



# Doing Business in Poland

Edition 2023

# RJ & PARTNERS

# TABLE OF CONTENTS

|                                       |    |
|---------------------------------------|----|
| Basic information .....               | 3  |
| Polish Economy.....                   | 4  |
| Tax regime .....                      | 5  |
| Legal forms of business activity..... | 7  |
| Commercial agreements .....           | 11 |
| Concessions and permits.....          | 13 |
| Labour law .....                      | 15 |
| Real property .....                   | 17 |
| Public procurement.....               | 19 |
| Courts and administration.....        | 20 |
| How to invest in Poland .....         | 22 |



# BASIC INFORMATION

Republic of Poland has been a Member State of the European Union since 2004 and is located at the geographical heart of Europe.

Poland is also a member of:

- The North Atlantic Treaty Organisation (**NATO**),
- The World Trade Organisation (**WTO**),
- The Organisation for Economic Co-operation and Development (**OECD**)
- The **Schengen** Area.

According to the latest census the population of Poland amounts to around **37.7 million inhabitants**, living on a territory of around **312 thousand sq. m.** Warsaw is Poland's capital city (with around **1.8 million inhabitants**). Other large cities and important commercial centres include the following:

- Kraków (803 thousand inhabitants),
- Wrocław (673 thousand inhabitants),
- Łódź (672 thousand inhabitants),
- Poznań (541 thousand inhabitants),
- Gdańsk (486 thousand inhabitants),
- Katowice (280 thousand inhabitants).

Poland is a unitary state, based on the principle of the separation of powers into central and local government administration.

In administrative terms, Poland is divided into **16 voivodships (*województwo*)**, which constitute a lower level of governmental administration as well as the highest level of local authorities. Lower levels of local authorities are represented by districts (***powiat***) (there are **314 districts in total**

and **66 towns enjoying the rights of a district**) as well as communes (***gmina***) (**2477 communes**).

The Polish language is the official language of Poland. Even though an increasing number of Poles speak at least one foreign language, it may be still difficult to communicate in a language other than Polish in public offices across the country. In practice, the use of other languages is excluded in correspondence with authorities. Similarly, the participation of a foreigner in court proceedings usually requires participation of a sworn translator.

In the wake of the Covid-19 outbreak in Poland, a number of regulations were introduced in areas such as labour law or court proceedings to prevent the spread of the outbreak. These regulations have been amended several times and although a large part of them are no longer valid, to some extent (e.g. concerning remote court hearings), they are still in force.

|   |                                      |
|---|--------------------------------------|
| The Polish zloty (PLN) is the legal tender in Poland          | EUR 1 = PLN 4.48<br>USD 1 = PLN 4,16 |
| GDP per capita (2023) (nominally according to the IMF)        | USD 19,91 thousand                   |
| GDP per capita (2023) (purchasing power according to the IMF) | USD 45,34 thousand                   |
| Unemployment rate (03/2023)                                   | 5.4%                                 |
| GDP growth (2022)   | 4.9%                                 |
| Inflation (2023)  | 14,7%                                |
| Minimum gross salary (2023)                                   | PLN 3,490 (EUR 779,1)                |
| Average gross salary (2023)                                   | PLN 7,430 (EUR 1,658)                |
| Public debt 2023  | 50,7% PKB                            |

\*The table presents average exchange rates announced the National Bank of Poland on 5 May 2023

# POLISH ECONOMY

The Polish economy is very diversified. The automotive industry, food, energy, metallurgical, electrical machinery, textile as well as clothing industries play a vital role in the economy of the country.

The economy is also significantly affected by mining and processing of raw mineral materials. The share of agriculture in Polish GDP does not exceed 3%, though the proportion of individuals employed in agriculture is much higher.

Poland's main economic partners are other EU members, especially Germany, Czech Republic and France. Internal demand plays an important part in economic growth, reducing the Polish economy's vulnerability to risks resulting from perturbations in other markets.

For many years, Poland has been one of the most popular places attracting foreign investors. Nowadays, Poland attracts more and more expats and immigrants seeking employment in the country, as the unemployment is record low. Polish economic growth benefits a lot from the inflow of migrants, especially migrants from Ukraine who are fleeing the ongoing war. Moreover, Poland is also an attractive destination for foreign students.

Poland is currently struggling with inflation at a high level (14,7 % in April 2023). The weakening currency is affecting the increase in the minimum wage. Due to inflation, the Polish central bank (NBP) has raised interest rates several times, resulting in a significant increase in the price of credit. However, economists predict that both inflation and interest rates will decrease in the coming months.

A response to the issues hampering Polish economy is National Recovery Plan. It is using EU funds amounting to nearly 35.7 billion Euro. Most of those funds is directed to incentivise the energy transition - around 14.3 billion Euro is dedicated to green energy generation and reducing energy consumption. Other notable objective of the plan is digital transformation of Poland. It is expected that funds under the National Recovery Plan will be disbursed to Poland in the coming months, which will contribute to further economic development, however for the time being its payment is still suspended.

Since 1992, the Polish economy has recorded continuous growth at the level of 1% - 7% per annum at various times (on average, it amounted to around 4% over that period), which places Poland in the position of being one of the fastest developing European countries.



