

## LEGALINK

### INVESTMENT AND BUSINESS START UP IN POLAND

#### Legal system

1. **What is the legal system (i.e. common law system, civil law system or both) in your country?**

Like most of the countries of continental Europe, Poland has a civil law system based on written codes and parliament acts.

2. **What are the major law courts in your country?**

The major law courts are district courts, regional courts, courts of appeal and the Supreme Court.

There are also administrative courts and martial courts.

3. **What are the sources of laws (such as constitution, statute law and common law) in your country?**

The sources of generally applicable laws in Poland are: Constitution, statutes, ratified international agreements and regulations.

4. **What is/are the official language(s) in your country?**

The official language in Poland is Polish.

#### (A) Foreign investment

5. **Are there any restrictions faced by a foreign individual or company when they want to invest in your country? Is an approval or permit required if a foreign individual or company wants to enter a certain industry?**

The following individuals and entities may undertake and carry business activity on the same terms as Polish citizens:

- i. foreign individuals and entities from the EU and the EFTA member states, as well as from countries which signed agreements with the European Community;
- ii. individuals from countries other than the indicated above, but who are family members of persons from the countries listed above;
- iii. individuals who have obtained a residence permit or are subject to protection in Poland under the Act on Granting Protection to Foreigners (e.g. have obtained a settlement or tolerated stay permit in Poland or have refugee status).

Other foreign individuals or companies may operate only as: (i) limited partnerships, (ii) limited joint-stock partnerships, (iii) limited liability companies or (iv) joint-stock companies.

Some activities require concessions (e.g. manufacturing, processing, storing, transmitting, distributing and trading in fuels and energy), permits (e.g. insurance activity), licenses (e.g. railway transport) or authorization. Certain activities are regulated (e.g. currency exchange activities), i.e. an entrepreneur must meet some legal requirements and obtain an entry in the register of regulated activities.

**6. Are there any exchange control or currency regulations in your country?**

There are no foreign exchange controls concerning transactions with the European Union member states. Foreign transactions and payments with other third countries require general or individual foreign exchange permit issued by the president of the National Bank of Poland.

Moreover, payments made (i) between entrepreneurs and exceeding the equivalence of EUR 15,000; (ii) abroad and exceeding the equivalence of EUR 15,000 shall be made via bank transfer.

As for currency regulations, monetary liabilities may be denominated in foreign currency. In such case, in principle payments shall be made in that foreign currency.

**7. What grants or incentives are available to a foreign individual or company to encourage investment in your country?**

Since its accession to the EU Poland has been experiencing continuous economic growth. Companies operating on Polish market can benefit from numerous financing programs, established by the EU or tax reductions and public aid granted by Polish government. In order to promote investment in Poland, the government has established special economic zones where it focuses its aiding effort. Special economic zones will be operational until 2026.

In 2013 Poland was able to increase the financing from EU budget for promoting economic growth in years 2014-2020 by 13%, which makes Poland the biggest benefactor of the EU findings. Out of EUR 960 billion Poland is to receive EUR 105.8 billion.

Poland also has a high ratio of qualified employees while retaining low cost employment when compared to other EU member states.

**(B) Business vehicles**

**8. What is the most common form of business vehicle used by foreign investors in your country?**

Please provide details on:

- i. **Registration formalities;**
- ii. **Minimum (and maximum) share capital;**
- iii. **Whether shares can be issued for non-cash consideration, such as assets or services (and any formalities);**

- iv. Any restrictions on foreign shareholders;**
- v. Management structure and any restrictions on foreign managers;**
- vi. Directors' liability;**
- vii. Parent company liability; and**
- viii. Reporting requirements (including filing of accounts).**

Available forms of business activity in Poland are (i) capital companies (limited liability company and the joint-stock company); (ii) partnerships (the general partnership, the professional partnership, the limited partnership, the limited joint-stock partnership); however, the general partnership and the professional partnership in principle are not available for foreign investors from other countries than European Union member states; (iii) representative offices and branches of parent companies.

