

Doing Business in Poland - Legal Aspects

(A Guidebook for Foreigners)

January 2010

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INTRODUCTION AND DISCLAIMER

This brief presentation is aimed at providing foreign investors with basic but crucial information on the Polish legal system. For further information please visit our home page at www.pnplaw.pl and see the document “Doing business in Poland – Legal aspects (extended version)”

“Doing business in Poland” takes into consideration legal regulations as per January 1, 2010.

This document is for information purposes only and it cannot be considered as legal advice on any matter. We have carefully examined all issues to ensure that the information contained herein is credible and current. However, we do not guarantee the credibility and validity of the material and we are not responsible for any errors or omissions or for any consequences of using the information. Prior to making any decision or taking any action, you should consult your lawyer.

BUSINESS CLIMATE IN POLAND

1. Welcome to Poland

Poland is renowned for its friendly and hospitable citizens, beautiful nature with a wide variety of attractive landscapes, tourist and sport opportunities as well as rich cultural heritage.

Basic information about Poland

Area	312,679 km ²
Population	38.1 million
Capital	Warsaw, 1,702 thousand inhabitants
Currency	1 Zloty (PLN) = 100 Grosze

Another advantage of Poland which has been increasingly acknowledged by foreign businessmen is its modern and stable economy. In the recent years Polish economy has shown a sustainable growth. GDP has been significantly growing, the unemployment rate falling while inflation has been low. Poland with its 38-million consumer-market is one of the biggest in Europe. Well-educated Polish economists, engineers, IT specialists and scientists are highly appreciated employees who are readily employed by IT companies, R&D centers and scientific institutes established by foreign companies in Poland.

Key macroeconomic indicators of Polish economy are presented in the table below.

Indicator	2001	2002	2003	2004	2005	2006	2007	2008	1 half of 2009
GDP (billion PLN)*	780	809	843	925	983	1,060	1,175	1,266	-
GDP increase (%)*	1.2	1.4	3.9	5.3	3.6	6.2	6.7	4.8	1.1
Foreign Direct Investment inflow (EUR million)**	6,372	4,371	4,067	10,237	8,330	15,741	16,674	10,970	962
Unemployment rate (%)*	17.5	20.0	20.0	19.0	17.6	14.8	11.2	9.5	10.8
Inflation rate (CPI, %)*	5.5	1.9	0.8	3.5	2.1	1.0	2.5	4.2	3.5

Source: *Central Statistical Office (GUS), **National Bank of Poland (NBP)

Poland is one of the few places on the map of Europe which has been developing during the time of the worldwide crisis. According to the preliminary estimations of Central Statistical Office in 2009 the Gross Domestic Product increased by 1.7 %.

Furthermore, the Polish banking system and industry turned out to be more resistant to the recession and they managed more calmly and prudently than some other developed countries.

2. Investments incentives

Poland as an EU member has the incentive system which is compliant with the European Community rules. The system is composed of different types of public aid.

New investments in Poland may be supported among others by the following kinds of public aid:

- corporate income tax exemption which is available for companies in Special Economic Zones
- real estate tax exemption
- cash grants from EU funds.

Special Economic Zones (SEZs) are separately administered areas offering favourable terms for doing business. SEZs offer i.a. land plots prepared for investment, exemption from tax on income earned by doing business in the zone and exemption from real estate tax.

Moreover, municipalities often use real estate tax exemption to attract local investments of foreign and Polish companies.

Poland is also the largest beneficiary of EU aid among the new member states.

Foreign investors may apply for EU cash grants on the same conditions as Polish investors.

The maximum level of public aid depends on the size of enterprise, type of aid and region of Poland where the investment is to take place.

3. Legal system

The Polish legal system, like many other continental European legal systems is based on the Roman law as opposed to the common law. Although after the Second World War the Soviet legal and economic system were implemented in Poland and it was not until 1989 that the law started to change in Poland, now our country follows European and US examples. This process has been intensified after Poland made its decision to enter the EU which obviously meant adjusting to the EU economic system and “*Acquis Communautaire*”.

Poland joined the European Union on May 1, 2004, which naturally resulted in further harmonization of the Polish law with the EU standards.

Although nowadays the Polish law does provide instruments necessary to do business, there is still a number of fields that require substantial changes and improvements. What strikes a foreign investor most are very time-consuming civil court proceedings and bureaucratic administrative procedures as well as inefficient debt collection system.

4. Capital Market

The first stock exchange in Poland was opened on May 12, 1817 in Warsaw. Before the Second World War seven stock exchanges operated in Poland but after the war, due to the change of political and economic system, the capital market could not be re-created.

In 1989, along with political changes, the new government began building a capital market structure. In its present form the Warsaw Stock Exchange (WSE) began operating in April 1991. The WSE is now an important European capital market and one of the leading Central-Eastern European stock exchanges.

