



# Business Guide Poland

Danske Bank

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PricewaterhouseCoopers

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# Chapter 1

## Facts about Poland

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### 1.1. Introduction

“Dramatic changes” would be an appropriate description of what has happened in Poland since the fall of communism. Few other places in eastern and central Europe have witnessed the same scale of development.

Throughout the country, foreign-owned companies are working in partnership with Polish counterparts, and capital is pouring into the country in a process that is steadily transforming Poland into a modern European nation.

Although more than 1,000 subsidiaries of Nordic companies have already set up business in Poland, there are still ample opportunities for Nordic businesses – both entrepreneurs and established companies.

Poland joined the EU on May 1, 2004, after a long and complex process that included substantial changes to codes of practice. The dynamic development process continues, and over time, it will align Polish standards to those of western Europe.

This dynamic process means that businesses with a presence in Poland need to follow developments closely – they offer a wide range of new opportunities but also entail risk.

We hope that this guide will provide useful answers to central questions about setting up and running a business in Poland. The guide is not intended to be read cover-to-cover; rather it is a collection of facts to which the reader can refer for basic guidance.

Every care has been taken to ensure that the information presented in this guide is correct. Yet the reader should be aware that the general legislative framework and detailed regulations are subject to frequent changes. Consequently, anyone wishing to do business in Poland should seek professional advice before making any final decisions. If there is any significant lapse of time between the adoption of a business strategy and its implementation, all critical strategic advice should be re-examined and confirmed.

Danske Bank, Mazanti-Andersen, Korsø Jensen & Partnere and PricewaterhouseCoopers cannot be held liable for any misinterpretation of the information presented in this guide.

## **1.2. Polish economy and politics**

Over the past two decades, Poland has experienced substantial and dramatic changes in its economic, political and social environment.

The most important political change was the transition to democracy at the beginning of the 1990s. Since then, Poland has undergone a political, social and economic revolution, and the democratisation of the country and radical economic reforms have been successfully completed.

The economic environment has been dominated by liberalisation of the economy through a large-scale privatisation programme supported by substantial foreign investment. The reforms and the relatively stable political climate have attracted the international capital needed to complete the shift from a centrally-planned economy to a market economy.

The outcome of the reform programme has been largely successful, and since the beginning of the 1990s, the Polish economy has shown one of the strongest growth rates of all the former communist states in central and eastern Europe.

But much still needs to be done to complete the transition to a well-functioning market economy. This applies in particular to the agricultural sector, which contributes less than 4% of GDP but employs as much as one-sixth of the labour force. Imbalances like this show the need for further economic restructuring and highlight the fact that the transition process is far from complete.

### **1.2.1. EU membership**

On May 1, 2004, Poland and nine other countries joined the EU. EU membership is essential to the Polish economy, and in step with the continued gradual economic improvements, a number of key figures are expected to converge towards EU levels.

### **1.2.2. Prospects for the Polish economy**

The economy has performed strongly since Poland joined the EU in 2004 but is now slowing down on the back of the global credit crisis, cooling domestic demand, tighter credit conditions and rising unemployment. The Polish economy is expected to contract in 2009, but is likely to start recovering during 2010. While growth is likely to remain relatively lacklustre in both 2009 and 2010, the long-term prospects for the Polish economy remain good - especially if the reform process continues. Economic growth is expected to average 4-5% y/y over the next decade.

### 1.2.3. Facts

#### 1.2.3.1. Politics

##### **Official name**

The Republic of Poland/*Rzeczpospolita Polska*

##### **Form of government**

Parliamentary democracy

##### **Parliament**

Bicameral system: *Sejm* (the lower chamber) and the Senate

##### **Election system**

Universal suffrage for citizens age 18 or above

##### **Head of state**

The president is elected for a period of five years. The current president is Lech Kaczyński of the conservative Law and Justice Party (PiS). The role of the president is primarily ceremonial, but he may play an active role in politics, particularly in foreign policy issues and in key appointments, such as that of the central bank governor.

##### **Central bank**

The Polish central bank (*National Bank of Poland*) is an independent central bank. Its medium-term inflation target is 2½% (+/-1%).

##### **International relations**

Poland is a member of the EU, NATO, BIS, OECD, OSCE and the UN, among other organisations. Full euro membership is expected in 2009-10.

#### 1.2.3.2. Economic indicators and demographics

##### **Population**

38.5 million (2006 est.)

##### **Religion**

Roman Catholic: 95%; Eastern Orthodox, Protestants, Jews and others: 5%.

##### **Languages**

Polish

##### **Currency**

1 zloty (PLN) = 100 groszy

##### **Social and economic indicators**

GDP (purchasing power parity): USD 632bn (2007)

Overall fertility rate: 1.27 children born per woman (2008 est.)

Life expectancy: total population: 75.41 years; males: 71.42 years; females: 79.65 years (2008 est.).

# Chapter 2

## Legal aspects

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### 2.1. Introduction

This chapter describes in general terms the Polish legal system and introduces selected items of Polish business law. The information below is intended to give the reader a broad understanding of various legal aspects and is not to be considered legal advice. The presentation was prepared by Mazanti-Andersen, Korsø Jensen & Partnere in cooperation with the Polish law firm Peter Nielsen & Partners.

### 2.2. The Polish legal system

#### 2.2.1. History

Like many other continental European legal systems, the Polish legal system is based on Roman law (civil law) rather than common law, the foundation of the Anglo-Saxon system.

Nordic investors in Poland should be aware that differences between the Nordic legal system and the civil law system exist, whereas German investors will find that the Polish and German legal systems are quite similar.

Poland has long legal and political traditions. The first constitution in continental Europe was the Polish constitution of May 3, 1791. The country was divided shortly afterwards, and Poland did not regain independence until 1918 after more than a century of Russian, Austrian and Prussian/German occupation.

Many Poles served in the highly developed Austro-Hungarian administration as civil servants. This experience was useful when Poland developed its own legal system and administration in the 1920s and 1930s.

The relatively new German civil code (*Bürgerliches Gesetzbuch*) and the German commercial code served as the primary sources of inspiration for the Polish civil code (*kodeks cywilny*) and the commercial code (*kodeks handlowy*).

From the time of the Soviet occupation during the Second World War (1943-1944) until 1989, the Soviet legal and economic systems dominated Poland. Nevertheless, the civil and commercial codes remained largely unchanged, although they were of less practical significance in the centrally-planned economy.

New property rights concepts were introduced, some of which remain in force to this day. These include “perpetual usufruct” which is a special long-term lease granted by the State or a county, giving the lessee the same rights as an owner, but without actual formal ownership.

Since 1989, input, particularly from the United States and the EU, has replaced Soviet influence on the legal system.

After the system change in 1989, the new Polish administration was eager to turn radically towards a market economy. The introduction of a complex modern economy required major changes to the legal system. In some fields – such as telecommunications – the early post-1989 administrations did not find that the EU system offered the liberal market economy approach that Poland wanted. Consequently, the influence of the US legal system is evident in such fields.

### 2.2.2. Current system

Poland joined the EU on May 1, 2004, together with nine other new members. Before that date, Poland had already joined NATO, the Council of Europe and the OECD.

As an EU member state, Poland is of course subject to EU directives, not least in the field of business law, and to the rulings of the European Court of Justice in Luxembourg.

In many areas, Polish legislation has been harmonised with the the total body of EU law – known as the *Acquis Communautaire*.

When operating in Poland, it is important to remember the country’s impressive transition over the past 20 years. The process included the legal system, which continues to adjust to the demands of a complex 21st-century market economy.

Anyone who is used to doing business within the EU will find that the legal system in Poland is becoming increasingly familiar. Today, the Polish legal system offers an acceptable level of protection for modern businesses, although some elements are still lacking.

Naturally, it is only a lawyer’s illusion that society changes as a consequence of changes in law. The legal system in Poland has undergone appreciable changes in a very short time, but the judicial apparatus still has its drawbacks, and Polish civil courts are not always the best choice for solving international business disputes.

### 2.2.3 The future

The EU will continue to exert direct influence on all matters concerning commercial law in order to ensure a high level of competition and prevent discrimination of foreign businesses.

In other fields of law, such as tax law, Poland's OECD membership may result in improvements to the present system.

Border control and customs clearance in particular may continue to improve, partly as a result of the European Commission's high priority to these areas.

