

Doing Business in Poland

LEGAL ASPECTS
GUIDEBOOK FOR FOREIGNERS | 2021



ANNIVERSARY EDITION | 30 YEARS OF PNP LAW IN POLAND



Peter Nielsen & Partners Law Office is a modern Danish-Polish law firm having its registered office in Warsaw, Poland; since its establishment in 1990 it has gained market recognition as a reliable and efficient advisor. For more information, please, visit our website www.pnplaw.pl

PNP Law celebrates 30 years of its business activity in Poland.

During the last 30 years we have introduced a significant amount of foreign companies to the Polish market and we still serve many of them. Our team is helpful, each of us speaks English and enjoys working in the multicultural environment. We find practical solutions for our clients within many areas of legal practice.

Our company is a member of several highly esteemed organisations, i.a. Scandinavian-Polish Chamber of Commerce and the European legal network “Eurolegal”. Moreover, the company actively participates in pro-bono organisations.

We undertake to provide highly specialised and client-oriented legal assistance within:

- ❖ Real Property/Construction Law,
- ❖ Foreign Investments,
- ❖ Mergers and Acquisitions,
- ❖ Labour Law/HR,
- ❖ Tax Law,
- ❖ Energy Law,
- ❖ Bankruptcy and Restructuring Law,
- ❖ Personal Data Protection.

Legal practice areas we also specialize in include:

- ❖ Business Law
- ❖ Corporate Law
- ❖ Civil Law
- ❖ Debt Collection
- ❖ Commercial Litigation
- ❖ Competition Law
- ❖ Public/Administrative Law
- ❖ Intellectual Property Law
- ❖ European Law

You are welcome to contact us by phone, fax or e-mail from Monday to Friday, 9 a.m. – 5 p.m.

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Dear All,

We live in interesting times. A year ago, we planned with other partners a grand celebration of 30 years of existence of our Company as well as directions of company's development for 2020. Perhaps, this time of year, we were already wondering where and when we would go on holiday abroad. The coronavirus has not only painfully verified our business and private plans in 2020, but also continues to significantly affect our lives. This special year, many companies, including also ours, felt how crucial role IT tools play in the company, ensuring remote work and communication with our business partners. We learn how to reconcile remote work with private life and appropriately use the company's resources in new conditions.

The coronavirus has made us plan the future more carefully, but after all, life has not stood still. An entrepreneur plans their business in any circumstances. At most, the plans will have to be verified and adjusted to rapidly changing conditions more often. As a lawyer and, at the same time, an entrepreneur – partner of the Law Office, I look to the future with cautious optimism.

The macroeconomic data indicate that Poland should be included in the group of these EU countries which have suffered least economically from the coronavirus so far. GDP in Poland will probably decrease by approximately 3.5% in 2020. Whereas, in the subsequent years, the National Bank of Poland forecasts significant economic growth: 3.1% in 2021 and 5.7% in 2022.

Dear Entrepreneur, maybe it is a good moment to open a business in Poland or establish business relations with a Polish company?

I hope that our anniversary edition of "Doing Business in Poland" will allow you to obtain necessary information on the legal and economic environment of conducting business activity in Poland.

In PNP Law, we have been advising foreign entrepreneurs on legal issues in Poland for 30 years. Our advice often goes beyond standard legal services by enriching it with aspects of economic advice. We have been providing services to many companies since their establishment in Poland, which is something we are very proud of. We would like to thank all our Clients for their trust. Entering the next 30 years, we wish ourselves and you many successes in business and we invite you to contact us.

Paweł Tomasik, partner of PNP Law,
editor "Doing Business in Poland"



30 years with PNP Law, Peter Tærø Nielsen, founding partner

Welcome to the 30th anniversary edition of “Doing Business in Poland”, edited throughout many years by my colleague Pawel Tomasik.

Vast changes took place over these 30 years in Poland. I will risk the opinion that no-one from Scandinavia and Western Europe is able to imagine the extent and speed of these changes.

Basically one can say that Poland, and hardworking Poles always persistently pursuing their aims achieved in 30 years, what countries like the Scandinavian ones spent 70 or 80 years achieving in terms of development from a classical agrarian to an industrial, modern European country.

There has been and will still be challenges and obstacles for businesses in Poland in the business legal context.

But rest assured, Poland will sustain as a growing and interesting market for Western European and Scandinavian businesses. Because the Poles want this. They want to stay EU and NATO members if not for other reasons, then because any other alternative is much worse. History has taught the Poles well and the Poles don't forget this.

PNP Law has been part of these changes the whole way through these 30 years, since Poland got rid of the communism.

In 1991 we were the lawyers advising one of the five first privatizations in Poland and these five privatized state-companies formed the basis of the reopening of the Warsaw Stock Exchange after having been closed for more than 40 years.

Later in the 90'ies we advised the Danish Ministry of Defence when the Danish NATO personnel was moved from Rendsburg, Germany to Szczecin, Poland as a part of Poland's entry to NATO.

We were co-founders of the Danish Polish Chamber of Commerce and key players when this Chamber was transformed into the Scandinavian Polish Chamber of Commerce. I personally have served the SPCC first as

chairman and subsequently as member of the board. In some period Iga Fischer served as a board member. Nowadays my colleague Dr. Lech Gniady is contributing to the future as a board member.

PNP Law Energy and Environment Section - led by my colleague Pawel Nowak - have recently contributed to government legislative work in the renewable energy sector.

Last but not least we have assisted hundreds of our clients, predominantly Scandinavian companies, with their entry into Poland and subsequent business activities here.

We are proud to say, that we see ourselves as really having made a difference in this context and we are humble and grateful that so many clients over the years have entrusted us with the legal advice needed for their business activities in Poland.

We want to continue that way and we are developing the firm and its services so it will always be of the highest quality and to the best of our clients. We especially believe that the upcoming post-COVID market situation is a challenge, one that we take and use for further development of PNP Law.

For my personal part 30 years is also a long time. I was 37 when I decided to start PNP Law, meaning that now I am 67. I have slowly moved into the background during the last 4-5 years and now decided to retire completely from the law firm as per the end of 2020. I will still, with my wife Joanna, have domicile in Warszawa and should any client or friend of PNP Law need any of my historical or other knowledge, I will be there, of course.

Let me use this opportunity to thank all colleagues, clients and friends for these fantastic 30 years and the outstanding cooperation. I wish all of you all the best for the future.

Yours,
Peter Tærø Nielsen

TABLE OF CONTENTS

INTRODUCTION AND DISCLAIMER	6	3. Remuneration in Poland	18
BUSINESS CLIMATE IN POLAND	6	4. Working Hours	18
1. Welcome to Poland	6	5. Employees' Leaves	18
2. Polish economy in times of SARS-CoV-2	7	6. Retirement	19
3. Incentives for Investors	8	7. Compulsory Insurance Rates	19
4. Legal System	8	RESIDENCE AND EMPLOYMENT OF NON-EU COUNTRIES' CITIZENS IN POLAND	19
5. Capital Market	8	1. Visas	19
FORMS OF BUSINESS ORGANISATION	9	2. Temporary Residence Permit	20
1. Introduction	9	3. Permanent Residence Permit	20
2. Limited Liability Company	9	4. Residence Permit for Long-Term Residents of European Community	20
3. Joint-Stock Company	10	5. Residence Card	20
4. Simple Joint-Stock Company	11	6. Visa-Free Traffic	20
5. Partnerships	11	7. Employment of Foreigners	20
6. Cooperative	11	8. Special Regulations in case of Citizens of Armenia, Belarus, Georgia, Moldova, Russia and Ukraine	20
7. Self-employment (Sole Trader or Sole Proprietorship)	11	9. Special Legal Solutions for Foreigners in connection with SARS-CoV-2	21
8. Branch and Representative Office	11	RESIDENCE AND EMPLOYMENT OF EU CITIZENS IN POLAND	22
9. Permits	11	1. Free Movement of Employees and Withdrawal of Permits for Work for EU Citizens in Poland	22
10. Registration Procedures	12	2. Right of Residence of Citizens of EU Countries in Poland	22
11. Timing and Costs of Establishment of Business Activity	12	3. Right of Permanent Residence	22
12. Electronic Registration of Some Types of Companies in Poland	12	CONTRACTS	23
TAXATION	13	1. Entering into Contracts in Poland	23
1. Companies	13	2. Obligation to Use Polish Language	23
2. Individuals	15	3. Consumer Sale	23
3. Other Taxes	16	4. Liability for Product Defects	23
REAL PROPERTIES	17	5. Venue and Governing Law	24
1. Acquisition of Real Properties by Foreigners	17	APOSTILLE	24
2. Acquisition of Real Properties by Citizens and Entrepreneurs of EEA States and Switzerland	17	ENERGY LAW – TRANSITION TO RENEWABLES	25
3. Other Restrictions on Acquisition of Real Properties	17	1. Introduction	25
4. Restrictions on Acquiring Companies or Partnerships Being Owners of Agricultural Real Properties	17	2. Act on Renewable Energy Sources	25
5. Legal Form of Real Property Transfer	17	3. New Perspectives for Off-Shore Wind Farms	26
LABOUR LAW	18	LEGAL PROFESSIONALS	26
1. Employment Contract in General	18	MAP OF POLAND	27
2. Termination of Employment Contract	18		

INTRODUCTION AND DISCLAIMER

This brief presentation is aimed at providing foreign investors with basic but crucial information on the Polish legal system. For further information please visit our home page at www.pnplaw.pl and contact our lawyers.

“Doing business in Poland” takes into consideration legal regulations as at 1 January 2021.

This document is for information purposes only and it cannot be considered as legal advice on any matter. We have carefully examined all issues to ensure that the information contained herein is credible and up-to-date. However, we do not guarantee the credibility and validity of the material and we are not responsible for any errors or omissions or for any consequences of using the information. Prior to making any decision or taking any action, you should consult your lawyer.

