

poland

Laszczuk
& WSPÓLNICY

Laszczuk & Partners

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Laszczuk & Partners is a commercial law firm in Poland.

We understand the needs of international companies and have a feel for local realities of doing business here.

Since 1989, we have assisted clients from all over the world in starting, running and optimizing their businesses in Poland.

With a staff of 30, we are one of the larger independent law firms in the country, but we remain small enough to maintain the personal attention and friendly service that are so important to our clients – whether they be start-ups, or some of Poland's largest companies.

Our team of advocates, legal advisors and assistants welcome the challenge of developing effective and practical solutions to the complex legal issues facing foreign companies doing business in Poland.

Teamwork is the key to how we work. We are organized into four practice groups: Commercial, Intellectual property & new technologies, Real estate, and Tax. Our practice groups cooperate closely to offer an integrated approach to maximizing our clients' business potential in Poland.

Commercial Practice Group

Our commercial practice group looks after the legal aspect of the client's business so that the client can concentrate on doing business. We advise foreign investors in establishing companies, mergers and acquisitions, capital structure, legal audit and restructuring of companies. We help draw up the necessary documentation for our clients to obtain the credit facilities they need to finance their Polish operations. Among the more complex matters which our clients may face are those dealing with European and Polish competition policies and related proceedings before the anti-monopoly authorities. Our commercial practice group reviews and drafts commercial contracts of all sorts as well as forms which our clients may use with their own customers.

We are sensitive to the special needs of direct selling companies and other companies that deal with consumers, for example with respect to consumer protection and data protection requirements. Labor laws and practices in Poland can be bewildering to foreign companies. We help our clients negotiate the minefield and achieve their strategic organizational goals. Our labor law services include negotiating contracts with management and key personnel, developing company-wide standard employment contracts, company work and pay rules, individual and group layoffs, workforce restructuring, incentive plans, social insurance and holiday issues, employment litigation, and HR alternatives such as use of independent contractors, agents and consultants.

Our litigators represent commercial clients before all courts, administrative and arbitration tribunals.

Intellectual Property & New Technologies Practice Group

Intellectual property rights may be intangible assets, but they often represent a substantial portion of the value of a business. We advise on licenses and other contracts concerning copyright, trademarks, patents and other forms of intellectual property. We take part in a substantial amount of litigation on behalf of holders of IP rights, including complex patent, trademark and unfair competition cases. We also organize ongoing anti-counterfeiting enforcement programs for holders of renowned trademarks. The firm has a longstanding practice representing major foreign advertising agencies doing business in Poland. We are attuned to the special needs of companies working in the high-tech field, providing innovative legal solutions for innovative products.

The firm is a member of the International Trademark Association (INTA).

Real Estate Practice Group

We advise investors throughout the whole life cycle of commercial real estate investments, including:

- the zoning and building permit process,
- agreements for design and construction,
- environmental concerns,
- financing,
- the construction process,
- management and leasing of existing commercial buildings,
- real estate brokerage arrangements,
- conveyancing,
- dispute resolution (administrative, judicial, arbitration).

In a major proportion of the most significant real estate transactions in Poland in any given year, we are there, advising one of the parties.

Tax Practice Group

Through tax planning, we help companies structure their overall business and particular transactions in order to minimize and control their tax exposure. We advise on tax issues that arise in the day-to-day business of our clients.

In tax litigation, we have represented foreign investors in some of the largest and most complex CIT, VAT, excise, customs and foreign exchange proceedings.

Value for fees, fees for value. Yes, we still use hourly rates, although international clients may be surprised at how reasonable they are. We also negotiate innovative hybrid fee arrangements, using such approaches as periodic retainers, volume discounts, blended rates, and success fees. Ultimately, our fees are always value-based.

We are proactive. We strive to understand how our clients' businesses function, to anticipate their legal needs, and to solve problems before they are problems. We provide ongoing, up-to-date information on changes in the law that may have an effect on our clients' business. We publish the firm Bulletin for our clients, which addresses important developments in Polish law so that clients can plan accordingly.

We think globally. We have links to professionals in many other countries. Our membership in legal networks provides us with ongoing contacts with a multidisciplinary range of independent professional firms in many other countries and the major commercial centers around the world.

We contribute to the broader business environment through our active membership in trade organizations such as the American, British, German, Scandinavian and Swiss chambers of commerce. They help us to remain alert to the broader business environment.

We work regularly in English, German and Polish.

Our office in Warsaw, which dates back to 1989, is home to some 30 lawyers and staff. We handle matters in and around the capital, elsewhere in Poland as well as abroad. The firm's offices are located in the architecturally striking and award-winning Metropolitan building on Pilsudski Square, in the heart of Warsaw. The practice is headed by managing partner Maciej Laszczuk.

poland | corporate law

Regulations

The main source of corporate law in Poland is the Commercial Companies Code of 2000 (as amended).

Types of Companies

There are two types of capital companies under Polish law, the limited-liability company (spolka z ograniczona odpowiedzialnoscia or "Sp. z o.o." for short) and the joint-stock company (spolka akcyjna or "S.A.") Personal companies (for example partnerships) are not addressed in this Compendium.

Liability of Shareholders

In both a limited-liability company and a joint-stock company, the shareholders are not liable for the company's debts.

Share Capital

In a limited-liability company, the minimum share capital is PLN 50,000 (about EUR 12,500). The minimum par value of a share is PLN 50 (about EUR 12.50), assuming that multiple, indivisible shares of equal value are used. (It is possible instead for the company to have one share which is divisible.) All stated share capital must be paid in to the company before the capital is registered.

In a joint-stock company, the minimum share capital is PLN 500,000 (about EUR 125,000), all of which must be subscribed for the company to be formed. The minimum par value of a share is PLN 1.