General statistics data of WSE*

Number of listed companies

	Domestic companies	Foreign companies	Total
Main market	313	24	337
Parallel market	39	0	39
TOTAL	352	24	376

Market value (EUR mil.)

	Domestic companies	Foreign companies	Total
Main market	112 762.88	78 411.61	191 174.49
Parallel market	1 227.98	0.00	1 227.98
TOTAL	113 990.86	78 411.61	192 402

* Source: www.gpw.pl

The WSE operates on two markets:

- WSE Main List (registered with the European Commission as a regulated market)
- NewConnect (an alternative trading system dedicated for young developing companies in particular from the high-tech sector).

FORMS OF BUSINESS ORGANISATION

1. Introduction

The Polish law provides the following commercial forms of conducting economic activity which are not reserved for the State only:

English name	Polish name
Limited liability company	Spółka z ograniczoną odpowiedzialnością abbreviation - Sp. z o.o.
Joint-stock company	Spółka akcyjna abbreviation - S.A.
Registered partnership	Spółka jawna abbreviation - sp.j.
Professional partnership	Spółka partnerska abbreviation - sp.p.
Limited partnership	Spółka komandytowa abbreviation – sp.k.
Limited joint-stock partnership	Spółka komandytowa-akcyjna abbreviation - S.K.A.
Cooperative	Spółdzielnia
Branch of a foreign entrepreneur	Oddział przedsiębiorcy zagranicznego
Representative office of a foreign entrepreneur	Przedstawicielstwo przedsiębiorcy zagranicznego

Foreign persons from the EU Member States as well as from the Member States of the EFTA-parties to the Agreement on the European Economic Area (EEA) conduct economic activity in any commercial form available to Polish persons as specified above. This also applies to some citizens of other states who have obtained a permit to settle or reside in Poland or a status of refugee or tolerated stay.

Other foreign persons may conduct economic activity in Poland in the form of a capital company, a limited partnership or a limited joint-stock partnership unless international agreements provide otherwise.

Furthermore, a foreign person (from non-EU and non-EEA country) conducting economic activity abroad may create a branch or a representative office in the territory of Poland provided that Polish entrepreneurs may create a branch or a representative office in the state where the foreign person has its permanent residence or seat (the rule of reciprocity), unless international agreements provide otherwise.

2. Limited Liability Company

Introduction

A limited liability company is a kind of a capital company which is conducted by a limited number of shareholders. It is the most common legal form of economic activity intended for conduct of small and medium-size commercial enterprises. Some large companies also prefer to conduct economic activity in the form of a limited liability company because corporate operations in a limited liability company are simpler in comparison with a joint-stock company.

Shareholders in a limited liability company are not liable for the company's liability with their private property with the exception of one case. In accordance with the Polish law a shareholder may be responsible for obligations of the company in organization.

Initial Capital and Shares

The minimum initial capital of a limited liability company amounts to PLN 5,000.00. The initial capital of the company is divided into shares of equal or unequal nominal value. If pursuant to the articles of association of the company the shareholder may have more than one share all the shares are equal and indivisible. The minimum nominal value of one share amounts to PLN 50.00.

Contributions of the company's shareholder to the capital of the company can be made either in cash or in-kind.

Governing Bodies

Pursuant to the Code of Commercial Companies and Partnerships the authorities of a limited liability company consist of:

- shareholders' meeting,
- supervisory board or audit commission,
- management board.

The supervisory board or audit commission has to be appointed in companies whose initial capital exceeds PLN 500,000.00 and where there are more than twenty-five shareholders. In other situations creation of the supervisory board or audit commission is not necessary.

Shareholders' Meeting

The Shareholders' Meeting is the superior body of a limited liability company.

Shareholders' meetings are held at the seat of the company or at another place in the Republic of Poland if all the shareholders agree to it in writing.

Decisions of the Shareholders' Meeting are adopted as resolutions of the shareholders.

The resolutions of the shareholders are required among others in the following matters: amending the company's articles of association, approval of the annual financial report and the report of the management board, increasing or decreasing of initial capital, decision on allocating profit or covering losses as well as acquisition and disposal of real estates.

Resolutions of the shareholders' meeting shall be taken by the absolute majority of votes unless the provisions of law or the articles of association provide otherwise. The absolute majority of votes means more than half of the votes cast.

Supervisory Board and Audit Commission

The members of the supervisory board or the audit commission are appointed and dismissed by a resolution of the shareholders unless the articles of association provide otherwise.

The Polish law stipulates that the power of the supervisory board in Polish limited liability companies is limited to a broadly described control and supervision. The supervisory board does not have the right to give the management board any binding instructions with respect to the management of the affairs of the company.

The powers of the audit commission are even more limited than the powers of the supervisory board. However, the articles of association may expand the duties of the audit commission in the company which does not have the supervisory board to cover also the powers of the latter.

Management Board

The supreme executive body, and the only body holding the right to represent and sign for the company, is the management board.