In criminal law, including the administration of justice act, differences between Poland and, for example, the Nordic countries continue to exist, although membership of the Council of Europe and public awareness add to progress in this field as well.

#### **2.2.4. The legal profession**

When doing business in Poland, investors and traders may meet various legal professionals. The legal market has been privatised and is now reasonably liberalised.

Legal professionals are divided into the following categories:

- *adwokat*
- *radca prawny*
- *notariusz*

The *adwokat* will often be referred to as an “attorney at law” in the English language, whereas the *radca prawny* will usually be referred to as a “legal adviser”. The *notariusz* is a notary, which is a private profession in Poland, as it is in most other countries with Roman law systems.

It is always possible to check with the local chamber of attorneys, legal advisers or notaries whether a given person is a member of the chamber and thereby authorised to practise law.

##### **2.2.4.1. Adwokat**

The adwokats have a long tradition of independence in Poland. Even while the country was under communist rule, the profession was free and adwokats were independent. The concept of independence also means that adwokats cannot accept jobs as in-house lawyers of companies for example.

Adwokats are law school graduates who have successfully completed a four-year training programme while practising as a junior associate of a qualified adwokat.

From the end of World War II until 1989, adwokats engaged primarily in matters involving family, inheritance and criminal law.

Adwokats are entitled to advise on any field of law and may appear before the courts in all types of cases.

Adwokats are members of the regional chamber of adwokats. It is always possible to ask the regional chamber to confirm a person's membership.

#### **2.2.4.2. Radca prawny**

The profession of radca prawny – legal adviser – was instituted after World War II.

Legal advisers were traditionally in-house lawyers at state-owned businesses and various authorities. In many cases, a legal adviser would work one or more days a week for two or more businesses.

Today, many legal advisers have set up their own law firms and may have young legal advisers and trainees on their staff.

A legal adviser is also a law school graduate who has completed a three and half-year training programme.

It should be noted that, in principle, only adwokats are permitted to act as counsel in penal proceedings.

Most adwokats and legal advisers charge a fee based on the hours spent on the case. Make sure always to obtain a fee estimate before retaining an adwokat or a legal adviser.

#### **2.2.4.3. Notariusz**

The third category of legal professionals in Poland is the notaries. As in many other Roman-law-based legal systems, notaries in Poland are engaged as private professionals in numerous types of transaction and activity.

Real-property transactions, donations and establishment of “perpetual usufruct” rights require a notary to draw up the title and handle all the paperwork.

More importantly for foreign investors, a notary must prepare and sign the deed of incorporation of a company. The notary is also to witness all subsequent changes to the company's statutes and other transactions, as described below, especially those of a joint stock company.

As the notary is required in many instances under Polish company law, it is often necessary to have documents drawn up abroad notarised in the foreign country. For example, a Danish company is setting up a subsidiary in Poland must present a declaration by the parent company. This declaration (and other documents) should be notarised, that is signed at the office of the public notary at a Danish court.

Notary fees are usually charged as a percentage of the transaction sum, but may be negotiated in advance.

## 2.3. Setting up business in Poland

### 2.3.1. Corporate form

Depending on the country of origin, a foreign company may choose between several different corporate forms when setting up business in Poland.

The most important forms are the limited liability company and the joint stock company. Recently, other corporate forms – such as general and civil partnerships – have become available to foreign investors.

A foreign company may also establish a presence by opening a representative office.

The Commercial Companies Code dated September 15, 2000, and the Act on Freedom of Economic Activity dated July 2, 2004, allow the following corporate forms:

- Joint stock company
- Limited liability company
- Branch
- Representative office
- Limited partnership
- Limited joint stock partnership
- Registered partnership
- Sole trader
- Cooperative

Generally, Polish rules on freedom of economic activity define two groups of foreign persons that may operate as entrepreneurs in Poland. The first group consists of non-Polish citizens who may conduct economic activity in any commercial form available to Polish citizens and on the same terms as Polish entrepreneurs.

This first group covers the following persons:

- (i) citizens of other EU member states,
- (ii) citizens of EFTA member states (Iceland, Liechtenstein, Norway)
- (iii) citizens of states other than those referred to in items (i) and (ii) who have obtained a residence permit, a tolerated stay permit, or refugee status in Poland, or who enjoy temporary protection in Poland,
- (iv) citizens of states other than those referred to in items (i) and (ii) who may carry on economic activity on the same terms as Polish entrepreneurs under other international agreements.

The second group covers all non-Polish citizens who do not meet the above criteria. The corporate forms available to persons of the second group are limited to capital companies, limited partnerships or limited joint-stock partnerships.

In addition to the corporate forms available to Polish citizens, foreign citizens conducting economic activity abroad may establish a branch or a representative office in the territory of Poland based on the reciprocity rule. The rule of reciprocity does not apply to EEA entrepreneurs, however. Consequently, such entrepreneurs may establish a branch or a representative office without the limitations of this rule.

This section focuses on the joint stock company and the limited liability company, as these are the preferred corporate forms of foreign businesses – a preference that is likely to continue.

### 2.3.2. Limited liability and joint stock companies

As in countries like Germany, joint stock companies have been far less popular than limited liability companies in Poland since 1989. Conducting business through a joint stock company is not a common approach unless the nature of the business – for example banking and insurance – makes this expedient, the company is expected to have a large number of shareholders or intends to become listed on the stock exchange. Large foreign companies also continue to prefer the form of the limited liability company, because it is generally reasonably simple to operate under Polish corporate law. Operating a joint stock company is more complicated and requires compliance with more formalities – particularly after the law was amended on January 1, 2001.

The Commercial Companies Code (the Act) of January 1, 2001, substantially revised a number of corporate law issues previously regulated by the amended Commercial Code of 1934.

Today, the liability of shareholders of a limited liability company is indisputably limited to the share capital. For a number of years in the 1990s, the corporate veil could hypothetically be lifted and shareholders made proportionally liable for uncovered public debt incurred by the limited liability company.

#### 2.3.2.1. Major differences between the joint stock company and the limited liability company

	Joint stock company S.A.	Limited liability company – Sp. z o.o.
Minimum capital	PLN 100,000 – of which 25% must be paid in on incorporation.	PLN 5,000 – 100% must be paid in on incorporation.
Management bodies	Executive board + board of directors/audit committee.	Executive board + board of directors/audit committee.

Founders	One or more. But a limited liability company with a sole shareholder cannot itself be a sole founder.	One or more. But a limited liability company with a sole shareholder cannot itself be a sole founder.
Audit	Compulsory annually.	Every year provided that at least two out of three criteria below are met: a) turnover exceeds EUR 5 million, b) total assets exceed EUR 2.5 million, c) number of employees exceeds 50.
Scope	All businesses that may be incorporated.	All businesses that may be incorporated, except banks and insurers.  Listing on stock exchange not possible.
Liability of executive board	Jointly and severally liable for damage under general rules, i.e. for the damage caused by culpable, unlawful actions or omissions when there is direct relation between action or omission and the damage.	Jointly and severally liable for damage under general rules. Also liable for the obligations of the insolvent company, unless certain conditions are met, such as bankruptcy petition filed in due time.

### 2.3.2.2. Initial capital

The minimum initial capital of a limited liability company is PLN 5,000, and the minimum nominal value of each share is PLN 50.

The minimum initial capital of a joint stock company is PLN 100,000, and the minimum nominal value of each share is PLN 0.01.

For both corporate forms, the capital may be contributed in cash or in kind.

### 2.3.3. Management bodies in a Polish company

Most Nordic joint stock companies have a two-tier management system. The board of directors sets the long-term agenda of the company, makes the major decisions and supervises the daily management of the company. It is common for the board of directors to represent the company in major

transactions. Usually the board of directors appoints members of the executive board, and the executive board reports regularly to the board of directors.

In Poland on the other hand, power rests with the executive board, but always of course with the general meeting as the highest authority. Polish joint stock companies are not required to appoint a board of directors. They may instead establish an audit committee.

When negotiating with Polish companies, it is important to remember this difference in managerial systems. A Polish CEO will assume that he and his foreign counterpart hold the same position and the same power to make decisions. That may not be the case, because important decisions taken by the foreign CEO are often subject to subsequent approval by the board of directors.

### **2.3.3.1. General meeting**

The ultimate power over the company rests with the general meeting, which must be convened in Poland.

