investor may also convert proceeds from the liquidation of a company into foreign currency and transfer them abroad.

A bank will transfer the proceeds from the sale of shares or liquidation upon presentation of the appropriate certificate issued by the Polish tax office confirming that the investor paid applicable Polish income taxes, if any.

## Privatization

Privatization in Poland is governed by the Act on Commercialization and Privatization 1996 ("the Privatization Act"). Privatization is the commercialization of a state-owned enterprise, and may be done directly or indirectly. The Minister of the State Treasury performs the commercialization of a state-owned enterprise on its own initiative or on the initiative of the organs of the enterprise.

The act of commercialization of the enterprise (i.e. the act providing for transformation of the enterprise into commercial company) substitutes all the acts necessary for the incorporation of the company. The closing balance sheet of the enterprise constitutes the opening balance sheet of the company.

The **INDIRECT PRIVATIZATION** of an enterprise takes place through the sale of shares. The shares may be sold in one of the following ways:

- public offer;
- public tender;
- negotiation following public invitation.

The employees of the enterprise are entitled to obtain up to 15% of the shares in the company at no cost.

The **DIRECT PRIVATIZATION** of an enterprise takes place through the disposal of all its assets and does not entail the liquidation of the enterprise. Therefore the entity which takes over the enterprise will be responsible for the debts and other obligations of the enterprise. The disposal of assets may be accomplished by selling them, contributing them to the capital of a company or releasing them for use by a company. Direct privatization is only available for state enterprises, with annual revenue for the year preceding the year in which privatization takes place of not more than 6 million EUR, funds at the end of that year of not more than 2 million EUR.

The sale of the enterprise may take place through public tender or negotiations following public invitation. The purchase price may be paid in installments over a period of not more than five years if the unpaid sum is properly secured. The first installment must be for at least 20% of the purchase price.

The contribution of the enterprise to the capital of a company should take place through negotiations following public invitation. Shareholders of the company other than the Ministry of the State Treasury should subscribe for at least 25% of the share capital. The employees have the right to obtain 15% of the shares at no cost.

The release of the enterprise for use takes place through an agreement between the Ministry of the State Treasury and the entity taking over the enterprise for the use of the assets for a maximum period of 15 years. The parties may agree to a purchase option after the expiration of the agreement. The transfer of ownership may take place after payment of at least 1/3 of the purchase price.

Recent amendments to the Privatization Act (effective as of July 2006) brought two significant changes into the privatization law. First, local governments obtained the right to initiate commercialization and acquire ownership of shares of state owned enterprises. However, they may do so only with respect to enterprises operating on their territories and for the benefit of local communities. Second, the Minister of the State Treasury obtained the right to transfer, under certain conditions, assets of state owned enterprises to corporations wholly owned by the state.



## Securities and Finance

Polish corporate entities may issue shares, bonds, commercial papers and other securities recognized by the Polish legal system. The issue, sale, and purchase of bonds are generally regulated by the Bonds Act of 29 June 1995. The issue of shares is regulated by the Code of Commercial Companies of 2000. The public issue and trading of publicly traded securities is regulated by the Act of July 29, 2005 on Public Offering and Conditions for Introduction of Financial Instruments into the Organized Trading System and on Public Companies (the "Act on Public Offering"); the Act of July 29, 2005 on Trading in Financial Instruments; the Act of July 29, 2005 on Supervision of the Capital Market and the Act of July 21, 2006 on Supervision of the Financial Market.

Polish capital market regulations follow the EU directives, including in particular the Prospectus Directive, the Investment Services Directive and the Takeover Directive.

Currently in Poland there are the following regulated markets: stock exchange operated by the Warsaw Stock Exchange (WSE) and over-the-counter market - operated by MTS CeTO S.A. In order to conduct a public offering of securities or admit securities to trading on the regulated market, generally, subject to certain exceptions, the issuer has to have its prospectus approved by the Financial Supervisory Commission (FSC), the Polish capital markets regulatory authority. The prospectus must be made available to the public. In addition, the Board of the WSE must approve the securities for listing.

All securities admitted to public trading are in book-entry form and are registered the National Depository of Securities, the central clearinghouse of securities in Poland. This is an independent joint-stock company, of which shares are held by the Ministry of the State Treasury, the National Bank of Poland, brokerage houses, investment funds and banks. Holders of listed securities need to have securities accounts at brokerage houses or banks at which their securities are registered.

The National Depository of Securities also runs the mandatory compensation system, which was established by the Act on Trading in Financial Instruments for the purpose of protecting investors from financial losses in the event of bankruptcy of a brokerage house. Brokerage houses make compulsory payments annually, in amounts specified by the Act on Trading in Financial Instruments. The maximum guaranteed amount will increase each year from EUR 15,000 in 2006 to EUR 22,000 in 2008.

### Offering requirements

The Act on Public Offering regulates the public issue of securities and admission of securities to trading on regulated market. The public offering is a communication, in any form and by any means, that is addressed to at least 100 persons or to an unspecified number of addressees, that contains sufficient information on the securities to be offered and the terms and conditions of their acquisition, as to enable an investor to take the decision to purchase these securities.

As a rule, the issuer may offer the securities by way of public offering once it has its prospectus approved by the FSC and published. The trading of securities on a regulated market may be conducted only through investment firms. The FSC is also responsible for the supervision of brokers, investment advisers and investment funds. It also monitors takeovers of listed companies. The FSC has full supervisory and investigative powers.

The prospectus must include information about the issuer, the securities to be issued as well as other information required by the investor to decide whether to buy the securities. The contents of the prospectus depend on the kind of offering, the issuer, and the securities being offered to the investors. It is also allowed to publish the prospectus on the Internet.

The FSC has 20 business days from the date of filing to approve the prospectus regarding offering of securities issued by an entity which securities have not yet been subject to public offering or are not admitted to trading on regulated market. If the securities being subject to public offering or admission to trading on regulated market are issued by entity which securities have been subject to public offering or are admitted to trading on regulated market, then the FSC has 10 business days to approve the prospectus.

The Act on Public Offering provides for a number of exemptions from the requirement to prepare, approve and publish the prospectus. The most important exemptions are:

- Public offering addressed exclusively to qualified investors;
- Public offering addressed exclusively to investors each of whom acquires securities of a value, calculated on the basis of the issue price or selling price, of at least EUR 50 thousand or the PLN equivalent thereof;
- Public offering concerning securities whose par value per unit amounts to not less than EUR 50 thousand or the PLN equivalent thereof;
- Public offering concerning securities whose total value, calculated on the basis of the issue price or selling price, does not exceed – over a period of consecutive 12 months – EUR 100 thousand or the PLN equivalent thereof; and
- Admission to trading on regulated market of securities of an issuer whose securities are admitted to trading on a regulated market, by the issuer or its affiliate, delivered to current or former directors or employees of the issuer or its affiliate.

Several offerings of securities are exempt from the requirement to prepare and approve a prospectus but the issuer must instead prepare an abbreviated form of offering circular referred to as the information memorandum. The information memorandum may be prepared for example in the following cases:

- Public offering of securities, where the total value of the issue, over the period of 12 consecutive months, calculated on the basis of the issue price, is less than EUR 2.5 million or the PLN equivalent thereof, calculated at the mid-exchange rate quoted by the National Bank of Poland for the day on which the issue price of those securities is defined;
- Admission to trading on regulated market of securities delivered to shareholders in the target company in connection with the acquisition of another company by the issuer; and
- Admission to trading on regulated market of securities delivered to shareholders in a company merging with the issuer in connection with the issuer's merger with another company.

Since Poland joined the European Union the foreign companies whose prospectus have been approved by supervisory authority in any Member State may conduct public offering or seek admission to trading on regulated market of securities in Poland under single EU passport rule. Similarly, Polish companies whose prospectuses have been approved by the FSC may conduct public offerings or be listed in other EU member states.

There is generally a time span of a few weeks between the public offering of shares and their listing on the WSE. Until shares are registered with the Krajowy Rejestr Sądowy (the National Court Register), rights to shares (called PDAs) which are a form of conditionally pre-released shares, may be traded on the WSE.

Issuers of publicly traded securities are subject to continuous reporting requirements, which include current, quarterly, semi-annual and annual reports.

### **Large shareholding requirements**

The Act on Public Offering includes extensive provisions regarding acquisition of large shareholdings in public companies. It regulates disclosure obligations, consent requirements, and requirements regarding the announcement of tenders concerning shares, bonds convertible into shares, depositary receipts based on shares and other securities which confer a right to acquire shares in publicly traded companies.