The management board represents the company and manages its daily matters.

Representation of the company consists in actions which engage third parties e.g. conclusion of agreements with contractors, disposal of rights of the company, whereas managing the company consists in actions concerning the company itself, first of all consisting in dealing with the current activity of the company, including giving professional orders to employees and supervising the company's activity.

Members of the management board are appointed and dismissed by a shareholders' resolution unless the articles of association provide otherwise.

3. Joint-Stock Company

A joint-stock company resembles in some aspects a limited liability company. Both are capital companies. Shareholders of a joint-stock company are not liable for the company's liability with their private property with the exception of one case. In accordance with the Polish law a shareholder may be responsible for obligations of the company in organization.

The joint-stock company is regarded as more formalistic kind of company than the limited liability company. There are many particular provisions providing the duties, obligations and procedures which have to be performed by the management board or the supervisory board. Moreover, a shareholder in the joint-stock company has definitely fewer rights than

a shareholder in the limited liability company. The rights to control the company's activity and its personal composition are limited.

Major differences between joint-stock and limited liability companies

	Joint-stock company	Limited liability company
Minimum share capital	PLN 100,000	PLN 5,000
Minimum value of one share	PLN 0.01	PLN 50
Formalities of shareholders meetings/general assemblies	All minutes have to be recorded by a notary	Not all the minutes have to be recorded by a notary
Supervisory board	Obligatory	Shareholders have to appoint a supervisory board or audit commission if initial capital exceeds PLN 500,000 and there are more than 25 shareholders
Restrictions of distribution of profit	Part of the net profit (at least 8%), must be annually transferred to the supplementary capital until it reaches 1/3 of the share capital	Part of the net profit does not need to be transferred to the supplementary capital unless articles of associations provide otherwise

4. Partnerships

According to the Polish law there are four types of commercial partnership:

- registered partnership (spółka jawna – sp. j.)
- professional partnership (spółka partnerska – sp.p.)
- limited partnership (spółka komandytowa – sp.k.)
- limited joint-stock partnership (spółka komandytowo-akcyjna – S.K.A.).

Partnerships do not have a legal personality although they may acquire rights in their own name, including the right of ownership of real estate, incur obligations as well as they may sue and be sued.

The most important feature of a commercial partnership is the liability of the partners for the partnership's obligations. With some exceptions the partners are personally and without limitation liable for the partnership's obligations.

Furthermore it is worth mentioning that in a capital company it is possible to be a sole shareholder, while a partnership should have at least two partners.

Transfer of all rights and obligations of a partner in a partnership to another person is possible if the articles of association provide so.

A commercial partnership comes into existence upon entry into the National Court Register.

5. Cooperative

According to the legal definition a cooperative is "a voluntary association of unlimited number of persons with changeable personal composition and changeable share fund". A cooperative conducts common economic activity for the benefit of its members; it may also conduct welfare activity and activity connected with culture and education for the benefit of its members.

This form of business activity was very popular before 1990 year in socialist economy. In capitalist economy it is losing its popularity but it is still an important form of business activity in housing sector and dairy industry.

6. Self-employment (Sole Tradership)

Self-employment is the custom term used to name personal business activity conducted by one person, replacing the employment relation.

The self-employed person from the point of view of the civil, tax and social insurance law is regarded as an entrepreneur. As a consequence the former employer and the self-employed person do not co-operate with each other on the basis of an employment contract any more, but rather of a business agreement between two entrepreneurs.

Due to tax benefits self-employment has recently become quite popular. It has often been the option of choice for managers; on the other hand in some cases employers have been demanding it from their employees on various positions such as doctors of medicine nurses etc. The authorities try to fight against self-employment therefore nowadays the possibilities to perform the activity in this way have been significantly narrower than they used to be few years ago.

Both the self-employed person and the company/entity which co-operates with this person may mutually benefit from this form of co-operation. Nevertheless, it should be considered carefully by both parties, as nowadays due to the decrease of tax rates, self-employment may not be as beneficial as it was in previous years.

7. Branch and Representative Office

A foreign person conducting economic activity abroad may create a branch or a representative office in the territory of Poland provided that the Polish entrepreneurs may create a branch or a representative office in the state where the foreign person has its permanent residence or seat (the rule of reciprocity), unless international agreements provide otherwise. In case of foreign entrepreneurs from European Economic Area (EU

Member States, Iceland, Liechtenstein, Norway) the rule of reciprocity is excluded. Consequently, such foreign entrepreneurs may create a branch or a representative office without the limitation connected with the rule of reciprocity.

A representative office may conduct economic activity exclusively within the scope of advertising and promotion of the foreign entrepreneur whilst a branch may conduct economic activity within the entire range of the entrepreneur's activity.

