

Guide to foreign direct investment in Poland

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Poland: economic outlook

Investment climate

Poland is the only country in the European Union which did not experience recession during the global economic crisis. It has had the highest economic growth in the region in recent years. Poland's stability and safety are guaranteed by NATO and EU memberships, thus making it a reliable and important business partner for foreign investors.

This opinion is confirmed by international publications. According to the Bloomberg Rankings 2014, Poland is the best country in Eastern Europe and Central Asia in which to do business because of its expanding consumer market and improving infrastructure. In the EY's attractiveness survey 2014, Poland was ranked as the most attractive country in Central and Eastern Europe in which to invest in the coming years.

This position is due to a unique combination of a stable economic and political situation, a qualified workforce, an internal market of almost 40 million citizens, as well as its strategic location providing access to Western and Eastern European markets and the inflow of funds related to EU structural funds.

Quick facts

Area	Population	Capital	Major cities	Currency	Life expectancy	Time	Membership
312 679 km ²	38 496 mln (Central Statistical Office as of 31.12.2013)	Warsaw	Gdańsk, Łódź, Kraków, Poznań, Wrocław	Złoty (PLN) = 100 groszy (gr.)	females 81.0, males 72.7	GMT +1	EU, EEA, NATO, OECD, WTO

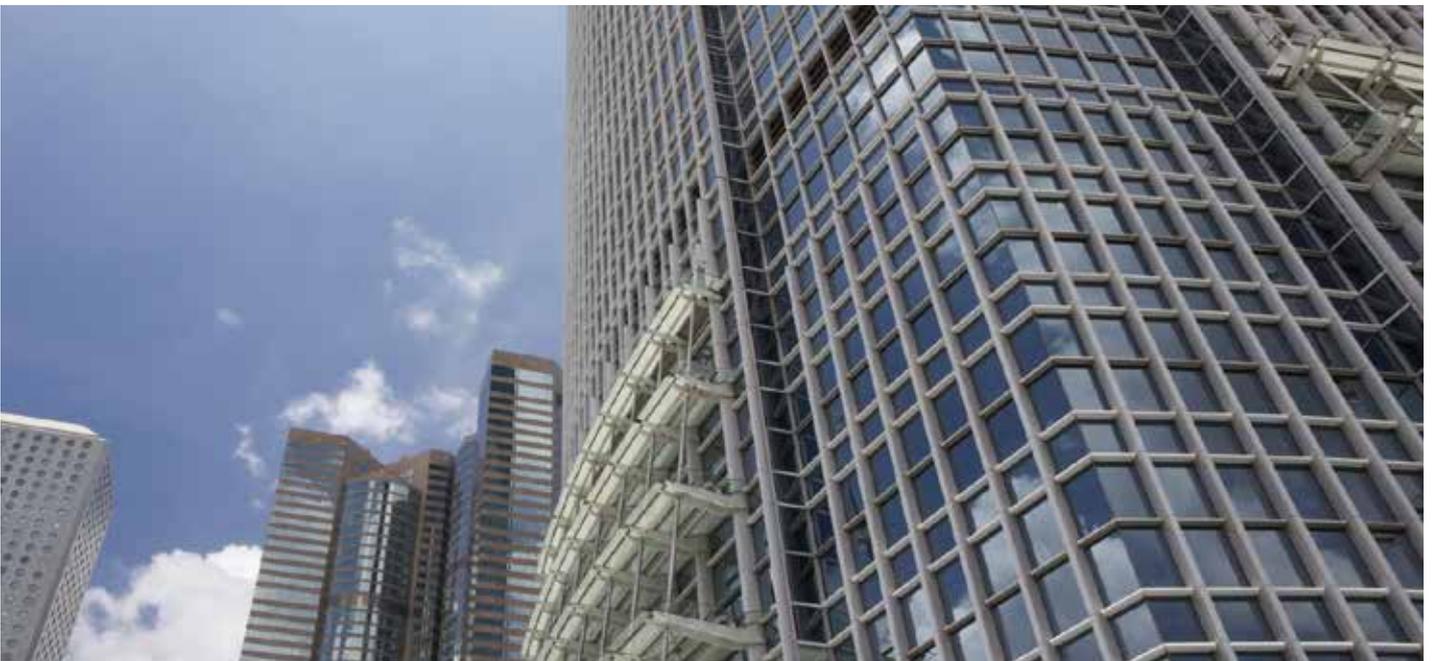
Key economic numbers

Category	2013
Real GDP growth (%)	1.6
Unemployment rate (%)	13.4
Inflation (%)	0.9
Exports (€ billion)	152.78
Imports (€ billion)	155.09



Source: Polish Information and Foreign Investment Agency: http://www.paiz.gov.pl/poland_in_figures

Legal framework for establishing a business presence in Poland



Major rules:

- Since Poland is a member of the European Union, a company established in Poland may pursue activities in other EU member states on an equal footing. Consequently, establishing a company in Poland opens the door for investors throughout the EU.
- The main vehicles used by foreign investors are limited liability companies (LLC) and joint-stock companies (JSC). Other vehicles, such as partnerships or branches, while sometimes utilized (mostly for tax reasons), are rarer and may not be accessible for investors from outside the EEA/EU area.
- Out of the two, the LLC, being roughly the equivalent of a private limited company (in the UK) or a GmbH (in Germany) is more popular. A JSC (the equivalent of a public limited company in the UK or an Aktiengesellschaft in Germany) is typically chosen when required by law for select types of business (such as banks, insurance companies), or if the investor intends to list the company (LLC shares cannot be publicly traded).
- The advantages of an LLC as a business vehicle include: (a) the exclusion of shareholders' liability (piercing the corporate veil doctrine generally does not apply in Poland); (b) relatively few corporate formalities which reduces operating costs; (c) a high degree of flexibility: LLC statutes may be adapted to its shareholders' needs; (d) the ability to conduct almost every kind of business (except, in particular, banking and insurance activities). In addition, Polish legislator contemplates introducing, in 2015, the possibility to establish an LLC with shares of no nominal value; if these contemplated changes enter into force, they will offer investors further flexibility regarding financing their investments.