# TAX REGIME

## Income taxes

| PIT                        |     |
|----------------------------|-----|
| ▪ income up to PLN 120,000 | 12% |
| ▪ income above PLN 120,000 | 32% |
| CIT                        |     |
| ▪ flat rate                | 19% |
| ▪ for small tax payers     | 9%  |

Poland offers an interesting tax solution for individuals running a business (sole proprietorship, without the obligation to establish a company). They may choose one of forms of taxation - a general form of taxation (as above) or a flat tax (*podatek liniowy*) of 19%.

Poland has double taxation agreements with nearly all of the major World economies. Considering the above, investors intending to conduct business activities in Poland should check beforehand the rules of taxation applicable to the income they will generate in Poland.

In principle, in order to calculate the income constituting the basis for taxation, the revenues and tax deductible expenses from all sources should be combined. Similarly, tax losses from one source decrease the profits from other activities. It should be noted that in the framework of the tax consolidation system, i.e. restricting the use of tax optimisation by businesses, as an exception to the above rule, some types of revenues and costs are counted as separate income and cannot be combined with others.

Individuals below 26 years old are in general exempt from the personal income tax and social security contributions.

## Value-added tax (VAT)

| VAT             |            |
|-----------------|------------|
| ▪ basic rate    | 23%        |
| ▪ reduced rates | 8%, 5%, 0% |

VAT is subject to detailed regulations under EU law, and the solutions adopted in Poland fall within the limits permitted under these regulations.

When planning investments in Poland, it is worth noting that the purchase of shares in limited liability or joint-stock companies is not subject to VAT. Likewise, the acquisition of an enterprise, or of an organised part thereof, is not subject to VAT.

The Polish tax system is rather complicated, but **in principle it does not differ from the solutions applied in other EU countries**. In case of transactions entailing tax risks, taxpayers can ask the tax authorities to issue a tax interpretation, the provisions of which will be binding.

The taxation of real properties is more complicated. In principle, the sale of real property is subject to VAT, with the reservation that, in some circumstances, real property trading may be exempt from VAT. When contemplating a transaction on the real property market, investors should carefully consider whether it would be more favourable to conclude such a transaction with VAT, or whether it would be more advantageous to benefit from a VAT exemption.

It is worth mentioning that the anti-inflation shield was introduced in the aftermath of the pandemic, but its relevance is now diminishing and most of the measures implemented through it expired at the end of 2022. Until the end of 2023, there is a zero VAT rate on certain product categories, which is expected to curb inflation.

The zero VAT rate also applies to the export of goods within the EU internal market, likewise services provided to a contractor from an EU country will not be taxed in Poland.

### Tax on civil law transactions (PCC)

The tax on civil law transactions (PCC) is charged on a one-off basis in case of conclusion of certain types of agreements. PCC is not charged on the sale of real property subject to VAT.

| Example rates of PCC      |                                |
|---------------------------|--------------------------------|
| share purchase            | 1% of the price                |
| sale of real property     | 2% of the price                |
| loans                     | 0,5% of the loan               |
| increase of share capital | 0.5% of the amount of increase |

### Real property tax

Real property tax is levied on land, buildings and structures. The specific tax rates are determined locally by the borough authorities.

The tax on land and buildings is calculated on the basis of their area, and in the case of structures on the basis of their value.

### Excise tax

In EU countries, excise duty on certain products is harmonised, which means common rules for the production, movement and storage of excise goods. However, the rates of excise duty on individual goods are determined by individual member states. For most products, excise duty rates in Poland are below the EU average.

Excise duty applies to the following products: certain cars, tobacco products, alcohol, petrol and electricity.



# LEGAL FORMS OF BUSINESS ACTIVITY

## Limited liability company

The most popular form of performing business activity in Poland is a **limited liability company**. Among the most significant advantages of limited liability companies are the low cost of operating, the high degree of freedom in determining the scope and operation of the company, and the limitation of the shareholders' risk to only the contributions previously made to the share capital.

### Features of a limited liability company

- limited formalities
- large freedom in shaping the provisions of the articles of association
- low mandatory share capital (PLN 5,000, around EUR 1,113)
- the possibility of establishing a sole-shareholder company

Only two company bodies are compulsory in the case of a limited liability company: the management board and the shareholders' meeting. The supervisory board is, in principle, a non-compulsory body (it must be appointed only if the company has at least twenty-five shareholders, and its share capital exceeds PLN 500,000).

A sole-shareholder limited liability company cannot be established by another sole-shareholder company.



## A joint-stock company

is a less frequently chosen form of conducting business activities in Poland. This type of company will work best in larger-scale operations when there is a need for more partners to undertake the business. A joint-stock company is also a right choice for entities planning to go on the stock market.

### Features of a joint-stock company

- many formalities in functioning (such as the required form of a notarial deed for minutes of the general meetings of shareholders)
- limited freedom in shaping the provisions of the company's statute
- high mandatory share capital (PLN 100,000, around EUR 22,265)

The compulsory corporate bodies of a joint-stock company include the following: (i) management board, (ii) supervisory board and (iii) general meeting of shareholders.