8. Permits

Generally the establishment of economic activity in Poland does not require any earlier permits from the Polish authorities. Nevertheless, if an entrepreneur wants to start performance of some particular activities, it is obligatory for him/her to obtain a concession, permission or licence of the relevant authority. Furthermore, some particular activities may be performed under additional conditions and upon registration in separate registers of the regulated activity.

Moreover, the intention of establishment of a new entrepreneur by two or more entrepreneurs may be subject to examination by the President of the Office for Competition and Consumer Protection. If, according to the provisions, the intention of establishment of an entrepreneur is subject to examination by the President, it may not be established without a prior consent of the President of the Office.

9. Registration Procedures

An entrepreneur who is going to start economic activity in Poland is obliged to perform the following registration procedures:

- registration of the economic activity in the National Court Register or other relevant register
- registration of the entrepreneur in the Voivodship Statistical Office
- opening a bank account
- registration in the local tax office,
- registration of employees in the Social Security Agency („ZUS”).

With the exception of self-employed persons/sole traderships and foreign representative offices all legal forms of economic activity should be registered in the National Court Register. Economic activity in the form of a sole tradership has to be notified to the economic activity register kept by the municipal offices whereas a foreign representative office has to be entered into the register of foreign representations kept by the Ministry competent for matters of the economy.

10. Timing and Costs of establishment of economic activity

It is worth knowing that the standard registration procedures (National Court Register, statistical office, tax office and ZUS) last between 5 and 7 weeks.

In case a licence or permit for a business activity is necessary it takes additionally from 4 to 10 weeks.

The costs related to the establishment of economic activity depend on the legal form chosen for conducting economic activity in Poland.

As an example below we present the main official costs related to the establishment of a limited liability company with a minimum initial capital (5000 PLN) with the assumption that no permission, concession or licence is necessary.

Cost	Amount	Description
Tax on acts in civil law	PLN 25	the rate of the tax amount to 0.5% of the initial capital
Notarial fee	approx. PLN 200	cost of drawing up the notarial articles of associations, the copies of the articles issued to the client are charged separately
Stamp duty re VAT registration	PLN 170	cost of registration of the company as a VAT payer
Court registration fee	PLN 1000	cost of registration of the company in the court register
Publication in MSiG	PLN 500	cost of announcement on registration of the company
Lawyer's fee		depends on particular agreement between client and lawyer
Patterns of signature	Approx. PLN 24	For each pattern of signature confirmed by a notary public

TAXATION

1. Taxation of Companies

The scope of taxation depends on the status of the taxpayer: resident or non-resident. In other words the Polish Corporate Income Tax Act (CIT) provides the rule of unlimited and limited tax liability. The unlimited tax obligation means that companies which have their registered seat or place of management in Poland are liable to Polish corporate income tax on worldwide income. The limited tax liability means that a taxpayer who does not have the seat or management in Poland pays tax levied only on the income earned within the Polish territory.

Partnerships do not have the status of independent subjects for tax purposes. However, revenues derived and costs borne by partnerships formed by companies are subject to CIT based on the proportion of the corporate partners' share.

A branch of a non-resident company is generally taxed according to the same rules as a Polish company. However, since a branch is considered to be a part of a non-resident company, there is no withholding tax on the transfer of profits from a branch to the head office.

Corporate Income Tax Rate

The rate of **income tax** for companies in the year 2010 amounts to **19%**.

Taxable business income comprises all profits generated by any non-agricultural business activity: i.e. trade, services, transport. A loss may be deducted against the taxable income over five subsequent tax years. The deduction in a particular year cannot exceed 50% of the loss being deducted. Losses must not be carried back or deducted from the income of the previous tax year.

Corporate tax is payable annually, however advance payments have to be made each month.

Dividends and Capital Gains

Dividends and other capital gains are subject to 19% lump rate of withholding tax.

Dividends paid by Polish subsidiaries to parent companies are tax-free provided that:

- the company paying the dividend has the seat or management office in Poland,
- the company obtaining income from the dividend is subject to world-wide income tax in Poland, another EU Member State or in a country which belongs to the European Economic Area,
- the parent company has at least 10% (25% in case of Switzerland) shares in its

Polish subsidiary for an uninterrupted period of at least 2 years.

Double Taxation Conventions and Certificate of Residence

Poland has concluded 80 double taxation conventions. The majority of double tax treaties set the withholding tax rate at the level of 5-15% while providing a possibility of 0% rate.

Polish entities making payments to foreign persons in the form of interest, dividends and other income from a share in profits of legal persons are deemed tax remitters and are obliged to collect withholding tax on the date when such payments are made. However, it is possible to apply a reduced rate or waive the tax if a double taxation treaty concluded by Poland and the country of the recipient's residence provides so. In such a case it is necessary to document the tax residence of the beneficiary of the payment (with a certificate of residence).

The certificate of residence is a document used for tax purposes to certify that the tax residence of a foreign person is in a country with which Poland has concluded a tax treaty.