Any person who has reached or exceeded 5%, 10%, 20%, 25%, 33%, 50% or 75% of total voting rights in a listed company must notify the FSC and the listed company within four days of the date of the transaction. The obligation also applies if an investor disposes of such shares and its shareholding falls below the specified percentages. Moreover, an investor who has more than 10% of total voting rights must notify purchases or sales which change the number of votes by at least 2% up or down. Furthermore any investor who has more than 33% of total voting rights must notify purchases or sales which change the number of votes by at least 1% up or down. A notification of acquisition of 10% of

votes or more in a public company must also contain a description of the investor's plans as to whether it intends to increase its stake in the company within the next 12 months.

There are following tender offer requirements in the Act on Public Offering:

- acquisition, within a period of 60 days, of shares in a listed company giving more than 10% or more of votes at the general meeting of shareholders of that company by an investor who holds at least 33% of votes;
- acquisition, within a period of 12 months, of shares in a listed company giving more than 5% of votes at the general meeting of shareholders of that company by an investor who holds at least 33% of votes;
- exceeding 33% or 66% of votes at the general meeting of shareholders of a public company;
- and delisting of a public company.

A shareholder that wishes to cross the 33% voting rights threshold is obliged to launch a tender offer for shares that will entitle it to hold 66% of votes whereas a shareholder that wishes to cross the 66% voting rights threshold is obliged to launch a tender offer for all remaining shares in a publicly traded company.

The entity intending to announce the tender offer is required to deliver a collateral of value equal to at least 100% of the value of shares which are subject to the tender offer. The tender offer price cannot be lower than the last 6-month, or 3-month (depending on the type of tender offer) market average and cannot be lower than the price which the entity launching the tender offer or its affiliates paid for the shares in the a last 12 months.

Percentages of voting rights held by associated entities are aggregated for the purposes of the tender offer requirements. For example, holdings of a affiliates are aggregated. The same applies to entities bound by written or verbal agreements regarding common acquisitions of shares of a public company or unanimous voting at a general meeting of shareholders. Analogous obligations have been imposed on an investment fund in case of an acquisition of shares by another investment fund under common management. Similarly, an entity is obligated to comply with these requirements if shares are acquired by a third party acting on their behalf, but on the mandate of or to the benefit of such an entity (the "concerted parties").

The Act on Public Offering has implemented a new minority right and permits shareholders holding 5% of the shares to propose a resolution at the shareholders' meeting to appoint an expert to investigate how the company's affairs are conducted. The expert may be a chartered accountant or another entity with the appropriate qualifications. The resolution must specify the subject and scope of the review, the documents that the company must make available to the expert, and the position taken by the management as to the requested review. If the shareholders' meeting fails to adopt the motion, the shareholders filing the motion have 14 days to file a motion with the court requesting appointment of the expert.

**Civil,  
administrative  
and criminal  
liability**

The Act on Public Offering, the Act on Trading in Financial Instruments and the Act on Supervision of the Capital Market provide for responsibility for practices being contrary to basic standards applicable in the capital markets, in particular:

1. Civil liability of issuers, selling shareholders, underwriters, and persons who prepare a prospectus or participate in preparing a prospectus, who provide false information or fail to provide material information in the prospectus. The liability is joint and several and cannot be contractually excluded;
2. Sanctions imposed by the FSC for failure to comply with the disclosure obligations, the large shareholding requirements or trading in securities during restricted periods. The FSC may impose fines or suspend trading in securities on the regulated market, depending on the type of delinquency;

### 3. Criminal liability for a number of offences, including:

- making a public offering of securities without a prospectus approved by the FSC;
- providing false information or failing to provide material information in a prospectus;
- insider dealing;
- market manipulation;
- non-compliance with the disclosure requirements.

## **Bonds**

The Bonds Act regulates interest bearing bonds, zero coupon bonds, convertible bonds, bonds that give the holder the right to participate in the issuer's profits, and bonds that give the bondholder the pre-emptive right to acquire any newly issued shares. It is possible to issue bonds in certificated and book-entry form. Bonds may be issued by any legal person running a business in Poland, limited partnerships, local authorities, and selected other entities.

As a rule the issuer is liable with all its assets for the liabilities resulting from a bond. Issuers of income bonds may limit their liability to a portion of or all of the proceeds obtained from activities that were financed from funds acquired from the issue of bonds or from proceeds acquired from other activities specified by the issuer. Only local authorities and companies designated to perform public utility tasks may issue such income bonds, which are repayable solely from income generated by the project they are used to fund.

The Bonds Act imposes an obligation on the issuer to supply investors with the minimum information required to evaluate the financial situation of the issuer and the risks that may be connected with the investment. Public offerings of bonds are governed by the Act on Public Offering. Security for the issue is optional and it may be in any form allowed by law, including a pledge or mortgage, a bank guarantee, or security issued by the Ministry of the State Treasury, a bank, or another financial institution. The interest under the bonds per annum may not be higher than four times the Lombard rate established by the National Bank of Poland.

The interests of the bondholders may also be protected through the use of a representative bank, the purpose of which is to perform the function of the statutory bondholders' representative in relations with the issuer. Conclusion of an agreement with the representative bank is optional for the issuer, except in cases where the bonds are guaranteed by the Ministry of the State Treasury. The issuer must supply the representative bank with specific documents and information, providing a basis for the evaluation of the issuer's financial situation. The representative bank should assess the issuer's ability to perform the obligations it has taken on as a bond issuer. The representative bank must also inform bondholders of any threats to their interests or of any breach by the issuer. In the event of a breach, the representative bank is under an obligation to take legal action against the issuer.

## **Banks**

Banking activity is regulated by the Banking Act of 1997. Banks may extend credits both in the Polish and foreign currencies. A number of well-known foreign banks have established subsidiaries or branch offices in Poland.

## **Secured transactions**

There are several types of security available under Polish law. Mortgages and pledges fall under the category of limited rights in property. They are effective not only between the parties to the transaction but also in relation to third parties. Mortgages and pledges are heavily regulated, thus limiting the freedom of the parties to structure these types of transactions. Under the general principle of freedom of contract, other types of security are possible. However, their effectiveness as against third parties is limited.

## **Leasing**

Since December 9, 2000, leasing has been defined and regulated by the Polish Civil Code (Articles 7091 - 70918). Under the Code, leasing is an agreement between the "financing party", acting within its scope of business activity, and the "user". The financing party is obliged to acquire an object from the seller and lease this object to the user for the specified period of time. The user is obliged to pay installments, equal at least to the acquisition price or to a fee for the acquisition of the object by the financing party throughout the period of the agreement. The Civil Code provides for particular obligations of the parties, e.g. mandatory obligations of the parties, conditions of termination of the agreement.

## Foreign Exchange

The current Polish Foreign Exchange Act came into force on October 1, 2002, (Journal of Laws 2002 No. 141 Item 1178, as amended). The Act implements the directives of the European Union regarding the freedom of capital transfers.

Under EU rules, no restrictions can be imposed on any capital transaction except for limitations for tax and banking supervision purposes. Consequently, foreign exchange transactions between Polish residents and non-residents from member states of the European Union, the European Economic Area and the Organization for Economic Co-operation and Development (the "Member Countries") are free of limitations, with a few minor restrictions. One of the remaining restrictions is that there is an obligation to transfer funds via a bank account if the transfer amount exceeds EUR 10,000 and a prohibition of making payments in non-convertible currencies, and on the export of gold and platinum. Under the Foreign Exchange Act, state control of currency flows still exists in relation to countries other than the Member Countries, defined as "Third Countries". Some of the Third Countries which have concluded bilateral investment treaties with the Republic of Poland, are treated in a more favourable way (the "BIT Countries").

The Foreign Exchange Act provides for a limited list of foreign exchange transactions that may be performed exclusively on the basis of special foreign exchange permits, which are issued by the banking regulatory authorities. Transactions that are subject to restriction include: transfers of funds by Polish residents to Third Countries for development of business activity; investments by Polish residents in Third Countries in real estate, shares, participation units and receivables; lending and borrowing loans and credits from non-residents from Third Countries if the repayment of half of the principal sum is scheduled to take place within one year from the date of the transaction; opening bank accounts in Third Countries and making donations to non-residents from Third Countries.