Classes of Shares

In a limited-liability company, all shares are registered. There are no share certificates or bearer shares. If so provided in the company charter, some shares may be privileged as to voting (maximum 3 votes per share), dividends and distributions.

In a joint-stock company, shares are evidenced by certificates, but the shares may be bearer shares or registered shares. There may be different classes of shares, preferred as to voting rights (maximum 2 votes per share), dividends or distribution. Preferred shares with respect to voting rights are not allowed in a publicly-traded joint-stock company, however.

Shares in either type of company are generally transferable (subject to the applicable formalities), but the company's charter may provide restrictions on transfer such as permission from the company or a right of preemption held by other shareholders.

Corporate Governance

LIMITED-LIABILITY COMPANY

Shareholders Meeting: The shareholders meeting (zgromadzenie wspólników) is a company's highest authority.

In the case of a limited-liability company, the shareholders meeting is responsible for approving the annual management board report, accounts and ratification that the management board (and supervisory board, if any) have performed their duties for the year. The shareholders meeting must also approve certain transactions outside the ordinary course of business, e.g. sale of the business, transactions in real estate, or transactions worth more than twice the share capital. Some of these requirements may be varied by the company charter.

A regular shareholders meeting is held once per year, within 6 months following the close of the prior fiscal year, to consider the annual reports and grant

releases to other company authorities, and if necessary confirm the term of the management board or appoint a new board.

Special meetings may be called by the management board or by holders of 10% of the share capital.

Shareholder meetings are formally convened upon advance notice as provided in the Code or the charter, or informally upon consent of all shareholders, and shareholders may also submit their positions in writing in lieu of holding a meeting.

Normally there is no quorum necessary for a shareholders' meeting to pass valid resolutions, and a simple majority is sufficient to pass resolutions. Exceptions include charter amendments or winding-up or disposal of all or an organized part of the company's enterprise, which require 2/3 majority; changing the company's business purpose requires a 3/4 majority.

In a limited-liability company, the shareholders normally have the personal right to supervise the company's activities, for example to examine the company's books and record.

Supervisory Board or Audit Committee: The supervisory board (rada nadzorcza), or alternatively an audit committee, are optional in a limited-liability company unless it has share capital of over PLN 500,000 (about EUR 125,000) and more than 25 shareholders, in which case either a supervisory board (of at least 3 persons) shall be appointed by the shareholders, or an audit committee must be established.

Management board: A limited-liability company is represented by a management board (zarząd) of one or more members, serving either one-year terms or other length of office (joint or individual) as provided in the company charter. In a limited-liability company, the management board members are normally elected by a shareholder resolution (simple majority). This may be varied in the company charter, for example by having board members appointed by the supervisory board (if any) or giving specific shareholders the right to appoint a given number of management board members.

The management board's authority to represent the company cannot be limited with respect to third parties.

The management board may also unanimously appoint a commercial proxy (prokurent), to represent the company. Any member of the management board may dismiss the commercial proxy, however.

Board members owe a duty to the company and may be liable to the company for mismanagement. The management board in a limited-liability company also has a duty to creditors to file for bankruptcy protection within 14 days after the company becomes insolvent; otherwise the board members become personally liable for the company's debts (including also tax claims) or harm to creditors caused by the delay. Board members may escape this liability by showing that the delay was excusable and there was no harm to creditors from the delay.

JOINT-STOCK COMPANY

The authorities of a joint-stock company are the general meeting (walne zgromadzenie, analogous to the shareholders meeting in a limited-liability company), the supervisory board and the management board. In most respects the role of these authorities in a joint-stock company tracks that of the analogous authority in a limited-liability company, except that it is mandatory to have a supervisory board and some of the quorum, voting and representation requirements differ.

The general meeting normally elects the supervisory board. It is also responsible for approving the annual reports and certain transactions outside the ordinary course of business such as disposition of the business. The annual general meeting is held within 6 months after the close of the fiscal year. Extraordinary meetings may also be called.

The supervisory board normally elects the management board. In a joint-stock company, the right to supervise the company's activities is vested in the supervisory board rather than in the individual shareholders.

In a joint-stock company, as in a limited-liability company, the management board members are required to file for bankruptcy within 14 days after the company becomes insolvent. If they do not do so, however, unlike in a limited-liability company, the board members do not become personally liable for the company's debts generally, but rather only for tax claims and for harm specifically caused by failure to file for bankruptcy within 14 days. Board members may escape this liability by showing that the delay was excusable and there was no harm to creditors from the delay.

Minutes, Publications and Registry

Companies are registered in the National Court Register (KRS), a central register based on information from the commercial division of the local district courts which have jurisdiction over corporate matters. Each company is assigned a unique KRS number which may be used to identify the company. Anyone interested in the company may request a KRS transcript, which reflects key data concerning the company based on filings with the register court (such as information about the company representatives, official address, charter, share capital, shareholders with 10% or more of the shares, filing of annual statements, insolvency filings and the like).

In addition to filings with the register court, certain public notices are required to be published in the official journal Monitor Polski B.

The company is required to maintain its books and records at the company seat. These will include such items as resolutions and the share register.

Public Companies

Only a joint-stock company (SA) may be listed on the Warsaw Stock Exchange and publicly traded. Mandatory standards of corporate governance for public companies are essentially the same as for other joint-stock companies. Nonetheless, a voluntary set of Best Practices in Public Companies has been adopted by the Warsaw Stock Exchange and the listed companies.

poland | tax law

The Polish treasury draws its revenues from a series of taxes on income (CIT and PIT), turnover, legal transactions, imports and miscellaneous acts.

