Chapter 2
Legal aspects of doing business in Poland

2.1. Introduction

Naturally, this brief presentation can only describe some of the elements of the Polish legal system in very general terms. The information below is intended to provide the reader with a broad understanding of some selected items of business law in Poland. The description is not to be considered as legal advice. The reader should be particularly aware of the fact that Polish law is in a continuous state of change, especially as a result of Poland’s accession to the European Union on 1 May 2004, which entails substantial changes in a number of fields.

2.2. The Polish legal system

2.2.1. History

The legal system currently in effect in Poland is based on Roman law in the same way as many other continental European legal systems, that is, it is based on civil law as opposed to common law (of which the Anglo-Saxon system is an example).

Nordic investors in Poland should be aware of some differences between the Nordic legal system and the civil law system, whereas German investors will undoubtedly 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 3 May 1791. The republic was divided shortly afterwards, and it was not until 1918 that Poland regained her independence, following 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 presumably useful when Poland developed her own legal system and administration in the 1920s and 1930s.

The relatively new German civil code (Bürgerliches Gesetzbuch – BGB) and the German commercial code were the primary sources of inspiration for
the Polish legislators when the civil code (kodeks cywilny) and the commercial code (kodeks handlowy) were drawn up.

From the time of the Soviet occupation during the Second World War (in 1943-1944) until 1989, the Soviet legal and economic systems dominated Poland. However, the civil and commercial codes remained largely unchanged, although they were without practical significance in many respects under the Soviet economic system - the planned economy.

New concepts were introduced in the field of property rights, some of which remain in force to this day. These include “perpetual usufruct” which is a special long-term lease from the State or County that basically grants the lessee the same rights as an owner, although without formal ownership rights per se.

Since 1989, traces of the Soviet influence on the legal system have been replaced by new input, particularly from the United States and the EU.

Following the change in system in 1989, the new Polish administration was eager to turn radically towards a market economy. This naturally implied major changes to the legal system to match the demands of a complex modern economy of this kind. It is worth noting that in some fields - such as telecommunications - the early post-1989 administrations found that the EU system was too far removed from the liberal market economy approach that Poland now desired. As a result, the influence of the US legal system has been evident in such fields.

2.2.2. Today

Poland joined the European Union on 1 May 2004, together with nine other new members. Prior to this, Poland had already joined NATO, the Council of Europe and the OECD. Poland took part in the US-led coalition with a considerable contingency in Iraq in 2003.

Following the accession to the European Union, Polish legislation, especially in the field of business law, will, of course, to a large degree be based on EU directives, and the Polish state will be subject to the rulings of the European Court in Luxembourg.

In many areas, Polish legislation has been harmonised with the entire EU law package - what is known as the “Acquis Communautaire”.

As a foreign business person, it is important to remember the impressive transition that Polish society has undergone over the past 15 years. This also applies to the legal system, which has undergone many changes since 1989 and 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 necessarily changes as a consequence of changes in the law. It must be borne in mind that the legal system in Poland has undergone appreciable changes in a very short time, and although there has been sufficient time to print the new laws, it has not yet been possible to complete implementation in every corner of the Polish administration. In addition, the judicial apparatus still has its drawbacks, and Polish courts, including permanent courts of arbitration, are not always the best choice for solving international business disputes.

2.2.3 The future

The European Union will continue to exert direct influence in all matters concerning commercial law, the aims of which include ensuring a high level of competition, and clamping down on discrimination against foreign businesses.

In other fields of law – such as tax law - Poland’s membership of the OECD may result in improvements to the present system, also as regards transparency and the protection of citizens and companies vis-à-vis tax assessments and the options of recourse in the tax administration. This is an area which is not yet on a par with the situation in Northern Europe.

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

As regards criminal law - including the administration of justice - substantial differences remain between Poland and, for example, the Nordic countries, although membership of the Council of Europe and public awareness is producing developments in this field as well.

No single political party is expected to change Poland’s progress towards becoming a fully integrated member of NATO, the OECD and the EU.

2.2.4. The legal profession

When doing business in Poland, investors and traders may encounter different types of legal professionals. Today, the legal market has been privatised and is reasonably liberalised.

Legal professionals are divided into the following categories:

- adwokat
- radca prawny
- notariusz

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

It is always possible to check with the local chamber of adwokats, legal advisers or notaries to establish 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 strong tradition of independence in Poland. Even while the country was under communist rule, the trade was free and adwokats were independent. The concept of independence also means that adwokats cannot be employed within a company, as in-house lawyers 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 were primarily engaged in family, inheritance and criminal law.