Foreign exchange values (foreign currencies, gold and platinum, as well as securities denominated in foreign currencies that are means of payment) may be owned by Polish residents in Poland as well as abroad and by non-residents in Poland. Residents are no longer required to repatriate foreign exchange values or Polish currency held abroad to Poland and may maintain foreign bank accounts with all banks in the Member Countries, while opening accounts with banks operating in Third Countries is still restricted.

The PLN is externally convertible and Poland complies with the requirements of Article VIII of the Statute of the International Monetary Fund. All transactions can be concluded and settled in PLN or in any of these currencies. Residents are not entitled to settle transactions with other residents in Poland in foreign currencies (save for a few exceptions). Foreigners (non-residents) employed in Poland may receive remuneration in a foreign currency, either in Poland or directly deposited to their bank accounts abroad.

Although transfers of funds from Poland are legal, residents conducting foreign exchange transactions are required to use a bank as an intermediary if the amount of the transaction exceeds EUR 10,000 or the equivalent in any other currency. The banks have some supervisory obligations with respect to the transfer of funds involving foreign exchange transactions between residents and non-residents. There are no restrictions on the opening of bank accounts by non-residents.

In the event of extraordinary public threats to the stability and integrity of the financial system of Poland, the Council of Ministers may introduce extraordinary restrictions for a period of up to six months, by way of an ordinance.

## Tax System

### Corporate income tax

Corporate income tax is currently levied at the rate of 19% on net profit. As a rule, net profit is calculated as the difference between revenues less tax-deductible costs.

Polish tax residents (companies including limited liability companies and joint stock companies in organization) are subject to corporate income tax on their worldwide income. Non-tax residents are subject to taxation in Poland on the revenues earned on the territory of Poland (tax is either settled by

such non-residents - in case of permanent establishments in Poland) or withheld at source by a Polish withholding agent (e.g. in case of dividends, interest, royalties).

Companies having legal personality and their shareholders are treated separately for taxation purposes. Dividends are subject to a withholding tax at 19% rate. The amount of withholding tax is often reduced to e.g. 5% rate under bilateral agreements for the avoidance of double taxation. In 2004 Poland has implemented the regulations of the Council Directive on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States. Therefore, income from dividends is exempted from withholding tax if the following conditions are fulfilled:

- the entity that earns income from dividends does not have its place of residence or management in Poland, and
- the entire income of the company receiving dividend, regardless of where it is earned, is subject to taxation in one of the EU states, and
- company receiving dividends is directly entitled to at least 20% (15% in 2007-8 and 10% starting from 2009) of Polish company's shares during an uninterrupted period of at least 2 years.

There are some tax incentives provided by the tax law, e.g. exemption of income earned due to business activity in the special economic zones or partial double deduction of expenses borne for acquisition of latest technologies.

Polish tax law provides for transfer pricing regulations in accordance with the general OECD provisions. It is possible to conclude an advanced pricing agreement with the tax administration in order to secure the correctness of transfer pricing method applied. There are also thin capitalization restrictions applying to intra-group financing. Polish tax residents can form tax capital groups.

### **Personal income tax**

Residents of Poland are subject to personal income tax with respect to their worldwide income. Nonresidents of Poland are subject to tax on income earned from work provided in Poland and any other income earned in Poland.

Personal income tax law provides for several categories of sources of revenues. As a rule, income from employment, personal services, business activities and from other sources is subject to progressive tax rates of 19%, 30% to 40%. The 40% rate applies to income over 74.048 PLN per annum (i.e. approximately USD 23.700). Income from business activities may, however, be taxed at the flat 19% rate. A flat 19% rate applies also to capital gains, dividends and interest.

Persons who are not tax residents in Poland are generally taxed in the same way as Polish tax residents. However, in case of revenues from personal services (also revenues for membership in board of directors or supervisory board) the flat rate tax of 20% of revenues applies.

### **VAT**

Currently, the following activities are subject to Value Added Tax (VAT):

- supply of goods,
- supply of services,
- intra-Community supply of goods,
- intra-Community acquisition of goods,
- export of goods,
- import of goods.

The VAT rate is currently 22% with reduced rates of 0%, 3% or 7% for certain types of goods and services. As a rule, Polish VAT law is based on the EU VIth Directive and other EU regulations.

### **Social security**

Social security contributions are paid to the Social Insurance Office (*ZUS*). Contributions are compulsory on employment contracts and most of personal services contracts.

The contributions consist of:

- retirement fund 19,52% (paid 50/50 by employer and employee);
- disability fund 13% (paid 50/50 by employer and employee);
- health fund 2,45% (paid by employee);
- accident fund (withheld by employer).

Since 1 January 2003, the premium for accident insurance has generally been between 0,40% and 8,12%, depending on the classification of the employer's activities in the PKD (Polish Classification of Activities), as listed in the REGON register (National Register of Polish Business Entities).

There is also a health care insurance amounting to 8,75% (9% from 2007) of the base (as a rule, taxable revenue less social security contributions). However, 7,75% of the base is deducted from personal income tax advances.

#### Other taxes

Tax on civil law transactions is levied in case of several kinds of civil law actions, e.g. raising share capital (0,5%), sale of goods and property rights (1% or 2%), loans (2%). As a rule, tax is not levied where VAT applies. Several exemptions are applicable to e.g. loans.

There is also real estate tax and some other minor local taxes.

## Competition Law

#### Introduction

Competition law in Poland is regulated by the Act on Protection of Competition and Consumers of 15 December, 2000, (the "Antimonopoly Act") and the Act on Combating Unfair Competition of 16 April, 1993, (the "Unfair Competition Act").

The Antimonopoly Act is directed towards three types of market behavior:

- anti-competitive agreements;
- abuse of a dominant position; and
- excessive concentration on a market.

#### Anti-competitive agreements

The Antimonopoly Act lists types of agreements, concerted practices, and decisions that are prohibited. These include, among other things:

- price fixing arrangements or agreements on other contractual terms among competitors;
- limiting or controlling the volume of production, sales, technical development or investment;
- market sharing;
- applying dissimilar or burdensome conditions to equivalent transactions;
- placing third parties at a competitive disadvantage;
- imposing onerous contract terms that confer undue benefits on the entity imposing them;
- agreements which restrict access to a specific market; competitors fixing the terms of a tender.

An agreement is not prohibited if it falls under statutory exemptions or block exemptions. Statutory exemptions apply to both horizontal and vertical monopolistic agreements. Horizontal agreements are not prohibited if the undertakings concerned do not have more than 5% of the relevant market. Vertical agreements are lawful if the market share of the undertakings concerned does not exceed 10%. It is important to know that the exemption at issue does not apply to agreements listed under points 1, 3 and 7 above.

**Abuse of a dominant position**

The Antimonopoly Act defines a dominant position as a position of economic strength enjoyed by an undertaking that enables it to prevent effective competition in the relevant market by giving it the power to behave, to an appreciable extent, independently of its competitors, customers and consumers. A dominant position is presumed to be held if the undertaking's market share exceeds 40%.

The abuse of a dominant position is prohibited and it may take, among others things, one of the following forms:

- directly or indirectly imposing unfair prices, including excessively high or low prices, or other unfair terms for sale or purchase;
- limiting production, purchase, or technical development to the prejudice of consumers or customers;
- applying dissimilar or burdensome conditions to equivalent transactions thereby
- placing third parties at a competitive disadvantage;
- making the conclusion of a contract contingent on the acceptance or performance of another service not connected with the performance under the contract, which would not otherwise be accepted or performed if that party had a choice (tie-in contracts);
- hindering the creation and development of competition;
- imposing onerous contract terms that confer undue benefits onto the entity imposing them;
- imposing onerous conditions on consumers in relation to their legal remedies,
- market sharing according to territorial, product or entity-related criteria.

The abuse of a dominant position is illegal *per se*.

The President of the Office for Protection of Competition and Consumers (the "Antimonopoly Office" or "AMO") has broad investigatory powers and may issue a decision ordering that illegal practices, in a form of anti-competitive practices or abuse of a dominant position, be ceased. Any agreement concluded in violation of the Antimonopoly Act may then be declared void by a Civil Court in whole or in part.

Also, the President of the AMO may impose fines on undertakings that enter into anti-competitive agreements or abuse a dominant position up to 10% of their annual turnover.