A key feature of recent government tax policy has been to encourage business by enacting a flat tax rate of 19% for corporations as well as individuals doing business through sole proprietorships and partnerships.

Among other significant recent developments in the Polish tax regime are the adjustment of the VAT rules upon entry to the European Union on 1 May 2004.

CORPORATE INCOME TAX

The principal statute is the Corporate Income Tax Act of 15 February 1992 (as amended – the CIT Act).

CIT taxpayers include all legal persons and organizational units without legal personality (but excluding partnerships), as well as branches of legal persons maintaining a separate balance sheet and tax capital groups (discussed below).

Corporate Residence

An entity with its seat or board in Poland is subject to CIT in Poland on its worldwide income (unlimited tax liability). If an entity does not have its seat or board in Poland, it is subject to CIT in Poland only on its Polish-source income (limited tax liability).

Income determination

REVENUE

The general basis for taxation is revenue less costs. In some instances, e.g. dividends, the revenue is taxed without regard to costs. Revenue is defined

broadly to include such items as exchange-rate differences, gratuitous benefits and income from forgiveness of debt.

Significantly, income from most types of agricultural and forestry activity is exempt from CIT. The CIT Act also provides for a number of different exemptions (for example in the case of public charities).

BUSINESS COSTS

Business costs are generally deductible, however in some respects there are arbitrary limits. As a general observation, costs are closely monitored in Polish tax audits, and it is important to be able to demonstrate a clear connection between the cost and anticipated revenues to be obtained as a result of incurring the cost.

DEPRECIATION

The costs of fixed assets and intangibles are generally subject to depreciation, with certain exceptions listed in the CIT Act. Significantly, the cost for acquisition of land is not depreciable, but is for most buildings.

LOSS CARRY-FORWARD

Net operating losses can be carried forward and deducted from profit in future years. Losses can be carried forward for a maximum of 5 years, and no more than half of losses carried forward may be recognized in any one future tax year.

OTHER DEDUCTIONS/EXCLUSIONS

The CIT Act allows certain non-business expenses to be deducted, for example charitable gifts up to a certain limit.

DIVIDENDS RECEIVED

Dividends received are taxed at a 19% rate (unless a tax treaty provides otherwise). However, dividends from a subsidiary, where the recipient has held

at least 10% of the company paying the dividends for least 2 years are exempt from CIT.

Significantly, income from redemption of shares is treated as dividend income for purposes of Polish tax law.

THIN CAPITALIZATION

To the extent that loan or other indebtedness to shareholders exceeds twice the level of share capital (excluding share capital created by conversion of debt), interest payable on shareholder loans is not tax deductible.

TRANSFER PRICING

Market-rate or arm's-length principles should be followed in transactions between related entities. Transactions between related entities may be reviewed by the tax authorities, and in the case of an audit an assessment may be made based on arm's-length principles.

Tax Rate

The main tax rate for CIT is 19%. There are special rates for certain types of income listed in the CIT Act, such as copyright income and dividends received by taxpayer without Polish tax residence (see below).

Group Taxation

Limited-liability companies and/or joint-stock companies who are members of a capital group may elect to be taxed as a consolidated group, if certain conditions are met. Among other conditions:

- average share capital of each company must be no higher than PLN 1 million (about EUR 250,000),
- at least 95% of capital in the subsidiaries must be held by the dominant company,
- the subsidiaries do not hold each other's shares,

- the companies do not take advantage of CIT or VAT exemptions,
- the companies have taxable profit of at least 3% of revenues.

The tax capital group is formed by an agreement in the form of a notary deed, concluded for at least 3 years and registered with the tax office.

Withholding Taxes

When a company in Poland is making certain kinds of payments to a recipient with limited tax liability in Poland (i.e. a recipient located abroad), it is required to deduct and pay a withholding tax in Poland. The most significant of these withholding taxes include – unless a tax treaty provides otherwise – 19% for dividends and 20% for interest, licensing fees for intellectual property rights and know-how, entertainment and sport performances in Poland, and a number of services such as consulting, accounting, market research, advertising, recruitment and legal services. When a tax treaty is in place, it will typically limit these rates, provided that the payor holds a tax residency certificate for the recipient demonstrating that the recipient is entitled to the benefit of the treaty rate.

Tax Administration, Returns and Payment of Tax

CIT taxpayers are registered with the tax office and are issued a taxpayer identification number (NIP). Taxpayers are required to file monthly returns showing their income for the month and to make advance payments toward annual tax due, by the 20th day of the following month. They are also required to file an annual tax return.

PERSONAL INCOME TAX

The principal statute is the Personal Income Tax Act of 26 July 1991 (as amended – the PIT Act). Some income is taxed according to a simplified flat-tax system under the Act on Flat-Rate Tax on Certain Income of Individuals of 20 November 1998 (as amended).

Territoriality and Residence

Under the PIT Act, individuals residing in Poland are subject to income tax in Poland on their worldwide income (unlimited tax liability). Individuals who are not Polish residents are subject to income tax in Poland only on their income earned in Poland (limited tax liability), including income from work performed in Poland regardless of the place of payment.

Income

Taxable income is defined broadly, although there are a number of exclusions. Among the more significant exclusions are income from agricultural and forestry activity (except for specialized agricultural units), damages, and certain foreign earned income.

Deductions and Tax Credits

The PIT Act provides for a number of deductions and tax credits. Among the more important ones are for the employee's portion of social insurance contributions, gifts to charity, interest on loans for purchase of new housing, and some housing renovation. Recent tax reforms have generally narrowed the list of possible deductions and tax credits. Most taxpayers also have an option of paying up to 1% of their annual personal income tax to a public charity instead of to the State Treasury—a recent innovation.