- The Polish regulatory regime is quite liberal; as a rule, no administrative consent is required to establish a company and run a business, unless the law states otherwise. Most manufacturing and non-financial services companies do not need a general permit to operate.
 - In most types of businesses, members of their corporate authorities may come from any country, and no specific authorization is required to appoint them.
 - In Brownfield projects, the acquisition of a going concern can generally take the form of either (a) the acquisition of shares in the company running the business, or (b) the acquisition of an enterprise, its organized part or selected assets.
 - Liquidating a company in Poland is typically a straightforward albeit time-consuming process. For companies which have already disposed of their business (in the course of divestment), their liquidation may take approximately seven-eight months.
- accelerated, e.g., by establishing the company via the Internet; however, for a variety of reasons, that might not be appropriate for every transaction).
- The acquisition of a shelf company can be effected almost in an instant (one to two days before the company is able to conduct business); however the process tends to be more costly due to the remuneration of the shelf company provider. Overall, the costs typically do not exceed PLN 15,000 (excluding reimbursement for share capital, which in the case of a typical shelf company would be the statutory minimum of PLN 5,000).
 - In Brownfield investments, adjust your transaction approach to the envisaged acquisition structure. Note the legal peculiarities that will apply to each of the structures, and specifically:
 - Make sure the due diligence covers sensitive areas relevant to the given transaction structure (e.g. the title to the shares in a share deal, specifically if the acquisition involves individually- or family-owned business, privatization issues if real estate is acquired as a part of the business, transferability of permits and agreements in an asset deal);
 - Accommodate the timing of your business schedule to match legal requirements (establishing a company, obtaining merger control clearance if required, but also, e.g., obtaining third party consents to the transfer of key agreements and permits in an asset acquisition);
 - Ensure that the transaction documentation properly addresses any peculiarities (e.g., put emphasis on properly drafted representations and warranties, specifically if the acquisition is structured as a share deal).
 - Check if the given business requires a license to operate, and if it does, what are the particular requirements that the investor needs to fulfil in order to apply for it. Note that such requirements might not apply, e.g. if the acquisition is structured as a share deal.

Red flags:

- From the Brownfield investment perspective, it is important to note that many acquisitions in Poland are made either from the state (typically in the form of privatization) or from local individual entrepreneurs. Each type of acquisition has its own peculiarities, and specifically, managers or officials responsible for the given privatization as well as the individual businessmen, may not be familiar with the large-scale international business environment (in fact, they seldom are), which may result in a protracted acquisition process and additional costs for the investor (both at the stage of due diligence, as well as negotiations).
- Further, privatizations are regulated, and the scope for negotiation is limited. In acquisitions of state enterprises, certain conditions (which may sometimes be arduous) are imposed. In particular, this applies to employees' participation in the company's governing bodies; the obligation to maintain the current level of

Tips:

- A business presence can be established in one of two ways: (a) by creating a new company; or (b) by purchasing a shelf company. Creating a new company is typically slightly more cost-efficient (assuming professional counsel is involved, the related costs should be in the range of PLN 10,000, excluding payment for share capital), however it is usually quite time-consuming; it could take as much as two months to get it fully operational (although this process may be

Legal framework for establishing a business presence in Poland

employment in the acquired enterprise; or the prohibition of reselling the shares and assets within a specified period.

- With regard to Brownfield investments structured as share acquisitions, it should be noted that the Polish statutory warranty regime can be vague and ambiguous (it is not clear to what extent it will apply to the assets in the possession of the company in which the shares are traded), which can at times jeopardise the interests of the purchaser. As a result, it is essential for the investor to ensure that the contractual representations and warranties regarding the company are properly drafted.
- As noted above, while the overall regulatory regime tends to be liberal, certain types of businesses are licensed. In particular, this relates to banking, insurance, energy and the media. Obtaining a license is often time-consuming and requires the fulfilment of specific conditions (which may relate to the investor's identity, the company's financial conditions or the company's technical equipment).
- Members of an LLC or JSC management board may be held civilly and criminally liable in specific cases (in particular, if they fail to file for bankruptcy when their company's condition requires this by law, or if they do not file the appropriate documents with the Registry Court). A management board member's liability cannot be limited or excluded. However, different instruments to minimize the financial liability of managers are in common use (e.g. professional indemnity insurance).



- Withdrawal of capital from a company is restricted and subject to formalized time-consuming procedures. However, in practice there are some legal instruments facilitating the return of capital notwithstanding the legal restrictions.
- Exiting an investment by liquidation is formalized and time consuming even if the company has neither financial resources nor assets. The assets of a liquidated company may be distributed among the shareholders only after satisfying or securing the creditors and not earlier than 6 months (for an LLC) or one year (for a JSC) following the date of summoning the company's creditors to state their claims.
- Even though most services businesses do not require any general permits to operate, certain sectors related to financial

services, media services and the energy sector tend to be more regulated (regulations may pertain to obtaining official authorizations, to choosing particular types of corporate vehicles by which the given business must be run, to requirements concerning the credentials of persons appointed to the management board, etc.). Investors intending to operate in restricted sectors should take note of the applicable regulatory provisions.

In Brownfield investments, adjust your transaction approach to the envisaged acquisition structure.

Public support for foreign direct investment – key incentives

Special Economic Zones (SEZ):

- There are 14 special economic zones situated near major industrial, academic and transportation hubs and in outlying regions offering qualified workforces and optimization of costs. The activity of Special Economic Zones has been extended until 2026. Previously, the SEZ regime was set to expire at the end of 2020.
- A SEZ permit currently provides a corporate income tax exemption of up to a certain proportion of the eligible investment costs (capital expenditure or 2 years' payroll). The aid intensities applicable since July 1, 2014, which are considerably diminished as compared to those previously available, would typically range between 20 percent (15 or 10 percent in Warsaw) and 35 percent of the eligible costs, with the exception of four eastern regions, which allow for 50 percent aid intensity. In addition, the relevant aid intensity may be increased by 10 percent or 20 percent in case of medium or small enterprises, respectively.
- A SEZ exemption may be accumulated with other regional investment aids.

- The acquisition of shares in a company with a SEZ permit principally allows the investor to enjoy the benefits of the SEZ exemption.
- Subsidized business must be conducted in the SEZ, assets should be held and the stipulated level of employment retained in the SEZ for at least five years (in respect of large investors) following completion of the investment.