BUSINESS CLIMATE IN POLAND

1. Welcome to Poland

Poland is renowned for its friendly and hospitable citizens, beautiful nature with a wide variety of attractive landscapes, tourist and sport opportunities as well as rich cultural heritage.

Basic information about Poland

Area	312,679 km²
Population	38.4 million
Capital	Warsaw, 1,735 thousand inhabitants (UN data)
Currency	1 Zloty (PLN) = 100 Groszy
Minimum remuneration	PLN 2,800 in 2021
Average remuneration in enterprises sector in September 2020	PLN 5,371.56 (GUS* data)

** Central Statistical Agency in Poland*



Another advantage of Poland which has been increasingly acknowledged by foreign businessmen is its modern and stable economy. In the recent years Polish economy has shown a sustainable growth. GDP has been significantly growing while inflation and unemployment rates have been low. Poland with its 38-million consumer-market is one of the biggest in Europe. Well-educated Polish economists, engineers, IT specialists and scientists are highly appreciated employees who are readily employed by IT companies, R&D centres and scientific institutes established by foreign companies in Poland.

Key macroeconomic indicators of Polish economy are presented in the table below.

Indicator	2015	2016	2017	2018	2019	2020
GDP increase (%) [*]	3.8	2.9	4.6	5.3	4.5	-3.5 ^{**}
Foreign Direct Investment inflow (EUR million) ^{**}	13,758	12,588	8,147	13,554	9,694	no data
Unemployment rate (%) [*]	7.5	6.2	4.9	3.9	3.3	3.1 ^{****}
Inflation rate (% year to year) ^{***}	-0.9	0.6	2	1.6	2.3	3.4 ^{**}

Source: ^{*}Eurostat, ^{**}National Bank of Poland (NBP), ^{***} Central Statistical Agency in Poland, ^{****} data as per 09.2020

2. Polish economy in times of SARS-CoV-2

The epidemics of coronavirus which appeared in Europe in 2020 has been for many companies in Poland one of the main business challenges. In Poland, as in other European countries, due to restrictions introduced by the authorities, industries related to tourism, gastronomy, hotels, air transport and the so-called event industries have suffered the most. The epidemics also became a huge challenge for public health which at the end of 2020, as in other countries, is pushed to the brink due to the increasing number of new cases of COVID-19. On the other hand, the epidemics and the restrictions introduced by the authorities were beneficial for industries performing services or sales on-line, courier companies as well as manufacturers and suppliers of medical equipment, protection accessories (masks, gloves, medical suits) and disinfectants.

In order to avoid a total economic lockdown, the Polish authorities decided to limit the activities of only certain areas of economic and social life which, in the opinion of experts, pose the greatest epidemic threat due to the fact that a significant number of people gathers in closed areas, while they do not provide services or offer goods, the so-called basic necessities. Due to the above, shopping centres, restaurants, hotels – except for business stays, cultural and art objects – have been temporarily closed. The authorities also decided to temporarily shift schools and universities to the remote learning system. Limits were also introduced on the amount of people on public transport and those participating in religious services. Only time will tell if such a strategy is successful.

In 2020, due to the epidemics of coronavirus, in Poland, as in other European countries, a decrease in gross domestic product (GDP) is forecasted. According to the projection of the National Bank of Poland, GDP will amount to -3.5% in 2020. At the same time, in accordance with the projections of the European Commission, Poland will be among the countries with the smallest decrease in GDP in the European Union, in 2020. In the subsequent years, the National Bank of Poland forecasts significant increases in GDP in Poland: 3.1% in 2021 and 5.7% in 2022.

The hitherto strategy of the Polish authorities, namely mitigation of the negative economic effects of the epidemics, consisted in financial support from public funds for enterprises in order to protect employment and ensure bankruptcy protection. Under subsequent aid programmes for entrepreneurs called „financial shields” in Poland, the following, among others, was introduced:

- ❖ system of partially non-repayable subsidies for entrepreneurs recording significant decreases in turnover due to the epidemics;
- ❖ exemption from obligatory retirement and social security contributions for employees (Social Insurance Institution – ZUS);
- ❖ co-financing of employees’ remuneration with lowered working time or during downtime;
- ❖ loans from the Labour Fund for micro-entrepreneurs.



2. Incentives For Investors

Poland as an EU member has the incentive system which is compliant with the European Community rules. The system is composed of different types of public aid.

New investments in Poland may be supported among others by the following kinds of public aid:

- ❖ corporate income tax exemption,
- ❖ real property tax exemption,
- ❖ cash grants from EU funds.

Currently, entrepreneurs may apply for support for new projects irrespective of where a project is to be carried out in Poland.

Obtaining exemption from the corporate income tax is conditioned upon fulfilling by the new investment certain quantitative (incurring qualified costs of investments in an appropriate amount) and qualitative criteria specified in the provisions.

Moreover, municipalities often use real property tax exemptions to attract foreign and Polish companies to local projects.

Poland is also a beneficiary of EU aid. Foreign investors may apply for EU cash grants on the same conditions as Polish investors.

The maximum level of public aid depends in particular on the size of an enterprise, the type of aid and the region of Poland where the investment is to take place.

3. Legal System

The Polish legal system, like many other continental European legal systems is based on the Roman law as opposed to the common law. Although after the Second World War the Soviet legal and economic systems were implemented in Poland and it was not until 1989 that the law started to change in Poland, now our country follows Western European examples. This process has been intensified after Poland made its decision to enter the EU which obviously meant adjusting to the EU economic system and “Acquis Communautaire”.

Poland joined the European Union on 1 May 2004, which naturally resulted in further harmonization of the Polish law with the EU standards.

Although nowadays the Polish law does provide instruments necessary to do business, there is still a number of fields that require substantial changes and improvements. What strikes a foreign investor most are very time-consuming civil court proceedings and bureaucratic administrative procedures as well as an inefficient debt collection system

4. Capital Market

The first stock exchange in Poland was opened on 12 May 1817 in Warsaw. Before the Second World War seven stock exchanges operated in Poland but after the war, due to the change of political and economic systems, the capital market could not be re-created.

In 1989, along with political changes, the new government began building a capital market structure. In its present form the Warsaw Stock Exchange (WSE) began operating in April 1991. The WSE is now an important European capital market and the biggest financial instruments exchange in Central-Eastern Europe.

General statistics data of WSE as per 24 November 2020*

Number of listed companies		
Domestic companies	Foreign companies	Total
384	49	433

Market value (PLN million)

Market value (PLN million)	
Main market	976,045.52
Parallel market	25,390.33
TOTAL	1,001,435.85

* Source: www.gpw.pl

FORMS OF BUSINESS ORGANISATION

1. Introduction

The Polish law provides the following commercial forms of conducting business activity which are not reserved for the State only:

English name	Polish name
Limited liability company	Spółka z ograniczoną odpowiedzialnością abbreviation - Sp. z o.o.
Joint-stock company	Spółka akcyjna abbreviation - S.A.
Simple joint-stock company*	Prosta spółka akcyjna abbreviation - PSA
Registered partnership	Spółka jawna abbreviation - sp.j.
Professional partnership	Spółka partnerska abbreviation - sp.p.
Limited partnership	Spółka komandytowa abbreviation - sp.k.
Limited joint-stock partnership	Spółka komandytowa-akcyjna abbreviation - S.K.A
Cooperative	Spółdzielnia
Branch of a foreign entrepreneur	Oddział przedsiębiorcy zagranicznego
Representative office of a foreign entrepreneur	Przedstawicielstwo przedsiębiorcy zagranicznego

*Probably available as of 1 July 2021

Foreign persons from the EU Member States as well as from the Member States of the EFTA which are parties to the Agreement on the European Economic Area (EEA) may conduct business activity in any commercial form available to Polish persons as specified above. This also applies to some citizens of other states who have obtained e.g. a permit to settle or reside in Poland, or a status of a refugee or tolerated stay.

Other foreign persons may conduct business activity in Poland in the form of a capital company, a limited partnership or a limited joint-stock partnership unless international agreements provide otherwise



Furthermore, a foreign person (from non-EU and non-EEA country) conducting business activity abroad, may create a branch or a representative office on the territory of Poland provided that Polish entrepreneurs may create a branch or a representative office in the state where the foreign person has his/her permanent residence or seat (the rule of reciprocity), unless international agreements provide otherwise.

2. Limited Liability Company

Introduction

A limited liability company is a kind of a capital company which is conducted by a limited number of shareholders. It is the most common legal form of business activity intended for conduct of small and medium-size commercial enterprises. Some large companies also prefer to conduct business activity in the form of a limited liability company because corporate operations in a limited liability company are simpler in comparison with a joint-stock company.

Shareholders in a limited liability company are not liable for company's obligations with their private property with the exception of one case. In accordance with the Polish law, a shareholder may be liable for obligations of a company in organization.

Initial Capital and Shares

The minimum initial capital of a limited liability company is PLN 5,000.00. The initial capital of a company is divided into shares of equal or unequal nominal value. If, pursuant to the articles of association of a company, a shareholder may hold more than one share, all the shares are equal and indivisible. The minimum nominal value of one share is PLN 50.00.

Contributions of the company's shareholder to the capital of a company can be made either in cash or in-kind.

Governing Bodies

Pursuant to the Code of Commercial Companies and Partnerships, the authorities of a limited liability company consist of:

- ❖ shareholders' meeting,
- ❖ supervisory board or audit commission,
- ❖ management board.

The supervisory board or the audit commission has to be appointed in companies whose initial capital exceeds PLN 500,000.00 and where there are more than twenty-five shareholders. In other situations creation of the supervisory board or the audit commission is not necessary.

Shareholders' Meeting

The Shareholders' Meeting is the superior authority of a limited liability company.