Losses may be carried forward for five years but can be set off only against income from the same source as the loss, and no more than half of losses carried forward may be recognized in any one future tax year.

Where income tax is paid abroad by a Polish resident on foreign earned income, a tax credit for the foreign income tax is generally available to the taxpayer in Poland.

Tax Rates

PIT is generally assessed at progressive rates of 19%, 30%, and 40%. A top marginal rate of 50% was signed into law at the end of 2004 but has since been held unconstitutional.

Certain income is not subject to the progressive rates but is taxed at a flat rate. These rates include 10% for profit on sale or exchange of real estate and 19% on interest and dividends.

Individual entrepreneurs, doing business as sole proprietorships or partnerships, are taxed on a pass-through basis, i.e. the individuals are taxed directly and the business entity is not taxed. A significant development (implemented for tax year 2004) is that individual entrepreneurs may elect to be taxed at a flat rate of 19% on their business income (less business expenses), without the possibility of claiming most other deductions and credits.

The Act on Flat-Rate Tax on Certain Income of Individuals allows individuals with certain types of income (e.g. from operation of bookkeeping offices, pharmacies, pawn shops or bureaux de change) to opt for a flat rate of tax or "tax card" (karta podatkowa) (e.g. individual performing production and services businesses) without however claiming business expenses.

Advance payments towards the total annual income tax are withheld by certain payers (e.g. employers and parties to some types of personal service contracts) and paid over to the tax office each month on behalf of the individual taxpayer. Some taxpayers (e.g. individual businesses) are required to make advance payments on their own behalf. Individuals are required to file an annual tax return with their local tax office by 30 April of the following year, at which time they pay any balance of tax due or claim a refund for overpayment of tax.

VAT

The VAT Act of 11 March 2004 has been in force since 1 May 2004. The VAT Act generally covers paid sale of goods and services in Poland, import and export of goods and services, and purchase and sale of goods and services between Poland and other countries within the EU.

VAT payers include legal entities, organizational units without legal personality, and individuals doing business independently.

The main rate of VAT is 22%. For certain classes of goods, preferential rates of 7% and 0% are applied. The VAT Act also sets forth various exemptions from VAT. (Exemption from VAT is conceptually different from applying a 0% rate and carries different consequences.)

Businesses who charge VAT (output VAT) are allowed to deduct VAT which they themselves pay in acquiring goods and services related to VAT-able transactions (input VAT) and pay the difference to the tax office. If a business incurs deductible input VAT exceeding the amount of output VAT charged to customers, it may claim a refund of the difference.

The VAT Act and implementing regulations provide detailed procedures for VAT payers. Businesses are required to settle VAT and file relevant statements on a monthly basis, by the 25th day of the following month.

EXCISE TAX

Various goods and imports are subject to excise tax in Poland. The operative law is the Excise Tax Act of 23 January 2004.

The excise taxpayer is generally the producer or importer.

The basis for excise tax and the rates are defined according to different parameters depending on the type of excise good involved. These include (a) a percentage of the contract price, (b) a fixed amount per unit of quantity, (c) a percentage of the maximum retail price, or (d) a combination of (b) and (c).

TRANSACTION TAX

A number of transactions are subject to tax under the Act on the Tax on Civil-Law Activities of 9 September 2000 (as amended). These include, in relevant part, contracts for sale or exchange of certain property, loan agreements, mortgages, company charters and increases in share capital.

The same transaction should not be subject to both VAT and the transaction tax. Thus the rule is that where one party to the transaction is a VAT payer with

respect to the transaction or enjoys an express VAT exemption with respect to the transaction, it is not subject to the transaction tax.

The basis for the tax and the rates vary depending on the type of transaction, and are expressed either as a lump sum or as a percentage of the value (sometimes on a sliding scale).

Some of the transaction tax rates that are most frequently encountered in commercial transactions include:

Sale or exchange of real estate:	2%
Sale of property rights:	1%
Enacting a company charter or increasing the share capital	0.5%
Loans (except bank loans, shareholder loans and operating loans)	2% of principal
Establishing an ordinary mortgage	0.1%
Establishing a capped mortgage	PLN 19 (about EUR 5)

The transaction tax must be reported and paid within 14 days after the tax obligation arose. In some cases an intermediary is appointed by law to collect and pay the tax (particularly in the case of notaries).

Other Taxes

Other taxes and tax-like public charges that are beyond the scope of this summary include:

- Social insurance premiums (discussed under Labor Law)
- Real estate tax
- Agricultural tax
- Inheritance & gift tax
- Customs duties

poland | foreign investment

Foreign investment in Poland has boomed since the opening of the free market from 1989. Laws regulating foreign investment have steadily liberalized since then. As of Poland's joining the European Union on 1 May 2004, laws have been harmonized with EU regulations.

As a member of the EU, Poland is now open to the flow of capital, persons and services from elsewhere in the Union. Major differences remain between treatment of EU investors and investors from other countries.

Government Registration and Permits

ECONOMIC FREEDOM ACT

The principal statute on conditions for doing business in Poland is the Economic Freedom Act of 2 July 2004.

Foreigners (individuals, legal persons or organizational units without legal personality) from the European Union or the European Economic Area may start and carry out business in Poland on the same basis as Polish businesses. (The same principle applies to individuals from outside the EEA who have a permit to settle in Poland or are protected here as refugees.)

Other foreigners have the right to start and carry out business in Poland, unless otherwise provided by treaty, in the form of limited-liability or joint-stock companies or limited partnerships. They may also acquire shares in such companies (subject to other general rules). Foreign companies may also establish branches or representative offices in Poland.