**Control of concentrations**

Concentration control rules are included in Section III of the Antimonopoly Act. The Antimonopoly Act does not, specifically, define the term "concentration". It simply lists transactions that require prior notification of the President of the AMO. The mere intent to enter into these transactions requires notification. An Ordinance of the Council of Ministers of 3 April 2002 regulates the notification procedure.

The notification requirement applies to:

- the merger of undertakings, if the total turnover of both undertakings concerned (including their parents and subsidiaries) exceeded EUR. 50 million in the year preceding the year of the notification;
- the creation of a joint venture, if the total turnover of the subscribing undertakings (including their parents and subsidiaries) exceeded EUR. 50 million in the year preceding the year of the notification;
- taking direct or indirect control, in any manner, of another undertaking if the total turnover of the undertakings concerned (including their parents and subsidiaries) exceeded EUR. 50 million in the year preceding the year of the notification;
- the acquisition of shares of an undertaking which confers at least 25% of the voting rights at the shareholders meeting if the total turnover of both undertakings concerned (including their parents and subsidiaries) exceeded, in the year preceding the year of the notification, EUR. 50 million;



- membership by the same person on the management board or the supervisory board of competing undertakings if the total turnover of both undertakings concerned (including their parents and subsidiaries) exceeded EUR. 50 million in the year preceding the year of the notification;
- the acquisition of shares of an undertaking by a financial institution if the total turnover of the undertakings concerned (including their parents and subsidiaries) exceeded EUR. 50 million in the year preceding the year of the notification. However, notification is not required if the shares are acquired with the intention to resell them within one year, provided no voting rights are exercised.

There is no statutory deadline for making the notification. However, the companies concerned should be aware that the notification has a suspending effect and concentrations may not be completed before the President of the AMO issues a decision or the time limit for issuing a decision has elapsed. If the President of the AMO does not object to the concentration, it will notify the parties within two months from the date of the notification (or two months and half in complex cases). Within that time the President of the AMO may also issue a decision prohibiting the transaction if it would lead to a significant lessening of competition, or a decision setting certain conditions under which the transaction may be performed.

A failure to notify a concentration or a performance of the transaction before the President of the AMO decision is announced may result in fines amounting up to 10% of the annual turnover of a company that is an active participant to that transaction.

An appeal may be lodged against a decision of the President of the AMO to the Court of Protection of Competition and Consumers within two weeks from the date of receipt of the decision.

The transactions listed above do not require any filing to the AMO if, among other things:

- the vendor's group did not generate turnover exceeding 10 million EUR in Poland in either of two years preceding the year of the notification (this exemption applies only to concentrations that take the form of a share acquisition or the taking of control over another company); or
- the undertakings concerned are controlled, directly or indirectly, by the same entity.

### *Statutory exemptions*

### **The Unfair Competition Act**

The Unfair Competition Act ("the Act") defines an act of unfair competition as any activity harming or infringing the interest of an entrepreneur (that is an individual, legal person, or other entity who performs economic activity) or a customer.

The Act provides a list of examples of activities that constitute acts of unfair competition. These are as follows e.g.:

- the use of another enterprise's name;
- false or misleading labeling, or the absence of labeling indicating the geographical origin of goods and services, their quantity, quality, ingredients;
- method of manufacture, utility, reparability, or any risk connected with the use of goods and services;
- the disclosure of business secrets;
- inducing another company's customers or employees to breach their contracts;
- copying another manufacturer's finished product;
- bribery of a person which performs public duties;
- the dissemination of untrue and confusing information concerning another business;
- obstructing access to the market through:
  - predatory pricing,
  - inducing other parties not to deal with other entrepreneurs,

- discriminating against customers,
  - unreasonably different treatment of certain clients, collecting fees for admission of goods for sale other than trade margins,
  - taking action aimed at forcing clients to select a specific entrepreneur as their contracting party, or creating conditions permitting third parties to force the purchase of goods or services from a specific entrepreneur;
- dishonest or misleading advertising;
  - organizing pyramid selling systems;
  - the sale of goods or services to consumers connected with granting all or some of them a bonus consisting of goods and services different from those which are the object of sale;
  - within the scope of promotional lotteries - wording offers so that the consumer is sure of winning regardless of the result of drawing of lots or the consumer's knowledge, provided that the consumer orders goods or services covered by the promotion or pays an amount to the offer or in advance;
  - the introduction by discount stores of products with brands which are the property of the owner of the network or his subsidiary companies in quantities exceeding 20% of the value of their turnover; and
  - the conducting of a commercial activity in the form of a consortium system, consisting in managing of a property gathered within the group of consumers set up in order to finance buying of rights, movables, immovables or services for participants of the group.

Civil or administrative remedies are available to an entrepreneur whose interests have been harmed by acts of unfair competition. These include an interim court order that would prevent all sales, including sales at a specific price, and advertising by the infringing party. Criminal liability is also possible.

**State aid rules** As of May 1, 2004 EU rules on State aid are applied directly in Poland. Therefore, it is the European Commission that has an exclusive competence to approve aid in excess of de minimis threshold (EUR. 100 thousand) granted by public authorities to companies operating in Poland unless they fall under block exemption regulations.

As of May 1, 2004 the AMO is vested a function of a liaison body in proceedings before the European Commission regarding notifications of an aid or before the European Court of Justice regarding aid granted in violation of EU principles. Then the AMO is a national supervisory body that ensures that EU State aid law and national implementing rules are well understood and applied by authorities granting the aid.

## Property Law

**Property ownership and title issues** Poland has a well-developed system of land registration and comprehensive legislation regulating the transfer of land.

Polish law recognizes the following types of title and interests in land: ownership; perpetual usufruct; limited rights in property; possession; and rights arising from obligations.

**Registration** Real estate ownership and perpetual usufruct are both obligatorily registered in the Land and Mortgage Registers kept by the State Courts. Claims or other interests may be registered. The Land and Mortgage Registers are governed by the State Courts - Land and Mortgage Register Departments. Each piece of real estate (which can comprise one or a number of plots) should have a Land and Mortgage Register Book established for it. In addition, there is a land register, maintained by local municipalities. This municipal land register contains information regarding the use of real estate, the area of each plot, and names of owners and possessors. Note that the legal presumption of reality applies only to land and Mortgage Registers maintained by the State Courts. Once an interest in land has been registered in the Land and Mortgage Register, it is presumed to be

valid.

Where there is a discrepancy between the Land and Mortgage Register and facts related to title, as evidenced by other documents or circumstances, the register will prevail (the legal presumption of reality of records). This applies particularly with respect to third parties to whom title is transferred from the registered titleholder.

Thus, any registered rights will be effective against and have priority over:

- any unregistered rights and interests; and
- any rights or interests which are registered subsequently.

Registered interests will be effective only where a third party is relying on the register and does not have any factual information, which would cause it to believe or suspect that the Land and Mortgage Register is incorrect. Additionally, a purchaser of property who obtains title to a property without paying any consideration is not able to rely upon the Land and Mortgage Register if another person who has a *bona fide* interest in the property objects to his title.

#### **Adverse possession**

A person who does not hold the title to a property but is in possession of that property for a period of no less than 20 years may acquire title to that property, unless that person originally gained possession of the property as a result of an act of bad faith. If the person did gain possession as a result of an act of bad faith the person may nevertheless acquire title to the property if the adverse possession lasts for a period of at least 30 years. Where a person possesses real property under some form of legal instrument or contract, the person is not treated by law as being in adverse possession and cannot claim title on that basis.

#### **Foreign purchasers**

The purchase of real estate in Poland by a foreign person requires a permit from the Minister of Internal Affairs and Administration. Pursuant to the Act on Acquisition of Real Estate by Foreigners the following are "foreign persons":

- a natural person who is not a Polish citizen;
- a legal person incorporated outside Poland;
- a partnership of persons described above having its seat outside of Poland and incorporated outside of Poland; or a legal person or partnership without legal personality incorporated in Poland, which is, directly or indirectly, controlled by persons or partnerships described above.

A person has control over a company where that person has a dominant position in the meaning of the Commercial Companies Code.

A permit is also required where a foreign investor acquires shares in a foreign-controlled Polish company in which the foreign investor is not already a shareholder and the company owns land. The same rules apply to perpetual usufruct acquisition. A permit is not required if, for example, a foreigner acquires a residential apartment (flat) or up to 0.4 hectares of non-developed urban space required for statutory purposes throughout the country.