A shareholder cannot be represented at a general meeting by a proxy who is a member of the executive board or an employee of the company.

### **2.3.3.2. Executive Board**

All members of the board may be appointed for a common term of office. If a member is appointed during such a term, the term of office of that member will end when the term of office of the other members expires. Such provision may apply only if clearly stated in the articles of association.

In certain matters, such as signing the application to the register of entrepreneurs, signing the list of shareholders or signing the annual report, the signatures of all members of the board are required, irrespective of the powers of representation stipulated in the articles of association.

The executive board is usually appointed by the general meeting. The board may consist of one or more members.

### **2.3.3.3. The supervisory bodies**

A joint stock company must appoint either a board of directors or an audit committee.

A limited liability company may choose to have a board of directors. A board of directors is required for limited liability companies with an initial capital of more than PLN 500,000 and with more than 25 shareholders.

The board of directors is generally elected by the general meeting, but the articles of association may specify other rules of election (i.e. authorise a shareholder or employee committee). The board must have at least three members. There are no requirements as regards their nationality or domicile. A member of the executive board may not simultaneously be a member of the board of directors.

#### **2.3.3.4. Resolutions requirements**

If the Act requires a resolution to be passed by the general meeting or the board of directors to perform an act in law, an act in law performed without the resolution required is considered null and void. Resolutions must be adopted no later than two months after the performance of the act in law. If the articles of association require a resolution by any of the management bodies of the company and such a resolution has not been adopted, the act in law is considered valid, although it does not affect the liability of the board members.

The Act states that any contract for acquisition of real property or fixed assets to the benefit of the company at a price exceeding one quarter of the initial capital, but not less than PLN 50,000, and entered into within two years of the registration of the company requires a resolution by the shareholders, unless provision was made for such a contract in the articles of associations.

Moreover, disposing of rights or contracting obligations to complete deals valued at more than twice the initial capital requires a resolution by the shareholders, unless otherwise stated in the articles of association.

#### **2.3.4. Agreements with members of management bodies**

The consent of the general meeting is required for the company to conclude a credit, loan, or guarantee agreement or similar agreement with a member of the executive board, board of directors or audit committee, proxy or liquidator, or to the benefit of any of these persons. The same applies to agreements similar to those listed above between a dependent company and persons with similar relations to the dominant company.

Agreements between the company and its executive board members may be signed on behalf of the company by the board of directors or a proxy established by the general meeting.

#### **2.3.5. Registration**

Companies must be registered in the Register of Entrepreneurs of the National Court Register.

The scope of data to be stated in the National Court Register has been significantly extended. The following information must be included:

- corporate form,
- NIP (tax identification number)
- REGON (Statistical) number,
- previous court register number or number in economic activity register,
- name,
- office and address,
- if an entity listed in the register of entrepreneurs has branches or subsidiaries – their offices and addresses must be listed as well,
- shareholders, their number of shares and value of their shareholdings if holdings exceed 10%,
- the amount of initial capital. If shareholders have made non-monetary contributions, these should also be included,
- date of statutes or deed of association, notice of their submission and amendments, if any,
- duration of the entity,
- the body or bodies authorised to represent the entity, the members of such bodies and the rules of representation,
- supervisory bodies and any other bodies of the entity, if appointed, and their composition,
- information concerning procuration and its scope,
- object of activity according to the Polish Classification of Activity (PKD),
- notice of submission of annual financial statements, balance sheets, income statements and cash-flow statements along with the date of submission,
- notice of submission of the auditor's report if the statement has been reviewed by an auditor in line with the accounting provisions,
- notice of submission of a resolution or decision on the approval of the financial statements and distribution of profit or coverage of loss,
- reports on activities if accounting provisions require submission to the registration court,
- outstanding tax and customs payments for completion if the payments have not been made within 60 days of the start of completion procedures; start dates for completion procedures for these payments and amounts already paid, dates and methods of finalising completion,
- outstanding payments in favour of the Social Insurance Agency for completion if the payments have not been made within 60 days of the start of completion procedures; start dates for completion procedures for these payments and amounts already paid, dates and methods of finalising completion,
- creditors of an entity and the accounts owing in their favour if they have enforcement title against the entity and have not been satisfied within 30 days of summons for payment,
- information on securing the debtor's assets in bankruptcy proceedings by suspension of executions effected against him and on dismissing motion for declaration of bankruptcy due to the insufficiency of the insolvent debtor's assets to cover bankruptcy proceeding costs,
- information on discontinuance of court or administrative execution against the entrepreneur because the execution would not produce a sum exceeding the amount of execution costs,

- information about motions submitted for the opening of settlement proceedings or motions for declaration of bankruptcy, as well as information pertaining to the ending of these proceedings or revocation of settlement about the appointment of the receiver,
- the appointment and revocation of a trustee
- information about opening and ending liquidation, establishment of receivership
- liquidator, trustee, receiver,
- information on the dissolution or annulment of a company,
- mergers with other entities or any other transformation of an entity.

The information in the National Court Register is available to the public. <http://krs.cors.gov.pl/Default.aspx> provides basic information from the register. Complex information is available in the current or full excerpt from the register. As the list above illustrates, the information maintained by the registry is extensive compared with the information available to the public in the Danish register of companies, for example.

It is possible to establish and register a company from abroad by means of notarised and translated powers of attorney issued, for example, to a Polish lawyer. Such powers of attorney should have an *Apostille* clause. If the founder is a company, transcripts from the Companies Registrar are required together with a list of shareholders, the deed of association of the future company and a resolution on the establishment of the Polish company.

### **2.3.6. Companies under registration**

The Act implements the concept of “a company under registration”, that is, a company that has been established but not yet registered in the National Court Register. Such a company must be represented by the executive board or by a proxy appointed by a resolution unanimously adopted by the shareholders.

The Act states that the company and the persons who acted in its name are jointly and severally liable for obligations of the company under registration. This liability is similar to the liability of partners involved in a civil partnership and to the traditional practice in the Nordic countries.

### **2.3.7. Sole-shareholder companies**

A limited liability company and a joint stock company may be founded by one or more shareholders. If the company is to have only one shareholder, the sole shareholder may not be a limited liability company with only one shareholder. In such cases, an option may be to have two founders, one of whom will subsequently sell its share(s) to the other, who may be a limited liability company owned by a sole shareholder.

The Act states that in the case of sole-shareholder companies under registration, the sole shareholder may not represent the company, except in matters concerning the application for registration.

For the sake of safety of commerce, in cases in which the shares of the company are vested in the sole shareholder or in the shareholder and the company itself, the declaration of intent made by such a shareholder to the company must be in written form.

A declaration of intent is an expression of will with the attendant legal consequences.

### **2.3.8. Preferential shares**

The Act states that preferential shares may, in particular, be related to voting rights, rights to dividends, or the form of participation in the distribution of assets in the event of liquidation of the company. Preferential voting rights may not grant any person more than three votes per share.

Preferential shares may not entitle the holder to dividends exceeding the dividend attributable to non-preferential shares by more than half. The right of holders of preferential shares to receive dividends does not rank above the right of holders of non-preferential shares, unless otherwise provided in the articles of association.

### **2.3.9. Merger, division and transformation of companies**

Although the Act considerably expands the scope for merger, division and transformation of companies, it is also stricter and entails more stringent requirements than previous regulations. For example, the Act requires both companies to prepare a detailed plan for the operation. After submission of a motion to the commercial court, this plan must be analysed by the auditors appointed by the court and announced in the court monitor, unless all shareholders of all merging companies or the company being divided give their consent to abstain from requesting the auditors' analysis. If all merging companies are owned by ten or less natural persons, the auditors' analysis is not required. This procedure naturally increases the duration and cost of the operation.

### **2.3.10. Register of insolvent debtors**

The National Court Register must also register information about debtors who have been declared bankrupt or who are personally liable for the obligations of bankrupt entities. Moreover, the register includes information about debtors who have defaulted on obligations confirmed by a judgement.

## **2.4. Making and enforcing contracts**

### **2.4.1. Contract law**

The UN Convention on the International Sales of Goods applies to all everyday cross-border business transactions in western European countries and Poland. Consequently, most ordinary international business transactions with Poland are regulated by well-known fundamental legal principles.

In many respects, general contract law is similar to civil code contract law in for instance Germany and France.