There are a few sensitive sectors that require a concession from the government. These include mining, explosives and weapons, fuels and energy, security services, radio and television broadcasting and air transit. A number of other

fields involving an element of public trust are subject to specific legal regulation under other laws, including the requirement of a permit or other prerequisites before the activity can be taken up.

LAW ON ACQUISITION OF REAL ESTATE BY FOREIGNERS

In some instances foreigners require a permit from the Interior Ministry in order to acquire real estate in Poland or shares in foreign-controlled companies holding Polish real estate. This law is discussed in detail in the section of the Compendium on real estate law in Poland.

ANTIMONOPOLY LAW

A barrier to some investments in Poland (although not unique to foreign investments) is imposed by anti-monopoly regulations.

A concentration requires a permit from the anti-monopoly office (UOKiK) if the joint turnover of the capital groups participating in the concentration was more than EUR 50 million in the two prior years, unless the capital group of the target company had turnover in Poland of no more than EUR 10 million in the two prior years.

Since 1 May 2004, under the amendment to the Polish antimonopoly law, the threshold of EUR 10 million does not apply where the concentration will create or strengthen a dominant position on the market.

FOREIGN EXCHANGE LAW

Foreign exchange transactions between Poland and other countries are generally permitted, except for certain restrictions provided in the Foreign Exchange Law. These restrictions generally do not apply to transactions between countries which are members of the European Union, European Economic Area, or OECD.

Residents and non-residents crossing the Polish border are required to declare Polish or foreign currency, gold or platinum, worth a total of more than EUR 10,000.

Transfers abroad by residents or non-residents, as well as payments within Poland to non-residents, must be made through authorized banks if the value of the transfer or payment exceeds EUR 10,000.

In the case of transactions with “third countries” who are not members of the EU, EEA or OECD, there are a number of specific forex restrictions or permit requirements in place.

Transfer Abroad

Poland does not restrict the transfer of dividends, interest and royalties abroad, other than general forex obligations (see above). Depending on the bilateral tax treaty in force, withholding tax may apply.

Under the EU’s parent-subsidiary directive, as enacted in the Polish Corporate Income Tax Act, a company which is subject to unlimited tax liability in another EU member state is exempt from tax in Poland on dividends from a Polish company if the recipient holds directly at least 20% of the capital of the Polish company for an uninterrupted period of at least 2 years, and provides a tax residency certificate to the Polish company.

Repatriation Procedures and Restrictions

Poland applies no repatriation procedures or restrictions other than general forex obligations (see above).

Foreign Personnel

A foreigner may work in Poland if he holds a work permit. European Union nationals are exempt from this requirement if they are citizens of an EU country which does not impose such a requirement on Polish citizens (currently these

countries are the UK, Ireland, Sweden and all the new EU member states who joined on 1 May 2004).

Among other situations, a work permit is required if the foreigner performs work for a foreign employer and is delegated by the employer to work at an entity with its seat in Poland for a period exceeding 30 days per year in order to perform duties for which he is delegated.

This is a two-step procedure involving a work permit and a visa and in most cases requires notice to the local employment office and advertisement of the position in order to demonstrate that there are no Polish nationals willing and able to be employed.

In the case of foreigners who are authorized to represent a foreign business at a branch or representative office in Poland, the permit is issued under a simplified procedure, i.e. without researching the local labor market and other typical criteria.

The Polish government actively seeks to attract foreign investment to the country. The agency responsible for supervising these efforts is the Polish Information and Foreign Investment Agency (www.paiz.gov.pl).

poland | labor law

Employment law in Poland is fairly rigid and tends to be protective of employee's rights. It is strongly urged that employers consult with counsel prior to concluding or terminating employment.

The basic source of law is the Labor Code of 26 June 1974 (as amended). There are dozens of other specific laws and regulations which have some bearing on labor law.

Employment Contracts

a) CLASSES

- Employment contract for definite period
- Employment contract for indefinite period
- Employment contract for period of performing specific work

Any of these may be preceded by a contract for a probationary period, not exceeding 3 months.

Conclusion of a third successive contract for a definite period (without a break between them of more than 1 month) is deemed to constitute conclusion of a contract for an indefinite period. In this sense, a contract for an indefinite period may be considered the standard.

The Labor Code has been amended recently to recognize the special nature of a contract with a replacement worker who is hired to take the place of a regular employee who is absent for some time.

b) FORMALITIES AND TERMS

The employer is required to provide the employee with written confirmation of employment and essential terms. Larger employers are required to maintain formal work rules and pay rules, which may codify some of the essential terms

of employment which otherwise would have to be placed in the individual employment contract. In practice, employment should be based on a clear written contract which has been reviewed by counsel for the employer.

The terms of an employment contract cannot be less favorable to the employee than the mandatory terms of the Labor Code or (if applicable) a collective bargaining agreement, work rules and pay rules.

c) TERMINATION

An employment contract may be terminated:

- by mutual agreement,
- by one party upon a statutory period of prior notice,
- by one party without prior notice,
- upon expiry of the time it is concluded for (if for a definite period),
- upon completion of the work for which the contract was concluded (in the case of such a contract).

Notice of termination by the employer must be made following prescribed formalities, in case of a contract for an indefinite period must state grounds for termination that are specific, accurate and sufficient, and (for all types of employment contracts) must include a notification to the employee of his right to challenge the termination in the labor court. (These challenges do not attract a court fee and therefore are extremely common regardless of how justified the termination may appear to the employer.)

The termination notice period in the case of a contract for an indefinite period is fixed by the Labor Code (from 2 weeks to 3 months) and depends on how long the employee has been employed with the given employer. The 3-month notice period may be reduced to 1 month where the termination is for economic reasons, such as bankruptcy, but the employee is entitled to additional severance pay to compensate for the shortened notice period.