2. Individuals

Income tax is payable to the State Treasury. There are no income taxes collected by the local and regional authorities or church. Division of incomes into different sources of revenue is a specific characteristic which also distinguishes personal income tax from corporate income tax.

The above mentioned difference (see part 1) between full and limited tax liability applies also in relation to individuals. Persons resident in Poland are subject to unlimited tax liability.

Taxation of Foreigners

The place of residence determines the tax liability. Persons having their place of residence in Poland are obligated to pay tax on their overall income; persons not having their place of residence in Poland are obligated to pay tax on income earned or arising from a source in Poland only. The above provisions apply unless the provisions of international agreements provide otherwise.

Pursuant to the Polish tax provisions a resident is:

- a person whose centre of personal or economic interests is located in Poland, or
- a person who stays in Poland for more than 183 days in a year.

Incomes of individuals taxed on the basis of the limited tax liability earned within the territory of Poland are in some cases subject to lump-sum rates.

Personal Income Tax Rates

As a general rule, revenue of any person (foreign or domestic) is subject to two taxation

rates: 18% and 32% depending on the amount of income (progressive scale). Revenues up to PLN 3,091 per year are tax free.

Incomes:	Tax amount:
up to 3,091	no tax
up to 85,528	18% of the taxation base minus PLN 556.02
over 85,528	PLN 14,839.02 plus 32% of the surplus over PLN 85,528

Taxation of Business Activity

Persons who conduct any non-agricultural business activity (but not on the basis of a management contract) may choose either standard progressive scale or the lump-sum rate of 19%.

Duties of Tax Remitters and Taxpayers

It should be remembered that employers as tax remitters are obligated to calculate and collect tax advance payments from persons who receive revenues from an employment relationship or on the basis of an agency contract or a contract for specific work. Tax advance payments increase during the tax year in case of exceeding the thresholds in the progressive scale. The tax should be calculated and collected by tax remitters also in most cases of payments which are taxed with lump-sum rates.

A tax-payer has to submit a tax declaration that covers income from the previous year. The declaration has to be delivered until April 30 of the following year.

3. Other Taxes

VAT and Excise Duty

Rates of VAT in Poland:

- standard rate - **22%**, (applicable to the majority of goods and services),
- reduced rates – 7% and 3%,
- preferential rate - 0%.

Poland just like other Candidate Countries was granted a transition period of four years following its accession to the EU for application of the reduced VAT rate for some goods and services. However, differences in this field are not crucial and Polish reduced rates apply mainly to the same goods and services as in other Member States.

VAT Refund for Foreign Taxpayers

The refund of VAT by foreign taxpayers is possible when some conditions are met.

As a prerequisite of tax refund the taxpayer who applies for VAT refund:

- cannot be a taxpayer registered in Poland,
- must be a registered taxpayer in the country of his/her residence or place of business,
- may not sell goods or supply services in the territory of Poland with the exception of

some auxiliary services connected with import of goods or other services mentioned in the relevant provisions.

The VAT refund is granted upon the taxpayer's application submitted in the country of residence of the foreign taxpayer (not in the Polish Tax Office). The applicant should address an electronic refund application to Poland and submit it to the Member State in which (s)he is established via the electronic portal. Copies of the invoices which are the basis for the request for refund must be submitted to the tax authority together with the application.

The taxpayer is obliged to submit the application within nine months from the end of the calendar year in which the entitlement to the refund arose. The application should concern a minimum period of three months and a maximum period of one calendar year. The refund period may be shorter than three months if it involves the remaining part of a calendar year. The tax amount which the taxpayer reclaims should be at least:

- EUR 400 if the application relates to a period of at least three months, but not a full calendar year;
- EUR 50 if the application relates to a calendar year or the remaining part of a calendar year shorter than 3 months.

Local Taxes

Local taxes include real estate tax, transportation tax imposed on trucks and buses, inheritance and donations tax, agricultural tax, forestry tax, dogs tax. Local taxes are a part of own revenues of local governments.

REAL ESTATES

1. Acquisition of Real Estates by Foreigners

A foreigner who intends to acquire in Poland ownership of a real estate and/or a perpetual usufruct right to a real estate shall with some exceptions, prior to acquisition of the real estate, obtain the permission of the Ministry of Internal Affairs and Administration for such purchase.

Similarly, a foreigner who wishes to purchase shares in a Polish company which is the owner or perpetual usufructuary of a real estate in Poland also requires permission from the Ministry of Internal Affairs and Administration.

Acquisition in defiance of the provisions of the Law (e.g. concluding a purchase agreement before the permit is granted) is invalid by virtue of law.

2. Acquisition of Real Estates by Citizens and Entrepreneurs of EEA and Switzerland

The regulation on acquisition of real estates by foreigners has been changed with reference to citizens and entrepreneurs from the European Economic Area (European Union + Norway, Iceland and Lichtenstein) and from Switzerland.