Shareholders' meetings are held at the registered office of the company or in another place in the Republic of Poland if all the shareholders agree to it in writing.

Decisions of the Shareholders' Meeting are adopted as resolutions of shareholders.

Resolutions of the shareholders are required among others in the following matters: amending the company's articles of association, approval of the annual financial report and the report of the management board, increasing or decreasing of the initial capital, decision on allocating profit or covering losses as well as acquisition and disposal of real properties.

Resolutions of the shareholders' meeting should be taken by an absolute majority of votes unless the provisions of law or the articles of association provide otherwise. The absolute majority of votes means more than half of the votes cast.

Supervisory Board and Audit Commission

Members of a supervisory board or an audit commission are appointed and dismissed by resolution of shareholders unless the articles of association provide otherwise.

The Polish law stipulates that the powers of the supervisory board in a Polish limited liability company are limited to a broadly described control and supervision. The supervisory board does not have the right to give the management board any binding instructions with respect to management of company's affairs.

The powers of the audit commission are even more limited than the powers of the supervisory board. However, the articles of association may expand duties of the audit commission in the company which does not have the supervisory board to cover also the powers of the latter.

Management Board

The supreme executive authority, and the only authority having the right to represent and sign for a company, is the management board.

The management board represents a company and manages its daily matters.

Representing the company consists in actions which engage third parties e.g. conclusion of agreements with contractors, disposal of rights of the company, whereas managing the company consists in actions concerning the company itself, first of all consisting in dealing with a current activity of the company, including giving professional orders to employees and supervising company's activity.

Members of a management board are appointed and dismissed by a shareholders' resolution unless the articles of association provide otherwise.

3. Joint-Stock Company

A joint-stock company resembles in some aspects a limited liability company. Both are capital companies. Shareholders of a joint-stock company are not liable for company's liability with their private property with the exception of one case. In accordance with the Polish law, a shareholder may be liable for obligations of a company in organization.

A joint-stock company is regarded as more formalistic kind of company than a limited liability company. There are many particular provisions providing the duties, obligations and procedures which have to be performed by a management board or a supervisory board. Moreover, a shareholder in a joint-stock company has definitely fewer rights than a shareholder in a limited liability company. The rights to control company's activity and its personal composition are limited.

Major differences between joint-stock and limited liability companies

Type of a company	Joint-stock company	Limited liability company
Minimum share capital	PLN 100,000	PLN 5,000
Minimum value of one share	PLN 0.01	PLN 50
Formalities of shareholders' meetings	All minutes have to be recorded by a notary	Not all the minutes have to be recorded by a notary
Supervisory board	Obligatory	Shareholders have to appoint a supervisory board or an audit commission if an initial capital exceeds PLN 500,000 and there are more than 25 shareholders
Restrictions of distribution of profit	Part of net profit (at least 8%) must be transferred annually to the supplementary capital until it reaches 1/3 of the share capital	No part of net profit needs to be transferred to the supplementary capital unless articles of association provide otherwise

4. Simple Joint-Stock Company

Probably as of 1 July 2021, the third type of the capital company appears in the Polish legal system – the simple joint-stock company. In principle, this type of a company is to be mainly used for conducting business activity by start-ups. However, due to its elasticity, a new company has the chance to become an attractive form of conducting business activity also for other entrepreneurs.

The main features of the simple joint-stock company include i.a.:

- ❖ possibility to establish and register the simple joint-stock company electronically, no-par value stocks,
- ❖ possibility to acquire stocks in return for providing work or services,
- ❖ capital stock from PLN 1,
- ❖ flexibility in forming company's authorities: by the Deed of Association, it is possible to appoint the Board of Directors which fulfils the function of the authority both representing and supervising the company (The Board of Directors instead of the Management Board and the Supervisory Board),
- ❖ possibility to appoint executive directors among the Board of Directors to conduct certain or all activities related to running the enterprise of the PSA, introducing mechanisms for creditors' protection,
- ❖ simplification in functioning of company's authorities.

5. Partnerships

According to the Polish law, there are four types of commercial partnerships::

- ❖ registered partnership (spółka jawna – **sp.j.**),
- ❖ professional partnership (spółka partnerska – **sp.p.**),
- ❖ limited partnership (spółka komandytowa – **sp.k.**),
- ❖ limited joint-stock partnership (spółka komandytowo-akcyjna – **S.K.A.**).

Partnerships do not have a legal personality although they may acquire rights in their own name, including the right of ownership of real property, they may incur obligations as well as they may sue and be sued.

The most important feature of a partnership is the liability of partners for partnership's obligations. With some exceptions, partners are personally and without limitation liable for partnership's obligations.

Furthermore, it is worth mentioning that in a capital company it is possible to be a sole shareholder, while a partnership should have at least two partners.

Transfer of all rights and obligations of a partner in a partnership to another person is possible if the articles of association provide so.

A partnership comes into existence upon entry into the National Court Register.

6. Cooperative

According to the legal definition, a cooperative is “a voluntary association of unlimited number of persons with changeable personal composition and changeable share fund”. A cooperative conducts common business activity

for the benefit of its members; it may also conduct welfare activity and activity connected with culture and education for the benefit of its members.

This form of business activity was very popular before 1990 in socialistic economy. In capitalistic economy it is losing its popularity but it is still an important form of business activity in housing sector and dairy industry.

7. Self-employment (Sole Trader or Sole Proprietorship)

Self-employment is the custom term used to name personal business activity conducted by one person.

From the point of view of the civil, tax and social security law, a self-employed person is regarded as an entrepreneur. As a consequence, a self-employed person and a recipient of his/her services/work do not co-operate with each other on the basis of an employment contract, but rather on the basis of a business agreement between two entrepreneurs.

Due to tax benefits, self-employment has become quite popular. In some cases employers demand that their employees on various positions such as doctors of medicine, nurses etc. become self-employed. The authorities try to fight against self-employment, therefore, nowadays the possibilities to perform activities in this way have been made significantly narrower than they used to be.

Both a self-employed person and a company/entity which co-operates with this person may mutually benefit from this form of co-operation. Nevertheless, it should be considered carefully by both parties, as nowadays due to the decrease of tax rates, self-employment may not be as beneficial as it was in previous years.

8. Branch and Representative Office

A foreign person who conducts business activity abroad may create a branch or a representative office on the territory of Poland provided that Polish entrepreneurs may create branches or representative offices in the state where the foreign person has his/her permanent residence or seat (the rule of reciprocity), unless international agreements provide otherwise. In case of foreign entrepreneurs from the European Economic Area (EU Member States, Iceland, Liechtenstein, Norway) the rule of reciprocity is excluded. Consequently, such foreign entrepreneurs may create branches or representative offices without any restrictions connected with the rule of reciprocity.

A representative office may conduct business activity exclusively within the scope of advertising and promotion of the foreign entrepreneur whilst a branch may conduct business activity within the entire range of the entrepreneur's activity.

9. Permits

Generally, no prior permits from the Polish authorities are required to establish business activity in Poland. Nevertheless, if an entrepreneur intends to start performance of certain activities, it is obligatory for the entrepreneur to obtain a concession, permission or licence of a relevant authority. Furthermore, some particular activities may be performed under additional conditions and upon registration in separate registers of regulated activities.

Moreover, an intention to establish a new entrepreneur by two or more entrepreneurs may be subject to examination by the President of the Office for Competition and Consumer Protection. If, according to the provisions, the intention to establish an entrepreneur is subject to examination by the President, the new entrepreneur may not be established without a prior consent of the President of the Office.

10. Registration Procedures

An entrepreneur who is going to start business activity in Poland is obliged to complete the following registration procedures:

- ❖ registration of the business activity in the National Court Register or other relevant register,
- ❖ registration of the entrepreneur in the Voivodship Statistical Office,
- ❖ opening of a bank account,
- ❖ registration in the local tax office,
- ❖ registration of employees in the Social Insurance Institution ("ZUS").

Except self-employed persons/sole traders and foreign representative offices all legal forms of business activity should be registered in the National Court Register. Business activity in the form of a sole trader has to be notified to the Central Register and Information on Business Activity, whereas a foreign representative office has to be entered into the register of foreign entrepreneurs' representative offices kept by the Ministry competent for matters of the economy.

11. Timing and Costs of Establishment of Business Activity

It is worth knowing that standard registration procedures (National Court Register, statistical office, tax office and ZUS) last between 1 and 3 weeks.

In case a licence or permit for business activity is necessary, it takes additionally from 4 to 10 weeks.

The costs of establishment of business activity depend on the legal form chosen for conducting business activity in Poland.

As an example below, we present the main costs related to establishment of a limited liability company with a minimum initial capital (PLN 5,000) assuming that no permission, concession or licence is necessary and that the company is not being established electronically.

Cost	Sum	Description
Tax on civil law transactions	PLN 25	the tax rate is 0.5% of the initial capital
Notarial fee	approx. PLN 200	cost of drawing up notarial articles of associations; certified copies of the articles issued to the client are charged separately
Court registration fee	PLN 500	cost of registration of a company in the court register
Publication in court journal MSiG	PLN 100	cost of announcement on registration of the company
Lawyer's fee		as agreed between the client and lawyer

12. Electronic Registration of Some Types of Companies in Poland

If an investor wants to save time during the start-up process of his/her business in Poland, it is possible to establish certain types of companies in Poland electronically. Electronic registration usually takes a few days and may be even 1-2 weeks faster than standard paper-form registration. However, it should be taken into consideration that, for technical reasons, a Polish professional adviser should assist in registering a company electronically. Moreover, there are some corporate law limitations concerning companies established electronically.



TAXATION

1. Companies

The scope of taxation depends on the status of a taxpayer: resident or non-resident. In other words, the Polish Corporate Income Tax Act provides the rule of unlimited and limited tax liability. The unlimited tax liability means that companies which have their registered office or place of management in Poland are liable to Polish corporate income tax (CIT) on worldwide income. The limited tax liability means that a taxpayer who does not have a seat or management in Poland pays the tax levied on the income earned within the Polish territory only.