The partnerships are, from a tax point of view, pass-through entities.

Both capital companies, the limited partnership and the limited joint-stock partnership in which the general partner is a capital company shield ultimate owners from liability.

In practice the limited liability company is the most common form of investment vehicle. Please find below detailed information on the latter business vehicle.

**i. Registration formalities;**

**1. Execution of articles of association**

The articles of association of a limited liability company require either a notarial deed or completion of an electronic form.

**2. Registration with the register of entrepreneurs of the National Court Register**

The company must be registered with the register of entrepreneurs of the National Court Register.

Upon registration the company obtains a legal personality (i.e., they become capable of acquiring rights and assuming obligations and have a full corporate status).

**3. Registration with the Tax Office for VAT**

If the articles of association have been executed before a public notary, a motion to the Tax Office in order to obtain a tax identification number (NIP) and to the Statistical Office in order to obtain a statistical number (REGON) are filed automatically by the commercial court (one stop shop principle). If the articles of association have been executed via Internet, separate motions to the Tax Office and to the Statistical Office shall be filed.

**ii. Minimum (and maximum) share capital;**

The minimum share capital amounts 5,000 PLN (app. 1,200 EUR).

**iii. Whether shares can be issued for non-cash consideration, such as assets or services (and any formalities);**

Shares may be issued for non-cash consideration in form of assets (except for companies set up in electronic form). An inalienable right or the provision of work or services cannot constitute a contribution. If an in-kind contribution is to be made, the articles of association shall specify in detail the in-kind contribution and the shareholder who makes it, as well as the number and nominal value of the shares acquired for such contribution.

**iv. Any restrictions on foreign shareholders;**

There are no specific legal requirements or duties imposed on a foreign entity. Please however note that foreign official documents required for incorporation must be stamped with apostille and translated into Polish.

**v. Management structure and any restrictions on foreign managers;**

The management board of a limited liability company shall comprise one or more members. The members are not obliged to be Polish citizens.

**vi. Directors' liability;**

According to the Commercial Companies Code, the members of the management board bear civil liability: (i) to the creditors of the company for giving false data concerning contribution to the share capital; (ii) to the company for damage caused by acts or omissions in breach of the law or the provisions of the articles of association; (iii) to the creditors of the company for its obligations if enforcement against the company proves to be ineffective.

**vii. Parent company liability; and**

The parent company is not liable for the debts of its subsidiary. The liability of a parent company is limited to the amount of share capital it has contributed to the subsidiary.

**viii. Reporting requirements (including filing of accounts).**

The companies are obliged to file to the commercial court the annual financial report together with the management board's report on the activity and a resolution of the shareholders accepting the report.

Some changes concerning the company (i.e. its business name, seat and address; its objects; the amount of the share capital; information as to whether or not the shareholder may have more than one share; data of the management board and supervisor board members and the manner of the representation of the company; if the shareholder make in-kind contributions, the term of the company and the gazette selected for

publication of the company announcement) shall be notified to the commercial court after their occurrence.

**(C) Employment**

**9. What are the main laws regulating employment relationships in your country?**

The main laws regulating employment relationships are:

- (a) the Labour Code;
- (b) the Act on Special Rules Governing the Termination of Employment Relationships with Employees for Reasons not Attributable to Employees (the Redundancy Act);
- (c) the Act on Information and Consultation of Employees;
- (d) the Act on Trade Unions;
- (e) the Act on Settlement of Collective Disputes;
- (f) the Act on Employing Temporary Workers;
- (g) the Act on Social Insurance System;
- (h) the Act on Social Insurance and Maternity;
- (i) the Act on Promoting Employment and Labour Market Institutions; and
- (j) the Act on Mitigation of the Economic Crisis Effect for Employees and Entrepreneurs.

**10. Is a written contract of employment required in your country, and if so, must it contain any particular language? Are any agreements and/or implied terms likely to govern the employment relationship?**

An employment contract should be made in writing and should at least indicate the following: (i) parties to the employment contract; (ii) type of employment contract; (iii) date of conclusion of the employment contract; (iv) type of entrusted work; (v) place of work; (vi) remuneration for work with indication of its elements; (vii) working time; and (viii) work commencement date.