Since the day of the Polish accession to the EU, with some exceptions, real estates may be subject to acquisition by citizens of the Member States and entrepreneurs of the EEC without any permits or other restrictions. From October 25, 2008 the citizens of Switzerland received exactly the same rights concerning purchase of real estates like the citizens from EEA.

This general rule has two exceptions i.e.: generally Poland can keep in force the rules regarding the acquisition of agricultural land and forests as stipulated in the Act on Acquisition of Real Estate by Foreigners for twelve years from the date of accession to the UE (i.e. till May 1, 2016).

3. Other Limitations in Purchase of Real Estate

The most significant limitation concerning the trade with real estates is the pre-emption right. Pre-emption right in case of a real estate results in two sale agreements, which usually prolongs the whole transaction. Most common is the pre-emption right of municipalities. Municipalities have the pre-emption right e.g. in case of sale of a non-developed real estate purchased previously from the State Treasury or self-governmental units. Sale agreements signed with the breach of the pre-emption right stipulated in the provisions of the law are null and void. Therefore we recommend to check whether the real estate is not burdened with the pre-emption right.

LABOUR LAW

Labour law is one of the most important branches of business law. It is also subject to frequent changes. The Polish labour law has been adjusted to the law of the European regulations.

1. Labour Relationship

Labour relationship arises by a contract of employment or by an appointment act. In further description of the labour law we will focus on employment contract as the most popular form of labour relationship

The contract of employment may be agreed for an indefinite time, for a definite time, for conducting a certain job and for substitution of an employee for the time of excused absence of the employee. Each of these contracts may be preceded by a contract for a trial period, however not exceeding 3 months.

The contract should be put in writing, with the type and terms and conditions of contract explicitly outlined.

The work can also be rendered on the basis of a contract for specific work or a contract of mandate. These contracts are civil law contracts and are not subject to the labour law regulations.

2. Termination of Employment Contract

Termination of the contract may occur:

- on the basis of mutual consent of both parties,
- with or without notice by either party,
- at the end of the task for which it was concluded,
- on the date when the work for which it was concluded is completed.

The termination of an employment contract without notice may take place on the basis of reasons indicated in the Labour Code only.

In case of a contract for an indefinite time, both parties may terminate the contract with notice. This termination is not subject to any further conditions, however the employer is always obligated to give the employee a reason justifying the termination. The notice period depends on the period of employment with a given employer and equals:

- 2 weeks, where an employee has been employed for less than 6 months,
- 1 month, where an employee has been employed for at least 6 months,
- 3 months, where an employee has been employed for at least 3 years.

Note:

The period of notice ends on Saturday (if the notice period is shorter than a month) or on the last day of the month (if the notice period is at least one month long). The provisions of the Labour Code indicate several specific categories of employees, whose labour contracts cannot be terminated; among others they include pregnant women, employees on their maternity leave, employees on their upbringing leave, employees within the period of four years before their retirement.

3. Remuneration

Remuneration for work should be fixed in a manner corresponding to a particular type of work performed and qualifications required for that work's performance. It must also take into account the quantity and quality of the work performed.

According to the basic principles of the labour law, the state specifies the minimum remuneration for work. In 2010 the minimum remuneration amounts to PLN 1,317.

In addition to the regular remuneration, the employer is obliged to pay bonuses for overtime work according to the rules specified in the Labour Code.

4. Working Hours

As a general rule working hours must not exceed 8 hours a day and an average of 40 hours per 5-day working week within an adopted account period not exceeding 4 months. The overtime work must not exceed 4 hours a day and 150 hours a year.

If it is justified by the type of work or organisation thereof, work schedules may be applied by which it is admissible to extend the working time with the limits specified by the labour law.

5. Employees' Leaves

An employee is entitled to an annual, continuous, paid vacation leave. The employee's right to the leave may not be renounced. The employee is entitled to the first leave after first month of work and duration of this leave is one twelfth of the leave due after one year of employment. According to the Labour Code the minimum period of annual leave is 20 working days. After 10 years of work the employee is entitled to the leave lasting 26 working days.

Note:

Working days mean all days, except Sundays, obligatory days off pursuant to the binding schedule of work (usually Saturdays) and public holidays. The so-called additional days off (39 compulsory days off and other days off defined by employers up to the maximum level

of 52 days) are not included in the leaves and they extend duration time of the leave.

The right to the leave and its length depend on the total period of employment, periods of former employment inclusive, regardless of pauses in employment and the manner of cessation of the employment relationship. The time of education is also added. The employee is entitled to the salary for the period of leave as if he/she regularly worked.

On the basis of employee's application, the employer may grant him/her an unpaid leave.

A female employee who gives birth to a baby is entitled to a maternity leave and maternity benefit for duration of such a leave. The leave amounts to 20 weeks in case of giving birth to one child in one delivery.

On female or male employee's application the employer is bound to grant an upbringing leave of up to 3 years to take care of the child of up to 4 years of age.