### Both types of companies have some common features:

- The management board is always the managing body. It can be comprised of one or more members. It is worth noting that, under Polish law, the president of the management board does not have any specific competencies. If his special position in the company is not indicated in the company's articles of association or statute, his primacy over other management board members is only of a titular value.
- The management board does not perform supervisory functions within the company (as it happens in certain other legal systems, where the administrative board or the board of directors performs both management and supervisory functions). If no supervisory board has been appointed in the company (which frequently happens in limited liability companies), the supervisory functions are performed by the shareholders' meeting, and individually by shareholders.
- In the case of both companies, it is possible to freely regulate the manner of appointing the members of the management and supervisory boards. It is even possible to appoint members of these bodies on the basis of unilateral declarations by one of the shareholders.
- Polish law provides for considerable freedom in determining the majority required to adopt resolutions by corporate bodies.
- On the other hand, it sets out restrictions protecting minority shareholders. In particular, it is not possible to introduce any changes to the company's articles of association or statutes that would limit the rights of shareholders or increase the scope of their obligations, without the consent of the parties concerned.
- In both types of company it is possible to differentiate shares in terms of the voting rights assigned to them, as well as the rights to dividends, rights to a share in the liquidated assets of the company, or as regards the appointment of management or supervisory board members.
- Shareholders' agreements are widely used for both types of company, as a way of regulating the manner of performing shareholders' rights.
- Shareholders are not personally liable for the company's obligations in either type of company.
- In both types of companies, in the case of the company's insolvency, the management board members may, in certain specific circumstances, incur personal liability for the company's obligations (including for tax liabilities). This does not apply to situations where the bankruptcy petition was properly filed by the required deadline.



## Simple Joint – Stock Company

The simple joint stock company has recently been regulated by the Commercial Companies Code. The regulations for the simple public limited company came into force on 1 March 2020. It is often referred to as a 'start-up company' due to the reduction of formalities.

### Features of a simple joint-stock company

- Low mandatory share capital (PLN 1, approx. EUR 0,22)
- Simplifications in conclusion of company agreement
- No obligation to establish a Supervisory Board
- Possibility of management the company by electronic means of communication

The advantage of a Simple Joint Stock Company is its simple incorporation procedure. It can be formed within 24 hours on the basis of an online form specified by the Ministry of Justice or traditionally in the form of a notarial deed. The management of a Simple Joint Stock Company is able to perform through the electronics means of direct distance communication such actions as conducting meeting of the board of directors and the supervisory board or participation of shareholders in the general meeting, broadcasted in real time.

An additional advantage of the simple joint-stock company is that, in practice, there are no financial barriers to starting up this way. It should also be mentioned that the share capital model used in a simple joint stock company, which makes distributions to shareholders dependent on the company's current financial

situation, is intended to further encourage investment in the company.

The main disadvantage of Simple Joint Stock Company is that its shares may not be publicly traded.

## Partnerships

The following partnerships are popular forms of performing business activities in Poland, though they are rarely used by foreign investors:

- registered partnership,
- limited partnership,
- limited joint-stock partnership.

Their shared feature is that, in principle, they do not have a separate legal personality (though this is a complex issue, as they can, for instance, conclude contracts).

Another common feature is that, in principle, their partners are personally liable for the partnership's obligations if it fails to satisfy its creditors (known as subsidiary liability).

A third feature is that, in principle, partnerships do not have corporate bodies. Their partners perform the management functions and are liable for the partnership's obligations.

There are certain exceptions to the above rules, specified in the applicable regulations, such as:

- limited joint-stock partnerships have a general meeting of shareholders and appoint a supervisory board,
- limited partnerships and limited joint-stock partnerships have two categories of partners: partners that are not liable for the partnership's obligations and that do not take part in management activities, and partners who are liable for its obligations without limit and are in charge of its management.

## Business activities performed by individuals

A widely used form of doing business in Poland is known as individual business activity (sole proprietorship), which is performed directly by an individual, without creating a separate legal structure, only on the basis of a relevant notification.

The essence of this form of performing business activities is that there is no difference between the property used to do business and personal property. It does not protect the personal property against creditors of the sole proprietor.

Even though this form is rarely used by foreign investors, many businesses in Poland (even those reaching medium size) are conducted in that manner. In the long-term, such businesses are usually transformed into companies or partnerships.

## Branch

A branch is a very convenient form of conducting business activities by foreign investors in Poland. This structure is not legally separate from the entity that created the branch.

In other words, all the liabilities of the branch constitute also the liabilities of the entity that created it.

Although a branch is not a separate entity, it must keep separate accounting records in Poland. It is also subject to Polish taxation as regards income generated in Poland, as well as to Polish VAT. It should be noted that a branch cannot perform any activities exceeding the scope of business activities carried out by the entity that created it.

The branch does not have any share capital.

## Representative office

A representative office is a simplified form of entering the Polish market by foreign investors. As in the case of a branch, the representative office does not have separate legal personality or share capital.

Its creation is the most simplified of all the forms of entering the Polish market (the creation of a representative office requires only entry into a register kept by the Minister of the Economy), however, the scope of its activities is the narrowest. Representative offices cannot perform any gainful activity. The scope of their activities can include only representation and advertising for the entity that created it.



# COMMERCIAL AGREEMENTS

## Freedom of contract

Even though all commercial agreements in Poland are concluded on the basis of the Civil Code which came into force in the nineteen-sixties, modern forms of contracts were developed in trading, and the binding regulations are adjusted on a regular basis to ensure that the standards of international trade are applicable in Poland.

The general principle of freedom of contract is binding in Poland, permitting parties to freely formulate the content of contracts, ensuring that their clauses do not violate the law, and that they do not contradict the nature of the affected legal relationship or the rules of social conduct.