Adwokats can advise in 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 of adwokats 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 employed by state companies and various authorities. In many cases, a legal adviser would work for two or more companies or authorities, allocating one or more days a week to each.

Today, many legal advisers have set up their own law firms, which may also employ younger legal advisers and trainees.

A legal adviser is also a law school graduate, and has followed a three and half-year training programme in the same way as trainee adwokats. Upon successful completion of the programme, the trainee legal adviser joins the regional chamber of legal advisers.

Outside the scope of business law, it should be noted that, in principle, only adwokats are permitted to act as counsel at the bar in non-business disputes.
The fees payable to most adwokats and legal advisers are based on the amount of time they have spent on the case. An estimate of these fees should be obtained prior to retaining a lawyer.

2.2.4.3. Notariusz

The third category of legal professionals in Poland is the notary profession. As in many other legal systems based on Roman law, notaries in Poland are engaged as private professionals in numerous types of transactions and activities.

Real estate transactions, donations and establishing perpetual usufruct rights can only be carried out through a notary, who will draw up the title and handle all the paperwork involved in the transaction.

More importantly for the foreign investor, a notary must prepare and sign the Deed of Incorporation of a company. The notary is also to witness any and all subsequent changes to the company's statutes after incorporation, and, as described below, must also be present in a number of other situations - especially in the case of joint stock companies.

As the participation of the notary is required in particular for many activities related to company law, it is often necessary to ensure that documents drawn up abroad are also notarised in the foreign country. For example, when a Danish company is setting up a subsidiary in Poland, it must present a declaration by the parent company. This declaration (and other documents) must be notarised, that is, signed at the office of the public notary at a Danish court. Subsequently, the documents must be confirmed by a Polish consulate as being in accordance with laws of the country in which they were issued.

Notary fees are usually based on a percentage of the sums involved in the transaction, but may be negotiated in advance.

2.3. Establishing a business in Poland

2.3.1. Scope of business entities

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

The most important types are the limited liability company and the joint stock company. Recently, other types of companies - such as general and civil partnerships - have become available to foreign investors.

In addition, a foreign company may establish a presence by opening a representative office.
According to the Act on Commercial Partnerships and Companies dated 15 September 2000, and the Act on Freedom of Economic Activity dated 2 July 2004, business may be conducted in the following forms:

- Joint Stock Company
- Limited Liability Company
- Branch
- Representative office
- Limited Partnership
- Limited Joint Stock Partnership
- Registered Partnership
- Sole Trader
- Cooperative

Generally, pursuant to the Polish rules on freedom of economic activity, foreign persons as entrepreneurs in Poland can be divided into two groups. The first group includes foreign persons who may conduct economic activity in any commercial form available to Polish persons and on the same terms as Polish entrepreneurs.

This first group covers the following persons:

- foreign persons from the EU Member States,
- foreign persons from the Member States of the EFTA- parties to the Agreement on the European Economic Area (Iceland, Liechtenstein, Norway)
- citizens of states other than those referred to in items (i) and (ii) who have obtained a permit to settle in Poland, a tolerated stay permit, or refugee status in Poland or who enjoy temporary protection in Poland,
- foreign persons from other states than those referred to in items (i) and (ii) who may carry on economic activity on the same terms as Polish entrepreneurs on the basis of other international agreements.

The second group covers all foreign persons other than those described in the first group. The commercial forms of conducting economic activity in Poland available to persons of the second group are limited to capital companies, limited partnerships or limited joint-stock partnerships.

Apart from the forms of conducting economic activity available to Polish persons, a foreign person conducting economic activity abroad may create a branch or a representative office in the territory of Poland, based on the reciprocity rule. The rule of reciprocity does not apply to foreign entrepreneurs from the European Economic Area, however. Consequently, such foreign entrepreneurs may create a branch or a representative office without limitation connected with the rule of reciprocity.

The section on business entities will focus on the joint stock company and the limited liability company, as these are the two forms most commonly used as platforms for foreign businesses at present - a preference that is likely to continue.
2.3.2. Limited liability and joint stock companies

In the same way as countries such as Germany, Poland has traditionally – that is, since 1989 – had very few joint stock companies as compared with limited liability companies. 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 or unless 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, which is generally reasonably simple to operate from the point of view of corporate law. Operating a joint stock company is more complicated, and requires respecting more formalities – particularly since the recent changes to the law that came into effect on 1 January 2001.