The termination notice period in the case of a contract for a probationary period is fixed by the Labor Code (from 3 working days to 2 weeks, depending on the length of the probationary period).

In the case of a contract for a definite period, it may be terminated upon prior notice only if the contract is for a period longer than 6 months and the contract expressly provides for this possibility. The notice period is 2 weeks.

In the case of a contract with a temporary replacement worker, the worker needs to be given only 3 days' notice.

There are special rules on group layoffs which apply to employers of 20 or more persons who eliminate positions for economic and other reasons on the side of the employer, such as reorganization. Advance notice to the local labor office of the group layoff is required, and the employees who are being laid off are entitled to severance pay of 1 to 3 months' salary (subject to a fixed cap however), depending on how long they have been employed with the given employer.

An employer may not terminate an employment contract except for the employee's fault:

- if the employee is less than 4 years from reaching retirement age and will qualify for a pension upon reaching retirement age,
- during the employee's annual leave or other justified absence from work, unless the absence exceeds a period which entitles the employer to terminate without notice (see below),
- if the employee is pregnant or on maternity leave.

Termination without prior notice because of employee's fault is possible in the case of serious violation of fundamental employment duties, criminal act that makes it impossible for the employee to hold the position, or loss of credentials which the employee needs to hold a given position.

The employer may terminate the employment contract without prior notice under certain other circumstances, such as disability exceeding several months (depending on specific factors) or other justified absence from work lasting more than 1 month.

d) ENTITLEMENT IN EVENT OF WRONGFUL TERMINATION

Termination may be challenged by the employee in labor court. If the termination is held to be wrongful (including if relevant formalities were not

followed, cause was inadequate, and the like), the court may order reinstatement or compensation. The minimum and maximum levels of compensation are set by the Labor Code and depend on case-specific factors such as the length of the notice period.

e) EMPLOYMENT CONTRACTS FOR DIRECTORS

Directors and upper-level management personnel may be hired under regular employment contracts or may be hired under a managerial contract, a type of civil-law contract which may contain flexible terms negotiated by the parties.

Employees' Representatives and Union Representation

Labor unions (especially Solidarity) have played an important role in Polish history. Their role in the modern workplace has been more limited, particularly in the case of new foreign investors whose workplaces are rarely unionized. Unions are most active in large state-owned or privatized industries. Nonetheless, union formation, membership and activities are considered to be a fundamental, but voluntary right of employees.

A labor union is a legal entity established by charter and entered in the National Court Register. A union may be established at a given workplace by vote of the eligible employees, covering specific trades or several trades.

Unions may negotiate and enter into collective bargaining agreements with employers, covering one or more workplaces.

A labor union established at a workplace must be notified and consulted in advance on important matters affecting the employment and the workplace, such as establishment of workplace conditions and regulations, employee duties and benefits, health and safety issues, group and other layoffs, discipline and termination of employees. The union has standing to demand investigations and inspections.

A number of union representatives (according to specific rules based on the size of the workplace) are entitled to special further protections designed to allow them to perform their union obligations without hindrance by the employer. They have entitlements such as unpaid leave, release from performing regular work duties, and prohibition of termination.

Employers have certain affirmative obligations to the union, such as providing them with meeting space, sharing information about the workplace, collecting and turning over union dues.

It is illegal for an employer to hinder the employees in establishing a union or to discriminate against employees because of union membership or non-membership.

Wages and Other Benefits

We chiefly speak of wages. Other types of benefits may be provided as set forth in the individual employment contract, workplace pay rules, or collective-bargaining agreement. Equity participation such as stock-option plans may be arranged, but are not well recognized yet. Some employers offer private health insurance plans (particularly for senior management or personnel seconded from abroad), but employees are covered by mandatory public health and pension plans for which significant contributions are assessed (discussed in section on social insurance).

CLASSES OF WAGES

Base salary is typically either monthly or hourly.

The standard workweek is 40 hours. Overtime or working at night or on Sundays or holidays is subject to certain restrictions and limits, and generally must be remunerated at 1.5 or 2.0 times the equivalent base pay. Variations from the standard workweek as well as extra pay for overtime or on Sundays and holidays are covered by complex formulas set forth in the Labor Code and as implemented in the regulations in force at a given workplace.

Employees in management-level positions may be required to work overtime without receiving additional pay.

Other types of pay include bonuses, supplements, and prizes to recognize employee achievement or milestones. These also are addressed in the employment contract, workplace pay rules or collective-bargaining agreement.

MINIMUM WAGE

As of the first half of 2005, the minimum gross monthly wage is PLN 849 (about EUR 212).

Holiday

Employees are entitled to uninterrupted annual holiday leave in a minimum amount set by specific regulations in the Labor Code. The amount of an employee's annual holiday leave depends on the total length of time the employee has been employed (with all employers), with credit also being given for certain equivalents such as time spent at university, and is 20 days or 26 days. Entitlement to annual leave is pro-rated for new employees and part-time employees.

Social Insurance

The social insurance system is administered by the Social Insurance Institution (ZUS). Employers are required to withhold the employee portion of premiums from the employee's gross salary and pay it over to ZUS on a monthly basis together with the employer's portion.

The elements of mandatory social insurance and employer and employee premiums (as a percentage of base gross salary) are as follows:

Type	Employer's Portion	Employee's Portion
Social insurance		
- pension insurance	9.76%	9.76%
- disability insurance	6.5%	6.5%
- sickness insurance	2.45%	
- accident insurance	0.4-8.12% (depending on nature of work)	
Health insurance		8.5% (but subject to a tax credit)
Labor Fund assessment	2.45%	
Employee Benefit Guarantee Fund assessment	0.15%	

Contributions for pension and disability insurance are capped once the annual gross salary reaches a certain level, currently set at PLN 72,690 (about EUR 18,173).