If an employment contract has not been made in writing, the employer should, not later than on the date work commenced, confirm to the employee in writing the details of the parties, the type of contract and the terms and conditions of employment and the remuneration.

In addition, the employer must inform the employee in writing about the basic terms and conditions of employment that apply to the employee (such as frequency of salary payments, annual leave entitlement, terms for termination of employment) not later than seven days after the employment contract was entered into and about any changes in those conditions.

The employment contracts concluded with Polish citizens must be established in Polish language. The employment contracts with foreigners may be established in foreign language.

Most of the provisions of the laws regulating employment relationships indicated in the point 9 above cannot be modified by the parties and are binding regardless of the fact whether the contract regulates a particular question.

**11. Do foreign employees require work permits and/or residency permits if they work in your country? If so, how long does it take to obtain them and how much do they cost?**

Employees from the EU or the EEA countries may be employed in Poland without a residence or work permit.

Pursuant to the Act on Promoting Employment and Labour Market Institutions, a foreign national who is not an EU or EEA country citizen may work in Poland if he or she holds a work permit issued by the provincial governor competent for the employer's registered office. Work permits are required if a foreign national works for an entity that has its registered office in Poland, or if he or she is employed with a foreign employer and has been seconded to work in Poland.

A work permit is issued for a definite period of time (not exceeding three years) and may be prolonged. In the event of employing a foreign national who is a management board member in a company employing at least 25 employees, the work permit may be issued for a period of five years.

Some categories of workers are exempt from the requirement to obtain a work permit. This concerns citizens of Russia, Belarus, Ukraine, Georgia and Moldova who commence short-term work in Poland (the period of work may not exceed six months in a period of 12 months).

A work permit is an administrative decision which shall be issued within 2 months from the day of filing the application. The employer shall pay a fee amounting to PLN 50 (in case of work permit not exceeding three years) or PLN 100 (in case of work permit not exceeding five years).

**12. Are employees entitled to management representation and/or to be consulted in relation to corporate transactions (such as redundancies and disposals) in your country?**

In principle, there is no legal requirement to consult employees in case of corporate transactions such as mergers or acquisitions.

However, if corporate reorganization entails (i) redundancies, (ii) employment contracts' termination or (iii) transfer of work establishment, trade unions and the employees council (if any) must be consulted.

For redundancies, please refer to point 16 below.

If an employer intends to terminate an employment contract concluded for an indefinite period of time with or without notice, it is obliged to consult with the trade unions and indicate the termination reasons in a written notification. Trade

unions may, within a limited period, state their objections (if they consider such termination unjustified). The opinion of the trade union organisation representing the employee should be taken into consideration by the employer, but it shall not be binding. If an employee is not represented by any trade union organisation, the employer is not obliged to seek consultation, although it is bound to indicate the termination reason in the notice.

Prior to transfer of a work establishment to a new employer trade unions (if any) or the employees must be informed on the legal, economic and social effects of such transaction, in particular with reference to employment contracts. When a new employer wishes to introduce changes to employment structure or working conditions, it is obliged to negotiate such changes with trade unions active within the company.

Finally, when an employer employs more than 50 employees, employees may form an employees' council. The council is to be informed of the company's operations and economic activity, changes in employment and any other projects which may cause relevant changes within the employment structure of basis for employment. Having that in mind, if a corporate transaction may influence the abovementioned, and a council is present, it should be consulted.

As for the management representation, in former state owned companies, the employees are entitled to elect one person to be a member of the management board when the average employment within the company exceeds 500 people. Also the employees may elect up to 2, 3 or 4 members of the supervisory board if the supervisory board has 6,7 or 11 members respectively. Those regulations do not cover other companies. Still, companies operating in Poland must take notice of the employee self-government bodies, active among its employees.