The Act on Commercial Partnership and Companies (the Act), which came into force on 1 January 2001, substantially revised a number of corporate law issues that had previously been regulated by the amended Commercial Code from 1934. The changes also apply to existing companies, although a transition period has been allowed in some areas, such as increasing capital to the new minimum requirements of 50,000 zloty and 500,000 zloty for limited liability and joint stock companies, respectively.

With regard to the limited liability company, it has been emphasised that the liability of a shareholder is today indisputably limited to the share capital. For a number of years in the 1990s, the corporate veil could hypothetically be lifted in connection with a limited liability company’s public debt, as shareholders were potentially proportionally liable for uncovered public debt.

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

<table>
<thead>
<tr>
<th>Joint stock company S.A.</th>
<th>Limited liability company – Sp. z o.o.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minimum capital</td>
<td>500,000 zloty – of which only 25% must be paid in on incorporation.</td>
</tr>
<tr>
<td>Management bodies</td>
<td>Board of managers + supervisory board/audit commission.</td>
</tr>
<tr>
<td>Founders</td>
<td>1 or more.</td>
</tr>
</tbody>
</table>
### 2.3.2.2. Initial capital

The minimum amount of initial capital for a limited liability company is 50,000 zloty, with the nominal value of each share being no less than 50 zloty.

Limited liability companies registered prior to 1 January 2001 benefit from a three-year transition period, during which the capital must be increased to 25,000 zloty. Following that increase, the capital is to be further increased to at least 50,000 zloty within two years.

The minimum amount of initial capital for a joint stock company is 500,000 zloty. Previously, the minimum capital was 100,000 zloty. Existing joint stock companies have also been granted a period of transition in which to increase their capital to the present minimum requirement.

For both types of company, the capital may be contributed in cash or in kind.

### 2.3.3. Management bodies in a Polish company

In the Nordic countries there is a tradition for operating a two-tier management system in joint stock companies. The supervisory board sets the

---

<table>
<thead>
<tr>
<th>Audit</th>
<th>Compulsory annually.</th>
<th>Only every third year if (at least 2 out of 3) a) turnover is less than EUR 5 million, b) the balance sheet total is less than EUR 2.5 million, c) there are fewer than 50 employees.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scope</td>
<td>All businesses that may be incorporated.</td>
<td>All businesses that may be incorporated (banking and insurance not allowed). Listing on stock exchange not possible.</td>
</tr>
<tr>
<td>Liability of board of managers</td>
<td>Jointly and severally liable for obligations of the insolvent company, unless certain conditions are met, such as bankruptcy petition filed in due time.</td>
<td>Jointly and severally liable for obligations of the insolvent company, unless certain conditions are met, such as bankruptcy petition filed in due time.</td>
</tr>
</tbody>
</table>
long-term agenda of the company, makes the major decisions and supervises the daily management of the company. It is common for the supervisory board to represent the company in major transactions. The Nordic board of managers is usually appointed by the supervisory board and is required to report to it regularly.

The tradition in Poland is different, in that the power is centred on the board of managers – although, naturally, the highest authority is the general meeting, as it is in the Nordic countries. Polish joint stock companies are not even required to appoint a supervisory board as they may establish an audit committee instead.

When negotiating with Polish companies, it is important to remember this difference in the management concept, as a Polish CEO will assume that his foreign colleague enjoys the same position and the same power to make decisions - which may not be the case, as important decisions taken by the foreign CEO are often likely to be subject to subsequent approval by the supervisory board.
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 management board or an employee of the company.

2.3.3.2. Management Board

All members of the board may be appointed for a common term of office. In such cases, the term of office of any member of the board who is appointed during a given term of office of the management board expires at the same time as those of the remaining members. However, if such a provision is to apply, it must be clearly stated in the articles of association of the company.

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

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

2.3.3.3. The supervisory bodies

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

A limited liability company may elect to have a supervisory board, but this is only obligatory for limited liability companies with an initial capital of more than 500,000 zloty and with more than 25 shareholders.

The supervisory board is elected by the general meeting. This board must consist of at least three members. There are no requirements as regards the nationality or domicile of the members of the supervisory board. A member of the management board may not simultaneously be a member of the supervisory board.

2.3.3.4. Requirement for resolutions by management bodies

In cases in which the Act requires a resolution to be passed by the general meeting or the supervisory board to perform an act in law, then any such act in law performed without the resolution required is considered null and void. Such 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 from any of the management bodies of the company and such a resolution has not been adopted, the act in law is considered invalid, although it does not affect the liability of the members of the management board.