## The manner of concluding contracts

Polish law provides for elaborate regulations concerning the manner of concluding contracts by the parties. This issue currently has increased importance due to the rapidly evolving forms of communication, which leads to a situation whereby many agreements (including commercial contracts) are concluded without physical presence of the parties.

One of the typical manners of concluding agreements is sending an offer to a business partner and the subsequent acceptance of that offer by the business partner. It should be noted that, in specific circumstances, in particular, in relations with regular business partners, the lack of any reply may

sometimes be deemed as tacit acceptance of the offer.

Under Polish law, only certain agreements must be in writing or a different specific form (such as a notarial deed or with signatures certified by a notary).

Due to the increasing computerisation of business transactions, the conclusion of contracts in a very informal manner is currently an important issue, for instance, by way of exchanging email correspondence, or even text messages.

Most contracts can be concluded in any form, even orally. **Obviously, for evidentiary reasons, it is recommended that contracts are concluded in writing.**

Prudence is recommended when formulating any electronic messages (emails, text messages, popular instant messengers, etc.), as their content may be used to demonstrate that an agreement was concluded between the parties.

## Liability

The liability of the parties for a failure to perform an agreement is an essential issue when discussing commercial contracts in Poland. Polish law does not distinguish between agreements of results and duty of care agreements.

In general, Polish contract law is based on the principle that each of the parties, when performing the agreement, is obliged to **act with due diligence**. The criterion for evaluating whether the

requirement of due diligence was met should be based on high standards, in line with the professional character of the activities carried out by commercial partners. If the entity demonstrates that it failed to perform its obligations but acted with due diligence, it will not be liable for the loss suffered by its business partner.

The parties to an agreement can, in principle, tighten or alleviate the rules of liability for a failure to perform an agreement. They can replace the general principle of liability with what is known as the warranty liability.

## Effects of a failure to perform a contract

In the case of the liability of a business partner for a failure to perform a contract, the other party may demand that the contract be performed, or that the damage resulting therefrom be redressed.

Compensation may be pursued only if damage was caused, and Polish courts require that the damage be precisely calculated by the party to the agreement. In the case of a breach of certain agreements, this may be very difficult.

In the case of a delay in payment, Polish law provides for statutory interest due to the creditor.

Under Polish law, the parties to an agreement cannot effectively exclude liability for intentional failure to perform an agreement. If they want one of the parties to be liable, or to essentially **guarantee** the performance of its obligations, it is necessary to introduce the relevant provisions into the agreement.

It is recommended that, in the case of contracts whose breach results in a damage that cannot be easily calculated or demonstrated, the parties should introduce provisions concerning contractual penalties. In that way, the compensation is fixed, and the amount of the damage suffered does not have to be demonstrated.



# CONCESSIONS AND PERMITS

## Freedom of performing business activities

The principle of the freedom of performing business activities, under which performing business activities does not require any permits, is applicable in Poland. However, there are many exceptions from this rule, and in practice it may be necessary to obtain:

- a concession to perform specific types of activities,
- a permit to perform business activities,
- specific personal qualifications to perform certain activities.

## Concessions

Certain types of business activities require a concession. This requirement applies to specific sectors of the economy where the state reserves close control.

In the Polish legal system, a concession is not an agreement (as it is in certain countries), but rather a kind of administrative decision. In principle, concessions are issued by the relevant ministers (with a few exceptions).

Administrative bodies can limit the number of concessions issued. If the concession is applied for by a larger number of companies than the number of concessions that may be issued, the actual issue of the concession may be preceded by a tender.

Example activities requiring a concession:

- exploration, appraisal and production of minerals
- military activity, production and trading of weapons and explosives
- production, processing, warehousing and handling of fuels
- protection of people and property
- distribution of radio and television programmes
- air transportation

## Permits

The regulations requiring a permit to perform business activities are provided for in many legal acts, and therefore, when considering business activities in Poland, it is advisable to verify what specific requirements should be met. In principle, permits are issued to any entity that meets the conditions set out in the relevant regulations.

It should be noted that, if an entrepreneur from the European Union intends to perform business activities in Poland without creating a separate company or partnership for this purpose (for instance, by creating a branch in Poland), it may apply for certain documents obtained abroad to be recognised by the Polish authorities (certificates, attestations), confirming that the conditions for commencing and performing activities have been met.

Example activities requiring a permit:

- waste management
- banking activities
- telecommunications
- insurance activities
- activities of insurance agents and brokers
- sale of alcoholic beverages
- running a pharmacy

### Personal qualifications

When planning the performance of business activities in Poland, there are a number of professions that are regulated, and a personal licence is required to carry out such professions. This issue is essential to remember when recruiting employees.

As regards citizens of other EU Members States, there is a system of recognising qualifications obtained in other legal systems.

Depending on the situation, the recognition of qualifications permitting the performance of a specific profession in Poland may be conditional upon:

- successfully passing an ability test, and/or
- completing an adaptation traineeship.