EU funds:

- EU funds proved to be one of the most attractive sources of aid to investment in 2007-2013; moreover, the EU has confirmed its allocation of extensive funds to Poland for 2014-2020.
- EU funding has been available for a variety of projects and sectors, from manufacturing to service centers, from traditional production lines to research and innovation, from energy, transport and industrial infrastructure to health care, education, financial industry and services.
- As a matter of principle, EU funding has been offered to investors through competitive tenders, in which various bidders submit their projects during the application periods set by the authorities.

Other key incentives:

- Real estate tax exemptions: provided by local authorities based on capital expenditure or employment targets; these benefits do not require any individual permit from the authorities and often provide significant cash relief for investors wishing to own the title to real property and infrastructure rather than lease such assets.
- Innovation tax credit: the investor is allowed, by law, to deduct from the taxable base 50 percent of the cost of acquisition of new technologies, and, in parallel, enjoy the tax depreciation rates available for such technologies under the general rules.
- Long-term government subsidies: based on an individual decision of the government and an agreement with the Ministry of Economy, a cash grant may be provided for investments in specific sectors.
- Employment subsidies: tangible cash support typically offered by local unemployment offices to investors creating new workplaces.
- Non-cash support: depending on the area and sector, local authorities may also provide,

Public support to Foreign Direct Investment – key incentives



in addition to cash instruments or, when they have insufficient funds, various in-kind benefits such as pre-development of land, improvement of local infrastructure and services, recruitment support, public procurement contracts or exclusivity.

- Restructuring aid: relevant when targeting ailing firms.

Tips:

- Immense support will be made available to Poland from 2014 through 2020. Based on experience, the principal funds are allocated on a first come, first

served basis. Consequently, the major funding opportunities will crop up earlier rather than later, so investors are strongly encouraged to review their investment plans as soon as possible and not to delay entry into the Polish market.

- Although subsidy agreements tend to be based on templates pre-established by the authorities, it is extremely useful to consider and negotiate, whenever possible, change of control clauses or potential downsizing conditions; these would give the investor greater flexibility in subsequent operations and restructuring and would help avoid litigation and

recovery of aid if the investment does not meet expectations.

- In addition, to avoid change-of-control restrictions, exits through alternative structures (including share deals) may be considered.
- The total threshold of aid available to FDI is usually above the amount of aid offered under any specific instrument; therefore, it is strongly suggested to combine various aid measures so as to effectively make use of the entire state aid limit or to reach that limit much sooner than would be the case for a single incentive.

- Management and timing are essential when applying for aid, particularly when investors intend to develop a state aid package; to streamline the process, a number of steps may be applied in practice, including start-up presentations to the key agencies and signing letters of intent with all the authorities and parties involved.

Red flags:

- Investment incentives are available provided that aid is applied for before the actual investment decision is made and its implementation begins; hence, it is crucial to consider and apply for aid well in advance. It is possible for an investor to seek initial advice on the contemplated project, but contracts with local suppliers or construction works commenced before an aid application is filed would usually render the expenses in question or even the entire investment ineligible for public aid (please note that in certain areas, the rules on timing investment procedures may be even stricter).
- Only new assets may qualify as eligible for large investments, and intangibles are typically eligible for aid only up to 50 percent of their value.
- Subsidized investment projects may involve individual notifications to the European Commission.
- Large investors would typically be required to retain their investments (without any substantial modifications) for five years following their completion and, consequently, the disposal of subsidized assets or of a branch of business, or even adjustments in the business model may be subject to restrictions during that period.
- Irrespective of investment commitments, in EU-funded projects, investors should also comply with other EU policies, such as state aid law, public procurement, environmental protection and their like; any infringement in those areas could have a detrimental effect on funding.
- Tax exemptions available in SEZs apply solely to those activities which are carried out within the SEZ and are covered by the SEZ permit; hence, outsourcing/allocating a part of one's operating or manufacturing activities to entities operating outside the SEZ may proportionally reduce the effective SEZ tax exemption.
- Depending on the aid measures considered, certain sectors are not eligible for SEZ-related benefits and reliefs (e.g. construction and development, wholesale, retail and financial services).
- The recent case record suggests that despite the regular supervision of the Polish authorities, the European Commission may from time to time challenge the allocation of EU funds to specific investors or programmes. When that happens, the Polish authorities could refuse to disburse the funding that has already been granted or seek to recover aid previously distributed. Even though various legal actions could be envisaged to mitigate the risk of such recovery, it is also useful to first carefully negotiate any recovery clause in the

subsidy agreement, and to keep a watching brief on the behaviour of the aid-granting authorities against the background of EU funding and state aid laws.

- As a rule, public aid can cover only a part of the investment costs and the investor is required to finance the balance of the investment expenditure; the intensity of public aid may also vary depending on the aid measure in question and the project.

EU funds proved to be one of the most attractive sources of aid to investment in 2007-2013; moreover, the EU has confirmed its allocation of extensive funds to Poland for 2014-2020.

Tax compliance and efficiency

Major rules:

- An existing business may be acquired through a share deal, the acquisition of going concern or the purchase of separate assets; each of those scenarios have considerably different tax effects and deserve careful consideration.
- Decide beforehand on the profit distribution pattern; depending on your sector of activity, you may find one of the following methods best suited to repatriating your profits: dividend distributions, interest payments, royalties or services fees.
- Register for tax purposes and apply for any relevant tax rulings well in advance of the actual commencement of the investment; tax rulings are issued within three months, which may delay the investment process.
- If you intend to acquire real property, examine its previous record as it may have a crucial impact on the VAT aspects, cash flow and timing of the transaction.
- As you contemplate financing your Polish investment, you should consider vital tax aspects such as withholding taxes, deductibility of interest, thin capitalization, stamp duty and foreign exchange effects; if carefully managed, intra-group

financing may be arranged for your Polish investment and operations at little or no tax cost.

- Reflect a fair and accurate allocation of tasks, duties, functions and costs within your capital group: this could significantly mitigate the local tax exposure of your Polish operations.
- If possible, consider investment in one of the many Special Economic Zones to obtain a corporate income tax exemption of up to 50% (for large investors), as well as other tax benefits.

Tips:

- A number of established, legitimate investment schemes may be used to maximize returns on investments such as: share exchanges, tax consolidations, closed-end investment funds, step-ups on acquired assets, profit-participating loans and plenty of others, tailored to your business aims.
- In recent tax practice, executive staff and managers have been able to enjoy particularly beneficial tax arrangements combined with efficiency incentives.
- Corporate restructuring may often be effected at little or no tax cost.