**13. Are there any employment protection laws (such as minimum wage law and/or maximum working hours law) in your country?**

Minimum month wage is fixed by regulation of the Minister of Labour. In 2013 it amounts to PLN 1,600 (approx. EUR 400) (gross amount).

The maximum working hours are defined in the Labour Code. In general, the working time may not exceed eight hours per day and an average of 40 hours per an average five days working week. The weekly working time, including overtime work, cannot exceed an average of 48 hours (except for managers and heads of separate organisational units). As a general rule, an employee is entitled to overtime pay of 100 per cent or 50 per cent (depending on when such work is performed) of the employee's remuneration, in addition to his or her normal salary. An employee may also be granted work-free time instead of additional remuneration. The Labour Code protects some categories of employees from overtime work, such as pregnant women, underage employees or employees carrying for a baby until the baby reaches the age of 4.

Employees are entitled to paid vacation of 20 or 26 working days per year, depending on the duration of their employment, level of education or a combination of the two.

**14. Is there any pension system in your country? Is it on a mandatory or voluntary basis? If so, please give details.**

There is a mandatory pension system in Poland. The pension scheme is composed of three pillars. The first pillar is obligatory and managed by the public Social Insurance Institution. The second pillar is also compulsory but managed by private institutions. The third pillar is managed by private institutions and voluntary.

Until December 31, 2012 the retirement age was 60 years for women and 65 for men. From January 1, 2013, the retirement age is gradually increased to reach 67 years for men in 2020 and the same for women in 2040. According to new regulations, employees will be able to retire at the age of 62 for women and 65 for men, but then they will be entitled only to 50% of the amount of pension they would receive upon retiring at the age of 67.

The retirement insurance premium amounts to 19,52% of the remuneration in the gross amount. The employer and the employee cover each half of the premium.

**15. How is the termination of individual employment contracts regulated in your country? Under what circumstances is the dismissal of an employee unlawful?**

An employment contract may be terminated:

- (a) by mutual consent of the employer and the employee;
- (b) upon the declaration of one of the parties observing the termination notice period;
- (c) upon the declaration of one of the parties with immediate effect (in particular due to the employer's/employee's fault);
- (d) after the expiry of the time for which the contract has been concluded or upon completion of the task it was concluded for.

The length of the notice period, in case of contracts for indefinite period, depends on the individual's work experience at a given workplace and is:

- (a) two weeks if an employee has been employed by an employer for less than six months;
- (b) one month if an employee has been employed by an employer for at least six months; or
- (c) three months if an employee has been employed by an employer for at least three years.

In principle, an employment contract for a definite period is terminated upon the lapse of time for which it was concluded. The possibilities of terminating such contract with notice are relatively limited. Only in the event of concluding a contract for a definite period longer than 6 months, the parties are entitled to its early termination with a two-week notice, if they had reserved such a right in the employment contract.

Written termination notice must be always served to the employee prior to dismissal. The employer is obliged to state the reasons for termination, which should be real, specific and exhaustively defined.

In some cases, the employer is obliged to consult the trade unions (if any), in particular in the event of terminating an employment agreement concluded for an indefinite period of time or terminating an agreement without notice.

It is unlawful to dismiss the following categories of employees:

- (a) persons who will reach the retirement age in not more than 4 years;
- (b) employees during their leave or other justified absence (not exceeding the indicated periods);
- (c) female employees during their pregnancy or while on maternity leave;
- (d) trade union's members.

**16. Are redundancies and mass layoffs regulated in your country? If so, please give details.**

Special rules for mass terminations or collective dismissals, namely, termination of employment agreements for reasons not attributable to the employee, such as liquidation of the workplace or position, the financial situation of the employer, liquidation or bankruptcy of the employer, are defined in the provisions of the Redundancy Act.

The Redundancy Act applies to employment contracts terminated by an employer employing at least 20 employees or within a period of 30 days with at least:

- (a) 10 employees if the employer employs less than 100 employees;
- (b) 10 per cent of employees if the employer employs at least 100 but less than 300 employees; and
- (c) 30 employees if the employer employs at least 300 or more employees.