Partnerships (except of professional partnerships as well as registered partnership under some conditions) are also liable to Polish corporate income tax (CIT). Furthermore, revenues derived and costs borne by

partnerships formed by companies are subject to CIT based on the proportion of the corporate partners' participation.

Corporate Income Tax Rate

The basic rate of **income tax** for companies in 2021 is **19%**.

However, the entrepreneurs who:

- ❖ start their business activity in a given fiscal year
or
- ❖ have the status of a so-called small taxpayer of CIT
pay CIT at a reduced rate of 9% of incomes other than capital gains.

Not exceeding the equivalent of EUR 2 million in PLN of the total revenues achieved by a CIT taxpayer in a fiscal year is an additional condition to qualify for 9%, and not 19%, CIT rate.

Currently, a small taxpayer of CIT is an entity with sales revenues (together





with an output VAT) which did not exceed an equivalent of EUR 2 million in a previous fiscal year.

Taxable business income comprises all profits generated by any non-agricultural business activity, i.e. trade, services, transport. A loss may be deducted against the taxable income over five consecutive tax years. The deduction in a given year may not exceed 50% of the loss being deducted.

As regards losses incurred in 2020 and subsequent fiscal years, it will be possible to make a one-time deduction of such loss against the income achieved in one of the five subsequent fiscal years. However, the maximum amount of such one-time deduction of loss against the income may not exceed PLN 5 million. The amount of loss not deducted in such a way may be subject to deduction from income in the remaining years of the 5-year period, whereby the deduction amount in any of these years could not exceed 50% of the loss amount. Losses must not be carried back or deducted against the income of the previous fiscal year (exceptionally, the provisions adopted in connection with COVID allow, in special cases, to deduct the loss incurred in 2020 from 2019).

Corporate tax is payable annually, however advance payments have to be made each month. Small taxpayers of CIT and entities launching their businesses (in the first fiscal year) may choose to pay quarterly advances to CIT.

Dividends and Capital Gains

Dividends and other capital gains are subject to 19% lump-sum rate of withholding tax. Dividends paid by Polish subsidiaries to parent companies are tax-free provided that the following conditions specified in the Polish Corporate Income Tax Act are met:

- ❖ the company which pays the dividend has its registered office or its management in Poland,
- ❖ the company which obtains income from the dividend is subject to worldwide income tax in Poland, in another EU Member State or in a country which belongs to the European Economic Area,
- ❖ the parent company has been holding at least 10% (25% in case of Switzerland) shares in its Polish subsidiary for an uninterrupted period of at least 2 years,
- ❖ the parent company does not use a CIT exemption on its total income, regardless of its source.

Double Taxation Treaties and Certificate of Residence

Poland has concluded over 90 double taxation treaties. The majority of double taxation treaties set the withholding tax rate at the level of 5-15% while providing a possibility of 0% rate.

Polish entities which make payments to foreign persons in the form of interest, dividends and other income from a share in profits of legal persons are deemed as tax remitters and are obliged to collect withholding tax on the date when such payments are made. However, it is possible to apply a reduced rate or not to collect the tax if a double taxation treaty concluded by Poland and the country of the recipient's residence provides so. In such a case, it is necessary to document the tax residence of the beneficiary of the payment (with a certificate of residence). The certificate of residence is a document used for tax purposes to certify that the tax residence of a foreign person is in a country with which Poland has concluded a tax treaty. Entities paying the withholding tax are obliged to exercise due diligence when verifying the conditions to apply the lowered rate of exemption or not to collect the withholding tax.

When the total sum of the receivables paid as the share in profit and license receivables paid to a given entity exceed the sum of PLN 2 million in the fiscal year, the sum exceeding PLN 2 million is subject to special rules of taxation and collecting the withholding tax. In particular, the entity paying such receivables is, as a rule, obliged to collect and transfer to the tax authority in Poland the withholding tax from the surplus, notwithstanding the provisions of the double taxation treaty. However, the refund of the withholding tax takes place upon application supported by the documentation required by the provisions which enables the tax authority to examine the validity of refund. The obligation to collect the withholding tax from the surplus over PLN 2 million may be avoided only when a special representation is filed with the tax authority or an opinion on tax exemption is obtained. However, the entry into force of the special rules of taxation and collecting the withholding tax concerning the sum receivables exceeding PLN 2 million has been postponed until 1 July 2021.

Special tax regulations for real property companies

From 2021 there are new tax regulations for real property companies. In particular, in connection with new tax regulations real property companies will become income tax payers for the disposal of shares in such company (the shares of which are disposed of), providing at least 5% of rights to vote or to participate in company's profit, in case the seller of shares is an entity not being a Polish resident.

In general, real property companies are those entities which meet all the below conditions:

- ❖ real properties located in Poland constitute at least 50% of the value of assets, and
- ❖ the value of those real properties exceeds PLN 10 million, and
- ❖ at least 60% of the total tax income in the previous fiscal year was generated from lease, real property leasing or agreements of a similar nature, or from the rights concerning real properties, or from other real property companies.

The legislator has provided for a different definition of a real property company in the case of entities commencing their business activity.

2. Individuals

Income tax is payable to the State Treasury. There are no income taxes collected by local and regional authorities or the church.

The above mentioned difference (see item 1) between the unlimited and limited tax liability applies also to individuals. Persons who reside in / who are residents of Poland are subject to the unlimited tax liability.

Taxation of Foreigners

The place of residence determines the tax liability. Persons who have their place of residence in Poland are obliged to pay tax on their overall income in Poland; persons who do not have their place of residence in Poland are obliged to pay tax in Poland on income earned or arising from a source in Poland only. The above provisions apply unless the provisions of international agreements provide otherwise.

Pursuant to the Polish tax provisions a resident is:

- ❖ a person whose centre of personal or economic interests is located in Poland, or
- ❖ a person who stays in Poland for more than 183 days in a year.

Incomes earned within the territory of Poland by individuals taxed on the basis of the limited tax liability are in some cases subject to lump-sum rates.

Personal Income Tax Rates

As a general rule, revenue of any person (foreign or domestic) is subject to two taxation rates: 17% and 32% depending on the sum of income (progressive rate). Furthermore, income exceeding PLN 1 million is subject to a so-called "solidarity tax" at the rate of 4%.

A taxpayer who pays the progressive tax rate is entitled to a tax-free threshold, the level of which depends on the income received. The higher

the income, the lower the tax-free threshold. The tax-free threshold is not applicable to income in excess of PLN 127,000.

Annual income in 2019	Tax-free threshold in 2019	Tax in 2019
PLN 1– 8,000	PLN 8,000	PLN 0
PLN 8,001 – 13,000.49	from PLN 8,000 to 3,091	17% less the sum ¹⁾ below decreasing the tax
PLN 13,000.50 – 85,528.48	PLN 3,091	18% less PLN 556.02 (fixed sum decreasing the tax)
PLN 85,529.50 – 127,000.49	from PLN 3,090 to 0	32% less the sum ²⁾ below decreasing the tax
Above PLN 127,001	PLN 0	32%
Above PLN 1,000,000	PLN 0	32% + 4% of solidarity tax

¹⁾ The sum decreasing the tax according to the formula: PLN 1,440 – [PLN 883.98 * (income – PLN 8,000)/PLN 5,000]

²⁾ The amount decreasing the tax according to the formula: PLN 556.02 – [PLN 556.02 * (income-PLN 85,528)/PLN 41,472]

Taxation of Business Activity

Persons who conduct any non-agricultural business activity (but not on the basis of a management contract) may choose either the standard progressive scale or the lump-sum rate of 19%.

Moreover, some entrepreneurs, if they meet additional conditions, may also choose a simplified form of taxation with an even lower tax rate: a lump-sum based on recorded revenues. However, in case of that method, the revenue earned by the entrepreneur is the tax basis, and costs are not taken into consideration. Therefore, that method of taxation may be advantageous mainly if the conducted business activity generates low costs.

Duties of Tax Remitters and Taxpayers

It should be remembered that employers as tax remitters are obliged to calculate and collect tax advance payments from persons who receive revenues under employment relationships or on the basis of agency contracts or contracts for specific work. Tax advance payments increase during the tax year when the thresholds in the progressive scale are exceeded. The tax should be calculated and collected by tax remitters also in most of the cases when payments are taxed with lump-sum rates.

A tax-payer has to submit a tax declaration that covers income from the previous year. The declaration has to be delivered until 30 April of the following year.

Income Tax on Revenues from Buildings

In Poland, in 2018, a new variant of income tax was introduced. Pursuant to the current provisions, this income tax variant takes as the subject of taxation a revenue from a fixed asset being a building located on the territory of the Republic of Poland:

- ❖ which is owned or co-owned by the taxpayer and
- ❖ which has been handed over for operation on the basis of a tenancy, lease, or similar contract.

The initial value of the building resulting from the kept records of fixed assets is the revenue from the building. Such initial value should be determined as at the first day of each month. In the month when the fixed asset is entered in the records, the initial value set as at the day of entering the fixed asset into the records is the revenue from the building.

The tax basis is the sum of revenues referred to above from the individual buildings, reduced by PLN 10 million. The tax rate is 0.035% of the tax base for each month. This tax has been suspended for the duration of the COVID epidemics.

3. Other Taxes

VAT and Excise Duty

Rates of VAT in Poland:

- ❖ standard rate - 23% (applicable to the majority of goods and services),
- ❖ reduced rates – 8% and 5%,
- ❖ preferential rate - 0%.

In Poland, among the goods subject to excise duty there are motor fuels, gas, alcohol and tobacco products, electricity.

Local Taxes

Local taxes include real property tax, transportation tax imposed on trucks and buses, inheritance and donation tax, agricultural tax, forestry tax, dog tax. Local taxes are a part of own revenues of local governments.