- If properly placed in your corporate structure, a Polish subsidiary may incur little or no withholding tax.
- In heavily capitalized subsidiaries, excessive stamp duty can be avoided by allocating a large proportion of your contribution to a share premium.
- A number of measures, such as the redemption of shares, may be applied to distribute profits tax-free.

Red flags:

- If you acquire Polish assets subject to VAT, make sure that the VAT is duly charged and could be recovered; if necessary, apply for a tax ruling in that respect. Note that if a seller charges an incorrect amount of VAT, the tax office will normally refuse to refund the corresponding amount of input VAT to the acquirer or seek recovery of the amount so refunded.
- Unless properly structured, the acquisition of local assets as a going concern may involve the assumption of liability for the tax debt of the seller; to preclude that risk, review the structure of the transaction and obtain comfort through tax certificates, if necessary.

- Some of the traditional investment schemes (including e.g. Luxembourg vehicles) have been significantly affected by recent changes in the Polish tax treaties and domestic laws; their adjustment may be advisable.
- Avoid investment in Polish subsidiaries through foreign partnerships if you intend to distribute profits as dividends, and be careful with intragroup loans to Polish partnerships.
- The deduction of interest on debt assumed from the seller of the local assets may be challenged by the tax authorities.

Exemptions and beneficial tax regimes:

- No withholding tax on dividends distributed to EEA/EU shareholders holding at least 10 percent in a Polish subsidiary for at least two years
- Zero percent withholding tax on interest and royalties distributed to EEA/EU shareholders holding at least 25 percent in a Polish subsidiary for at least two years
- Exemption from corporate income tax on mergers and spin-offs
- Exchange of shares exempt from tax, subject to conditions
- Leasing of business assets
- Corporate income tax exemptions for foreign and domestic investment funds
- Real estate tax exemptions on local investments
- Foreign and shareholder loans free from stamp duty

- VAT exemptions for used real premises

Start-up and M&A rules:

- Corporations may choose tax years compatible with their business models.
- Tax losses incurred during the investment stage can be carried forward into the five subsequent years (up to 50 percent a year).
- Tax losses incurred by a company acquired through a merger cannot be carried forward.
- Interest received by a Polish subsidiary on intra-group debt in excess of the thin capitalization thresholds is not tax-deductible.
- The acquisition of a going concern may necessitate the return of a part of the input VAT paid and deducted by the seller.
- Prior to the acquisition of a going concern, tax certificates should be sought from the tax authorities confirming that the seller has no tax arrears.

Compliance:

- Tax registration: typically managed by the registration court
- VAT returns: monthly or quarterly
- CIT advance payments: monthly (the simplified regime may also be applied). CIT returns: annually
- Updated transfer pricing documentation: required for intra-group transactions crossing the thresholds of €20,000, €30,000, €50,000 or €100,000
- Payroll reporting: annual
- Average tax dispute: six months-two years (possibly more in complex cases)

- Personal liability for tax compliance: typically all board members, possibly also the financial director or the chief accountant
- Financial statements: annually
- Tax inspections: in principle announced in advance, but also random in certain cases
- Risk of enforcement: tax decisions enforceable only if final (in the case of litigation, if approved by the court)

Rates and terms:

- CIT: 19 percent
- VAT: 23 percent
- PIT: 18 percent; 32 percent
- Tax penalty interest: 8 percent
- Statute of limitation on tax arrears: five years
- Tax depreciation of real estate: 10/40 years
- Stamp duty on share capital: 0.5 percent
- Stamp duty on a share transfer: 1 percent
- The transfer of a going concern or branch of a business: VAT exempt (in the case of sale, stamp duty may be chargeable)
- Withholding tax on dividends (subject to international treaties and domestic exemptions): 19 percent
- Withholding tax on interest and royalties (subject to international treaties and domestic exemptions): 20 percent



Employment compliance

Major rules:

- Employment law is codified and highly regulated. An employment contract cannot be less beneficial for the employee than the provisions of the Labour Code and other generally binding regulations.
- The basic form of employment is an indefinite term contract. Work may also be based on fixed term contracts, civil law contracts or in the form of self-employment.
- The same rules regarding employment apply to management staff and to regular employees except for provisions regarding overtime.
- The minimal salary changes every year. In 2014 it is PLN 1,680 gross monthly (approx. €401) and in 2015 it will be PLN 1,750 gross monthly (approx. €418).
- Collective bargaining agreements are not commonly met in the private business sector.
- The associated costs of employment are relatively high. They reach approximately 48 percent of the net wage paid to the employee. Alternative forms of employment help to reduce these costs significantly.
- Rules regarding non-discrimination, non-harassment

and anti-mobbing are commonly applicable. Employers must comply with these requirements regardless of the type of contract (employment contracts or civil law agreements).

- Private pension plans are not common. Pension insurance is an element of the obligatory social security insurance system.
- EU citizens enter and perform work in Poland without work permits. Other foreigners as a rule need working visas and work permits.
- Establishing a company in a Special Economic Zone may bring income tax relief due to the establishment of new places of work. The level of the tax relief depends on the Special Economic Zone and requires investing a particular amount of money and maintaining the level of employment for a particular period.
- The employment of a set number of disabled persons allows an employer to obtain the status of supported employment enterprise, which brings the possibility of reimbursement of up to 50 percent of the interest rate on enterprise development loans related with disabled employees rehabilitation, the

reimbursement of the related costs of construction, transport and administration and tax reliefs.

- The acquisition of assets or an organized part of a business in the majority of cases results in the automatic transfer of employees and their contracts to the purchaser (TUPE effect).
- Starting an employment case before the labor courts is free for employees if the value of their case is below PLN 50,000.

Tips:

- The background screening of candidates to work is very limited. Due to personal data protection regulations, the employer may only request basic data in recruitment process. Recruitment agencies may provide some additional information about the candidates they recommend.
- Monitoring in the workplace regarding e-mails, telephones and other devices is legally admissible if the employees are duly informed about the measures adopted by the employer. Issuing respective by-laws is recommended.
- To make an Employee Handbook/ Code of Conduct or other similar document effective in Poland it should be announced to the employees formally, preferably as

Employment compliance

a part of the internal workplace by-laws. In some cases it should be discussed with employee representatives, such as the works council and/or trade unions.