6. Retirement

Employees not younger than 60 years (women) or 65 years (men) with some exceptions, are entitled to retirement.

7. Compulsory Insurance Rates

In principle, the gross remuneration of the employee constitutes the basis for calculating the amount of premiums for the pension, annuity insurance as well as sickness and accident insurance. According to the law on social insurance system the amounts of premiums are deducted partly from the gross remuneration of the employee. The rest of the premiums shall be covered by the employer from the employer's own means.

Another compulsory insurance is the premium to the National Health Fund [*Narodowy Fundusz Zdrowia*]. This whole premium burdens employees.

There are three more obligatory premiums paid by the employer namely: Labour Fund, Guaranteed Employees' Benefits Fund and Early Retirement Fund.

8. Employees' Council

Entrepreneurs employing more than 50 workers are obliged to establish an employees' council. The employees' council consists of members elected by the employees in accordance with principles described in the act. The employees' council establishes with the employer the terms and the course of transfer of information as well as the performance of consultations, manner of settling of disputes and the rule of bearing the costs connected with the execution of the necessary expertises. The employees' council provides consultations and influences opinions.

RESIDENCE AND EMPLOYMENT OF NON-EU COUNTRIES' CITIZENS IN POLAND

The rules and conditions of entry into the territory of Poland and stay therein by foreigners are regulated by provisions of the Foreign Persons Act of July 13, 2003.

On December 21, 2007 Poland acceded the Schengen Agreement, whose main purpose is the abolition of physical borders among European countries. Since the implementation of the Schengen rules border posts between participating countries have been closed.

The provisions of the Foreign Persons Act do not apply to the citizens of the EU and EEA member states and Switzerland and the following paragraph refers to the citizens of the states other than these. **The information concerning the EU, EEA and Switzerland citizens is presented in the subsequent chapter.**

1. Visas

Visas are issued only for a specified period of time and only for a particular purpose.

Since December 21, 2007 Polish consulates have issued unified visas (Schengen) type "C". The stay, or stays, cannot be longer than 3 months jointly within the period of 6 months counted from the first entry to Schengen Treaty area.

Apart from visa "C" Polish consulates shall issue visas type "D" (for a stay longer than 3 months), which entitles to enter Poland and stay only within its territory.

The visas are issued by a Polish consulate (or consulate department of a Polish embassy) if the foreigner stays abroad, and it may be prolonged by voivods if the foreigner stays in Poland. The procedure of issuing the visa in Poland lasts about two weeks.

2. Temporary Residence Permit

Temporary residence permit is issued among others to the following groups of foreigners:

- foreigners who were granted a work permit in Poland or, in case the work permit is not necessary, the statement of an employer in writing confirming that the foreigner will be employed,
- foreigners who conduct business activity in Poland.

A foreigner has to present the Polish authorities with certain documents.

The permit may be issued for the period necessary to achieve the foreigner's aims, but not for longer than 2 years.

The permit is issued only by voivods and the procedure lasts no less than 6 – 8 weeks.

A foreigner may also obtain from the Polish authorities a permit to settle in Poland. The foreigner who was granted a permit to settle in Poland does not need a permit to

conduct work in Poland.

3. Residence Permit for Long-Term Residents of European Communities

Foreigners who have resided legally and continuously within the Polish territory for more than 5 years may be granted a long-term resident's status.

The Polish authorities may refuse to grant a long-term resident's status on the basis of public policy or public security. The procedure is conducted by voivods and may not exceed 3 months.

4. Employment of Foreigners

Pursuant to the Law of April 20, 2004 on Promotion of Employment and Labour Market Institutions, an employer may employ a foreign employee in the territory of Poland after having obtained a voivod's permit for employment.

Among others the following groups of foreigners are released from the obligation of possessing a permit for employment:

- foreigners granted a permit to settle or a permit for a long-term resident of the EC;
- foreigners who have been granted a permit for residence for the specified period of time because their spouses are the citizens of Poland;
- foreigners having refugee status.

The foreigner must additionally possess a temporary residence permit or a visa with the right to work. A work permit of a foreign person is valid for the definite time (however, not longer than 3 years and in case of members of the management boards of companies that employ more than 25 persons the work permit may be valid up to 5 years) and for a given foreigner.

RESIDENCE AND EMPLOYMENT OF EU COUNTRIES' CITIZENS IN POLAND

On May 1, 2004 Poland joined the EU and the provisions of the EU law became applicable also in Poland. Moreover, as mentioned in the previous paragraph, on December 21, 2007 Poland acceded the Schengen Agreement. The purpose of this act is to enable people to move freely between the countries which are party to it.

Freedom of movement of employees within the European Union is one of the fundamental rules of the Community.