However, recent changes in Polish law related to Poland's joining the European Union have made investing in Poland significantly easier. As of May 1, 2004, citizens and business entities from the European Economic Area are released from the obligation to obtain a permit for the acquisition of real estate as well as for the acquisition of shares in companies which own or which are perpetual usufructuaries of real estate in Poland. This entitlement is however limited in the following cases:

- for 5 years from the moment of accession, the acquisition by EU citizens (and EEA citizens) of "second houses" will be subject to the permit requirement; and
- for 12 years from the moment of accession the acquisition by EU citizens (and EEA citizens) of agricultural and forest land will be subject to permit requirements.

Despite the above-described restrictions, investment made by foreign entities into real property in the Republic of Poland is a reasonably simple process. Nothing prevents foreign entities from establishing

a Polish subsidiary and then using that company as an acquisition vehicle for the property. This structure is commonly used to effect foreign investment into Polish real property.

### Construction process

The issues concerning the construction process in Poland are regulated above all by the Act of 27 March 2003 on Zoning Planning and the Act of 7 July 1994 - Construction Law (the "Construction Law").

According to the Construction Law the following persons shall be participants in the construction process:

- investor;
- investor's supervision inspector;
- designer;
- construction site manager.

The investor is the main participant in the construction process, which is confirmed by the scope of its duties and its position in the investment process specified in the Construction Law.

Before beginning of the construction process, the investor must check certain essential information, i.e.:

- whether the real estate to be developed is covered by a local zoning plan;
- whether the function of the real estate is agricultural, industrial or construction;
- whether the investor holds appropriate legal title to land allowing the real estate to be used for building purposes.

If the legal status of the real estate is clear and it may be used for the planned investment in accordance with applicable provisions of law, the construction process can begin. During this process, the investor should obtain a building permit, which may be issued directly on the basis of the local zoning plan, or - if there is no such plan - on the basis of planning permission.

Once the construction process is completed an occupancy permit is issued. In cases where the investment is of a specific nature, not typically located or has other specific features, certain additional decisions might be required before the investment may be properly started or completed.

### Contract Law

Contract law is regulated by the Polish Civil Code. The principles of Polish contract law are based on the continental European legal model, mainly on the Napoleonic Code that was in force in a part of Poland from 1811 until 1934. Freedom to contract is the main principle of contract law.

The Civil Code regulates certain types of contracts (such as the sales contract, construction contract, contract for services, etc). Due to the widespread use of leasing in Poland, the capital leasing agreement has recently been added to and is now regulated by the Civil Code. Parties may also form contracts that are not expressly regulated by the Civil Code and may structure relationships at their discretion, provided the content or goals of such relationships do not violate the principles of public order.

The Civil Code underwent significant changes which entered into force on 25 September 2003. These include new definitions of the terms "consumer", "entrepreneur" and "enterprise", and a new regulation on business names (*firma*), commercial representation (*prokura*) and conclusion of contracts.

### Consumer protection

Fulfilling commitments to harmonize Polish law with European Union regulations, on March 2, 2000, the Parliament adopted the Act on protection of certain consumer rights and liability for damage caused by a hazardous product. The Act provides a legal framework for contracts that are not concluded face to face and at the company's seat between a professional on one side and a

consumer on the other. It also introduced to the Civil Code a list of clauses which are prohibited in contracts (such as excluding or limiting liability towards consumers for bodily injury, excluding the jurisdiction of the Polish courts, having the case decided by a Polish or a foreign court of conciliation or another authority, or forcing a decision to be made by a court which has no local competence) and a producer's civil liability for damage caused by a hazardous product. The new product liability provisions are based on the American concept of strict liability in tort.

On July 27, 2002, the Parliament adopted an Act on special conditions of consumer sale. The Act eliminates the statutory warranty for movable goods offered by traders to consumers purchasing those goods for purposes that do not fall within the sphere of their commercial or professional activity. In a consumer relationship the responsibility of the seller is determined by the lack of conformity of a consumer good with a contract at the moment it is delivered to the consumer. The lack of conformity of a consumer good replaces the notion of defectiveness. The Act also introduces the mandatory provision of consumers with information about the prices of goods offered by traders.

**Polish language requirement**

According to a recent amendment to the Act on Polish Language of 2000 agreements generally do not have to be executed in Polish.

The exceptions to this include:

- labor and consumer agreements if the consumer or employee is domiciled in Poland during the execution of the agreement and the agreement is executed in Poland and
- dealings with certain public authorities.

**Employment Law**

**The labour code**

Polish labour law is statutory and regulates most aspects of an employment relationship. As a rule an employer is allowed to provide in an employment agreement or internal regulations for more favourable conditions than those provided for by law.

**Definition of an employment agreement**

Each agreement signed between the parties shall be deemed an employment agreement if one party is obliged to perform specified duties under the supervision of the employer at the time and place specified by the employer in return for remuneration. Employment agreements can have a fixed term or be of indefinite duration. It is possible to enter into a separate contract for a trial period of up to three months.

Where necessary the employer may, throughout a period of justified absence of an employee, engage another employee on the basis of an employment agreement for a definite term, equal in length to the period of absence of the employee being replaced (i.e. on the basis of a "substitute employment agreement").

**Continuing employment after a merger or takeover**

In the case of a merger or takeover by a new employer, the employee is automatically transferred to the new employer and does not need to sign a new employment contract. The employee has the right to terminate the contract upon seven days' notice within 2 months from the date of the transfer.

If there is a trade union or work counsels organization in the Company, the employer is obliged to consult with the trade unions and work counsels about the transfer of employees.

**Termination**

Either party may terminate the employment contract with notice if that contract is for an indefinite period or a trial period. A definite term contract for longer than six months may be terminated upon notice if it includes a provision for termination upon two weeks' notice.

The length of notice is dependent on the period of employment with the employer and, in exceptional cases, on the employment period with the previous employer if the employee was taken over by the new employer. Any decision by the employer to terminate an employment agreement concluded for an indefinite period, with or without notice, should be accompanied by a statement giving reasons justifying the termination and information about the employee's right to appeal to the Labor Court. The trade union representing the employee should be consulted and receive the reasons for the termination of the agreement in writing.

The length of notice of termination for an employee on a contract for an indefinite time period depends on the actual length of employment at the time notice is given. The notice periods required by the Labor Code are as follows:

- two weeks - if the employee has been employed for less than six months,
- one month - if the employee has been employed for at least six months, but less than 3 years,
- three months - if the employee has been employed for at least three years.

If an employee appeals against his/her termination and, during the court proceedings it is determined that the notice of termination of the contract for an indefinite period was unjustified, or that it is contrary to the provisions on termination of employment contracts, the court, upon the request of the employee, will rule that the notice of termination is invalid. If the contract has already been terminated, upon request, the court may order that the employee be reinstated to his/her job on the original conditions, or order damages to be paid to the employee. The court may disregard an employee's request to be reinstated if it determines that it is impossible to do so or that to consider such a request is pointless, and as an alternative may order that compensation be paid. The compensation will amount to the remuneration owed for a period of between two weeks and three months, and not less than the remuneration owed for the period of notice.

#### **Termination without notice**

An employer is entitled to terminate a contract of employment without notice due to the fault of the employee if:

- the employee commits a serious breach of his/her basic duties as an employee;
- the employee commits an offence that renders further employment at his/her post impossible, if the offence is obvious or has been confirmed by a court judgment;
- the employee loses, through his/her own fault, a license necessary for the performance of work at his/her post.

A contract of employment may not be terminated without notice due to the fault of the employee if one month has elapsed since the employer became aware of the circumstances warranting such termination. Prior to such termination the employer must seek the opinion of the trade union representing the employee.

An employer is entitled to terminate a contract of employment without notice without the employee's fault if:

- the employee is incapable of working due to illness and such incapacity lasts: longer than 3 months, in cases where the employee has been employed in the same business establishment for less than 6 months, or longer than the illness-allowance period in cases where the employee has been employed in the same establishment for at least 6 months or where the incapacity was caused by an accident at work or is the direct result of performing his/her work tasks;
- the employee is absent from his/her work for more than one month for a justified reason other than those mentioned above.

A contract of employment may not be terminated without notice where the employee is absent to care for a child or has been placed in isolation because of a contagious disease, and is in receipt of an allowance on that account.

In the case of unlawful termination of the employment contract without notice, the employee is entitled to appeal to the labor court and request reinstatement on the former conditions of employment, or to receive compensation.