Life insurance is voluntary and may also be organized for employees as a group.

Health and Safety

The employer is responsible for providing safe and hygienic working conditions. Some specific aspects of the employer's work health and safety (BHP) obligations include the requirement to maintain current medical certifications that employees are fit to work at their given position, to conduct regular health check-ups of employees during working time, and to train employees on BHP issues.

Compliance with BHP requirements is assured by regular state inspections and monitoring by the workplace labor unions, if any. Employers with more than 100 employees are required to establish a workplace BHP service; smaller employers may appoint employees from other positions to carry out these functions. The BHP function may be outsourced.

Contracting and Outsourcing of Work or Services

Outsourcing and hiring of temporary workers placed by temp agencies are possible, subject to certain conditions to prevent circumventing of the labor law.

In the case of temps, the agency has a service agreement with the employer and the worker has an employment or other relationship with the agency.

Outsourcing is permissible in the sense of hiring workers to provide services as independent contractors under civil-law agreements. Caution is urged in such cases to avoid indicia of employment under the terms of the agreement as well as in the actual performance.

These arrangements may be monitored by the Labor Inspector and cannot be misused as a cover for a regular employment relationship.

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Real estate law in Poland is characterized by a land register system run by a specialized court, significant involvement of notaries in conveyancing and other transactions related to real estate, and in the case of leases, detailed provisions in the Civil Code which are generally designed to protect the rights of tenants.

Types of Ownership

Polish law recognizes outright fee ownership of real estate (własność), including land and buildings.

Another interest in the case of land (but not buildings) is perpetual usufruct (wieczyste użytkowanie). This is a long-term ground lease (generally for 99 years and subject to extension) with the right to use the land and obtain the fruits thereof, but where ownership is retained by the State Treasury or local authority. The perpetual usufruct is required to pay an annual fee to the owner. The right to perpetual usufruct is generally transferable. In some circumstances perpetual usufruct can be converted into ownership. The ownership of land under perpetual usufruct can be sold in some circumstances to the perpetual usufruct, but cannot be sold to a third party.

Buildings are subject to ownership together with an associated interest in the land. Individual premises within a larger building (for example an apartment) may be owned, together with an associated fractional interest in the common areas and the land held in common with other owners of premises in the building.

Premises within a building (e.g. an apartment) may also be held through a cooperative (spółdzielnia). The cooperative holds the land and the building, and the owner of each premises is a member of the cooperative with the right to use the specific premises. Rights in a cooperative can generally be sold. The holder of cooperative rights to premises may also convert his interest to ownership.

These are the principal interests involving ownership or quasi-ownership. Other, lesser interests in land are also recognized (such as servitudes or mortgages).

Some tenants (e.g. residents of council flats) have statutory protections, a right to remain in their flats and under certain conditions to extend this right to relatives, although such rights cannot be sold.

Land Register and Record of Plots and Buildings

Polish real estate is reflected in two types of registers, the land register (księga wieczysta) and the record of plots and buildings (ewidencja gruntów i budynków).

LAND REGISTER

The land register reflects legal interests in real estate. It is public and is maintained by the land register division of the district court for the locality of the real estate. It provides record notice of the current legal status of real estate and protects the integrity of real estate transactions.

Different sections of each land register reflect different legal interests in the real estate, such as ownership, servitudes, claims and mortgages. When a motion is filed that may affect the land register, a notation to this effect is made in the register in order to provide notice, for example to prospective purchasers.

A land register is maintained for each distinct piece of real estate, whether it be land, buildings, premises within a building, or cooperative ownership rights. When a new piece of real estate is established, for example by separating premises from a larger building, a new land register is created for the real estate.

Changes to the land register are made by motion as a type of judicial proceeding. When a real estate transaction is held before a notary, it is the obligation of the notary to submit the deed to the land register court with the appropriate motion.

Not all real estate in Poland is covered by land registers. This is partly for historical reasons, for example war-time loss of records and post-war holding of land by the State Treasury or state enterprises. When it is necessary to create a land register for such real estate, there is a procedure to establish the relevant legal interests.

The land register system in Poland is currently undergoing computerization.

There is a presumption that the current status of the land register reflects the current legal status of the real estate, and that interests that have been deleted no longer exist. An interested party may make a motion to the land register court to amend the land register to reflect the current legal status.

As a matter of law, a good-faith purchaser may rely on the information in the land register as proof of legal title.

RECORD OF PLOTS AND BUILDINGS

This record is maintained by the local government administration. It is intended to reflect the current status of land and buildings, use and the like, and is informational in nature. It does not have substantive legal effect in the sense that the land register does.

Notaries, court and other relevant authorities are required to submit documents reflecting revisions in the information reflected in this record.

Mortgages

A mortgage (hipoteka) is an interest in real estate that is entered in the land register and gives the holder the right to satisfy given claims by resort to the real estate, with priority over the debtor's other creditors (with a few exceptions including enforcement costs, child support and wage claims).

An ordinary mortgage secures an existing claim in a fixed amount. A capped mortgage (hipoteka kaucyjna) secures a future debt up to a specific amount or an existing debt in an amount which is not fixed, up to a specific amount, including contingent amounts such as interest.

Under Polish law, a mortgage must be tied to a specific claim and cannot exist apart from the claim. One mortgage may cover more than one piece of real estate (hipoteka łączna).

A mortgage is normally created through a declaration made by the mortgagor in the form of a notary deed (although there are some specific procedures in the case of mortgages in favor of a bank). The declaration is then submitted to the land register court. The mortgage comes into being upon registration by the court, but effective retroactively from the date of filing of the motion for registration.