Under the Redundancy Act, the employer has the obligation to consult or conduct negotiations with the employees' representatives or trade unions in order to agree on the conditions of collective redundancy. Furthermore, the employer is obliged to inform the district labour office about the planned collective dismissal. Following closing of consultations or negotiations with the employees and drawing up of the collective redundancy rules, the employer should provide the district labour office with written notification of the arrangements. Only 30 days following performance of this obligation may the employer hand over written notices to the employees.

The amount of the severance pay depends on the length of the employment with the given employer and is equal to one, two or three months' remuneration. However, the severance pay may not exceed 15 times the minimum remuneration for work in Poland.

**(D) Tax**

**17. In relation to employees, what is the basis of taxation (i.e. whether territorial source principle, tax residency principle or other principle is adopted) in your country?**

Polish tax system is based on tax residency principle in relation to employees.

**18. Under what circumstances are employees subject to taxation in your country?**

Employees with their place of residence in Poland are taxed on their total income, regardless of where the income is earned (unlimited tax obligation in Poland). Employees who do not have a place of residence in Poland are taxed solely on income earned in Poland (limited tax obligation in Poland) subject to provisions of applicable double tax treaties.

An individual with a place of residence in Poland is a person who:

- (a) is physically present in Poland for more than 183 days during a tax year, or
- (b) has a centre of personal or economic interests in Poland (centre of vital interests).

**19. What income tax or social security contributions must be paid by:**

**i. Employees?**

Employees pay the following social security contributions (as percentage of the employee's gross income):

- (a) Pension fund – 9.76%;
- (b) Disability fund – 1.5%;
- (c) Illness fund – 2.45%.

All employee's net income (gross income decreased by employee's social security contributions) is subject to personal income tax. The tax rate is of 18% for income up to PLN 85,528.00 and 32% for excess over this amount.

**i. Employers, in relation to their employees?**

Employees pay the following social security contributions (as percentage of the employee's gross income):

- (a) Pension fund – 9.76%;
- (b) Disability fund – 6.5%;
- (c) Accident fund – 0.67% to 3.86% (depending on the activity of the employer);
- (d) Labour Fund – 2.45%;
- (e) Employees' Guaranteed Benefits Fund – 0.10%.

**20. In relation to corporations, what is the basis of taxation (i.e. whether territorial source principle, tax residency principle or other principle is adopted) in your country?**

Polish tax system is based on tax residency principle in relation to corporations.

**21. Under what circumstances are incorporations subject to taxation in your country?**

Legal persons with their registered seat in Poland are taxed on their total income, regardless of where the income is earned (unlimited tax obligation in Poland). Foreign companies (which do not have their registered seat in Poland) are taxed solely on their Polish source income (limited tax obligation in Poland) subject to exceptions resulting from double tax treaties.

Partnerships (which do not have legal personality) are only taxed at the shareholders' level.

**22. What are the main taxes that potentially applicable to a corporation and what are their tax rates?**

(a) Corporate Income Tax (CIT)

The corporate income tax rate is 19%.

(b) Civil transaction tax

The tax on civil transactions applies to certain civil agreements (sale, loan, articles of association). It pertains to (i) transactions which concern assets located in Poland and rights performed in Poland; (ii) assets located abroad or rights performed abroad by a Polish individual or entity if the transaction takes place in Poland.

Civil transaction tax rate is from 0.5% to 2% of the transaction's value.

The tax does not apply to transactions subject to VAT.

(c) Local taxes

The most important local tax is the real estate tax. Its rate is determined by local communities but cannot exceed the amount indicated in the legal provisions.

Moreover, the following direct taxes are applicable in Poland:

(a) Tax on goods and services (Value Added tax – VAT).

The standard VAT rate in Poland is 23 %. The preferential rates are 8 % (e.g. for gastronomy and hotel services) and 5 % (e.g. for books, basic food products).

(b) Excise tax

Poland together with other EU member states constitutes common customs territory. Goods subject to EU excise tax are energy products, electricity, alcohol and tobacco products. Some other products (like passengers cars) are subject to excise tax on the basis of Polish (non-EU) regulations.