Example activities requiring a specific professional qualifications:

- medical professions
- brokers
- sworn translators
- architects
- geologists, land surveyors
- operators and maintenance professionals of mechanical equipment
- professions connected with appraisals (various specialisations)



# LABOUR LAW

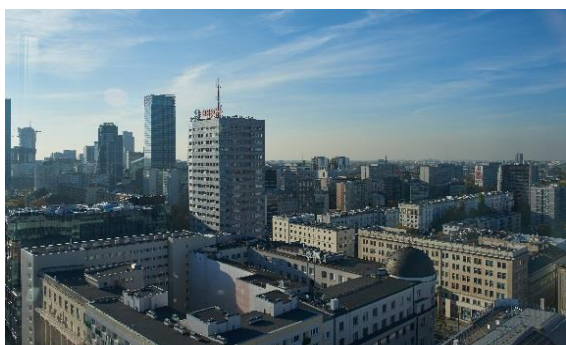
## General principles

As in case of the majority of other developed countries, Polish labour law regulates the mutual rights of employers and employees in a detailed manner. These rights result from individual employment contracts and from company labour law acts (work rules, remuneration rules, collective agreements, etc.).

The common use of other forms of employment not subject to labour law is an important issue in Poland. These include mandate contracts, specific task contracts and contracts for the provision of services with sole proprietors.

Polish Labour law is based on the following principles:

- prohibition of discrimination,
- equal treatment,
- privileging the employee (expressed in the principle that the provisions of the employment contract cannot be less favourable than the applicable general legal provisions and the company's labour regulations).



## Types of employment contracts

In the Polish legal system, three main kinds of employment contract can be distinguished:

- concluded for an indefinite period,
- concluded for a definite period,
- concluded for a probationary period.

An employment contract for an indefinite period provides the employee with the widest scope of rights and protection.

Polish law aims to limit the cases of concluding many subsequent employment contracts for a definite period with the same employee. In the case of a violation of these restrictions, a contract for a definite period is transformed by virtue of law into an indefinite employment contract.

## Amendments to the Labour Code

In 2023, an amendment to the Labour Code came into force in connection with the implementation of two EU directives - Work Life Balance and the Directive on Informing and Consulting Employees.

The amendment provided for the possibility to work remotely wholly or partly at a location designated by the employee and agreed with the employer in each case.

Furthermore the amendment introduced occasional remote working. According to the new regulations, an employee has the right to perform occasional remote work for no more than 24 days per calendar year. The employee is entitled to this right regardless of working hours and type of contract.

In addition, certain groups of employees (e.g. those caring for people with disabilities) have gained the right to switch entirely to remote working.

## Termination of an employment contract

Every employment contract can be terminated by notice. The notice period varies depending on the type of contract and the employee's length of service with the company. It ranges from three days to three months.

According to new legal solutions aimed at removing inequalities in labour law between fixed-term and permanent employment contracts, both in the case of termination of an employment contract concluded for an indefinite or definite period of time, a reason justifying the termination must be indicated. If the justification indicates reasons attributable to the employer, the employee is entitled to additional severance pay.

The employer can terminate an employment contract without observing the notice period (with immediate effect) in the case of a prolonged absence of an employee (even if it is excused) or in the case of a flagrant violation of the employee's obligations.

There is a number of restrictions on terminating employment contracts under Polish law. Examples of employees protected against termination of their employment contracts:

- pregnant women
- employees with less than four years before reaching retirement age
- employees during an excused absence
- management board members of trade unions
- social labour inspectors

## Systems of work

In principle, the working time amounts to eight hours per day and forty hours per week in a five-day week.

Polish law attempts to provide for a flexible working time and manner of performing work. Employers may therefore introduce (under certain conditions) different working time systems, depending on their needs, such as:

- remote working,
- interrupted working time,
- flexible working time,
- task-based working time,
- weekend work system,
- individually determined work system.

## Trade unions

In Poland, the level of unionisation is relatively low. In the private sector, trade unions are less frequently established than in enterprises controlled by the state.

The role of trade unions and their impact on the functioning of enterprises depends on the situation of the specific entity.

In certain companies, this impact is significant, while in others it is marginal.





# REAL PROPERTY

## General principles

The Polish real property market is developing rapidly, and therefore, investors enjoy a wide range of legal forms enabling them to use real properties. The most popular legal titles to real property include ownership, perpetual usufruct (being a characteristic institution of Polish law) and the rights resulting from a relationship of obligations: lease, tenancy or granting for use (for no consideration).

## Ownership

The transfer of the ownership right to real property (as well as the obligation to transfer the ownership of the real property) must be in the form of a notarial deed. A failure to meet these requirements in terms of form results in the absolute invalidity of the contract.

## Perpetual usufruct

Perpetual usufruct is a legal title to real property that is typical of Polish law.

In practical terms, the right of perpetual usufruct is similar to the ownership right. It should be noted, however, that there are certain elements distinguishing this legal right from full ownership.

The contract or the decision establishing the right of perpetual usufruct may impose specific obligations or conditions that, if not met, may result in the early revocation of the right (such as the obligation to construct specific facilities). The establishment and transfer of the perpetual usufruct right must be in the form of a notarial deed.

### Perpetual usufruct – specific features

- perpetual usufruct may only be established on land belonging to the State Treasury or to local authorities
- perpetual usufruct is limited in time, in principle it is established for a period of ninety-nine years
- the perpetual usufructuary pays the owner (the State Treasury or local authorities) a fee determined as a percentage rate of the value of the real property
- perpetual usufruct is established and transferred at the time of making an entry to the land and mortgage register

## Legal titles resulting from contracts

The most common legal titles to real properties resulting from contract relationships include lease (*najem*) and tenancy (*dzierżawa*), where these two legal relationships are quite similar from a practical point of view and the main difference consists in the right to derive profits from the object of the agreement.