Some formalities may have to be observed under Polish law. For example, certain transactions, notably agreements transferring title to land, have to be notarised.

According to the Act on the Polish language, all agreements with consumers or state authorities and all documents under labour law must be prepared in a Polish version, and only the Polish version is binding on the parties and enforceable in the courts.

It is often a good idea to verify that persons claiming to represent a company are actually authorised to do so. This information can be obtained from the Register of Entrepreneurs of the National Court Register.

### **2.4.2. Venue and governing law**

The venue and governing law clauses in agreements – whether standard (for example general terms of delivery) or individual – should not be neglected in contract negotiations. Fortunately, only a small fraction of agreements become subject to legal disputes, but the governing law and venue clauses still have a bearing on stages that precede an actual legal dispute.

First, it is important to establish which legal system will regulate the commercial relationship, as this is relevant when interpreting the contractual relationship. It should be noted that opting for Polish law implies a choice of law that is increasingly similar to that applied within the EU. This is a result not only of the harmonisation of Polish law and EU law, but also of the fact that the individual EU countries and Poland are subject to the same international treaties – the UN Convention on the International Sale of Goods in particular.

Second, the parties to a potential legal dispute will usually consider the implications of a lawsuit: the prospect of becoming involved in a legal dispute in another country with unknown proceedings in a foreign language is usually not considered an advantage. It will inevitably influence the perception of the party's position in the settlement negotiations that usually take place prior to the initiation of legal proceedings. Accordingly, the venue and governing law agreed on often have practical implications during subsequent negotiations in case of disagreement, but are rarely applied.

The parties must realise that governing law and venue are two separate issues. In theory, it is possible to agree on Polish law and arbitration in Denmark, although this may not be very practical.

In international business, it is often a good idea to agree on arbitration as opposed to judgement by the ordinary courts. EU member states are bound by Council Regulation (EC) No 44/2001 of December 22, 2000, on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters. Accordingly, a Swedish high court judgement, for example, may be enforced in Poland or anywhere else within the EU.

As most of northern Europe's major trading partners, including Poland, are subject to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, it is convenient to agree on arbitration.

In addition, arbitration usually has the advantage of allowing the parties to agree on the language of the proceedings and on where these should take place. Moreover, the parties may often decide to appoint one arbitrator each, giving them an opportunity to appoint an arbitrator well-acquainted with the subject matter of the dispute.

The parties may choose a permanent arbitration institute, such as the ICC, the Swedish Chamber of Commerce, the International Court of Arbitration (IMAC) at the Polish Chamber of Maritime Commerce in Gdynia, the Polish Chamber of Commerce or Danish Arbitration. It is always a good idea to review the statutes of the different courts of arbitration prior to making a final decision.

Alternatively, the parties may agree on ad hoc arbitration. In this situation, it is particularly important that the parties agree on a procedure for appointing the arbitrators, the place of arbitration, the procedural law and language, and the time frame.

## **2.5. Labour law**

Traces of the communist era are still evident in Polish labour law, although the influence of EU law is increasing. Many foreign companies have found that the special labour dispute courts strongly favour the employees in almost all cases.

Although labour in general is less expensive than in other EU member states, social taxes (ZUS) are considerable. For additional tax information, see chapter 3.

Under the Labour Act, the terms of notice under contracts of employment entered into for an unspecified period of time are:

Length of employment	Mutual notice
Less than 6 months	2 weeks
From 6 months to 3 years	1 month
More than 3 years	3 months

In case of material breach, the contract may be terminated without notice.

The parties may agree on a trial period with a shorter term of notice.

Certain categories of employees enjoy protection from contract termination. These include pregnant women, employees with less than two years to retirement, employees on leave and some trade union representatives.

The retirement age in Poland is 65 for men and 60 for women.

Trade union influence is not strong compared to the power of unions in Scandinavia and Germany, for example. But buyers of companies previously owned by the state may expect that what is known as the workers' council will have certain powers. In general, the trade unions are stronger in state-owned companies and in companies formerly owned by the state.

Where active, trade unions usually enter into individual agreements with the company. Some foreign investors will be familiar with this practice, which is common in Sweden, for example, but not in Denmark.

The Polish working week is 40 hours.

Employees are entitled to up to 26 days of vacation. The Labour Act also regulates vacation: the amount of vacation to which an employee is entitled depends on the length of employment (see table below).

Length of employment	Length of vacation
Less than 10 years	20 days
At least 10 years	26 days

The length of employment with a previous employer together with periods of education must be included in the calculation of the length of vacation. For example, graduating from university equals eight years of employment and finishing middle comprehensive school equals four years of employment.

Employees may take up to three years' unpaid leave to raise their children. During this leave, the employee is not entitled to compensation but is subject to social insurance. Maternity leave lasts from 20 to 37 weeks, depending on the number of children born.

To benefit from the Polish social security system (ZUS) and qualify for health insurance benefits, an individual must have been employed for a certain period of time, depending on the benefit applied for. ZUS and compul-

sory health insurance contributions amount to up to 31.3% of the gross salary. The employee pays 15.21% and the employer the remainder of this amount.

## **2.6. Real property**

### **2.6.1. Property rights**

The influence of the communist era is also found in the field of real property. Otherwise, the legal principles that regulate real property transactions will presumably be familiar to German investors, while Scandinavian investors are unlikely to be accustomed to the traditions of Roman law. One of the distinguishing features of Roman law is that all real property transactions must be conducted through a notary.

The concept of “perpetual usufruct” will be unfamiliar to EU investors. “Perpetual usufruct” is a long-term lease arrangement with the State Treasury or a county owning the building or plot of land. The term usually runs for 99 years, during which period the lessee is practically entitled to exercise the rights of an owner of the property. By establishing this long-term arrangement, it is possible formally to abolish personal property rights without actually restricting the rights of an owner.

### **2.6.2. Acquisitions of real property by foreigners**

Although the EU harmonisation process is progressing rapidly, some restrictions to foreigners’ acquisition of real property still exist. In general, foreigners or companies owned mainly by foreigners are required to apply for permission from the Ministry of the Interior to acquire real property. The requirement has been relaxed, and foreign nationals may now acquire houses and flats for residential purposes. In addition, companies may acquire property in towns and cities, provided that the area covered by the property is less than 0.4 of a hectare.

As regards acquisition of farmland, consent is granted unless the Ministry of Agriculture and the Ministry of Defence oppose it.

Permission is also required if shares in a Polish-owned company are to be acquired by a foreign investor with the result that foreign shareholders will hold more than 50% of the shares in the company.

Regulations of acquisition of real property by EEA citizens and entrepreneurs have been amended.

Since Poland joined the EU, the acquisition of real property by EU citizens and EEC entrepreneurs has, with a few exceptions, not been subject to restrictions. The rules laid down in the Act on Acquisition of Real property by Foreigners stipulating a period of twelve years from the date of accession for the acquisition of agricultural land and forests still apply. Self-employed

farmers who have resided in Poland for at least three years (in some cases, seven years) are not subject to this restriction, however.

Until May 1, 2009, a second transition period for acquisition of secondary residences in Poland applied. A secondary residence is a property intended for housing or recreation but not intended to serve as a permanent residence.

As a consequence, EEC citizens and entrepreneurs have to obtain permission from the Ministry of Internal Affairs and Administration to acquire agricultural land and forests.

On July 16, 2003, rules regulating acquisition of farmland were introduced. They aim at improving the structure of farmland ownership, counteracting the excessive concentration of agricultural estates, promoting family agricultural farms and ensuring that farms are run by people with appropriate qualifications.

These provisions oblige investors without prejudice to obtain the consent of the Ministry of Interior to acquire real property in Poland.

The law introduces the following legal instruments to establish a farmland owner structure and counteracting excessive concentration of agricultural estates:

- pre-emption right vested in the lessee,
- pre-emption right vested in the Agricultural Real Property Agency,
- limits on farmland purchased from the Reserves of the State Treasury Agricultural Property (AWZ),
- option to repurchase real property sold by the Reserves of the State Treasury Agricultural Property (AWZ).

The law offers agricultural estate purchasers certain privileges if the purchase leads to the establishment of a family-run farm.