**23. Please explain how each of the following is taxed in your country:**

**i. Dividends paid to foreign corporate shareholders?**

Dividends paid to foreign shareholders are subject to a withholding tax of 19%. Double tax treaties may provide for preferential rates.

Moreover, certain dividends are exempt from withholding tax:

- (a) paid to companies with their registered seat in Poland or other EU/EEA member state or in Switzerland,
- (b) if the shareholder has continuously and directly held at least 10 % (25 % for shareholders having their registered office in Switzerland) of the shares in the company disbursing the dividends for at least two years.

In such case, the company paying and the company receiving the dividend must be subject to corporate income tax on its total income in Poland or in an EU/EEA member state or in Switzerland.

**ii. Dividends received from foreign companies?**

Dividends received by Polish shareholders from foreign companies are subject to 19% corporate income tax together with income earned in Poland, unless otherwise provided in double tax treaties. The tax paid abroad may be deducted from Polish CIT, but the deduction cannot exceed the amount of CIT due under Polish legislation (for the part classified as foreign income).

Some dividends are exempt from CIT in Poland:

- (a) if they are paid by companies with offices in an EU/EEA member state or in Switzerland; and
- (b) the Polish company has held at least 10 % (or 25 % for companies with their registered office in Switzerland) of the shares in the company disbursing the dividends for at least two years.

As in case of disbursing dividends by a Polish company, the mother company and the shareholder shall be subject to CIT on their total income in Poland and in the EU/EEA member state or in Switzerland.

**iii. Interest and intellectual property (IP) royalties paid to foreign corporate shareholders?**

Interest and royalties are subject to a 20% withholding tax, unless reduced by a tax treaty.

Interest and royalties are exempt from withholding tax in Poland if they are disbursed by an entity with its registered seat in Poland to a company in another EU/EEA member state or in Switzerland, and if:

- (a) the company collecting the interest/royalties holds at least 25 % of the shares in the capital of the company disbursing the interest/royalties, or
- (b) the company subject to taxation on its total income in an EU/EEA state holds at least 25 % of the shares in the capital of the disbursing company and in the capital of the company collecting the interest/royalties;

and the 25 % share has been held directly and continuously for at least 2 years.

The exemption is possible if some other formal conditions are met (in particular the recipient holds a tax residency certificate).

**24. Are there any thin capitalization rules (i.e. restrictions on loans from foreign affiliates) in your country? If so, please give details.**

Corporate Income Tax Act introduces restrictions pertaining to loans from shareholders. In some cases the interests on such loan or credit cannot be considered as tax deductible costs. It concerns the situation when:

- (a) the loan is granted by a shareholder who holds at least 25% of the company shares or by shareholders holding jointly at least 25% of the company shares and
- (b) the amount due to such shareholder(s) reaches three times the value of the company equity.

**25. Are there any controlled foreign company rules (i.e. the profits of a foreign subsidiary must be imputed to a local parent company) in your country? If so, please give details.**

There are no controlled foreign company rules in Poland.

**26. Are there any transfer pricing rules (i.e. restrictions on the pricing of transaction between a local entity and a foreign entity) in your country? If so, please give details.**

Polish law sets up transfer pricing rules for transactions between affiliate entities or with an entity having its seat or management board in "tax heaven" state.

Transfer pricing documentation is required for transactions exceeding the following values throughout a tax year:

- (a) EUR 100,000 - if the transaction value does not exceed 20% of the share capital;
- (b) EUR 30,000 – in case of intangible services;
- (c) EUR 20,000 – if a transaction is concluded with an entity from a “tax haven” country;
- (d) EUR 50,000 – in all other cases.

If tax authorities consider that the conditions agreed between companies differ from those which would be set between independent entities, they may estimate the market value of the transaction and calculate the tax.

Moreover, if tax authorities determine higher income than those declared by the taxpayer in relation to the transaction and the documentation is not filed in due time, the difference is taxed with income tax amounting to 50%.