REAL PROPERTIES

1. Acquisition of Real Properties by Foreigners

A foreigner who intends to acquire ownership of a real property and/or a perpetual usufruct title to a real property in Poland should, with some exceptions, first obtain a permit of the Ministry of Internal Affairs and Administration for such acquisition.

Similarly, a foreigner who intends to purchase shares in a Polish company which is the owner or perpetual usufructuary of a real property in Poland also needs a permit from the Ministry of Internal Affairs and Administration.

Acquisition in defiance of the provisions of the Law (e.g. concluding a purchase agreement before the permit is granted) is invalid by virtue of law.

2. Acquisition of Real Properties by Citizens and Entrepreneurs of EEA States and Switzerland

At present, real properties are acquired by citizens or entrepreneurs from European Economic Area States (EU Member States, Norway, Iceland and Liechtenstein) and Switzerland under the rules and legal rigour similar to acquisition of real properties by Polish citizens or companies.

However, it should be noted that Polish regulations provide for specific restrictions on acquisition of private agricultural real properties. The restrictions relate to acquisition of both ownership titles and perpetual usufruct titles to agricultural real properties. There are no restrictions on acquisition of agricultural real properties smaller than 0.3 ha or properties which are internal roads only.

As a rule, only a full-time farmer may acquire an agricultural real property. However, an agricultural real property with an area of less than 1 ha may also be acquired by a person who is not a full-time farmer. The full-time farmer is defined as a natural person who is an owner, perpetual usufructuary, own-like possessor or lessee of agricultural real properties with the total arable land area which does not exceed 300 ha. In addition, the farmer has to be appropriately qualified, reside for at least 5 years in the commune where one of the agricultural real properties belonging to the agricultural farm is located, and personally run the farm during this time. Apart from the full-time farmer, agricultural real properties may also be acquired by the following persons: close relatives of a seller, self-governmental units, State Treasury, some capital companies of State Treasury, church legal persons, national parks for the purposes related to environmental protection, cooperatives of agricultural production and their members (under specific circumstances), as well as persons and entities who become owners as a result of some legal proceeding e.g. inheritance, restructuring proceedings within the financial recovery proceedings, enforcement or bankruptcy proceedings.

In the remaining cases, acquisition of an agricultural real property requires a consent of the Director General of the National Centre for Support of Agriculture. The consent may be issued at transferor's request if all of the following conditions have been met:

- ❖ the transferor demonstrates that there was no possibility for the agricultural real property to be acquired by the entities who have the right to do so;

- ❖ the acquirer gives a guarantee of conducting agricultural activity in an appropriate manner;
- ❖ the acquisition of the real property does not cause excessive concentration of arable land.

The consent may also be issued at the request of an acquirer being a natural person who intends to establish a family agricultural farm, meets the requirements set forth in the Act and undertakes to reside in the commune where one of the agricultural real properties is located.

3. Other Restrictions on Acquisition of Real Properties

The most significant restriction concerning the trade in real properties is the pre-emption right. As regards real properties, the pre-emption right requires two sale agreements to be concluded: a conditional and final agreement. Such procedure prolongs the whole transaction. Pre-emption rights vested in municipalities and communes are most common restrictions. Municipalities and communes have pre-emption rights e.g. to non-developed real properties purchased initially from the State Treasury or self-governmental units.

Another example is the pre-emption right to an agricultural real property vested in the lessee and the State Treasury. It is worth mentioning that the State Treasury has also the pre-emption right to private real properties marked as forest in the land registry or designated for afforestation in the manner specified by the regulations of law.

Sale agreements signed in breach of the pre-emption right stipulated in the regulations of law are null and void. Therefore, we recommend checking whether a real property is not burdened with the pre-emption right.

4. Restrictions on Acquiring Companies or Partnerships Being Owners of Agricultural Real Properties

The Polish law also grants the State Treasury the pre-emption right to shares in commercial companies which own agricultural real properties. On the other hand, if a new partner joins a partnership which owns an agricultural real property, the National Centre for Support of Agriculture, acting on behalf of the State Treasury, may issue a statement on acquisition of the real property for the price equal to the market value of the property.

5. Legal Form of Real Property Transfer

In Poland, acquisition of a real property requires that a contract between a seller and buyer is drawn up by a notary public in the form of a notary's deed.



LABOUR LAW

Labour law is one of the most important branches of business law. It is also subject to frequent changes. The Polish labour law has been adjusted to the European regulations.

1. Employment Contract in General

A labour relationship arises by an employment contract or by an appointment act.

In further description of the labour law, we will focus on employment contracts as the most popular form of labour relationships. The employment contract may be agreed for an indefinite term, for a fixed term or for a trial period of no longer than 3 months. The purpose of concluding an employment contract for a trial period is to check the qualifications of an employee and the possibility of employing a given employee to perform a certain type of work. The contract should be made in writing, with the type, and terms and conditions of contract explicitly outlined.

2. Termination of Employment Contract

A contract may be terminated:

- ❖ on the basis of a mutual consent of both parties,
- ❖ with or without notice by either party,
- ❖ upon completion of the task for the purpose of which it has been concluded,
- ❖ after the lapse of the period for which it has been concluded.

An employment contract may be terminated without notice due to the reasons indicated in the Labour Code only. The termination of the contract with notice is not subject to any further conditions, however, the employer is always obliged to give the employee a reason which justifies the termination. In the case of a contract for a trial period the notice period depends on the agreed length of the trial period.

In the case of the contract for an indefinite term or for a fixed term the notice period depends on the period of employment with a given employer and it is:

- ❖ two weeks if the employee was employed for less than 6 months;
- ❖ one month if the employee was employed for at least 6 months;
- ❖ three months if the employee was employed for at least 3 years.

3. Remuneration in Poland

Remuneration for work should be determined in a manner corresponding to a particular type of work performed and qualifications required for that work's performance. It must also take into account the quantity and quality of the work performed.

Salary rates referred to in statistical data and discussed during job interviews with possible candidates in Poland are gross sums. Gross sums are calculated as a net salary level plus costs of social contributions and the tax paid by employees. A super gross salary level is understood as the

total cost of an employee borne by the company (a gross level plus social contributions paid by an employer). Rates of social contributions are described in the further part of this report, in the Compulsory Insurance Rates section.

Sample net, gross and super gross salary calculation is presented in the table below.

Net salary (paid to the employee)	Gross salary (net salary plus social contributions & tax paid by the employee)	Super gross salary (gross salary plus social contributions paid by the employer i.e. total cost of employing the employee in the company)
PLN 3,613,19	PLN 5,000	PLN 6,024

The state specifies the minimum remuneration for work as well as minimum hourly rate. In 2021 the minimum monthly remuneration is PLN 2800 gross. In addition to the regular remuneration, the employer is obliged to pay bonuses for overtime work according to the rules specified in the Labour Code.

The average gross monthly remuneration in Poland reached PLN 5,286 in the sector of enterprises (as of June 2020).

The salary levels vary depending on the sector and the company's geographical location. According to the data of the Central Statistical Agency for I quarter of 2020, the highest salaries were paid in the sector of financial and insurance activity: PLN 9,461,46 gross on average, whereas the lowest salaries were paid in the sector of accommodation and catering activities: PLN 3,935.31 on average. In the first quarter of 2020 the best remunerated region was the Mazowieckie Voivodeship with the average of PLN 7,082 gross. The lowest average remunerations were paid in the Warmińsko-Mazurskie Voivodeship: PLN 4,856.

4. Working Hours

As a general rule, working hours must not exceed 8 hours a day and an average of 40 hours per 5-day working week within an adopted accounting period not exceeding 4 months. Overtime work must not exceed 150 hours a year. A weekly working time including overtime work must not exceed an average of 48 hours within an adopted accounting period. If it is justified by the type of work or organisation thereof, work schedules may be applied by which it is admissible to extend the working time up to the limits specified by the labour law.

5. Employees' Leaves

An employee is entitled to an annual, continuous, paid holiday leave. The employee's right to the leave may not be renounced. According to the Labour Code, the minimum period of annual leave is 20 working days. After 10 years of work an employee is entitled to a leave of 26 working days. An employee is entitled to a regular salary for the period of leave.

6. Retirement

A standard retirement age in Poland is 60 years for women and 65 years for men.

7. Compulsory Insurance Rates

In principle, the gross remuneration of an employee constitutes the basis for calculating the sum of contributions to the retirement, pension as well as sickness, accident insurance, Labour Fund, Guaranteed Employees' Benefits Fund and Early Retirement Fund.

Sickness insurance contributions are entirely deducted from the gross remuneration of an employee, whereas retirement and pension insurance contributions are partially deducted from the employee's gross remuneration. Another compulsory insurance is a contribution to the National Health Fund [Narodowy Fundusz Zdrowia]. This whole contribution is paid by an employee. The rest of the contributions are paid by an employer from the employer's own means: the remaining part of the retirement and pension insurance, the entire accident insurance, Labour Fund, Guaranteed Employees' Benefits Fund and Early Retirement Fund (this last fund is applicable to work in special conditions or of a special nature).



RESIDENCE AND EMPLOYMENT OF NON-EU COUNTRIES' CITIZENS IN POLAND

The rules and conditions of entry into the territory of Poland and stay therein by foreigners are regulated by the Foreign Persons Act of 12 December 2013.

On 21 December 2007 Poland acceded to the Schengen Agreement, which is aimed at the abolition of physical borders among the European countries. Since the implementation of the Schengen rules, border posts between participating countries have been closed.

The Foreign Persons Act does not apply to the citizens of the EU and EEA Member States and Switzerland, and the following paragraph refers to the citizens of other states. **The information concerning the EU, EEA and Switzerland citizens is presented in the next chapter.**

1. Visas

Visas are issued only for a definite period of time and only for a particular purpose.