The Act states that any contract for acquisition of real estate or fixed assets to the benefit of the company - at a price in excess of one quarter of the initial capital, but no less than 50,000 zloty - if 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 of the company.

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 provisions to the contrary are included in the articles of association.

2.3.4. Agreements with members of company bodies

The consent of the general meeting is required for the company to conclude a credit, loan, suretyship agreement or any similar agreement with any member of the management board, supervisory board, audit commission, proxy or liquidator, or to the benefit of any of these persons. The same applies when any agreement corresponding to those listed above is to be concluded between the dependent company and persons with corresponding links with the dominant company.

2.3.5. Registration

As from this year, companies must be registered in the new National Court Register. Companies established before 1 January 2001 must be transferred to the new register within three years of this date. However, if any changes to data are made and require registration, then such changes are to be made directly in the new register. In practice, this means that the company registration as a whole will be transferred to the new register in connection with the changes to the data.

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

- legal form,
- REGON number,
- previous number in a court register or number in register of economic activity,
- name,
- seat and address,
- if an entity listed in the register of entrepreneurs possesses branches or subsidiaries – their seats and addresses must be listed as well,
• shareholders and the number and value of their shareholdings; if there are more than 50 shareholders in a company, only those with holdings in excess of 2% are to be registered,
• 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 manner 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 concerning the submission of annual financial statements, balance sheets, income statements and cash-flow statements along with the date of their submission,
• notice concerning the 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 concerning the approval of the financial statements and distribution of profit or coverage of loss,
• reports on activities if the accounting provisions require their submission to the registration court,
• shares owned in other companies if their purchase has required reporting to the Commission of Securities in accordance with the provisions of the Law on public dealings in securities and trusts,
• outstanding tax and customs payments for completion if the payments in question have not been made within 30 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 in question have not been made within 30 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 about temporary orders concerning claims pursued against the entity if the court examining the case has issued a temporary order for the registration of such information,
• information about motions submitted concerning the opening of settlement proceedings or motions concerning a declaration of bankruptcy, as well as information pertaining to the ending of these proceedings or revocation of settlement on the receiver,
• the appointment and revocation of a trustee
• information about opening and ending liquidation, establishment of receivership
• liquidator, trustee receiver,
• information concerning the dissolution or annulment of a company,
• mergers with other entities or any other transformation of an entity,
• number and date of notification to the Office for Protection of Competition and Consumers with regard to the absence of reservations as to the intention of merger or transformation of an entity, as required by provisions on countering monopolistic practices.

The information in the National Court Register is available to the public. As the list above illustrates, the information maintained by the registry is very extensive as compared to 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 to a Polish lawyer, for example. Such powers of attorney should also be legalised at a Polish consulate. Moreover, transcripts from the Companies Registrar are required if the founder is a company. A list of shareholders, the deed of association of the future company and a decision concerning the establishment of the Polish company are also to be submitted.

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 which is not yet registered in the new National Court Register. Such a company must be represented by the management board or by a proxy appointed via a resolution unanimously adopted by the shareholders.

The Act states that the liability for obligations of the company under registration must be borne jointly and severally by the company and the persons who acted in its name. This liability is similar to the liability of partners involved in a civil partnership. The situation of companies under registration is similar 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. However, if the company is to have only one shareholder, there is a new restriction which states that this sole shareholder may not be a limited liability company with only one shareholder. Should this situation arise, an option is to have two founders, one of whom will subsequently sell its share(s) to the other - which 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. Moreover, if the declaration of intent refers to action beyond the ordinary scope of business, this declaration must be in written form, with the signature certified by a notary.

The declaration of intent is deemed 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.

As regards dividends, preferential shares may not entitle the holder of such shares to dividends exceeding the dividend attributable to non-preferential shares by more than half. Shares entitling the holder to preferential dividends may not enjoy priority of satisfaction before the non-preferential shares.

2.3.9. Mergers, divisions and transformations of companies

Although the Act provides considerably more possibilities for mergers, divisions and transformations of companies, it is simultaneously stricter and entails more stringent requirements than the previous regulations. These requirements include the preparation by both companies of a detailed plan for the operation. Furthermore, on delivery 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. This procedure naturally increases the duration and cost of the operation.