**27. How are imports and exports taxed in your country?**

Import (i.e. sale of goods outside the European Union) is taxed with import duties and VAT. Intra-community acquisition of goods (i.e. from other European Union member state) is neutral from tax point of view.

There is no tax on exports from Poland to other European Union member state or to third countries, provided that some formalities are fulfilled (in particular, a confirmation that goods were delivered to the recipient is required).

**28. Is there a wide network of double tax treaties in your country? If so, please give details.**

Poland has concluded 91 double tax treaties. Most of them are comprehensive treaties (for example with Germany, Great Britain, France, United States, Russia, India, China). A few of them cover only airline and shipping income and some categories of income of natural persons (with Guernsey, Jersey and Isle of Man).

**(E) Competition**

**29. Is there any competition law in your country? If so, please give details.**

Poland is a member state of the EU and as such its material competition law is derived from competition law of the European Union. Poland, as other member states, retains independent national competition authority. Polish law regulates procedural laws as passed by the Parliament, however much of it is influenced by the EU and jurisprudence of the EU Commission and European courts.

Apart from competition law, enforced by government bodies, Polish law provides for protection against acts of unfair competition. Those infringements resolved by civil court and the proceedings are initiated by the company harm by another company, by unfair practices like harmful advertisement, liable against other companies, mimicry of other companies.

**30. Are restrictive agreements and practices regulated by competition law in your country?**

Rules and regulations concerning restrictive agreements and practices are regulated by the Treaty on the Functioning of the European Union, which can be enforced directly by the Polish competition authority. Polish Parliament has also passed an act of competition and consumer protection. Polish regulations on restrictive agreements however mirror the EU Treaty regulations and the only differences are the procedural regulations on investigations carried out by Polish competition authority.

**31. Is unilateral (or single-firm) conduct regulated by competition law in your country?**

As with the restrictive agreements and practices, unilateral conduct is subject to both EU and Polish regulation if the company in question has a dominant position on the relevant market. Dominant position is characterized by a market position which allows the company to prevent effective competition in a relevant market, thus, enabling it to act to a significant degree independently of its competitors, contracting parties and consumers. It is assumed that an undertaking holds a dominant position if its market share in the relevant market exceeds 40% (for Poland) or 50% (for the EU).

**32. Are mergers and acquisitions subject to merger control in your country?**

Mergers and acquisitions are subject to control of the Polish competition authority when the concentration reaches thresholds provided by the Polish competition law. Those thresholds are based on the turnover of all parties to the concentration. Bear in mind, that the EU Commission thresholds still apply and some concentration will be subject to the EU Commission merger control regulations. Also, the EU Commission can intercept any merger control proceeding from the national competition authority if it determines that the merger will affect more than one national market.

**(F) Intellectual property**

**33. Please outline the main intellectual property rights that are capable of protection in your country. In each case, please state:**

- i. What is the nature of the right?**
- ii. How is it protected?**
- iii. How is it enforced?**
- iv. How long is it protected?**

Polish legal system grants protection for copyrights and industrial property rights.

- (a) Copyright**

The object of the copyright is each original and individual work, irrespective of its form, and in particular:

- work expressed in words, mathematical symbols, graphic signs;
- artistic works;
- photographic works;
- industrial design works;
- audio-visual works.

There is no requirement to register a copyright in order to acquire protection in the field covered by it. The copyright protection derives directly from the law.

In case of violation of a copyright, a relevant action concerning (i) ceasing the breaches; (ii) remedy of the effects of the breach; (iii) hand-over of benefits and (iv) repairing the damage may be initiated.

Copyrights generally expire 70 years after the author's death.

(b) Industrial property rights

The following are, inter alia, protected by industrial property rights:

- inventions;
- utility patterns;
- industrial designs;
- trademarks.

The protection is granted only after registering in the Patent Office. A patent/other protection right confers an exclusive right on to use the patented invention/pattern/ design/trademark on the territory of Poland.