In reality, lease is concluded for shorter periods (the agreement can be concluded for a definite period of up to ten years, and where both the lessor and the lessee are business entities then for up to thirty years, or for an indefinite period). In principle, if the provisions of the agreement do not provide otherwise, the lessee may sublease the object of lease to a third party.

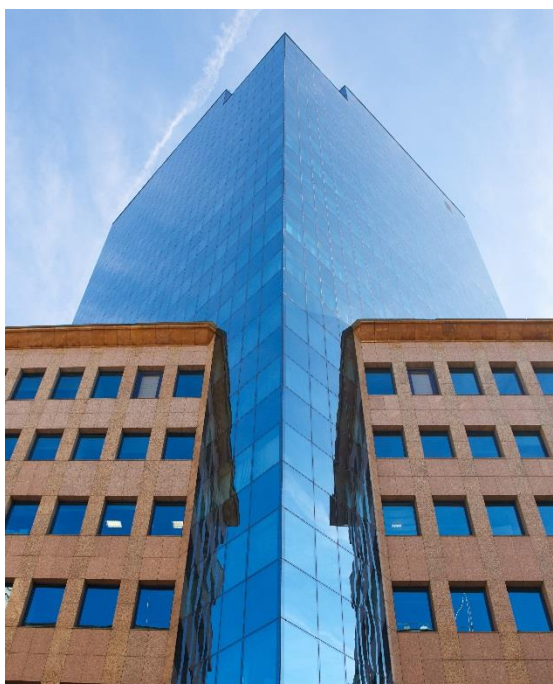
The object of tenancy may consist of real properties that generate proceeds due to their nature or intended purpose, such as

agricultural land. A tenancy agreement may be concluded for a much longer definite period (of up to thirty years) or for an indefinite period. Unlike with lease agreements, the tenant cannot transfer the object in question into sub-tenancy without the consent of the landlord.

### Verification of the legal status of the real property

It is possible to verify the legal status of a real property by consulting the land and mortgage register (available on the internet page [www.ekw.ms.gov.pl](http://www.ekw.ms.gov.pl)). Land and mortgage registers contain information on the owner, perpetual usufructuary, specific rights connected with a real property, obligations (for instance, easements) as well as other encumbrances such as mortgages.

Certain detailed data concerning the legal status of real properties are also available in the land register kept by local authorities. It is possible to check there, among others, the borders of real properties or their intended purpose in the local zoning plan.



### Acquisition of real properties by foreigners

The acquisition of real property by entities from the European Union and the European Economic Area does not require any specific permits.

This is not the case when real property is purchased by non-EU entities – then the acquisition requires the consent of the Minister of the Interior and Administration in order to be binding. This also applies to situations in which an investor from outside of the European Economic Area intends to purchase shares in a company or partnership being the owner or perpetual usufructuary of real property. There are very few exceptions to the above rule.

### Trading in agricultural property

Agricultural property larger than 0.3 ha can only be acquired by a person qualified as an individual farmer. Anyone who does not meet this requirement must obtain a special permit of the President of the National Agricultural Support Centre (KOWR).

Trading in shares in companies that own agricultural property is also subject to special requirements. Where shares in such companies are for sale, the KOWR has a right of pre-emption.

### Public burdens connected with real property

The main public burden connected with holding real property is real property tax. In addition, the entities holding land under the right of perpetual usufruct pay the relevant fee to the owner. A discussion is underway concerning the introduction of a new tax on commercial real property, which would be charged on the value of the real property.

# PUBLIC PROCUREMENT

Public procurement contracts are regulated in Poland in accordance with EU regulations, which do not leave much space to national authorities as regards the adoption of solutions different from community regulations.

## Formalised procedures

It should be noted that the legal provisions on public procurement in Poland are very formalised. Even though regulations aimed at making the procedure less formalised have been in place for many years, success in that regard has only been partially achieved. Numerous facilitations have already been implemented, and therefore, submitting offers is much easier than before. Nevertheless, a relatively minor error on the part of the bidder may still result in its offer being rejected. For this reason, it is recommended to complete and draw up tender documentation with the utmost prudence and accuracy.

## Acceleration of proceedings – limiting appeals

The award of public procurement contracts has been accelerated, among others, by limiting the possibility of submitting appeals. Currently, a dissatisfied contractor may submit an appeal against the ordering party to the National Board of Appeals (KIO). Even though in the case of an unfavourable decision of the Board, the contractor still has the right to submit a complaint to the regional court, the proceedings before the court do not result

in suspending the conclusion of the contract for the award of public procurement.

Another method of limiting the number of unjustified complaints against the rulings of the Board (KIO) is determining high fees and discouraging contractors from questioning them. The above regulations result in the fact that very few contractors file a complaint to the court against unfavourable rulings of the Board (KIO).

## Limited possibilities of renegotiation of the contracts

An important issue in terms of the Polish public procurement law is the limited possibility of introducing changes to the contract concluded as a result of public procurement.

Contractors submitting an offer must therefore remember that if their offer is selected by the ordering party, they will not be able to effectively apply for its renegotiation, even in the case of a material change of the market environment.

This is because, according to Polish law, a change in the substance of the contract can only be made in the cases strictly provided for by law or the contract itself. Hence, it is important to include clauses like indexation clause in the contract.



# COURTS AND ADMINISTRATION

## Civil court proceedings

The common courts of law in Poland are divided into three instances:

- district courts,
- regional courts,
- courts of appeal.