- Outsourcing of selected areas of operation such as payroll, accounting or IT services, may reduce costs and help increase the headcount.
- Statutory severance payment due to redundant employees is not high. It can be from one to three monthly salaries, but no more than 15 times the minimum wage guaranteed by law.
- Foreigners (non-permanent residents) may benefit from double tax treaties concluded between Poland and their home countries.
- As a rule, bonuses for managers are paid in cash. For motivation and retention purposes the employer may also offer financial instruments, stock option plans, shares and other non-monetary benefits which in a number of cases benefit from preferential tax treatment.
- Highly qualified foreigners (non-EU citizens) must be employed at higher rates of pay. The minimal salary will be 63,390 PLN gross annually (approx. €15,165). However, the employer has less administrative obligations regarding the employment of such foreigners.
- Costs of creating a new place of work for an unemployed person registered with the District Employment Agency could qualify for reimbursement of up to approx. PLN 22,439 (approx. €5,359). The employment of

that person must last for at least 24 months.

Red flags:

- As a rule, employment-related documents must be drawn up in Polish. Foreign versions may only serve as legally non-binding auxiliary sources of information.
- If trade unions operate at the company, they are empowered to negotiate on all collective employment matters in the name of all the employees (including non-union members of the workforce). This concerns, in particular, remuneration and bonus rules, terms of collective dismissals and restructuring processes.
- If there is a works council at the company, it must be informed or consulted in matters related to the economic situation of the company, planned and foreseen changes in staff levels and employment conditions.
- Drug testing is not allowed with respect to job candidates and employees. Alcohol tests on employees are strictly regulated and cannot be made on a random basis.
- Hiring casual workers (external employment) is not regulated by Polish employment law. The only legal form of external employment is temporary work which is limited in time and provided by licensed temporary work agencies.
- There are many groups of employees who are legally protected against ad hoc terminations of their employment contracts or changes in their conditions of employment. This

should be taken into account whenever a company is to be restructured or individual termination decision is to be made.

- After six months in Poland, a foreigner automatically becomes a Polish tax resident. He/she is required to report and tax all his/her income to the Polish tax office, regardless of where the income was obtained.
- Payroll documentation must be archived for 50 years.

Exemptions and beneficial regimes:

- Managerial contracts can be governed by the civil law which allows for greater flexibility in setting the terms of employment. Labor Code regulations do not apply to civil law contracts.
- Management board members of a company registered in Poland do not need work permits if they stay in Poland for less than six months in the 12 month period commencing with the date of their arrival.
- Citizens of Armenia, Belarus, Georgia, Moldavia, the Russian Federation and Ukraine do not need work permits if they work in Poland for less than six months in the 12 month period commencing with the date of their arrival.
- Engaging registered self-employed workers reduces fixed costs. The company is invoiced for the services provided by the self-employed worker and may deduct VAT. The self-employed person is responsible for his/her social security contributions and personal income tax advances.



- A self-employed person may pay the minimum social security contributions, calculated as 60 percent of the average salary published by the Central Statistical Office, regardless of the income actually obtained. A person setting up a business for the first time may benefit from an even more preferential tax and social security regime for the first two years.

An employer must:

- Have written contracts with employees
- Register itself and each of its employees with the social security office (ZUS)
- Produce assessments of the occupational risks and hazardous factors pertaining to each working position
- Ensure each new employee has a medical check-up performed by an occupational physician at the employer's expense

- Provide health and safety at work training for employees
- Provide the employee with the information on anti-discrimination regulations
- Set up a personal file for each employee; the contents of the file are regulated by law
- Employ payroll specialist or hire an external payroll provider
- Obtain work permits for foreigners as necessary
- Draft and properly introduce internal by-laws such as Workplace Rules, Regulations, Social Fund Rules, etc.

Rates and terms:

- Personal income tax for self-employed: 19 percent
- Standard income tax rates: 18 percent and 32 percent
- Social security (ZUS) contributions: minimum 42.19

percent (including health insurance), 33.19 percent (excluding health insurance)

- ZUS share paid by the employee: 22.71 percent (including health insurance), 15.21 percent after tax deduction and 13.71 percent (excluding health insurance)
- ZUS share paid by the employer: minimum 19.48 percent
- Statute of limitation of social security arrears: as a rule five years (in certain cases 10 years)
- Minimal gross monthly salary in 2014: PLN 1,680 (approx. €401) and in 2015 PLN 1,750 (approx. €418)
- Average gross salary in the first quarter of 2014: PLN 3,895.31 (approx. €930) and in the second quarter of 2014: PLN 3739,97 PLN (approx. €893)

Environmental protection



Major rules:

- If you intend to conduct business activity, check out the local legal and environmental issues before proceeding with your investment plans.
- Be aware that a local zoning plan usually applies and any investment decision must comply with it.
- In the absence of a local zoning plan, you may need an individual zoning permit before proceeding further.
- You may need a building permit, depending on the investment.

- Factor a possible decision on environmental conditions into your thinking before applying for an individual zoning permit, a building permit or other administrative orders (e.g. water permit).
- A decision on environmental conditions is generally required if the planned investment is likely to have a significant impact on the environment: check the statutory list of such investments, be aware it was recently changed.
- For investments that may have a high impact on the environment, an environmental impact assessment must be conducted

for the purposes of the decision on environmental conditions: you will have to commission an environmental impact report.

- The environmental impact assessment procedure comprises: analysis of the environmental impact report, consultation with the relevant authorities and public consultations.
- You might have to provide alternative versions of the planned investment so as to give the authorities the chance to choose the more environmentally-friendly option.
- Before starting operations you may need other environmental permits (e.g. for waste production/emissions to air) and an occupancy permit.
- Although generally the polluter pays principle applies to contaminated ground, please be aware that in certain instances the liability for contaminated land may be assigned to the new owner.

Tips:

- Swiftly determine if you need a decision on environmental conditions and whether an environmental impact assessment will have to be made so that you can factor them into your investment schedule.