Legal protection derived from the above indicated rights lasts for the following periods (from the day of the right's registration) in the Patent Office:

- inventions – 20 years;
- utility patterns – 10 years;
- industrial designs – 25 years (divided in 5 year periods);
- trademarks – 10 years.

In case of violation of industrial property rights, a relevant action concerning (i) ceasing the breaches; (ii) hand-over of unlawful benefits and (iii) repairing the damage may be initiated.

Please note that trademarks and designs may also be protected at the EU level. After registration at the European Office for Harmonization in the Internal Market (OHIM), Community trademark and Community design are protected in all the EU member states.

## **(G) Marketing agreements**

### **34. Are marketing agreements regulated in your country? If so, please give brief details in respect of the following arrangements:**

**i. Agency;**

**ii. Distribution; and**

**iii. Franchising**

Agency agreement is a type of nominate contract, which is regulated in the Polish Civil Code. Pursuant to this agreement, the agent commits, against remuneration, to provide regular intermediary in executing contracts with clients on behalf or in the name of the principal. To enter the agency agreement, each party shall act as an entrepreneur. The agent shall perform its obligations arising out from the agreement within its business operating scope.

Polish Civil Code provides also for a mandate agreement, according to which the mandatary commits to perform a specified legal act for the mandator, with or without remuneration. The agreement might be concluded between natural or legal persons, provided that they possess the capacity to enter the legal transactions.

Neither the franchise nor the distribution agreement are regulated in the Polish legal system. However, both agreements can be concluded under the principle of freedom of contracts and are commonly practiced and recognized within the Polish legal system.

## **(H) E-commerce**

### **35. Are there any laws regulating e-commerce (such as electronic signatures and distance selling) in your country? If so, please give brief details.**

The electronic signature is regulated in the Polish law. In order to acquire the secure electronic signature, the interested party shall apply to one of the authorized entities entered to the register kept by the Minister of Economy. According to the Civil Code, the electronic signature obtained in the abovementioned way cause equivalent legal effects as the ordinary signature.

Pursuant to the Polish law, the consumer may withdraw from the agreement concluded by distance within 10 days. The period runs from the moment of receipt of the product by the consumer or from the day of concluding the agreement (in case of services). It should be stressed that the consumer does not

have to provide the seller with any reasons concerning its decision to withdraw from the agreement. In order to perform the right of withdrawal, the consumer should sent to the seller a relevant statement of will within the abovementioned period of time.

**(I) Data protection**

**36. Are there any data protection laws in your country? If so, please give brief details.**

Personal data protection is derived from the Personal Data Protection Act, which regulates in particular the legal aspects concerning collecting, processing and disclosing of personal data to third parties.

In order to process the personal data, the appointed personal data administrator should notify the personal database to the General Inspector for Personal Data Protection in order to register it. There are only several exceptions which exclude personal data administrators from the obligation to notify and register the personal data base. The regarded exceptions concerns inter alia the following situations:

- (a) data containing classified information;
- (b) data containing the commonly accessible information;
- (c) data processed only in order to issue an invoice or for the needs of bookkeeping.

Furthermore, the Polish legal system recognizes several kind of information when collecting and processing of personal data is directly forbidden by the law, as for example the information referring to racial and ethnic origin, political views, religious and philosophical beliefs.

**(J) Product liability**

**37. Are there any laws regulating product liability and product safety in your country? If so, please give brief details.**

Product liability regulation derives from the European directives. The Civil Code defines hazardous product as a product which does not meet the safety requirements that can be expected based on the normal use of the product.

The product liability is based on the ground of risk liability, which shall be understood as a liability which is not conferred to fault but appears in each case when the damage was caused by the product.

There are several releasing circumstances, which allows the manufacturer to exempt itself from liability. The most significant one concerns the situation when the damage was caused by a hazardous product which was introduced on sale outside the scope of business activity performed by a particular manufacturer.

Furthermore, manufacturer is not liable if the properties of hazardous product are revealed after the product is introduced on sale, unless they are due to the element inherent in the product.

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