2.3.10. Register of insolvent debtors

The National Court Register must also contain 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 are in arrears with payments of obligations confirmed by a judgment.
2.4. Entering into contracts and enforcing them

2.4.1. Contract law

The UN Convention on the International Sales of Goods applies between all western European countries and Poland in everyday international business transactions. Consequently, the majority of ordinary international business transactions with Poland are regulated by the fundamental legal principles well-known to businessmen from North and West Europe.

In many respects, general contract law is similar to civil code contract law - the German and the French principles, for example.

Some formalities may be connected to entering into contracts in Poland. For instance, certain transactions have to be notarised - particularly agreements concerning changes of title to land.

According to the Act on the protection of the Polish language, all agreements with Polish companies must be accompanied by a Polish version, and only this Polish version is binding between the parties and enforceable in the courts. The parties may, however, choose to state that the foreign language version may be the binding version. The Act is still relatively new, and court practice is sparse. It is possible that this provision of the Act may be abolished or substantially modified due to EU regulations.

It is often advisable to verify that persons claiming to represent a company are actually authorised to do so. This information can be obtained from the new 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 during 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.

Firstly, it is important to establish which legal system that is to regulate the commercial relationship, as this is relevant when interpreting the contractual relationship. However, in this respect it should be noted that choosing Polish law increasingly implies a choice of law similar to that applied within the European Union. This is a result not only of the harmonisation of Polish with EU law, but also of the fact that the individual EU countries and Poland are subject to the same international treaties - the United Nations Convention on the International Sale of Goods in particular.

Secondly, the parties to a potential legal dispute will usually consider the implications of entering into a legal dispute. In this respect, 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. This
will inevitably influence the perception of the party’s position during the settlement negotiations that usually take place prior to the initiation of legal proceedings. Accordingly, the choice of law and venue in the agreement often has a practical implication during subsequent negotiations in case of disagreements, although 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 the ordinary courts. The countries in the European Economic Area are bound by the Lugano Convention, the Brussels Convention, and the Brussels Regulation concerning venue and enforcement of foreign judgements. Accordingly, a Swedish high court judgment, for example, may be enforced in Poland or anywhere else within the Area. So far, Poland is the only one of the 10 new EU member states which on the basis of the Lugano Convention enjoys rights with regard to venue, recognition and enforcement of Danish judgements and vice versa. It may be noted that the other 14 “old” EU members are all subject to Brussels Regulation, not only with regard to Poland, but also with regard to the nine other new members. Denmark’s position is a result of the Danish reservations in respect of the Amsterdam and Nice treaties concerning judicial co-operation within the European Union.

As most of the larger trading partners of Northern Europe, 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 elect 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 one of the permanent arbitration institutes such as the ICC, the Swedish Chamber of Commerce, the Warsaw Chamber of Commerce or Copenhagen Arbitration. It is always advisable to review the statutes of the different courts of arbitration prior to making a final decision. It should be noted that Polish lawyers occasionally have reservations when it comes to choosing the Court of Arbitration of the Warsaw Chamber of Commerce, as they find that some foreign Courts of Arbitration may render more transparent awards.

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, and to establish where the arbitration is to take place, according to which procedural law, in which language and within which time frame.
2.5. Labour law

In the field of labour law, strong traces of the communist era are still in evidence, although the influence of EU law is increasingly making its presence felt. In particular, many foreign companies have found that in Poland, the special courts that deal with labour disputes strongly favour the employees in almost all cases.

In connection with labour law, it should also be mentioned that although labour in general is less expensive than in the EU, the social taxes (ZUS) are considerable. For additional information in this respect, please see chapter 3.

According to the Labour Act, the periods of notice laid down for contracts entered into for an unspecified period of time are:

<table>
<thead>
<tr>
<th>Length of employment</th>
<th>Mutual notice</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 6 months</td>
<td>2 weeks</td>
</tr>
<tr>
<td>From 6 months to 3 years</td>
<td>1 month</td>
</tr>
<tr>
<td>More than 3 years</td>
<td>3 months</td>
</tr>
</tbody>
</table>

In cases in which a material breach of the employment contract has been committed, the contract may be terminated without notice.

The parties may agree on a trial period, during which the period of notice is shorter.

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 Scandinavian countries and Germany, for example. However, when acquiring a company previously owned by the state, it is to be expected 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 practise, 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 how long the employee has been employed, on the basis of the following principles:
<table>
<thead>
<tr>
<th>Length of employment</th>
<th>Length of vacation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 10 years</td>
<td>20 days</td>
</tr>
<tr>
<td>At least 10 years</td>
<td>26 days</td>
</tr>
</tbody>
</table>

The length of employment with a previous employer is also to be included in the table above.