Creation of a mortgage is subject to the tax on civil-law transactions in the amount of 0.1% of the amount secured in the case of an ordinary mortgage, or a flat PLN 19 (about EUR 5) in the case of a capped mortgage. Additional fees for the notary and the court will be approximately 3% of the value of the mortgage (based on a sliding scale).

Transfer Formalities

Acquisition of real estate normally requires a notary deed. The notary submits the deed to the land register court to record the transfer. In the case of transfer of ownership, the transfer is effective upon signing of the deed. In the case of some other rights, such as perpetual usufruct, the transfer does not occur until registration by the court (but with effect from filing of the relevant motion to the court).

Transfer of ownership or quasi-ownership of real estate is subject to the tax on civil-law transactions in the amount of 2% of the market value, or when the sale is made by a VAT payer in the course of its business, VAT will normally be charged instead (7% for new residential properties, 22% for non-residential properties).

Additional fees for the notary and the court will be approximately 2% of the market value (based on a sliding scale).

Restrictions on acquisition

There are three principal restrictions on acquisition of real estate in Poland: acquisition by foreigners, preemption, and specific rules for acquisition of agricultural land.

ACQUISITION OF REAL ESTATE BY FOREIGNERS

The Law on Acquisition of Real Estate by Foreigners has been in place since 1920 (most recently amended in 2004). Generally a foreign individual or legal entity requires a permit from the Interior Ministry in order to acquire (1) ownership or perpetual usufruct of land in Poland or (2) shares in a company which holds ownership or perpetual usufruct of land in Poland, where the company is or becomes controlled by foreigners.

Some important general exceptions to the permit requirement, among others, are for acquisition of separate residential premises in a building (typically, an apartment), acquisition by a foreign company of undeveloped urban land of up to 0.4 ha, acquisition of publicly traded stock in a company which holds Polish real estate, or acquisition by a bank holding a mortgage or pledge of shares.

There are broad exceptions to the permit requirements for individuals or commercial entities from the European Economic Area, which reflect the terms of the EU accession treaty. EEA nationals do not require a permit in order to acquire real estate in Poland unless (for a period of years following Poland's EU accession) it is agricultural or forest land or a second home. There is no permit required for EEA nationals to acquire shares in any company that holds real estate in Poland (regardless of the type of real estate held).

PREEMPTION RIGHTS

Options may be created by contract giving the holder the right of preemption in the transfer of real estate. Such rights may be assignable and heritable.

In addition, there are important statutory preemption rights in some cases. Such rights may be held by local authorities, the State Treasury, leaseholders, the Agricultural Real Estate Agency (ANR), port authorities and administrators of Special Economic Zones (SSE).

This means that in some cases advance notice of a proposed sale must be given to the relevant stakeholders.

Preemption rights are exercised by submission of a binding declaration in the form of a notary deed.

SPECIAL RULES FOR ACQUISITION OF AGRICULTURAL LAND

Plots designated for agricultural use are subject to special limitations. The Agricultural Real Estate Agency (ANR), acting for the State Treasury, has a right of preemption if agricultural real estate is to be sold, unless the sale will increase the size of a family farm (no larger than 300 ha) or if the sale is to an agricultural cooperative or a relative of the seller. If land is purchased from the Agency, the Agency retains a right to buy back the land if it is offered for resale within 5 years.

Special Legal Protection for Parties

Whether one of the parties to a transfer of real estate may have the right to unilateral revocation of the transfer is not directly regulated by law. In the case of transfer of perpetual usufruct and sale of related buildings, according to precedent, this may be possible if the contract has not been fully performed yet (for example, if the buyer is in default in payment) or because of a defect. In the case of transfer of ownership of real estate, it is clear that the parties may mutually agree to rescind their agreement. In either case, however, such actions directly affect only the parties. In order to have in rem effect, the property must be reconveyed with the same formality (i.e., by notary deed).

Construction and Use Restrictions

Land use is regulated at the local level by use of a local development (zoning) plan which specifies the permissible uses, construction parameters and other relevant conditions. New construction, structural renovations, change in use and the like must be consistent with the development plan.

When there is no development plan in force for a given area, then an investor who wishes to build, change the use or the like, must apply to the local authorities for an individual decision on construction and development conditions, via an administrative proceeding. The permit will specify the relevant conditions and serves a function analogous to a development plan.

In addition to these requirements, construction or structural renovations require a building permit. The permit is based on detailed plans for the construction, consistent with the development plan (or the individual decision on construction and development conditions). A building permit is transferable together with ownership or other right to build on the site. Construction must begin within 2 years after issuance of the building permit.

In the case of a listed landmark, structural changes, renovation or demolition requires a permit from the province landmark conservator.

After completion of construction, the investor must submit relevant documentation in order to obtain a use permit.

Leasehold Interests

There are two types of leasehold interest in Polish real estate law, which we may refer to as a “ground lease” (*dzierzawa*) which includes the rights for the tenant to enjoy the fruits of the land, and an ordinary lease (*najem*) which does not. A ground lease primarily concerns land as such. An ordinary lease may be for land, but will generally involve a building or premises in some way.

If either type of lease is for a definite term of more than 1 year, it must be in writing, or else it will be deemed to be for an indefinite term.

GROUND LEASE

A ground lease may be concluded for a definite period of up to 30 years or for an indefinite period. Terms for payment or rent and for termination of the ground lease are provided by statute, but for the most part the parties may agree on different terms contractually.

ORDINARY LEASE

An ordinary lease may be concluded for a definite period of up to 10 years or for an indefinite period. Terms for payment of rent and for termination of the ground lease are provided by statute, but for the most part the parties—especially in commercial leases—may agree on different terms contractually.