An employee is entitled to terminate a contract of employment without notice if:

- a medical certificate has been issued that states that the employee's work is harmful to his/her health, and the employer failed to transfer the employee, within the time specified in the medical certificate, to another job that is appropriate for his/her state of health and vocational skills;
- the employer committed serious violation of its basic duties towards the employee.

The employer, in the event of a wrongful termination of the employment contract by the employee without notice in the case defined above, is entitled to appeal to the labor court and request compensation.

### **Remuneration regulations**

The employer must prepare written regulations concerning remuneration if at least 20 persons are employed and there is no collective labor agreement concluded by the Company.

If an employee is prepared to perform work but cannot do so for reasons connected with the employer, the employee is entitled to receive remuneration according to his/her individual rate of pay per hour or per month and if such component of remuneration has not been identified, 60% of his normal remuneration, but not less than the minimum wage.

A pension bonus equal to one month's salary must be paid to all employees whose employment expired in connection with a disability or retirement.

### **Restriction and competition**

Under the Labor Code, an employer may stipulate in a separate agreement that employees can not undertake competitive activity or accept a job offer from a competitor either during employment or for a given period after the termination of the employment.

This restriction may only apply to activity directly connected with that of the employer. During the employment period, the restriction may be imposed on all employees. After termination of employment, the restriction may only be applied to those employees who have had access to various trade secrets and confidential information relating or belonging to the employer, disclosure of which could cause damage to the employer.

A non-competition agreement which is in effect after termination of employment should specify the term of the restriction after employment, as well as the amount of compensation due to the employee, which can not be less than 25% of the employee's remuneration received prior to termination of employment for a period corresponding to the term of the restriction. Compensation is payable for the whole restriction period. The parties may agree for the compensation to be paid monthly or conclude other payment terms.

### **Work regulations**

Employers employing at least 20 persons must prepare work regulations to establish the rules concerning organization and order at work, and the related rights and obligations of employees and employers.

As of September 2004, working hours are eight hours per day and 40 hours per week (five days per week). The Labor Code allows for different work schedules, such as a decrease in work hours through a collective labor agreement. The statutory annual overtime limit is 150 hours per year.

It is possible to set higher overtime limits either in collective labour agreements, remuneration regulations, or in certain situations, in employment contracts, however, the maximum number of hours worked by an employee in any given week cannot exceed 48 hours within the agreed settlement period.

As of September 2004, in consideration for overtime worked on weekdays, Sundays and on public holidays, which, according to the work schedule in place, are working days for an employee, an employee is entitled to an additional 50% allowance. In consideration for overtime worked at night, on Saturdays and public holidays that are not working days for an employee, and for overtime worked on days off work granted to an employee in lieu for work performed on Sundays or public holidays, an employee will receive an additional 100% allowance.

The minimum length of paid holiday leave is 20 days after less than 10 years of work and 26 days after at least 10 years of work. All employment (regardless of the employer) is credited for the purposes of calculating the number of days due. Post-elementary education is also taken into consideration. Secondary school graduates receive 4 years' credit and university level graduates receive a total of 8 years' credit towards calculating the number of days of paid leave due.

An employee who commences work for the first time shall, in the calendar year in which he/she commenced work, acquire the right to leave after each month of work at 1/12 of the length of leave due to him/her after working for one year. The right to subsequent leave shall be acquired by the employee during each successive calendar year.

### Mass lay-offs

Mass lay-offs are regulated by the Law on Mass Lay-offs dated March 13, 2003 (as amended) ("The Law"). The Law, however, does not apply to employment establishments which employ less than 20 employees.

Mass redundancies are deemed to take place where an employer who employs at least 20 persons within a period of not longer than 30 days terminates the employment relationships by notice or by mutual agreement of the parties- with:

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

### Procedure

Pursuant to the Law, the procedure for mass lay-offs is as follows:

- Employers shall consult trade unions and work unions operating in the employer's company about the intent to conduct mass lay - offs. These consultations shall regard in particular the possibility of avoiding or reducing the extent of mass lay - offs and labor issues connected with the lay-offs, including in particular the possibility of requalifying or professional training, as well as finding other employment for employees laid off.
- The employer shall notify the company trade unions and work unions in writing of the causes of the intended mass lay-offs, the number of employees, and professional groups to which they belong, professional groups of employees covered by the lay-off, the period during which such lay-offs will occur, the proposed criteria for selecting employees for the lay-offs, the order of employee lay-offs, and proposals as to how to resolve labor issues connected with the intended lay-offs. Where the lay offs are covered by cash benefits, employers shall additionally present methods by which the level of these benefits shall be established. The notice should be delivered to company trade unions within a period enabling the unions to make proposals regarding the above-mentioned matters in the scope of consultations.
- Written notice should also be delivered to the local labor office.
- An agreement should be executed between the employer and the company trade unions within 20 days of the date of notifying the company trade unions. The agreement must define the procedure with respect to the employees to be laid off.
- If consent as to the content of the agreement cannot be reached, the employer must prepare regulations defining the procedure for mass lay-offs with special regard to agreements agreed with the company trade unions in the course of negotiating the agreement.
- If no agreement has been reached, the employer must inform the company trade union representing the employee about the termination of each employment agreement. The company trade union must register any protest within 5 days from receiving this information.
- Where the company trade unions do not operate at the given employer, their rights connected with the mass lay-off procedure shall be available to employee representatives selected in procedures adopted at the given employer. The



employer prepares regulations on the procedure of mass lay-offs after consulting the representatives.

- After concluding the agreement with the company trade union or with the representatives (or once the period of time for reaching an agreement has elapsed), the employer shall notify the proper labor office in writing of the agreements reached on the lay-offs, including the total number of employees and of the employees to be laid off, the reasons for the lay-offs, and the period during which the lay-offs are to be made.
- Notice of the lay-offs may not be given to employees before notification of the "powiat" Labor Office, or, in the event that this is not required, - after reaching the agreement or issuing the regulations.
- Termination of employment relationships with employees in the scope of mass lay-offs may occur no sooner than after 30 days from the date of the notification delivered to the local labor office, or if this is not required, no sooner than 30 days from conclusion of the agreement or issue of the regulations.
- Termination notices are delivered in accordance with the regulations regarding the periods of termination notice, special protection of employees etc.
- In respect to protected employees (for example, persons close to retirement, pregnant women, and those on maternity leave, etc) it is only possible to change their current terms and conditions of work and remuneration. If the procedure described above results in a reduction in remuneration, such employees will be entitled to an equalization payment until the end of the period of their protection.
- Employment contracts concluded for definite periods of time or for the period of the performance of a specific task may be terminated upon two weeks' notice. In the case of contracts of employment concluded for an indefinite period of time where the notice period amounts to three months, the employer may shorten the notice period to a minimum of one month. The employee shall be entitled to indemnity for the remaining 2-month period of notice.

### **Severance payment**

A severance payment is made to dismissed employees in accordance with the rules applicable to the calculation of the cash equivalent for unused holiday leave.

The amount of the severance payment depends upon the length of employment of the employee with the given employer as follows:

- the equivalent of one month's salary, if the employee has worked for less than 2 years;
- the equivalent of two months' salary, if the employee has worked for 2 to 8 years;
- the equivalent of three months' salary, if the employee has worked for more than 8 years.

The level of severance pay may not exceed 15 times the minimum monthly salary as published by the government as of the date of the termination of employment.

### **Social benefits fund**

All employers employing at least 20 employees on January 1st of a given year are under a statutory obligation to create a Social Benefits Fund that finances cultural, educational, sports and recreational activity, and provides assistance including loans and grants for housing.

The Fund is made up of annual contributions based on 37.5% of the average monthly wage (per employee,) in the domestic economy in the preceding year, or in the second half of the preceding year if the average monthly wage was then higher. The Chairman of the Central Statistical Office in the official gazette, Monitor Polski, announces the average monthly wage every year.

The rules governing the allocation of the Fund's resources are defined in the company's regulations, and must be agreed to by the trade unions or, where there are no trade unions, an employee chosen by the workforce to represent its interests.

## Bankruptcy

The Law on Bankruptcy and Reorganization of 28 February 2003 (the Bankruptcy Act) came into force on 1 October 2003 replacing the existing 1934 Ordinances of the President of the Republic of Poland: Bankruptcy Law and Law on Arrangement Proceedings.

The Bankruptcy Act principally regulates all the issues of bankruptcy, including special procedures concerning the insolvency of banks, insurance companies and bond issuers.