Since 21 December 2007 Polish consulates have been granting unified (Schengen) visas of "C" category. The Schengen visa is granted to the

persons who intend to stay on the territory of Poland or other Schengen country up to 90 days (approx. 3 months) in total (during one or several travels), within each 180-day period (approx. 6 months), counted from the date of entry into the territory of a Member State, or who intend to move within the Schengen territory for transit purposes.

Apart from visas of "C" category, Polish consulates have been issuing visas of "D" category (national visa). Such visa is granted to the persons who intend to stay on the territory of Poland for more than 90 days in total (during one or several travels) within one year from the date of the first entry. The national visa permits to stay on the territory of Poland during the period of validity for which the visa has been granted and additionally to move within other Schengen countries up to 90 days within each 180-day period, counted from the date of entry into the territory of the Member States. The validity period of a national visa may not exceed 1 year.

The national visa is granted by a Polish consulate (or a consulate department of a Polish embassy) if a foreigner stays abroad, and it may be prolonged by a voivode if the foreigner stays in Poland. The Schengen visa is granted at the border by the commander of the Border Guard checkpoint. The procedure of granting the visa in Poland lasts about two weeks.

2. Temporary Residence Permit

A temporary residence permit is granted for a period necessary to achieve the foreigner's purpose of stay on the territory of the Republic of Poland, however for no longer than 3 years. In order to obtain a temporary residence permit, a foreigner has to document the reasons for which he/she wants to stay in Poland for a period longer than 3 months.

These reasons might include for example:

- ❖ taking up or continuing work on the territory of Poland,
- ❖ performing work by a foreigner posted to Poland by a foreign employer,
- ❖ conducting business activity in Poland,
- ❖ taking up or continuing studies in Poland,
- ❖ performing seasonal work.

The foreigner staying in Poland in order to perform work may apply, within one procedure, for a permit both for work and stay in our country.

The permit is granted only by voivodes and the procedure lasts no less than 6–8 weeks. An application for a temporary residence permit should be submitted personally, no later than on the last day of the foreigner's legal residence on the territory of Poland.

A foreigner may also obtain from the Polish authorities a permit for permanent residence in Poland. The foreigner who was granted a permit to settle in Poland does not need a permit for work in Poland. A permit for permanent residence is granted for an indefinite period.

3. Permanent Residence Permit

In some situations listed in the Act it is possible to grant a residence permit for an indefinite period e.g. a foreigner got married to a Polish citizen recognized on the territory of Poland and simultaneously, has been married for the period of at least 3 years prior to filling the application and has stayed on the territory of Poland for at least 2 years on the basis of the temporary residence permit.

4. Residence Permit for Long-Term Residents of European Community

Foreigners who have resided legally and continuously within the Polish territory for at least five years may be granted a long-term resident's status.

The Polish authorities may refuse to grant a long-term resident's status on the basis of public policy or public security. The procedure is conducted by voivodes and may not exceed 3 months.

5. Residence Card

A foreigner applies for a residence card on the basis of the decision with a consent to residence. The residence card is a document which confirms the foreigner's identity during his/her stay in Poland.

6. Visa-Free Traffic

A visa-free traffic applies to Poland with regard to the citizens of some countries. These are, for instance, the citizens of Albania, Argentina, Ukraine, and Moldova.

The list of the countries whose citizens may travel to Poland without visas may be found, inter alia, on the Ministry of Foreign Affairs' website. The total period on the territory of all Member States without the necessity to obtain a visa may not exceed 90 days within each 180-day period.

7. Employment of Foreigners

Pursuant to the Law of 20 April 2004 on Promotion of Employment and Labour Market Institutions, foreigners are entitled to perform work on the territory of Poland, if, among others, they:

- ❖ have a status of a refugee granted in Poland,
- ❖ have a permanent residence permit,
- ❖ have a long-term EU-resident permit,
- ❖ are citizens of an EU Member State,
- ❖ are citizens of a European Economic Area Member State not belonging to the EU,
- ❖ have a temporary residence permit,
- ❖ have a work permit.

A work permit is granted by a voivode (except a seasonal work permit which is granted on behalf of a staroste, by the director of a Poviast Employment Office) at the request of the entity entrusting performance of work to the foreigner. Currently, the applicable provisions stipulate six types of work permits granted to foreigners. The work permits include, among others, the permits for:

- ❖ foreigners who perform work on the territory of Poland under a contract with an entity whose registered office, place of residence, or branch, establishment, or other type of organized activity is located on the territory of Poland (type A work permit);
- ❖ foreigners who are members of a management board of a legal entity registered in the Register of Entrepreneurs or a capital company in organization and who stay on the territory of Poland for a period exceeding 6 months in total within 12 consecutive months (type B work permit);
- ❖ workers posted to work in Poland by a foreign entrepreneur (type C, D, and E work permits);
- ❖ workers performing seasonal work on the territory of Poland (in agriculture, gardening, or tourism; type S work permit).

A work permit of a foreign person is valid for a definite time (however, no longer than 3 years, and in the case of members of management boards of companies that employ more than 25 persons a work permit may be valid up to 5 years) and for a given foreigner. A seasonal work permit may be issued for maximum 9 months.

8. Special regulations in case of citizens of Armenia, Belarus, Georgia, Moldova, Russia and Ukraine

The obligation to hold a work permit does not apply to citizens of the Republic of Armenia, the Republic of Belarus, the Republic of Georgia, the Republic of Moldova, the Russian Federation, or Ukraine who perform work outside the scope requiring the obligation to obtain a seasonal

work permit, for a period no longer than 6 months within 12 consecutive months, if the Poviát Employment Office, prior to the commencement of work by the foreigner, entered to the record of declarations the employer's declaration on entrusting performance of work to the foreigner, and the work is performed on the conditions specified in this declaration.

The appropriate Poviát Employment Office competent for the place of residence or the registered office of the entity providing a foreigner with work registers a written declaration of that entity on the intention to employ the foreigner.

This means that foreigners from the above-listed countries may commence employment in Poland without the permit if:

- ❖ the employer registers a declaration in the Poviát Employment Office on the intention to employ a foreigner (for the period of maximum 6 months),
- ❖ the foreigner holds a valid visa with the permit to work in Poland or a temporary residence permit for the territory of the Republic of Poland,
- ❖ the foreigner is entitled to stay in Poland under the visa-free traffic rules.

In case of a foreigner who stays outside of the territory of Poland and does not hold any residence documents (a visa or a temporary residence permit), the employer shall register a declaration on the intention to employ the foreigner, and then send it to the foreigner. Only then, the foreigner, on the basis of the declaration, may apply to a Polish diplomatic facility for a visa granted for the purpose of carrying out work on the territory of Poland.

The period of employment of a foreigner without a permit on the basis of the registered declaration may not be longer than 6 months during 12 consecutive months. This means that if the foreigner has already worked on the basis of the declaration, then another employment of the foreigner on the basis of a declaration may be commenced only after a six-month period of grace. An employer who makes a declaration on the intention to employ a foreigner may indicate a period of maximum one year, but the foreigner may not work for longer than 6 months.

The procedure for employment of a foreigner on the basis of a declaration may be combined with the procedure for granting a work permit.

An employer may employ a foreigner under a simplified procedure (on the basis of a declaration) and then, after several months, the employer may apply to a voivode for granting a work permit for that foreigner. In such case, the period of employment of the foreigner on the basis of the permit may commence directly after the period of employment on the basis of the declaration.

In addition, if a foreigner (a citizen of Belarus, Russia, Ukraine, Georgia, Armenia or Moldova) has performed work for a particular employer on the basis of a declaration for at least 3 months and the employer has applied for a work permit for that foreigner for the period following the period of employment on the basis of the declaration, the voivode grants a work permit without the need to obtain the information regarding the situation on the local labour market from the staroste.

9. Special Legal Solutions for Foreigners in connection with SARS-CoV-2

Due to the SARS-CoV-2 epidemic situation some rules of residence and employment of non-EU countries' citizens in Poland have been temporally modified. In particular, periods of legal residence in Poland were extended in case of persons staying legally in Poland on the day of the first announcement of the state of epidemic threat (14 March 2020). At the same time, there appeared temporary restrictions concerning the entry to Poland. There also appeared an obligation to undergo quarantine for persons entering Poland, with the exception specified in regulations.

Due to the above, before arriving in Poland we recommend that foreigners from outside EU States should check in a Polish consulate or seek information from Polish lawyers as to the currently binding rules for the entry to Poland, stay as well as work in Poland.



RESIDENCE AND EMPLOYMENT OF EU CITIZENS IN POLAND

On 1 May 2004 Poland joined the EU and the provisions of the EU law became applicable also in Poland. Moreover, as mentioned in the previous paragraph, on 21 December 2007 Poland acceded to the Schengen Agreement. The purpose of this Agreement has been to enable people to move freely between the countries which are party to the Agreement.

An EU citizen in the meaning of this chapter is a citizen of a country of the European Economic Zone (all Member States of the European Union, Iceland, Liechtenstein and Norway) and Switzerland.

1. Free Movement of Employees and Withdrawal of Permits for Work for EU Citizens in Poland

Freedom of movement of employees within the European Union is one of the fundamental rules of the Community.

The EU citizens are released from the obligation to obtain a permit for work in Poland.

2. Right of Residence of Citizens of EU Countries in Poland

Pursuant to the Act of 14 July 2006 on entry into, residence in and exit from the Republic of Poland of EU citizens and their family members, the EU citizens and members of their families are allowed to cross the border if they hold the valid passport or other document that confirms their identity and citizenship. EU citizens who intend to stay in Poland for a period longer than 3 months have to register their stay. The spouse of an EU citizen not being the citizen of the EU has to obtain a document known as a “residence card of spouse of an EU citizen”.