- Classify the planned investment carefully so you do not evade obtaining a decision on environmental conditions: this avoids future problems.
 - Sometimes only certain elements of your investment, and not all of it, require a decision on environmental conditions: e.g. a shopping center car park but not the entire shopping center.
 - Prepare documents required for obtaining a decision on environmental conditions well in advance, especially if your investment is complex and requires an environmental impact report.
 - Take care to produce a high quality environmental impact report, otherwise the authorities will ask you to amend it.
 - Help the authorities ensure that all interested parties—the cooperating authorities and the public—receive all the documents produced during the procedure, especially the environmental impact report and any attachments/amendments.
 - From beginning to end, work with and educate the local authorities and the public.
 - Prevention is better than cure: monitor the procedure for issuing the decision on environmental conditions and discuss with the authorities any doubts you may have as to the correctness of this procedure.
 - While acquiring the property for the purpose of your investment, consider environmental survey of the land as it may be polluted.
- Red flags:**
- Failure to obtain a decision on environmental conditions due to the wrong classification of the investment may have a serious impact on the validity of the other decisions obtained and could put the whole project on hold.
 - A special environmental impact assessment procedure applies if there is a likely impact on a Natura 2000 protection site.
 - Only one decision on environmental conditions should be issued for one project: a series of technologically interconnected facilities may be classified as one project, even if they are delivered by different investors.
 - “Salami slicing” is against the law: avoid dividing an investment into small parts so as to avoid the need to obtain a decision on environmental conditions.
 - Examples of investments requiring a decision on environmental conditions: various types of power plants, wind farms of certain parameters, production of natural gas, waste treatment plants, industrial plants, housing developments, shopping centers and car parks.
 - Certain obligations related to clean-up and liability for ground contamination may be acquired by the new owner of the land.

Failure to obtain a decision on environmental conditions due to the wrong classification of the investment may have a serious impact on the validity of the other decisions obtained and could put the whole project on hold.

Acquisition of real estate

Major rules:

- Prior to the purchase of real estate for development purposes, check its legal status, in particular whether the seller holds an appropriate legal title to it.
- Check whether consent for the acquisition of the real estate by foreigners is required; as a rule, foreigners from the European Economic Area do not need consent unless agricultural or forest land is involved. As for other foreigners, there are certain exceptions to the requirement of obtaining consent (e.g. the acquisition of undeveloped property by an entity for its statutory objectives, provided that the total area of its real properties in the country does not exceed 0.4 ha in urban areas). However, these exceptions must be treated carefully, because every sale without consent (if an exception was not applicable) automatically invalidates the sale agreement.
- The state or local authorities hold first refusal or other rights regarding some real estate (e.g. undeveloped property previously acquired by the seller from the state or local authorities, a perpetual usufruct right to undeveloped land, property entered in the register of monuments, property located in a Special Economic Zone, etc.).

- Certain restrictions apply to agricultural properties (e.g. the pre-emption right of its lessee or of the Agricultural Properties Agency if the area exceeds 5 ha, consent for acquisition by foreigners). Also, as mentioned below, as a rule, no development is allowed on agricultural land, except for that classified as agricultural land in cities.
- In Poland it is also crucial to verify, prior to the acquisition of the real estate, whether it has been expropriated in the past, as the previous owners or their heirs hold certain rights with respect to such properties (e.g. the right of first refusal or even the right to request the return of the property). The above issues may have an impact on the legal title to some properties.

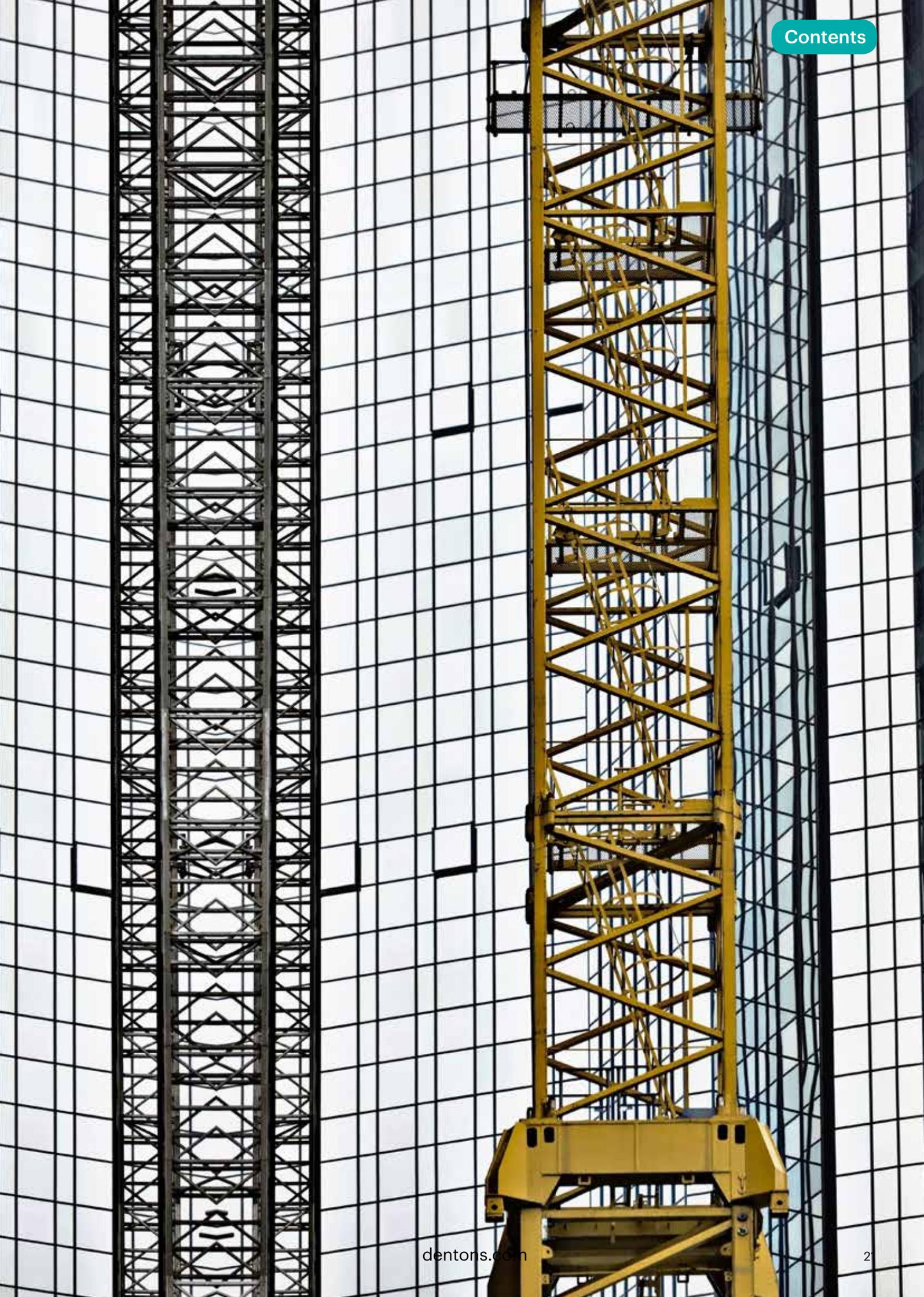
Tips:

- Prior to the purchase of a property for development purposes, check to ensure:
 - It is not designated for public purposes in the local zoning plan;
 - It is not agricultural or forest land;
 - The state or local authorities, or any other entity, does not hold pre-emption rights or

other rights regarding the real property to be purchased.