The Bankruptcy Act provides for two separate types of proceedings related to insolvency of business entities. The bulk of the legislative provisions constitute norms for bankruptcy proceedings conducted against an insolvent business entity. This regulation is supplemented with the regulations on reorganization proceedings initiated by financially troubled business entities and is aimed at avoiding insolvency. The Bankruptcy Act refers also to international bankruptcies in relation to entities from non-EU Countries. In the area of international bankruptcy of entities from EU Countries, the Council Regulation No. 1346/2000 applies.

### Purpose of bankruptcy and reorganization proceedings

The general purpose of the Bankruptcy Act is to enable the proceedings to be conducted in such a manner that the claims of the creditors would be satisfied to the maximum extent possible, and if reasonably possible to let the existing company of the debtor continue its operation.

### Capacity to be declared bankrupt

"Capacity to be declared bankrupt" means that an entity may be declared bankrupt under the Bankruptcy Act. Such capacity to go bankrupt is enjoyed only by those business entities which are individuals, legal persons or organizational units without legal personality yet with legal capacity, conducting business activity on their own behalf or conducting professional activity.

Capacity to be declared bankrupt is also enjoyed by limited liability and joint-stock companies not conducting business activity, partners in commercial partnerships bearing liability for the obligations of the company without limitation with their entire property, partners in professional partnerships, and branches of foreign banks.

Some entities may not be declared bankrupt. These are e.g. the State Treasury, units of territorial local government and entities created by a legislative act, etc.

### Grounds for bankruptcy

The basic prerequisite for the declaration of bankruptcy is insolvency of the debtor, meaning the debtor fails to pay its debts or perform other obligations when due. With respect to debtors which are bodies corporate and organizational units without legal personality yet enjoying legal capacity, a distinct prerequisite for the declaration of bankruptcy will be excessive indebtedness, meaning that liabilities exceed the value of assets of such entity. Under these circumstances bankruptcy may be declared regardless of the debtor paying its current liabilities.

### Bankruptcy procedures

The bankruptcy procedure may be concluded for the purpose of liquidation of the assets of the debtor (so-called liquidation bankruptcy) or for the purpose of entering into a composition arrangement with the creditors (so-called arrangement bankruptcy). If it is possible that by an arrangement, creditors will be satisfied to a greater extent than as a result of liquidation bankruptcy, the arrangement bankruptcy should be declared.

The kind of bankruptcy procedure is determined by the court in a decision on the declaration of bankruptcy. Depending on the circumstances, one bankruptcy procedure may be replaced with the other one in the course of the proceedings.

### Consequences of declaration of bankruptcy

Declaration of bankruptcy gives rise to a number of consequences both for the bankrupt entity itself and its creditors. These consequences will affect the bankrupt entity, its assets and liabilities as well as all pending proceedings. The consequences will vary depending on the type of bankruptcy proceedings i.e. liquidation proceedings or arrangement proceedings.

### Bankruptcy proceedings

Bankruptcy proceedings are conducted after the declaration of bankruptcy before the court that issued the decision declaring bankruptcy. During the bankruptcy proceedings the bankruptcy bodies (i.e. the judge-commissioner supervising the bankruptcy, receiver or supervisor, managing or supervising the bankruptcy) perform actions aimed at the establishment of the bankrupt entity's estate,

the drawing up of the list of claims, as well as actions aimed at the liquidation of the bankrupt entity's estate and the distribution of the funds among the bankrupt entity's creditors in the case of liquidation bankruptcy proceedings, or actions aimed at reaching an arrangement agreement with the creditors in the case of arrangement bankruptcy proceedings.

It is worth noting that in the case of liquidation bankruptcy proceedings under this Act not only claims secured by registered pledges, but also claims secured by mortgages, Civil Code pledges, fiscal pledges and sea mortgages would have priority when satisfying claims from the sale of the object of the security. In arrangement bankruptcy, such secured creditors may decide whether they participate in the arrangement (and thus agree to revise their claims) or not.

### **Participation of creditors in the bankruptcy proceedings**

The creditors are able to control the course of bankruptcy proceedings through the board of creditors. The board of creditors may be appointed at the first meeting of creditors, before bankruptcy has been declared or, after bankruptcy has been declared, at the request of one-fifth of creditors of all claims or ex-officio, by the judge commissioner, if he deems it necessary. The board of creditors gives its consent to certain acts to be taken with respect to the bankruptcy estate.

Furthermore, in all the cases provided for in the Bankruptcy Act, the creditors may decide regarding particular acts taken in bankruptcy proceedings at the creditors' meetings, for instance in the case of approval of arrangement with the bankrupt entity. Arrangement may be also approved at the initial meeting of creditors before bankruptcy is declared.

### **Cross-border bankruptcy proceedings**

The Bankruptcy Act provides for specific regulations in the scope of bankruptcy proceedings conducted abroad against a debtor that has its assets within the territory of Poland applicable in respect to the non-EU Countries. Such proceedings will be valid under Polish law if they are recognized by a Polish court.

Declaration of bankruptcy abroad does not prevent bankruptcy from being declared also in Poland. However, once foreign bankruptcy proceedings are recognized, bankruptcy declared in Poland will relate only to the assets located in Poland.

The issues relating to bankruptcy declared within the territory of the European Union are regulated by Council Regulation no. 1346/2000 dated 29 May 2000 on insolvency proceedings. Therefore, bankruptcy declared in one EU Country is automatically recognized in Poland.

### **Reorganization proceedings in the event of the threat of insolvency**

In addition to bankruptcy proceedings the Bankruptcy Act provides for a special procedure if the debtor is threatened by insolvency. This procedure applies solely to those business entities which are recorded in the National Court Register and still perform their obligations, but it follows from a reasonable assessment of their economic situation that they will become insolvent in the near future. The course of reorganization proceedings is monitored by a court supervisor.

The reorganization proceedings are commenced after the business entity files with the court a relevant declaration accompanied by a reorganization plan. The reorganization plan proposed by the business entity should ensure restoration of the business entity's ability to be competitive on the market by way of restructuring the liabilities, assets and staffing levels in its business. The Bankruptcy Act does not provide for a limited list of restructuring methods.

Liabilities are restructured by way of an arrangement concluded at the creditors' meeting. The court may refuse to agree for initiation of the reorganization or refuse to approve the arrangement.

### **Special Issues**

#### **Choice of law, jurisdiction and arbitration**

##### *Choice of law*

Conflicts of law are governed by the Polish International Private Law. With respect to contracts, the parties may decide that the contract is governed by the laws of another country if the body of law is related to their agreement. The law of the country in which real property is located governs agreements pertaining to real property.

### *International jurisdiction and judgement enforcement*

Since 1 May 2004, Poland as a member of the European Union is bound by the Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ("Regulation 44/2001"). The Regulation 44/2001 supersedes, as between the Member States, the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters ("Brussels Convention"), except as regards the territories of the Member States which fall within the territorial scope of the Brussels Convention and which are excluded from this Regulation pursuant to Article 299 of the Treaty (i.e. Denmark).

Since year 2000, Poland is a party to the Lugano Convention on the Jurisdiction and Enforcement in Civil and Business Law Matters, applicable now to non-EU members being parties of the Lugano Convention.

These three Acts have made apply to civil and commercial disputes in international business relations<sup>1</sup>. They provide that court judgements and equivalent instruments issued in one of the signatory states are recognized and enforceable in all other states who are party to the Acts, without the need to institute special proceedings. The provisions of the Acts have priority over the Polish Code of Civil Procedure.

### *Arbitration*

Parties to a contract may include an arbitration clause in their contract. This will allow enforcement of a foreign arbitration award within the territory of Poland since Poland is a party to the New York Convention on the Recognition and Enforcement of Arbitration Awards. Polish courts recognize foreign arbitration awards if they are not contrary to Polish public policy and do not violate provisions of the New York Convention.

The arbitration clause or the arbitration agreement must be executed in writing in order to be valid.

### **The Act on the Polish language**

The Act on the Polish Language (the "Act") came into force on May 8, 2000. The Act provides a legal framework for protection of the Polish language and it limits the use of foreign languages in public activities and legal relationships.

The Act confirms that Polish is the official language of all entities of public administration. All documentation submitted to these bodies must be in Polish.

The Polish language must be used in transactions with the consumers conducted with the territory of Poland and in implementation of the labour law provisions, if:

- consumer or a person performing the work has a domicile in Poland at the time of conclusion of the contract; and
- the contract is to be performed in Poland.