An EU citizen has the right to reside in Poland for a period longer than 3 months if he/she meets one of the following conditions of stay in Poland, namely he/she:

- ❖ is an employee or a person working on their own account on the territory of the Republic of Poland;
- ❖ has sufficient financial means to cover the costs of supporting himself or herself and the members of the family on the territory of the Republic of Poland so that he/she does not become a burden to the social assistance system and holds appropriate health insurance;
- ❖ studies or undergoes vocational training in the Republic of Poland, and also has sufficient financial means to cover the costs of supporting himself or herself and the members of the family on the territory of the Republic of Poland so that he/she does not become a burden to the social assistance system and holds appropriate health insurance;
- ❖ is the spouse of a Polish citizen.

An EU citizen who enters the territory of Poland in order to look for a job may stay in Poland without necessity to fulfil the conditions of stay in Poland described above, for a period no longer than 6 months, unless after the lapse of this period they demonstrate that they actively continue looking for a job and have a real chance for employment.

The voivode competent for the place of residence of the EU citizen shall be responsible for the registration of residence.

3. Right of Permanent Residence

An EU citizen may obtain the right of permanent residence after 5 years of continuous residence within the territory of the Republic of Poland if all the conditions of residence are fulfilled within this period.

However, it is possible to obtain the right of permanent residence before the lapse of 5 years in some circumstances. The residence within the territory of the Republic of Poland is considered to be continuous if the intervals in the residence do not exceed 6 months in a year in total.

An EU citizen who has obtained the right of permanent residence is granted a document certifying the permanent residence right.



CONTRACTS

1. Entering into Contracts in Poland

The Polish contract law is adjusted to a substantial extent to the EU regulations. Some formalities may be connected with entering into contracts in Poland. For instance, certain transactions have to be made in the form of a notarial deed, e.g. purchasing a real property, or with signatures confirmed by a notary, e.g. transfer of shares in a limited liability company.

It is advisable to always verify whether persons who claim to represent an entrepreneur are actually authorised to do so.

2. Obligation to Use Polish Language

Provisions of the law on the Polish language concern protection of the Polish language and its use in public and business activity in Poland. The strict regulation has been changed with the EU-accession day, allowing the entrepreneurs to use foreign languages in their business activity.

The law imposes the obligation to use the Polish language in the following situations:

- ❖ relations with the Polish state and local government authorities,
- ❖ relations and contracts in the field of the labour law as well as consumer contracts,
- ❖ if a consumer or employee resides in Poland and a contract is or shall be executed in Poland, with some exceptions where a contract may be in a foreign language.

The obligation to use the Polish language concerns in particular names of goods and services, offers, advertisements, manuals, information on characteristics of goods and services, warranty terms, invoices, bills and receipts, as well as warnings and information for consumers required by virtue of other provisions.

Documents within the scope mentioned above, including, in particular, contracts with the participation of consumers and contracts stipulated by the labour law, should be drawn up in the Polish language. Such documents may additionally be drawn up in a foreign language version or versions. However, the Polish language version should be the basis for their interpretation if the person performing work or the consumer is a citizen of the Republic of Poland.

The documents may be drawn up in a foreign language upon request of a person providing work or a consumer commanding that language if such person is not a Polish citizen and has been previously instructed about the right to have the contract or another document drawn up in the Polish language.

Additionally, non-observance of these provisions of law with respect to relations with consumers as well as in the field of the labour law may result in a fine.



3. Consumer Sale

The consumer sale is the sale of a movable object performed within the scope of activity of an enterprise for the benefit of a natural person who buys this object for the purpose not connected with the professional or business activity.

In case of the consumer sale in Poland, the provisions of the law on the Polish language impose additional obligations on the seller aimed at protection of consumers' interests. Among others it broadens the seller's obligations with regard to giving clear, comprehensible and not misleading information in Polish, sufficient for proper and full usage of the purchased goods, providing the proper technical-organizational conditions in the place of sale allowing to make a choice of the good and to check its quality, completeness and functionality of main mechanisms and their basic sub-assemblies.

4. Liability for Product Defects

The Polish law provides for a warranty for defects of an objects of sale. This type of warranty is statutory and is separate from a guarantee in sales given by the seller to the buyer in the event where the object of sale has a physical or legal defect.

The regulations provide for a detailed description of what objects are subject to warranty for defects. A physical defect may be related to the decreased value and usability of the object of sale or its incompleteness and lack of certain qualities. A legal defect is usually related to the lack of the seller's right to dispose of a given item or encumbrance of the item with a third party's right, e.g. a mortgage or a pledge. The seller is released from the liability if the buyer knew about the defect at the moment of purchase.

The liability for defects has a lot to do with the nature of the parties participating in a transaction. Warranty rights differ depending on whether the buyer is a consumer or the transaction is concluded between two equivalent entities, such as entrepreneurs. The procedures are different in terms of the liability periods, as well as the rights and obligations of the parties. If the buyer is a consumer, the liability may be limited or excluded only in particular circumstances. If the buyer is not a consumer, the statutory liability for defects may be contractually extended, limited or excluded. However, the limitation or exclusion will be ineffective if the seller insidiously concealed the defect from the buyer.

The buyer has a range of rights under the warranty for defects: it may request a reduction of the price, removal of the defect (by repair), exchange to a non-defective item or it may withdraw from the contract but only if the defect is substantial. Furthermore, the buyer may not exercise its right to request a reduction of the price or to withdraw from the contract if the seller has replaced the item with a non-defective one or removed the defect immediately and without excessive inconvenience for the buyer. The freedom to choose the right to be exercised by the buyer under the warranty for defects (exchange or repair) is limited by the provision of “impossibility or excessive costs”. The reason is that the seller may oppose the fulfilment of the buyer’s request in a manner specified by the buyer if such manner is impossible or would require excessive costs in comparison to the alternative manner.

The seller is liable under warranty for defects if the physical defect is found before the lapse of two years, and if the object of sale is a real property – before the lapse of five years from the release of the object of sale to the buyer. If the buyer is a consumer and the object of sale is a movable property, the liability of the seller may be limited to no less than one year following the release of the object of sale to the buyer.

A claim for removal of a defect or exchange of the object of sale is subject to a time-limit of one year counting from when the defect was found. If the buyer is a consumer, the limitation period may not end before the deadline for the founding of a defect.

5. Venue and Governing Law

It is very important in the international business to agree on the law that will govern the contract as well as on the court that will be relevant in the case of a dispute.

Since 17 December 2009 the EU Member States (except Denmark) have been obliged to apply the Regulation (EC) No. 593/2008 of the European Parliament and of the Council instead of the Rome Convention on the law applicable to contractual obligations, so-called Rome I. The Regulation regulates the problem of law applicable in the case of contracts related to the legal systems of different states. As a rule, the contract is subject to the law as chosen by the parties, and in case no law has been chosen, the detailed rules as defined in the Regulation should be referred to and complied with.

APOSTILLE

The Polish law stipulates that foreign official documents have the same probative force as Polish official documents. Thus, there is no formal obligation to have them certified. There are, however, two exceptions to that rule, i.e. documents certifying transfer of ownership title to a real property located in Poland and documents the authenticity of which was challenged by a counter-party still should be authenticated by

Polish diplomatic or consular agents. Nevertheless, in practice, the Polish authorities want to be sure that the presented documents are authentic and have been issued legally. This is what the so-called apostille is for. Not only the original document requires authentication, but also its copies and excerpts.

What is Apostille?

An official document issued in another country must be first certified in order to be used before Polish courts and other authorities.

In the case of documents intended for circulation in states that are parties to the Hague Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents, the certification is done by an apostille. It can take two forms: of an annotation (e.g. a seal or stamp) affixed directly to the document being certified or of a separate document. Apostille is designed to certify the authenticity of a document according to the law applicable at the place of issuing that document in respect of its form, issuance by the relevant authority, as well as authenticity of the stamp affixed and signatures made on the document. In short, apostille makes it possible for a foreign document to be used legally in a different country.

An up-to-date list of the states which are parties to the Hague Convention of 1961 is available on the HCCH website or at the legalisation centre: <http://www.hcch.net>

According to the Convention, official documents are understood as: notarial deeds, documents issued by state administration, and court documents, including documents issued by a prosecutor’s office or official certificates affixed to documents signed by persons acting as private individuals (e.g. notarial authentications of signatures).

Apostille is granted upon request of the document holder in the country where the document was issued. Some documents may also require prior authentication by other institutions.

From 16 February 2019, as a result of the changes introduced by Regulation (EU) 2016/1191 of the European Parliament and of the Council of 6 July 2016, the authorities of the EU Member States cannot require an apostille if submitted documents have been issued in another Member State and are referred to in the Regulation, e.g. documents certifying birth, death, name and last name, marriage, divorce, separation or annulment of marriage, origin of a child, adoption, place of residence, lack of criminal record. It does not mean, however, that EU Member States will not be able to issue, at the citizen’s request, an apostille to a document covered by the Regulation 2016/1191.

In case of the documents intended for circulation in a state which is not a party to the Hague Convention, the Polish public documents are certified through another procedure: legalisation.

ENERGY LAW

1. Introduction

The Polish energy policy has just reached a crucial point in establishing the direction of its further development in the upcoming years. Poland has always been associated with its vast coal reserves, and in fact Polish energy system was many decades based on this fuel. On the other hand, the climate policy in the European Union, to which Poland belongs since 2004, requires introduction of solutions which will limit the emission of CO₂; this means an increased share of renewable energy sources in the national energy production. During 2020 Polish Government announced the draft of the new Polish Energy Politics 2040 (called also “PEP 2040”) which outlines a target to wean Poland off coal and towards nuclear and renewable sources of energy. Polish energy production from coal is the highest level in the European Union i.e. it is currently 73%. The plan is to reduce it to 56% w 2030 and 28% w 2040. Such numbers are the most low figures we have ever seen in official governmental documents. It is also worth to mention that at the end of 2019 old ministries responsible for energy and environment were transformed into the new Ministry of Climate.