A family farm is a farm run personally by a person possessing agricultural qualifications, residing in the municipality where one of the agricultural estates constituting the farm is located (an individual farmer), and where the total size of arable land does not exceed 300 ha. The privileges do not extend to farms operated by a legal person or individuals residing outside of the municipality where the agricultural estates constituting part of the farm are located.

## **2.7. Mazanti-Andersen, Korsø Jensen & Partnere**

The Copenhagen law firm of Mazanti-Andersen, Korsø Jensen & Partnere was founded in 1853 and is thus the oldest law firm in Denmark.

The firm assists both Danish and foreign companies in all fields of business law, including mergers and acquisitions, banking law, corporate law, energy

law, tax law, environmental law, bankruptcy law, financing, contracts and litigation.

Over the past decade, the firm has assisted a considerable number of foreign companies investing in Poland and the Baltic region. It provides advice on co-operation and trading with Polish companies on an ongoing basis. Mazanti-Andersen, Korsø Jensen & Partnere represents an increasing number of Polish companies doing business in the EU.

The firm is also active in the Baltic region. The firm has provided assistance primarily to foreign companies doing business in the three Baltic States, but it also serves as adviser to the Latvian Privatisation Agency on its mass privatisation programme.

Internationally, Mazanti-Andersen, Korsø Jensen & Partnere has a strong network with partners in Europe, North America and Asia. Yet the choice of local counsel is always made on a case by case basis, taking into account possible conflicts of interest, the expertise required and geographical considerations.

The firm is a member of the Scandinavian-Polish Chamber of Commerce.

Peter Nielsen & Partners in Warsaw has kindly contributed to this section. For additional information, please contact

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# Chapter 3

## Taxation

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### 3.1. Tax on corporate income

The corporate income tax (CIT) is the only tax levied on corporate income. The CIT rate is 19%.

The corporate income tax applies to all legal entities, including companies, companies in the course of formation and “organisational entities without corporate status” engaged in business activities with the exception of partnerships. Partnerships are regarded as fiscally transparent entities, which means that the income they generate is allocated to the partners and tax is levied on them.

CIT also applies to companies with foreign participation. Such companies can be set up as either limited liability companies or joint stock companies. There is no limitation on the percentage of foreign participation. Both company types are subject to the general corporate income tax rules, including the 19% tax rate. The same rate applies to branches of foreign companies (see Branch income below).

### 3.2. Corporate residence

A company is considered to be a resident if its registered office or management is located in Poland. Income earned by Polish residents is subject to Polish tax even if the income was earned abroad as opposed to income earned by non-Polish residents, who will pay CIT only on the income earned in Poland.

The tax authorities’ right to tax a non-resident is further limited if the non-resident’s home country concluded a double taxation treaty with Poland. If this is the case, the Polish tax authorities are entitled to tax only the portion of the non-resident’s income, which is derived through a “permanent establishment” located in Poland. The exceptions relate to specific types of income such as royalties, interest, dividend and capital gains that are taxed based on special treaty rules.

#### 3.2.1. Branch income

Foreign businesses are allowed, under certain conditions, to establish their branch offices (exclusively within the scope of their “foreign” business activity) and representative offices (exclusively with regard to promotion and advertising).

A branch office nearly always has permanent establishment (PE) status in Poland. Once a branch is established, the foreign company pays corporate income tax at the standard rate of 19% of the income attributable to the

operations of the Polish branch. For this purpose, as well as for accounting purposes, a branch is obliged to keep accounting books with all the data necessary to establish the taxable base.

General income determination rules relevant to Polish companies apply to branches as well. In those few cases in which a branch can demonstrate, on the basis of a double taxation treaty, that its business presence in Poland does not amount to a permanent establishment, its profits are not subject to Polish corporate income tax.

### **3.2.2. Tax administration**

#### **3.2.2.1. CIT settlement**

The annual corporate income tax return must be submitted to the tax authorities within three months after the end of the tax year. The same deadline applies to the settlement of the annual CIT liability. In financial terms, the above final settlement is not significant, since most of the annual liability is prepaid over the whole tax year. Monthly CIT payments fall due on the 20<sup>th</sup> day of the following month. Since January 1, 2007, the reporting of amounts in additional monthly tax returns has not been required.

Another reform introduced on January 1, 2007, concerns new entities, i.e. entities that have started new business activities (except companies organised as a result of certain transformations) and entities, whose gross sales revenue (i.e. including VAT) in the prior tax year did not exceed EUR 800,000. Taxpayers in both these categories will have the option of advance quarterly settlement (instead of monthly settlement).

#### **3.2.2.2. VAT settlement**

Similarly, VAT is reported on a monthly basis. VAT returns must be submitted by the 25th day of the following month. An exception has been made for "small taxpayers" (as defined in the VAT Act), who may report quarterly and must submit VAT returns by the 25th day of the month following the last month of the quarter. Payment of VAT due must be made within the same deadline as the one provided for filing the monthly (or quarterly) VAT return.

Finally, businesses that are involved in intra-community acquisitions or supplies of goods (cross-border sale transactions within the EU) are obliged to submit additional quarterly VAT returns for these particular transactions.

### **3.3. Withholding taxes**

In 2007, the general withholding tax (WHT) rate for dividends was 19% (the same as in 2006). Some other types of income, such as income from investing in companies, including income from the redemption of shares and income resulting from the liquidation of a company, are taxed at the same 19% rate. The general withholding tax rate on interest and royalties paid to non-residents is 20% (the same as in 2006). The above WHT rates may be lower if warranted by double taxation treaties (see below).

A 20% withholding tax also applies to payments made to non-residents as consideration for intangible supplies (such as consulting services). However, if a payment is made to a country which has a double taxation treaty with Poland, this tax can be avoided by meeting a few administrative formalities.

### 3.3.1. Special treatment – EU directives

Apart from the above, dividends, royalties and interest paid to residents of numerous European countries receive special treatment under the CIT provisions, which implement the relevant EU directives.

Dividends paid to corporate residents of EU countries as well as Iceland, Liechtenstein, Norway and Switzerland are exempt from withholding tax subject to certain conditions specified in the CIT provisions. The basic requirement is that the foreign beneficiary should hold at least 15% of the shares in the Polish company for at least two years (with respect to the Swiss shareholders, the minimum shareholding is 25%). The exemption also applies to income from the redemption of shares or the liquidation of a company.

When it joined the EU, Poland was granted a transitional period for removing withholding tax on interest and royalty payments paid by Polish corporate residents to associated EU companies. Currently, the withholding tax rate on such payments is 10%. From July 1, 2009, it will be reduced to 5%. Starting on July 1, 2013, the full exemption will apply. In general, the transitional rules, as well as the full exemption after July 1, 2013, only apply to interest and royalty payments between associated companies (parent-subsidiary relationships or inter-subsidiary relationships) in which capital involvement is significant.

### 3.3.2. Treaty rates

In cases where special EU rules do not apply, Polish companies are required to withhold tax on payments of dividends, interest and royalties based on general CIT provisions modified by double taxation treaties. The table below shows the withholding tax rates of the treaties concluded by Poland. However, we would like to stress that the table below shows only such rates, which result from general treaty provisions. Please note that the treaties sometimes include special provisions (applicable in special circumstances or to special entities) with rates lower than those listed below.

Recipient	Dividends %	Interest %	Royalties %
<b>Non-treaty:</b>			
Corporations	19	20	20
Individuals			
<b>Treaty:</b>			
Denmark	15	5	5

### 3.4. Individual taxation

*Territoriality and residence:* A new definition of a resident was introduced with effect from January 1, 2007, which means that a resident is a person who

1. has a centre of personal or business interests (a life interest centre) in the territory of Poland, or
2. spends more than 183 days of a fiscal year in the territory of Poland.

From a practical point of view, the most important difference, compared with the 2006 definitions, is the second definition (183-day stay in Poland), which means that a higher number of expatriates will be considered Polish residents.

#### 3.4.1. Taxation of residents and non-residents

Income earned by Polish residents is subject to Polish tax even if the income was earned abroad as opposed to non-Polish residents who will pay Polish tax only on the income earned in Poland. In many cases, non-residents can apply a 20% flat tax rate on their revenues (i.e. with no deduction of costs). This flat rate applies to various sources of income, including management fees (but not to income under employment contracts). The above general rules, resulting from Polish legislation, may be modified by applicable double taxation treaties.