Red flags:

- Every unconditional sale concluded (a) in a way preventing the exercise of the pre-emption right or (b) without consent for the property's acquisition by a foreigner, causes invalidity of the sale agreement.
- The purchase of the real estate from a public entity (e.g. municipalities, the State Treasury), as a rule, is only possible by tender. The law provides for certain exceptions from this rule (e.g. the sale of the land to the holder of a perpetual usufruct right, the sale of the land which may improve the development of the neighbouring land and which may not be developed unilaterally). However, the exceptions must be treated carefully, because every sale without a tender, where the exception was not applicable, causes invalidity of the sale agreement.



Building process

Major rules:

- If there is a local zoning plan, the design must be (a) in strict compliance with the terms and conditions set out in the plan and (b) the building permit should be issued directly on the basis of the plan.
- If there is no zoning plan, zoning decisions must be obtained for (a) the construction of the building or facility; (b) the modification of the use of the investment or any of its parts; (c) carrying out other major construction works.
- The zoning decision specifies the investment type, planning conditions and detailed rules for planning.
- The zoning decision is issued by the heads of local authorities: wójt or mayor, depending on whether it is a rural or urban municipality. During the decision's term of validity, it is binding upon the authorities responsible for issuing building permits.
- The investor should apply for the building permit. The application is filed in a specified form.
- The building permit may be granted exclusively on the basis of the local zoning plan or zoning decision. Most investments must be preceded by environmental impact assessments or environmental decisions obtained prior to the building permit. Failure to do so may undermine the validity of the building permit.
- A building permit may be issued only once the application complies with the local zoning plan or zoning decision, as well as with the environmental decision (if required) and after all technical, environmental (if applicable) and other requirements have been met.
- If the property's legal situation is clear-cut, the construction process can begin. This includes obtaining a final building permit.
- An investor must sign a construction works contract, under which the contractor undertakes to render his services in accordance with all of the design and the technical requirements specified in the contract. The investor must prepare and deliver the site, deliver the designs and permits and pay the agreed upon fee.
- The construction works contract must itemize the scope of work to be performed by the contractor and the work to be subcontracted. It is possible to use FIDIC model contracts in Poland.
- The building permit expires if the construction does not start within three years of the date on which this decision became final and unalterable, or if the construction is suspended for more than three years.
- Construction works may commence only on the basis of a final and unalterable building permit being issued. However, the Construction Law specifies the types of work, which may be performed without a building permit, mainly small repair works and modifications of existing structures.
- The building permit relates to the whole construction project. If the planned investment consists of more than one object that can function independently, the investor must submit a planning design for the whole investment.
- Subject to the next point, an investment for which a building permit is required may be occupied after the competent authority is notified of the completion of construction works and provided that this authority does not raise any objections.
- In the case of more complex investments specified in the law, an occupancy permit must be obtained at the end of the

construction process. Where investments are of a specific nature, atypically located or have other specific features, certain additional decisions may have to be obtained before the commencement or upon completion of the investment.

- Investments completed in violation of the applicable provisions, in particular those without the required building permit or which are contrary to the terms and conditions specified in the building permit, may be legalized only if the conditions described in the Construction Law are met. In most cases, such legalization carries significant legalization fees.

Tips:

- Prior to the purchase of real estate for development purposes, check its legal, environmental and zoning status, in particular its designated purpose and whether or not it is contaminated and that there are no other environmental obstacles (e.g. groundwater, etc.).
- If the title to the real property is a perpetual usufruct right (and not ownership), verify:
 - If the required manner of using the land by the perpetual usufructuary allows for its planned development (as using the land in breach of its designated purpose may lead to the loss of title to the real property);
 - When was the last increase of the perpetual usufruct fee; perpetual usufruct fees are paid annually and their level could significantly affect the profitability of the real estate.

- A zoning permit may be obtained even if the investor does not have a title to the real estate, which allows verifying the investment opportunities before acquiring the title.
- A building permit may be obtained for the property which is not in freehold, e.g. leasehold.
- It is possible to obtain an occupancy permit before completing all finishing works (e.g. fit-out works in the tenants' premises) if the authorities decide that the object fulfils the requirements set forth by law. In such case the authorities may set a binding deadline for the completion of all works in the occupancy permit.

Red flags:

- The lack of a zoning plan for a given real property does not prevent its development. However, the investor must then obtain a zoning permit before applying for the building permit. The lack of a zoning permit or environmental permit (if required) prior to the issuance of the building permit may impact the validity of the building permit or even the validity of the occupancy permit.
- If the given property is not covered by the zoning plan, the investor should carefully monitor the works aimed at its adoption. This is because upon adoption of the zoning plan, any major works (e.g. an extension of the building) must comply with it, even if the building was constructed on the basis of the zoning permit.
- The adoption of a zoning plan may carry a 'zoning upgrade fee' for the real property's owner. The

fee constitutes a percentage of the amount, by which the real property's value increased due to the adoption of the zoning plan; the percentage is stated in the zoning plan, and it can be up to 30 percent. The fee is paid only once with respect to the given zoning plan – by the entity that owned the real property at the time when the zoning plan was adopted. It is due upon the sale of the real property and only if the proceeding regarding its payment is initiated within five years of the plan coming into force (thus, there would be no fee if sold 5 years after the zoning plan came into force).

- As a rule, no development is allowed on agricultural land, except for that which is classified as agricultural land in cities. Therefore, in order to construct a building on agricultural land in a rural area, before applying for a building permit one must obtain a permit allowing for its exclusion from agricultural production. It may impose certain fees on the land's owner (one-off and annual fees payable for 10 years), the amount of which depends on the land's area and category (e.g. agricultural land, meadows, forests) and the quality of the soil. The one-off fee is reduced by the land's value, thus usually it is minor. However, the annual fee may be significant (e.g. for the best quality agricultural land).