1. Right of Residence of Citizens of EU Countries in Poland

Pursuant to the provisions of the Act of July 14, 2006 on entry into, residence in and exit from the Republic of Poland of nationals of the European Union Member States and their family members, citizens of the EU member countries are allowed to cross the border if they hold the valid passport or other document that would confirm their identity and citizenship. Citizens of the EU countries intending to stay in Poland for a period longer than 3 months have to register their stay. The spouse of an EU citizen not being the citizen of the EU has to obtain a document known as a "residence card of spouse of an EU citizen". Among others, an EU citizen shall have the right to reside for a period longer than 3 months if s/he is an employee or a self-employee.

The voivod competent for the place of residence of the EU citizen shall be responsible for the registration of residence.

2. Right of Permanent Residence

An EU citizen shall obtain the right of permanent residence after 5 years of continuous residence within the territory of the Republic of Poland if all the conditions of residence are fulfilled within this period.

However there is possibility to have the right of permanent residence before a lapse of 5 years. The residence within the territory of the Republic of Poland is considered to be continuous if the intervals in the residence do not exceed of 6 months in a year in total.

An EU citizen who obtained the right of permanent residence is given a document certifying the permanent residence right.

3. Free Movement of Employees and Withdrawal of Permits for Work for Citizens of EU and EFTA Countries in Poland

Pursuant to the provisions of the Law on Promotion of Employment and Labour Market Institutions the citizens from the EU, EEA Member States and Switzerland are released from the obligation to obtain a permit for work in Poland.

CONTRACTS

1. Entering into Contracts in Poland

The Polish contract law is adjusted to a substantial extent to the EU regulations. Some formalities may be connected with entering into contracts in Poland. For instance, certain transactions have to be made in the form of a notarial deed, e.g. purchasing real estate or with signatures confirmed by a notary, e.g. transfer of shares in the limited liability company.

It is often advisable to verify whether persons claiming to represent an entrepreneur are actually authorised to do so.

2. Act on Polish Language

Provisions of the law on the Polish language concern protection of the Polish language and its use in public and business activity in Poland. The strict regulation has been changed with the accession day, allowing the entrepreneurs to use foreign languages in their commercial activity.

The law imposes the obligation to use the Polish language in the following situations:

- relations with the Polish state and local government authorities,
- relations and contracts in the field of labour law as well as consumer contracts with some exceptions where contract may be in a foreign language.

It concerns in particular names of goods and services, offers, advertisements, manuals, information on characteristics of goods and services, warranty terms, invoices, bills and receipts as well as warnings and information for consumers required by virtue of other provisions, instruction manuals, and information on features of goods and services.

Additionally, non-observance of the provisions of law with respect to relations with consumers as well as in the field of labour law may consequently result in a fine.

3. Consumer Sale

The consumer sale is the sale of a movable object performed within the scope of activity of the enterprise for the benefit of a natural person who buys this object for the purpose not connected with the professional or economic activity.

In case of the consumer sale in Poland, the act imposes additional obligations on the seller aimed at protection of consumers' interests. Among others it increases the seller's obligations regarding giving clear, comprehensible and not misleading information in Polish sufficient for proper and full usage of the purchased goods, providing the proper technical-organizational conditions in the place of sale allowing to make a choice of the good and to

check its quality, completeness and functionality of main mechanisms and its basic sub-assemblies.

4. Venue and Governing Law

It is very important in the international business to agree on the law that will govern the contract as well as on the court that will be relevant in case of a dispute.

Since December 17, 2009 the EU member states have been obliged to apply the Regulation (EC) No. 593/2008 of the European Parliament and of the Council instead of the Rome Convention on the law applicable to contractual obligations, so-called Rome I. The Regulation regulates the problem of law applicable in case of contracts related to the legal systems of different states. As a rule, the contract is subject to the law as chosen by the parties, and in case no law has been chosen, the detailed rules as defined in the Regulation should be referred to and complied with. The Regulation applies to contracts which have been signed after December 17, 2009.

LEGAL PROFESSIONALS

Legal assistance in Poland is provided by attorneys at law [*adwokat*] and legal advisors [*radca prawny*]. The attorney at law may advise in any field of law and may appear in court in all types of cases. The legal advisor, except when acting as a defence counsel in criminal or fiscal penal proceedings, may also appear in court in all types of cases and can advise in any field of law.

Notary [*notariusz*] is the third category of legal professionals in Poland. The role of the notary is to protect the legal proceedings through assuring the security and certainty of legal transactions. Polish law provides that some of the acts in law have to be carried out in the presence of a notary who will draw up the title and handle all the paperwork involved in the transaction, in particular:

- real estate transactions,
- donations,
- establishing perpetual usufructuary rights,
- preparing and signing the Deed of Incorporation of a company.

The notary may also make legal duplicate of a document or draw up a will.

A bailiff [*komornik*] is authorised to enforce judgements of courts.

In order to verify whether a person is authorized to practice law it is advisable to check with the local chamber of attorneys at law, legal advisors, notaries or bailiffs.