#### 3.4.2. Gross income

##### 3.4.2.1. Overall income

Personal income tax (PIT) is levied on the individual's overall income. The taxable base is calculated as the sum of income generated from all taxable sources subject to a number of exceptions (some types of income are taxed separately and not included in the overall income calculation).

Income from a particular source is defined as the amount by which the revenue exceeds tax-deductible costs related to the same source. If tax deductible costs exceed the revenue, the result is a tax loss. An annual loss from one source of income cannot be set off against income from another source. Instead, a taxpayer is entitled to carry forward such loss over the next five years deducting it from income derived from the same source. The taxpayer cannot, however, deduct more than 50% of the loss in any particular year.

##### 3.4.2.2. Employee income

Employee income includes basic pay, overtime pay, supplementary pay, awards and bonuses, compensation for unused holidays and vacation, all other monetary amounts, and benefits in kind, as well as all other benefits obtained for free from the employer.

### 3.4.2.3. Special rules for non-residents

Specific types of income, if earned by non-residents, are subject to special treatment: They are taxed at a flat rate of 20% of income (cost deductions are not allowed) unless a double taxation treaty between Poland and the individual's country of residence provides otherwise. The types of income include the following:

1. Revenue from copyrights and other intellectual property, such as trademarks, patents and designs, including revenue from the sale of the rights in question;
2. Income from the transfer of technology and know-how;
3. Payment for leasing industrial, commercial or scientific equipment;
4. Income from independent work in the fields of art, literature, science, education, journalism, and sports, including income from participation in artistic, scientific and cultural competitions;
5. Income from work commissioned by national or local authorities or administrative bodies, courts, or prosecutors;
6. Income received as fees for membership of boards of directors, supervisory boards, committees, or other decision-making bodies of legal entities;
7. Income from rendering personal services based on an agreement with a legal person or other entity as long as these services are not rendered within the scope of independent business activity, i.e. they are not offered to the public;
8. Income from activities performed personally under management or similar contracts.

### 3.4.2.4. Transfer of real property

General tax legislation applies to transfer of real property if made within the scope of regular business activity. Consequently, income from transfers is added to other business income and taxed based on a progressive scale or the 19% flat rate.

However, special rules apply if the transfer of property is made outside the scope of the business's activities. In that case, the transaction is taxed separately, and the income is not added to the income from other sources. These special rules were revised with effect from January 1, 2007, and now tax is levied on income (revenue less costs). Before that date, tax was levied on revenue. Please note that the old rules still apply to the sale of real property acquired before January 1, 2007. Therefore, we describe both the old and new rules.

As mentioned above, if a sales transaction concerns real property acquired before January 1, 2006, PIT is levied on revenue. The relevant tax rate is 10%. A number of exemptions exist, however. For example, the transaction is not subject to PIT if the sale is made more than five years after the end of

the tax year, when the property in question was purchased. Furthermore, a seller may avoid paying 10% tax if he/she spends the income received on purchasing another real property for personal accommodation purposes; the purchase should be made within two years after the sale subject to the exemption.

If the real property was purchased after January 1, 2007, the subsequent disposal will trigger a tax payment of 19% of the income. The income equals the difference between the revenue on sale and the cost of earning that revenue plus the total depreciation allowances, if any, made before the disposal. Revenue from the disposal of residential real property is tax exempt if the taxpayer was registered as a permanent resident of the relevant building or flat for at least 12 months prior to the disposal date.

#### **3.4.2.5. Transfer of shares**

Transfer of shares is taxed separately at a rate of 19% of the income (revenue less expenses on acquisition). The income is not added to income from other sources.

#### **3.4.2.6. Dividends and interest**

Income from dividends paid by joint-stock companies and limited liability companies is not added to an individual's overall income. Instead, it is taxed at a rate of 19% (deductions are not available). The same rules apply to interest on loans and savings.

The exception concerns loans granted within the scope of regular business activities. In such cases, the general PIT rules apply. Consequently, both the revenue and the costs associated with such loans are taken into account when calculating the taxable base. Subsequently, income from business activities is taxed according to the progressive scale or the 19% flat rate.

#### **3.4.2.7. Exempted income**

More than 100 types of income are tax exempt. The most important types are

1. Damages received under administrative law, civil law and other legal acts (subject to numerous exceptions);
2. Receipts from property insurance and personal insurance claims (subject to some exceptions).
3. Remuneration paid to individual businessmen out of the international aid funds established by foreign financial institutions or other countries based on agreements concluded between such institutions or countries and the Polish government;
4. Cash equivalents provided to employees who have to use own tools, goods or equipment to perform their work;

5. Reimbursement of employees' costs for relocation to another place of employment and reimbursement for the costs of settling in the new place (up to 200% of the monthly salary payable to employees in the month of transfer);
6. Limited daily allowances and other amounts due to employees on business trips.
7. Additional pay granted to employees temporarily transferred to work away from home and other benefits granted according to the principles and limits that apply to state employees.
8. Expenses covered by employers for employees staying in hotels for employees and in flats rented from private persons for the purpose of collective lodging of employees.
9. Limited payments to employees who use their private cars for company business.
10. Income earned outside Polish territory if an agreement for the avoidance of double taxation signed by Poland and the foreign country provides for such exemption.

For more information, visit [www.pwc.com/pl](http://www.pwc.com/pl)

*Reference:*

*World Fact Book (www.cia.gov/cia/publications/factbook)*

*PwC Worldwide Tax Summaries (www.taxsummaries.pwc.com)*

# Chapter 4

## Banking in Poland

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### 4.1. The Polish banking sector

#### 4.1.1. Overview

The Polish banking environment – like that of many other countries in eastern Europe – has changed dramatically over the past 20 years. Significant and successful reforms, privatisation of most of the banking sector and the establishment of a proper legal and infrastructural framework have produced a two-tier system that consists of the Polish central bank (Narodowy Bank Polski (NBP)) and a number of commercial banks.

The banking sector remains the largest segment of the financial market in Poland, although its share of financial sector assets decreased as a consequence of the rapid growth in assets of non-bank financial institutions (investment funds, open-ended pension funds and insurance companies).

When Poland joined the EU on May 1, 2004, it adopted the single banking passport. With the banking passport, a credit institution of another member state can provide services in Poland without a banking licence from the Commission for Banking Supervision.

#### 4.1.2. The Polish central bank

The Polish central bank (Narodowy Bank Polski (NBP)) has seen its powers and autonomy expand as a result of EU membership requirements and modification of relevant legislation in 1997, including article 227 of the Constitution, the Polish Banking Act and the Act on the Polish central bank.

The NBP is responsible for implementing monetary policy and maintaining price stability. Within the framework of this strategy, the Monetary Policy Council defines the inflation target and adjusts the NBP's basic interest rates to meet this target.

Other responsibilities of the NBP include issuing coins and notes, managing the country's foreign currency reserves, regulating banking sector liquidity and providing refinancing facilities to the sector. The NBP is in charge of supervising the financial sector to ensure stability and maintaining and developing efficient payment systems in Poland.

Poland wants to join the single currency, and the NBP is focusing on meeting the European Monetary Union entry criteria.

#### 4.1.3. Supervision

The Commission for Banking Supervision (founded in 1997) has been in charge of regulating and supervising the Polish banking sector since January 1, 1998. The General Inspectorate of Banking Supervision (GINB)

is the Commission's executive agency. It operates autonomously within the NBP and regularly checks that all banks comply with prudential requirements, such as capital adequacy requirements and risk exposure restrictions, including liquidity risk, foreign exchange risk and credit risk restrictions.

#### **4.1.4. The Polish Bank Association**

The Polish Bank Association (Związek Banków Polskich (ZBP)) was established under the 1989 Chamber of Commerce Act. The ZBP is an autonomous public organisation. Its principal objective is to promote the Polish banking sector, improve banking operations in Poland and enhance interbank co-operation. It plays an active part in the development and improvement of banking legislation. The ZBP represents its members (commercial banks and co-operative banks licensed to operate in Poland and established under Polish law) domestically and internationally – principally as a correspondent member of the EU's European Banking Federation.

### **4.2. Legal aspects**

#### **4.2.1. Exchange controls**

The Polish zloty (PLN) is the official currency of the Republic of Poland.

The PLN has been allowed to float and trade freely against all currencies since the abandonment of the crawling peg policy in April 2000.