Court cases are resolved in two instances, whereby, depending on the type of the case and the value of the dispute, the first instance court will either be the district or the regional court.

A cassation appeal can be filed with the Supreme Court against some final and enforceable judgements issued by these courts.

According to independent research on vulnerability to corruption, the Polish system of common courts of law meets the same standards adopted in other Western European countries, such as France or Germany, and corruption in courts is considered not a problem in Poland.

For many years, the length of court proceedings has been a major problem in Poland. However, official statistics show that their duration has been significantly reduced (the latest figures show that court proceedings in the first instance, as of 2022, take an average of 4.2 months), which will certainly be reduced even further in the years to come due to the increasing computerisation in the judiciary.

As a result of the Covid-19 pandemic, a significant part of civil cases now take place remotely. Efforts are currently underway to make this permanent.

In addition, in order to shorten the time of court proceedings, a number of obligations were imposed on the parties in the Polish judicial system, including the obligation to present specific statements and evidence in the proceedings within set deadlines, without the possibility to file them later.

This solution is particularly important for those running a business. There are commercial divisions in the courts, which generally handle cases much faster than other divisions.

As a result, professional legal advice from a Polish lawyer is vital in court proceedings to ensure that the dispute is not lost for purely formal reasons. This is particularly relevant when there is a large amount of documentation involved in the proceedings, as is often the case with foreign investors.

One of the ways in which foreign investors may be able to overcome the excessive formalism and prolixity of the Polish judicial system is to use arbitration courts. There are a number of renowned arbitration courts in Poland.

The arbitration court at the National Chamber of Commerce, whose rules of arbitration are based on the rules binding at the International Chamber of Commerce in Paris (ICC), is the most prestigious and the longest operating institution of that kind in Poland. The Managing Partner of our Law Firm, Robert Jędrzejczyk, is an arbitrator at that court.

## Administrative proceedings

Most proceedings before administrative authorities are carried out according to a unified scheme, and potential differences result from various aspects of the subject of the proceedings.

The proceedings take place in the form of exchange of correspondence. Foreign investors may sometimes be surprised by the reluctance of Polish clerks to get in touch with them directly. In reality, many offices introduce restrictions hindering or preventing the parties to the proceedings from contacting the clerks directly.

Administrative proceedings are aimed at observing the rights and interests of the parties. Each administrative decision must contain a precise justification. Any violation of the rights of the parties may result in the revocation of the decision by an appeals board, or to the decision being invalid.

In principle, proceedings are always conducted on two instances. However, the structure of the Polish administrative system is rather complicated, and therefore, the body of first instance may either be a local authority or governmental administration.

In relatively few cases, the minister or a different body of central administration is the first instance body (in such cases, it is possible to submit an application for the case to be re-examined instead of an appeal).

A characteristic feature of the proceedings is that it is relatively easy to file an appeal against a decision. The applicant does not have to justify the appeal, the mere fact that it challenges the issued decision is sufficient. This may sometimes be surprising to foreign investors, as the parties participating in proceedings initiated at their request (for instance, the owners of neighbouring real properties) may easily question the accuracy of the decisions issued by first instance authorities.

Decisions issued in the framework of proceedings carried out at two instances are final and enforceable. However, this does not prevent the parties from submitting further complaints – to the Provincial Administrative Court and to the Supreme Administrative Court.

Given the above possibilities, even though administrative bodies usually settle cases efficiently, due to a large number of potential appeals, the whole case may last quite a long time.



# HOW TO INVEST IN POLAND?

From the many years of professional experience gained by lawyers at the RJ & Partners law firm, the majority of foreign investors can be divided into two main groups:

- businesses interested in commencing business activities in Poland “from scratch”,
- businesses intending to enter the Polish market by acquiring an existing company or partnership.

## Commencing new business

The majority of investors commence their activities by creating a new legal structure, usually in the form of a limited liability company. This legal form is considered the least formalised, and in terms of company image it matches well the range and expected scope of the new business.

Even though the construction of a limited liability company in Poland allows for single-shareholder companies, in order to make their entry into the Polish market more effective, foreign investors often decide to invite a local partner to their new company.

The regulations concerning limited liability companies are flexible, and it is relatively easy to adjust the provisions of the company’s articles of association to a range of situations, depending on the amount of the share of the Polish partner and the scope of its competencies.

Another frequent form of entering the Polish market is commencing co-operation with a Polish entity active on this market.

In this case, such co-operation may take the following forms:

- distribution agreement,
- agency agreement, under which the local partner is entrusted with intermediary services such as concluding agreements on behalf of the foreign investor,
- franchise agreement.

## Acquisition of an existing enterprise

The acquisition of an existing enterprise may be an alternative to incorporating one from scratch.

The Polish standards of M&A transactions are fully adapted to international standards. Agreements for the acquisition of enterprises do not differ much from similar agreements concluded in other countries.

Contracts can be divided into two basic types:

- contracts concerning a company’s shares, known as share deals,
- contracts concerning a company’s assets, known as asset deals.

Under Polish law, a share deal significantly differs from an asset deal. The subject of the latter includes an enterprise (*przedsiębiorstwo*), within the meaning of Polish law. Considering the specific definition of an enterprise, an asset deal must contain separate provisions concerning the liability of the purchaser for the obligations connected with running the acquired enterprise.