Employees may take up to three years’ unpaid leave for the purpose of raising their children. During this leave, the employee obtains limited public compensation. Maternity leave is 26 weeks maximum.

The Polish social security system “ZUS” is based on the principle that to benefit from it, the individual must have been employed for a certain period of time - depending on the benefit applied for. ZUS and the compulsory health insurance contributions amount to 44.5% of the gross salary, of which the employee pays 18.71% and the employer the remainder.

An employee must have worked for a certain period of time to qualify for ZUS and health insurance benefits.

2.6. Real estate

2.6.1. Property rights

The influence of the communist era is also to be found in the field of real estate in Poland. Otherwise, the legal principles that regulate real estate 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 estate transactions must be conducted through a notary.

The concept of “perpetual usufruct” in particular will be unfamiliar to EU investors in Poland. “Perpetual usufruct” is a long-term lease arrangement with the public owner of a building or a plot of land. The term usually runs for between 40 and 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 was possible formally to abolish personal property rights - without actually restricting the rights of an owner.
2.6.2. Acquisitions of real estate by foreigners in Poland

Although the EU harmonisation process is progressing rapidly, there are still some restrictions pertaining to the acquisition of real estate by foreigners. In general, foreigners or companies owned mainly by foreigners are required to apply for permission from the Ministry of the Interior to acquire real estate. The requirement has been relaxed, as foreign naturals 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 farmland, consent is granted provided the Ministry of Agriculture and the Ministry of Defence do not 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.

The regulation on acquisition of real estate by foreigners referring to citizens and entrepreneurs from the European Economic Area has been changed.

Since Polish accession to the EU, with some exceptions, real estate may be subject to acquisition by citizens of the Member States and entrepreneurs of the EEC without restrictions. Poland may, however, keep in force the rules laid down in the Act on Acquisition of Real Estate by Foreigners for twelve years from the date of accession regarding the acquisition of agricultural land and forests. However, self-employed farmers who have resided in Poland for at least three years (or, in particular cases, seven years) will not be subject to this restriction.

Other provisions concern the transition period of five years for acquisition of secondary residences in Poland. A secondary residence is deemed to be a property intended for housing or recreation and is not intended to serve as a permanent residence.

As a consequence, citizens or entrepreneurs from the EEC have to obtain a permit from the Ministry of Internal Affairs and Administration for acquisition of agricultural land and forests or secondary residences.

On 16 July 2003, the new regulations regarding farmland were introduced. They aim at improving the structure of farmland ownership, and countering the excessive concentration of agricultural estates while promoting family agricultural farms, as well as 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 for the acquisition of real estate in Poland.

The law introduces the following legal instruments with the aim of creating the farms’ land structure and countering excessive concentration of agricultural estates:
- pre-emption right vested in the lessee,
- pre-emption right vested in the Agricultural Real Estate Agency,
limiting the farms’ land size created as a result of purchasing of farms from the Reserves of State Treasury Agricultural Property,
- the option of repurchasing the real estate sold from the Reserves of State Treasury Agricultural Property.

The law privileges the agricultural estate purchasers if the purchase of an estate leads to the establishment of a family agricultural 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 will not concern 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 celebrated its 150-year anniversary in 2003.

The firm assists both Danish and foreign companies in all fields of business law including mergers & 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 in investing in Poland and the Baltics. Advice is continuously rendered with regard to co-operation and trade with Polish companies. Mazanti-Andersen, Korsø Jensen & Partnere has been retained by an increasing number of clients in the form of Polish companies that do business in the European Union.

The firm is also active in the Baltic region. In this respect, the firm has primarily provided assistance to foreign companies that do business in the three Baltic States, although it has also been retained by the Latvian Privatisation Agency as advisor on its mass privatisation programme.

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

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

In Poland, the firm works closely with the well-established and well-reputed business law firm Peter Nielsen & Partners in Warsaw. Peter Nielsen & Partners has kindly contributed to this section and has participated in reviewing the updates. For additional information reference is made to www.pnplaw.pl.
Address in Denmark of Mazanti-Andersen, Korse Jensen & Partnere:
St. Kongensgade 69
1264 Copenhagen K
Denmark.
Tel.: +45 33 14 35 36
Web site: www.mazanti.com

Contact person: Philip S. Thorsen, lawyer, pst@mazanti.dk