The Foreign Exchange Act of October 5, 2002, ensures the free flow of capital, opening of accounts, and investing and borrowing within the EU and the OECD zone. But the Act also contains some transaction restrictions, including mandatory foreign exchange permits. The restrictions concern mainly account openings, investments and lending activities involving Polish residents and entities outside the OECD zone or entities in countries with which Poland does not have an agreement on mutual promotion and protection of investments.

Non-residents' direct investment in real property has been greatly liberalised since Poland's accession to the EU, although restrictions on non-residents' acquisition of second homes and agricultural properties still apply (see Chapter 2). In addition, specific restrictions on investments in various strategic state-protected sectors apply.

Before April 2007, all payments between residents and non-residents, and all non-resident cash transactions were subject to payment title verification; the bank had to see copies of source documents, such as invoices or agreements, for transactions exceeding EUR 10,000. Moreover, banks had to check the taxation of transfers of proceeds and income to non-residents before debiting the amount to the account. On April 21, 2007, updated FX legislation lifted these restrictions, liberalised foreign exchange transactions and generally adjusted Polish regulations to EU regulations.

The latest Foreign Exchange Law amendment, which came into force on January 24, 2009, abandoned the requirement for NBP permission to

settle foreign currency transactions between Polish residents. Consequently, Polish residents can now transfer amounts in currencies other than PLN without restriction.

#### **4.2.2. Central bank reporting requirements**

The NBP maintains statistical records of the balance of payments, indebtedness and foreign liabilities. The statistical data come from bank and other reports. To ensure valid data, all international payments and local payments in foreign currency equal to or exceeding EUR 12,500 must be accompanied by a payment title or a statistical code.

Reporting data is the bank's responsibility, except in some specific cases, for example if a resident holds an account abroad or a Polish company participates in intra-group netting. Banks normally report to the NBP on a monthly basis.

#### **4.2.3. Legislation on money laundering**

Polish legislation complies with the European directive on money laundering and the recommendations of the OECD's special task force (FATF). Following the enactment of the Act on Countering the Introduction into Financial Circulation of Property Values Derived from Illegal or Undisclosed Sources and Preventing Terrorism' in November 2000, all transactions exceeding EUR 15,000 (either as a single transaction or as a series of linked transactions) have to be recorded in a register with identification of the ordering customer. In addition, all suspicious transactions have to be reported regardless of their value and nature.

The Act applies to banks, brokerage houses, gambling firms, insurance companies, investment funds, leasing and factoring companies, Polish post offices, real-estate agents and public notaries. The Act also provides the legal foundation for a specialised financial intelligence unit (FIU) and the General Inspector of Financial Information.

#### **4.2.4. Other important EU directives**

Two other directives which have significantly influenced the Polish banking sector are the Capital Requirements Directive (CRD), known as Basel II, published by the European Commission in June 2006 and the Markets in Financial Instruments Directive (MiFID) published in August 2006. Although MiFID has not yet been implemented in Polish legislation, banks and other financial institutions have already started to adjust their procedures to the directive.

The Ministry of Finance and the Polish Banks Association are working on the implementation of the Payment Services Directive in Polish legislation. The objective of the directive, is to introduce unified and transparent rules for intra-EU money transfers.

### **4.3. Payment (and collection) instruments**

The dominant cashless payment instrument in Poland is credit transfers. Customers, especially corporates, are processing an increasing number of credit transfers electronically. Card payments are also making substantial

inroads into cash payments. They are particularly popular among consumers and small businesses and second only to paper-based credit transfers. Cheques, on the other hand, never took off in Poland, and their use remains marginal. Direct debits are available but are only slowly catching on. Like in all former communist economies, cash remains popular especially in retail transactions. Transfers in foreign currency, except EUR payments executed through domestic Euro-clearing, are always considered international payments.

#### **4.3.1. Direct debit**

The first direct debit transactions were executed in July 1998. This payment method can be used for electronic payments of EUR 0–1,000/50,000 (individuals/legal entities). A transaction can be revoked by the debtor within five business days (legal entities) or 30 calendar days (individuals). Polish banking law permits direct debits provided that

- both the creditor and the debtor hold a bank account with a bank that has entered into a direct debit agreement;
- the debtor has authorised the creditor to debit his/her account on agreed dates in order to meet certain payment obligations;
- the creditor and the bank have entered into an agreement on direct debits.

In 2005, a new business-to-business direct debit system (GOBI) was introduced. Unlike the classic direct debit system, GOBI transactions are subject neither to amount thresholds nor to payment revocation.

The number of direct debits is growing slowly, and the instrument still does not play any significant role in retail transactions, although, according to the National Clearing House (KIR), the number of direct debit transactions increased by 12% to 20.4 million in 2008. The number of direct debits accounted for only 1.7% of the total number of transactions cleared.

#### **4.3.2. Cheques**

Cheques have never been that popular, and with the rapid expansion of payment cards, their relevance has decreased even more. Consequently, banks often do not accept the cheques of non-customers. The only exception is cashiers' cheques, which are a popular means to withdraw cash. But, given that cashiers' cheques are essentially cash withdrawal instruments (unlike normal settlement cheques) and cannot be used as an account transfer method, they are legally defined as a method of cash payment.

#### **4.3.3. Card payments**

Payment cards are one of the fastest growing payment methods in Poland. Nearly 30.5 million cards issued by commercial banks were in use at the end of 2008. Customers have over 13,500 ATMs at their disposal. Debit cards still dominate the market, although their share is steadily declining (67.6% in 2008). The share of credit cards rose from 29.5% to 31.1%. Payment cards – especially debit cards – will definitely play a major role in the further development of the Polish retail banking market. Their share of

payment transactions is still not impressive, though (48.5% at the end of 2008).

The majority of cards issued by Polish banks are linked to international payment card schemes, such as VISA International, Eurocard/MasterCard International, American Express or Diners Club.

#### **4.3.4. Postal instruments**

The Polish post offices are permitted to carry out transfers of money between consumers who do not have a bank account and cash payments into bank accounts as well as to process pension and disability allowance payments. The postal network consists of approximately 8,500 post offices throughout the country. Most of these offices do not have bank accounts; instead they have accounts with larger post offices that hold bank accounts. Cash payments into bank accounts are settled by KIR.

#### **4.4. Bank accounts**

Both residents and non-residents may open current accounts in PLN and all convertible currencies.

All bank account numbers in Poland must comply with the IBAN format. This format is used for international transfers, whereas domestic transfers rely on the NRB format (a 26-digit account number consisting of a verification code, the bank's identification code and an individual identifier of the customer's account). Except for the PT ISO country code in the IBAN format, the numbers of both formats are exactly the same. The NRB format has been mandatory since July 1, 2004, and is therefore well-known to all banks, corporates and consumers. Transfers specifying the beneficiary account number in a format other than the NRB are returned by the clearing house to the bank submitting the transfer.

Account opening forms are available in Polish and English. Some banks offer online access to the forms.

#### **4.5. Liquidity management**

As no specific regulation of notional cash pooling schemes and cash concentration solutions exists, some uncertainty about the legal framework prevails. Nevertheless, most banks on the Polish market have the expertise and technology to offer such solutions.

##### **4.5.1. Notional pooling**

Capital adequacy requirements and risk-related issues pose a challenge for notional pooling. This, together with the legal uncertainties, means that notional pooling is not widely offered or used, although some banks offer interest enhancement/compensation models.

##### **4.5.2. Cash concentration**

As in other markets, zero-balancing, the most straight-forward cash pooling product, is the preferred liquidity management solution. But the establishment of a zero-balancing cash pooling scheme in Poland may pose

potential risk both to the participants and the bank. Therefore a cash pool agreement must comply with several sets of regulation, including rules governing the taxation of civil act transactions, transfer pricing rules, and rules governing withholding tax and VAT. Although the legal drafting of an agreement can minimise such risks, agreements are always construed on the basis of existing law. Therefore it cannot be guaranteed that the assumptions made would not be questioned by any authority. A bank offering cash pooling solutions usually has obtained legal opinions from legal and tax advisers, however. Nevertheless, a second opinion should always be sought.

#### **4.5.3. Intra-group netting**

Group netting used to be difficult owing to strict foreign exchange regulations, requiring, among other things, special permission by the NBP. This was probably the reason why most international groups did not enter into group netting agreements with their Polish subsidiaries. Foreign exchange legislation was eased recently, and special permission and payment title verification are no longer required.