As regards other provisions, both contracts are similar. When conducting negotiations with Polish business partners, investors will see that similar areas are negotiated as on the international scene.

Contracts can be concluded in the form of a single transaction (the ownership is transferred on the same day) or in the form of a preliminary or conditional agreement. In the two last cases, the transfer of the ownership of shares (or the enterprise) depends on whether additional conditions and specific formalities are met.

Sometimes the performance of the transaction depends on meeting additional requirements (for instance, obtaining the consent of the President of the Office of Competition and Consumer Protection, the non-performance of the right of first refusal by the KOWR or obtaining the consent of the Minister of the Interior and Administration).

#### Typical elements of contracts:

- determining the price and adjustment mechanisms after the conclusion of the transaction (possibly also conditions of paying an additional price)
- conditions that must be met to ensure that the legal title to shares or the company or partnership is transferred
- representations and warranties of the seller concerning the factual and legal circumstances of the object of sale
- the mechanism of the buyer taking over control of the object of sale
- determination of the rules of liability and pursuing claims against the seller
- determination of the manner of securing claims



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District Court for the city of Warsaw in Warsaw.

XII Commercial Division of the National Court Register.

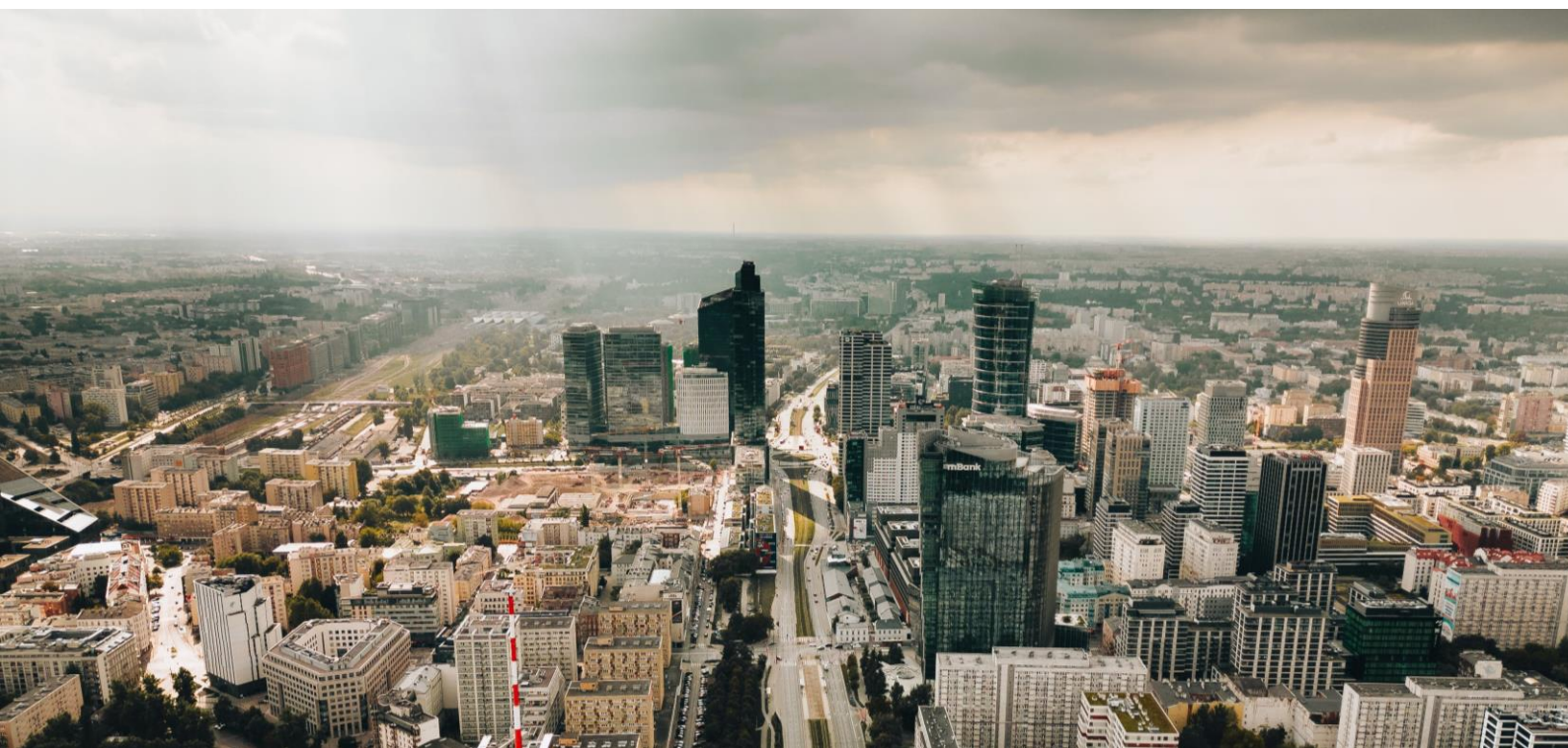
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### Legal note

This publication is only a brief presentation of the general outline of Polish law. It may not serve in any case as a basis for making business decisions. Before deciding to commence business activities in Poland, we recommend that you obtain detailed advice concerning the legal conditions applicable to specific industries and sectors of the economy. Robert Jędrzejczyk i Wspólnicy Law Firm, its employees or co-operating entities are not liable for the effects of decisions taken on the basis of this publication.