In the same extent, the names of goods and services, offers, terms of guarantees, invoices, bills and receipts, as well as warnings and information for consumers required by other provisions, instruction, manuals and information on characteristics of goods and services (including advertisements) must be in Polish. Exceptionally, there is no Polish language requirement as to warnings and information for consumers, instruction manuals and information on characteristics of goods.

The Acts do not apply to tax matters, customs duty and administrative matters, or to matters relating to matrimonial property relations, inheritance law, bankruptcy law, composition law, social security and arbitration courts.

However, if a graphical form is accompanied by a description, such a description has to be in Polish. Non-compliance with the above obligations is sanctioned by a fine.

## Industrial Property Rights

Polish intellectual property law is governed by several legal acts, the most important being the Industrial Property Law of June 30, 2000 (the "IPL"), and the Law on Copyrights and Neighboring Rights. Additionally, there are various civil, penal and administrative provisions, particularly customs procedures, relevant for the protection of IP rights in Poland.

Protection under the IPL relates primarily to registered and renowned trademarks, patents, utility models, designs, topographic circuits, rationality models, geographical indications. The act also regulates the protection against civil and penal infringement by third persons of all the aforesaid rights. Other commercial designations of origin, for example unregistered trade marks, company names, as also unfair competition acts, data exclusivity etc., are governed by separate regulations.

The IPL introduces a general obligation to appoint a Polish patent attorney if the party is a foreign entity.

Some of the above-mentioned rights, i.e. trademarks and designs, may also be protected as Community trademarks and Community designs on the territory of Poland by virtue of registrations by an EC office, and not only the Polish Patent Office.

Polish law stipulates, as is mandatory in the European Union, for the exhaustion of registered IP rights on the territory of the EC and the territory of the European Economic Area.

### Patents

Protection of inventions is assured under the IPL. A patentable invention is any new solution of a technical character that does not obviously result from prior art and is capable of practical or industrial application. Protection is awarded for a maximum of 20 years. Patent protection is extended to cover chemical compounds, pharmaceuticals and foodstuffs. A supplementary protection certificate may be granted, a certificate granting an extended protection (of more than 20 years) for patents that relate to medicinal or plant protection products.

On 1 March 2004 Poland joined the European Patents Convention and became a member of the European Patent Organization. From that date onwards, Poland may be designated as a country for protection of European patents. Thus, Polish law relating to patents is harmonized with the European Patents Convention. It is also in harmony with Community legislature in this area.

Possession of a patent right confers the exclusive right to use the invention throughout Poland. The right to obtain a patent is vested with the inventor and/or the party to whom the invention was transferred. Where an invention has been created by an inventor in the course of his duties as an employee or in the execution of a contract, the right to the patent belongs to the employer or the commissioning party, unless otherwise agreed by the parties concerned. To apply for a patent, a petition has to be filed with the Patent Office together with a description of the invention, patent claims, and an abstract of the description and drawings where necessary. The patent application is published by the Patent Office after 18 months from the date of priority.

The invention enjoys temporary protection as of the moment of publication of the application for registration, effective from the date on which the application for registration is filed. Progressive fees must be paid from the first to the 20th year of patent protection to maintain a valid patent. The right to a patent, or the patent itself, may be assigned and be subject to succession. A patent holder may authorize another person to use his invention by way of a license contract.

### Utility models

Utility models, or so called petty patents, are any new and useful invention of a technical nature affecting the shape, construction or permanent assembly of an object. Utility models are a less known way to protect technical solutions that are "not complicated enough" to merit patent protection. It is thus relatively easier to obtain protection for a utility model in Poland, and if, during the assessment of a patent invention, the Patent Office finds that a patent may not be granted, the applicant has the possibility to converse his application into a utility model.

### Industrial designs

A design is an exclusive right for the novel outward appearance of a product or part of it, resulting from the features of, in particular, the lines, contours, colors, shape, texture and/or materials of the

product itself and/or its ornamentation. The basic requirement for protection is novelty and individual character of the design.

Industrial designs may be registered by the Polish Patent Office, however, you may partly also rely on copyright protection for either registered or unregistered designs. The protection period lasts for a maximum of twenty-five years from the date the registration is filed. Registration of an industrial design does not exclude it from protection under copyright law, however, the fact that the right is registered constitutes an important feature as it gives it greater certainty and solidity in case of infringements.

An unregistered Community design protects a design for a period of three years from the date on which the design was first made available to the public within the Community. An unregistered Community design confers on its holder only a right to prevent copying. This right is recommended if the design was made public before registration and suddenly is infringed - this is so because an unregistered design gives you less rights (only against direct copying) and only lasts for three years. Moreover, it is harder to prove the date of making it public within the Community.

## Trademarks

According to the IPL, a trademark is any sign capable of being represented graphically, provided that such signs are capable of distinguishing the goods of the same kind of one undertaking from those of other undertakings. Protection of a trademark is obtained by way of registration (or by use on the basis of unfair competition provisions). Usually, the first applicant for a trademark is entitled to have it registered and to have exclusive use of it. Polish trademark provisions are fully harmonized with the Trademark Directive from 1988, however, sometimes the compliance with the interpretations of the European Court of Justice may differ in Polish courts.

Trademark applications are filed with the Polish Patent Office and cover one or more classes of products and services. Registration of the trademark will take place after examination for their form and ability to be registered and for any potential conflict with prior registrations. The IPL provides for protection for well-known trademarks and renowned trademarks. The latter are protected, in accordance with Community law, not only for similar products but also against different goods and services. The period of trademark protection lasts for 10 years from the date of application, and protection may be extended for subsequent 10-year periods.

The right derived from registration of a trademark may be assigned or licensed. The owner of a trademark may demand the cessation of any acts of infringement, the payment of damages and the surrender of any profits unlawfully acquired through infringement of the right. The trademark right expires if the holder does not use the trademark within Poland over a period of five consecutive years as of registration. A registered trademark may be cancelled if the requirements for registration were not met or if it was applied for in bad faith.

A Polish trademark registration can be used as the basis for an international registration under the Madrid system, provided the owner of the Polish registration is a national of a Member Country of the Madrid Convention or has a bona fide branch office in a Member Country. The Madrid system offers a trademark owner the possibility to have his trademark protected in several Member Countries in the world by filing one application directly through national trademark office. An international mark so registered is equivalent to a registration effected directly in each of the countries designated by the applicant.

As of 1 May 2004, a trademark can also obtain protection as a Community Trademark (CTM) on the territory of Poland. The CTM gives its proprietor a uniform right applicable in all Member States of the European Union in a single procedure. A Community trade mark is filed either directly at the Harmonization Office or at the Polish Patent Office or through any other national industrial property office in a Member State.

## Copyright

Applies to a wide range of different works, including literary, artistic, musical and dramatic works. Copyright in Poland extends also to databases as long as they are creative. Moreover, computer programs are also to some extent protected by copyrights. Economic copyrights consist essentially of the exclusive right to use and dispose of a work and the right to remuneration. The work can be used and disposed of on so-called "fields of exploitation" (the types of uses of the copyrightable work). There are also so called moral rights of the author that may not be assigned.

There are no formalities for copyright protection in Poland. Copyright vests and comes into existence automatically upon creation of the work. You cannot register copyrights in Poland. Most types of copyright work will receive protection against unauthorized copying for 70 years after the death of the author.

**Anti-counterfeiting on the borders**

Counterfeit products increasingly have their origins in Eastern Europe or Asia and many of them are subsequently distributed in the EU. Polish customs offices are the first firewall against the import of counterfeit goods.

Filing an appropriate application to the Director of the Customs Chamber helps protecting IP rights in Poland. Polish Customs may also seize goods that infringe IP rights on their own initiative (an 'ex officio' action). The filing of a Customs application by the owner of the IP right is usually much more effective, because the Customs authority may not be familiar with the characteristics of IP rights and may not react when they come across infringing goods.

No administrative fee is required to file an application. However, the application requires written undertakings to cover any liability or expense incurred by the customs in relation to the matter. If, following a customs inspection, Polish Customs have well-founded grounds to suspect violation of IP rights, they will issue a decision ordering the seizure of such goods and immediately notify the party concerned. Under a simplified procedure in a new EC regulation, infringing goods can be destroyed at the request of the IP rights holder, provided that customs receive a written permission from the declarant, the holder or the owner of the goods. As of July 2006, the simplified procedure can be used in Poland.