A Polish company participating in group netting is obliged to report netting transactions to the NBP. Within 20 days of signing of the netting agreement, the company has to submit basic information to the NBP about the agreement. In addition, the company is obliged to report netting transactions on a quarterly basis (the report must be submitted within 20 days after the end of the quarter). If the total amount of the transactions set off during a quarter is equal to or higher than EUR 100,000, all netted receivables and payables must be included in the quarterly report.

### **4.6. Financing**

#### **4.6.1. Inter-company funding**

Intra-group loans are subject to tax. The current civil act tax (CAT) rate is 2% of the loan amount. The tax does not apply to loans granted by a foreign company whose primary activity is lending, loans subject to or exempt from VAT or loans from the borrower's direct shareholder.

Additionally, inter-company loans must comply with thin capitalisation and transfer pricing rules.

Under Polish transfer pricing rules, transactions between related entities should be concluded at arm's length (at prices which would have been set for such transactions between unrelated companies).

According to Polish thin capitalisation rules, interest on certain loans/credits obtained from a qualified lender (specifically related entities) is not fully tax deductible in corporate income tax (CIT) if the total debt to such lender is more than three times as large as the borrower's share capital. In such cases, interest on the part of the loan (credit) that exceeds this limit is not tax deductible. Polish tax law has a very broad definition of loans for the purpose of thin capitalisation: All agreements under which funds, for example in the form of debt securities and bank deposits, are transferred to another party but is expected to be returned are also considered loans.

A qualified lender is defined as

- a shareholder holding at least 25% of the borrower's shares,
- two or more shareholders jointly holding at least 25% of the borrower's shares,
- a shareholder holding at least 25% of the shares in both the lender and borrower.

#### **4.6.2. Financing investments in Poland**

Foreign investment in Poland has increased significantly since the collapse of the centralised system. The Nordic countries are encouraging direct investment through a variety of institutions, each of which promotes investment for special purposes.

The following section lists some of the institutions. Although the list and descriptions may not be exhaustive, one or more of these sources may hopefully accommodate your financing requirements.

#### **4.7. Danske Bank A/S S.A. Branch in Poland**

From the office in central Warsaw, the bank offers a targeted range of products and services. Danske Bank Poland has deep insight into the local business environment, and with a strong IT platform the bank can assist customers in all parts of the country.

Since 2000, the bank has provided services to corporate and institutional clients - primarily Nordic companies operating in Poland. The current customer base includes around 500 subsidiaries of Danish, Swedish, Finnish, Norwegian, German and UK companies that have chosen Danske Bank Poland as their preferred local financial partner.

Danske Bank Poland combines local expertise and the international profile of the Danske Bank Group to offer their customers a broad range of high-quality products and services tailored to the Polish market.

Contact:

Danske Bank A/S S.A.  
Branch in Poland  
Warsaw Corporate Centre  
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00-688 Warsaw, Poland

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Fax +48 22 33 77 101  
SWIFT DABAPLPW  
Website [www.danskebank.com/pl](http://www.danskebank.com/pl)

# Chapter 5

## Useful addresses in Denmark, Finland, Norway, Sweden and Poland

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Agency for Foreign Investments (PAIZ)	<a href="http://www.paiz.gov.pl">www.paiz.gov.pl</a>
Business Links Poland	<a href="http://www.andreas-prause.de/business_links_poland">www.andreas-prause.de/business_links_poland</a>
Business Polska guide to business Chamber of Commerce	<a href="http://www.polska.net">www.polska.net</a> <a href="http://www.chamberofcommerce.pl">www.chamberofcommerce.pl</a>
Danish-Polish Chamber of Commerce	+48 22 849 7414
Danske Bank	<a href="http://www.danskebank.com">www.danskebank.com</a>
Danske Bank Polska S.A.	<a href="http://www.danskebank.com/pl">www.danskebank.com/pl</a>
Embassy of Denmark in Warsaw	<a href="http://www.ambwarszawa.um.dk">www.ambwarszawa.um.dk</a>
Embassy of Finland in Warsaw	<a href="http://www.finland.pl">www.finland.pl</a>
Embassy of Norway in Warsaw	<a href="http://www.amb-norwegia.pl">www.amb-norwegia.pl</a>
Embassy of Sweden in Warsaw	<a href="http://www.swedish-embassy.pl">www.swedish-embassy.pl</a>
EU Directorate for Enlargement	<a href="http://www.europa.eu.int/comm/enlargement/index.htm">www.europa.eu.int/comm/enlargement/index.htm</a>
EU news, policy positions, etc.	<a href="http://www.euractiv.com">www.euractiv.com</a>
European Bank for Reconstruction & Development	<a href="http://www.ebrd.org">www.ebrd.org</a>
European Investment Bank	<a href="http://www.eib.org">www.eib.org</a>
Finance Ministry	<a href="http://www.mf.gov.pl">www.mf.gov.pl</a>
FINNFUND	<a href="http://www.finnfund.fi">www.finnfund.fi</a>
The World Bank	<a href="http://www.worldbank.org">www.worldbank.org</a>
International Finance Corporation	<a href="http://www.ifc.org">www.ifc.org</a>
Industrialisation Fund for Developing Countries	<a href="http://www.ifu.dk">www.ifu.dk</a>
Investment Insurance	<a href="http://www.ekf.dk">www.ekf.dk</a>
Mazanti-Andersen, Korsø Jensen & Partnere Law Firm	<a href="http://www.mazanti.com">www.mazanti.com</a>
Ministry of the Treasury	<a href="http://www.msp.gov.pl">www.msp.gov.pl</a>
National Bank of Poland	<a href="http://www.nbp.pl">www.nbp.pl</a>
National Fund for Environmental Protection & Water Management	<a href="http://www.nfosigw.gov.pl">www.nfosigw.gov.pl</a>
Nordic Environmental Finance Corporation	<a href="http://www.nefco.fi">www.nefco.fi</a>
Nordic Investment Bank	<a href="http://www.nib.fi">www.nib.fi</a>
Nordic Project Fund	<a href="http://www.nopef.com">www.nopef.com</a>
Official website of Poland	<a href="http://www.poland.pl">www.poland.pl</a>
Peter Nielsen & Partners Law Office	<a href="http://www.pnplaw.pl">www.pnplaw.pl</a>

Poland and CEE Guide	<a href="http://www.inyourpocket.com/Poland/index.shtml">www.inyourpocket.com/Poland/index.shtml</a>
Poland and the EU	<a href="http://www.pol-mission-eu.be">www.pol-mission-eu.be</a> <a href="http://www.unia-polska.pl">www.unia-polska.pl</a>
Polish Business Directory	<a href="http://www.polish-bus.com">www.polish-bus.com</a>
Polish Chamber of Commerce	<a href="http://www.kig.pl/en/">www.kig.pl/en/</a>
Polish Danish Business Forum	<a href="http://www.polishdanishforum.dk">www.polishdanishforum.dk</a>
Polish-English-Polish online dictionary	<a href="http://www.ectaco.com/online/diction">www.ectaco.com/online/diction</a>
PricewaterhouseCoopers	<a href="http://www.pwc.com">www.pwc.com</a>
Prime Minister Chancellery	<a href="http://www.kprm.gov.pl">www.kprm.gov.pl</a>
Privatisation Agency	<a href="http://www.msp.gov.pl/en/agencja/index.html">www.msp.gov.pl/en/agencja/index.html</a>
Public Opinion & Market Research Center	<a href="http://www.obop.com.pl">www.obop.com.pl</a>
Scandinavian-Polish Chamber of Commerce	<a href="http://www.spcc.pl">www.spcc.pl</a>
Search Portals	<a href="http://www.polishworld.com">www.polishworld.com</a>
Securities' Market Commission	<a href="http://www.kpwig.gov.pl">www.kpwig.gov.pl</a>
Statistics Office	<a href="http://www.stat.gov.pl">www.stat.gov.pl</a>
Swedfund International AB	<a href="http://www.swedfund.se">www.swedfund.se</a>
Transparency International/Poland office	<a href="http://www.transparency.pl">www.transparency.pl</a>
Warsaw Stock Exchange	<a href="http://www.gpw.com.pl">www.gpw.com.pl</a>

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