2. Act on Renewable Energy Sources

At the moment, energy production is regulated by the Energy Law Act and the Act on Renewable Energy Sources (hereinafter referred to as “the Act on RES”). The Act on RES came into force on 4 May 2015 and was subject to significant changes through a few amendment which has been implemented during last years.

The provisions of the Polish law define renewable energy sources as renewable non-fossil energy sources which include wind energy, sun radiation energy, aerothermal energy, geothermal energy, hydrothermal energy, hydropower, the energy of waves, currents and sea tides, energy obtained from biomass, biogas, agricultural biogas and bio-fluids. It is estimated that in 2020, on-shore wind power plants, biomass, and water power plants shared among themselves most of the installed RES capacity. But photovoltaic plants are during 2020 subject to the most dynamic increase in installed capacity.

The Act on RES, adopted in the current version, closed the old support system: the system of certificates of origin. The support provided by certificates of origin remains valid for no longer than 15 years from the date of commencement of production, but no longer than until 31 December 2035. The new system stipulated in the Act on RES is based on contracts of differences; it is the so-called auction model. This system is obligatory for installations launched after 1 July 2016. The main element of this support system consists in auctions announced and conducted by the President of the Energy Regulatory Office (ERO). Such auctions are to be held at least once a year, separately for installations with the total installed power up to 1 MW and over 1 MW. Separate auctions would also be held for installations launched before 1 July 2016 which choose to adopt the new system. The new support system has a wide flexibility as



the Government has a full discretion to decide on the volumes and values of energy to be purchased via auctions in a particular year.

Auctions are conducted in electronic form via an Internet auction platform. The auction criterion is the price for 1 MWh of electricity produced in 15 years. The winner is elected in a simple way: the lowest price offered wins. The obligation to produce electricity in the declared volume will be settled once in every three years. The sanction for failure to observe this obligation will be a cash fine. The last auctions, organised in 2018 and 2019, showed very competitive prices.

In 2020 it is intended to contract up to 75,3 TWh of electricity produced in renewable energy source. The allocated funds amount to maximum PLN 27,4 billion. The main technology for future RES capacity, chosen by the Ministry of Climate, is on-shore wind and PV which together creates the biggest auction with the capacity of 46,3 TWh and with value of PLN 14 billion. Auctions for 2021 are in the stage of planning. The Ministry of Climate announced drafts showing intention to create new 2 200 MW installations. The most important technology for 2021 will be PV with the plan for 1 700 MW. Total values are, however, much smaller than in 2020 i.e. it is intended to construct up to 53,2 TWh of electricity with maximum value of PLN 19,8 billion.

3. New Perspectives for Off-Shore Wind Farms

The Ministry of Climate has prepared a draft act on promoting power generation in offshore wind farms. The draft provides for a separate support scheme dedicated to the installations used to generate energy from the offshore wind.

The draft regulations provide for a two-stage support scheme allowing for significant acceleration of an investment process with regard to the offshore wind farms planned to be constructed in the Polish exclusive economic zone. The model adopted in both stages is based on a bilateral contract for difference.

Both in the first and in the second stage of the support scheme, producers will apply for the right to cover the negative balance. In practice, the right to cover the negative balance means covering the difference between a market price of energy and a price which will make it possible for producers to cover the costs of generating energy offshore. The stages will only differ in the way of selecting the projects which will have the right to have the negative balance covered. In the first stage of the support scheme, the right to cover the negative balance will be granted at the producer's request via an administrative decision issued by the President of the Energy Regulatory Office. The projects that will be able to take part in this stage are the ones which are highly advanced in the investment process, and guarantee energy generation before 2030, and the ones located in the area guaranteeing the lowest average cost of energy generation. In the second stage of the support scheme, the right to have the negative balance covered will be granted at auctions.

LEGAL PROFESSIONALS

Legal assistance in Poland is provided by attorneys-at-law [*radca prawny*] and advocates [*adwokat*]. An attorney-at-law and an advocate may advise in any field of law and may appear in court in all types of cases.

A notary [*notariusz*] is a third category of legal professionals in Poland. The role of a notary is to protect legal proceedings by assuring the security and certainty of legal transactions. The Polish law provides that certain acts in law have to be carried out in the presence of a notary who draws up a deed and handles all the paperwork required for a given transaction, in particular:

- ❖ real property transactions,
- ❖ donations,
- ❖ establishing perpetual usufruct titles,
- ❖ preparing and signing Deeds of Incorporation of companies.

A notary may also make a legal duplicate of a document or draw up the last will.

A bailiff [*komornik*] is authorised to enforce court judgements.

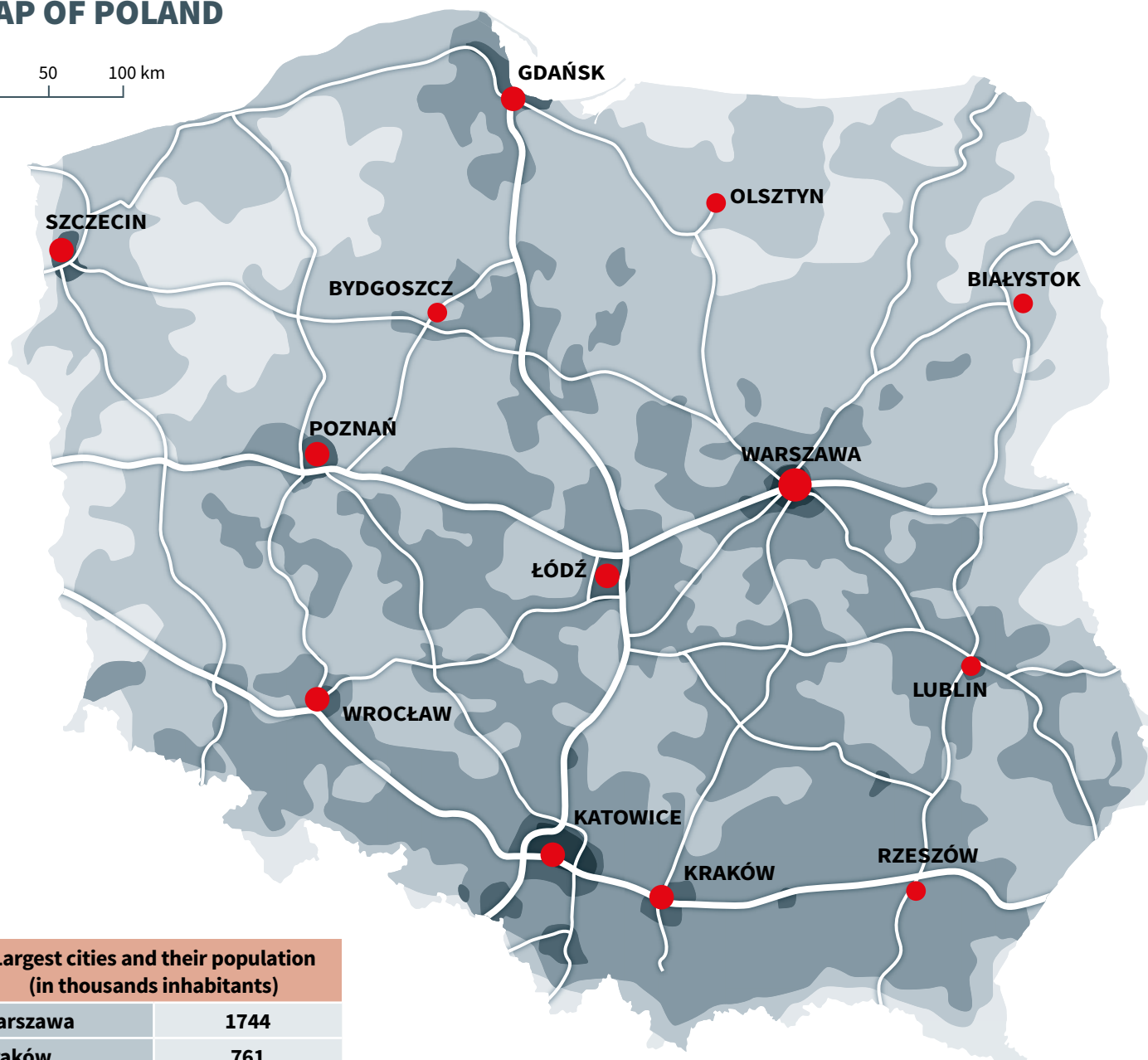
A tax advisor [*doradca podatkowy*] is authorised to advise in the field of tax law only.

It is advisable to check with a local chamber of respective legal practitioners in Poland if a given person is authorised to practice the legal profession.



MAP OF POLAND

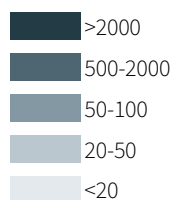
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**Largest cities and their population
(in thousands inhabitants)**

Warszawa	1744
Kraków	761
Łódź	701
Wrocław	636
Poznań	542
Gdańsk	462
Szczecin	406
Bydgoszcz	356
Lublin	340
Katowice	300
Białystok	296

Number of inhabitants per 1 km²



Total population	38.4 million
Land area	312,685 km²

Source: Central Statistical Agency in Poland (GUS), 2015

Peter Nielsen & Partners Law Office is a modern Danish-Polish law firm having its registered office in Warsaw, Poland; since its establishment in 1990 it has gained market recognition as a reliable and efficient advisor. We find practical solutions for our clients within many areas of legal practice. We undertake to provide highly specialised legal assistance within: real property market/construction law, foreign investments, mergers and acquisitions, labour law/HR, energy law, litigation and dispute resolution, bankruptcy/restructuring, debt collection as well as corporate law. For more information, please, visit our website **www.pnplaw.pl**

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