Intellectual property



Major rules:

- Since Poland is a member of the European Union and party to all major intellectual property related European and international agreements, Polish intellectual property regime is substantially harmonized with regimes existing in other European countries.
- The following intellectual property rights are recognized in Poland:
 - Copyrights in original works (including databases and computer programs);
 - Neighbouring rights (including

- right to artistic performances, phonograms, video grams and broadcasts);
- Patents (including patents applied for the territory of Poland in accordance with European Patent Convention);
- Utility designs;
- Industrial designs (including registered and unregistered Community designs);
- Trademarks (including Community trademarks and trademarks applied for the

- territory of Poland by means of international registration);
- Geographical designations, protected geographical indications and marks of origin;
- Topographies of integrated circuits;
- Sui generis databases;
- Trade secrets, know-how;
- Domain names.
- Registration and protection of inventions, designs and

trademarks for the territory of Poland is possible on national (Polish Patent Office), European (Office for Harmonization in the Internal Market and European Patent Office), and international level (through World Intellectual Property Organization).

- Full copyright protection is afforded in relation to works whose authors are of Polish nationality, or to works which were published for the first time in the Polish territory (or simultaneously in Poland and abroad), or in the Polish language, as well as in relation to works whose authors are nationals of any country belonging to the European Economic Area (full assimilation rule). Poland, as a party to all major international treaties and agreements, also ensures protection of works under the terms and conditions set out in these agreements.
- Original works are subject to copyright protection without any additional conditions to be met including registration or existence of a material form of the work. Types of works that may be subject to copyright protection are not limited to specific categories.
- Polish copyright law provides for a strong protection of rights of the authors both in relation to economic copyrights (i.e. right to remuneration) and personal copyrights. Personal copyrights are very broad, inalienable, unlimited-in-time and cannot be waived. However, legal practise has developed contract clauses for authorization of third parties to exercise personal copyrights in the name of the author and clauses under which the

author undertakes not to exercise these rights in relation to specific entities.

- The term of protection of economic copyrights and industrial property rights is subject to harmonization across the European Union which applies to Poland as well. The terms generally are:
 - 70 years from the death of the author in relation to economic copyrights;
 - 20 years for patents;
 - 10 years for trademarks (with possibility of extension for further 10-year periods);
 - 5 years for industrial designs (with possibility of extension for further five-year periods—the maximum term of protection is 25 years);
 - 10 years in relation to utility designs.
- Measures for the protection of intellectual property rights include both civil and criminal measures provided for in the copyright and industrial property laws. All intellectual property including copyrighted works and unregistered industrial property is also protected under unfair competition law.
- In case of a breach of rights arising from intellectual property rights, an eligible entity or a person may, among others, request that the breach is abandoned, the unlawfully gained profits released and, in case of a culpable breach, the inflicted damage is redressed:

- On general rules (which require evidencing the particular damage and its amount), or
- By payment of an amount corresponding to a license fee or other suitable remuneration which at the time of claim would be due to the eligible entity for granting consent to use the object of protection (in relation to infringement of copyrights it could equal the amount of double, or in the case of culpable breach, of triple the value of relevant remuneration which, at the time of its enforcement, would be due on account of the right holder's consent to use a work).

Tips:

- An entity or a person who has previously made the first notification of an invention, a design or a trademark to the respective intellectual property register in another country (on the rules specified in international agreements) may benefit from the priority right to register them in Poland, if the period between the first notification and the notification to the Polish Patent Office has not lapsed. The said period is:
 - 12 months for inventions and utility designs;
 - Six months for industrial designs and trademarks.
- Copyright assignment agreements and exclusive licenses must be made in writing. Any license and copyright assignment agreement must additionally list expressly the fields of exploitation (use) of a

Intellectual property

work, covered by the license or the transfer (e.g. reproduction, communication to the public, public display, lease etc.).

- Copyright licensing agreements should explicitly state their term and the territory for which the licenses are granted. Otherwise the licenses authorize to use the work for the period of only 5 years and only in the territory in which the licensor has its registered office.
- Only the holder of an exclusive copyright license may pursue his claims arising from the breach of economic copyrights within the framework of the license agreement (and subject to the provisions of the license agreement).
- Licenses and assignments in relation to industrial property rights must be made in writing.
- In the case the industrial property right registered within the Polish Patent Office and encumbered with a license is transferred, the license agreement is effective with respect to the legal successor.
- A license for industrial property rights registered within the Polish Patent Office, at the request of the interested party (i.e. licensor or licensee), may be entered into the register of Polish Patent Office. Only the holder of an exclusive license entered into the register may claim the infringement of these rights in the same scope as the proprietor of these rights (unless the license agreement provides otherwise).

- Poland is subject to Council Regulation (EC) no. 1383/2003 of 22 July 2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights. Therefore on the basis of one motion submitted in any of the countries of the European Union there is a possibility of combating the introduction to the Polish market of counterfeited goods.

Red flags:

- Under employment agreements employers acquire economic copyrights, as well as rights to obtain the patent, utility and industrial designs in relation to works, inventions and designs created by their employees in course of exercising their duties under the agreement. In the absence of specific contractual provisions employers however, do not obtain derivative rights and personal copyrights to works created by the employees. Possession of the authorization to exercise personal copyrights and derivative rights is generally necessary to introduce changes to copyrighted works and to dispose and use the works derived from the original work.
- In the absence of specific contractual provisions, the transfer of economic copyrights to work does not transfer proprietary rights in the carriers in which the copyrighted work is embedded.

- In the absence of specific contractual provisions, acquisition from the author of a copy of an architectural design or urban architectural design grants the right to use it only for one construction.
- Any persons or entities not domiciled or without the registered office in Poland may only act before the Polish Patent Office represented by the patent/trademark attorney.
- Transfer of the protection right to trademark does not, by virtue of law, transfer the copyrights to the logotype registered as a trademark.
- Further sublicenses for patents and designs are prohibited. The right to sublicense industrial property rights ought to be expressly stated in the agreement; however, in relation to trademarks, a presumption of the right to grant sublicenses exists.



¹Including Berne Convention, Paris Convention for the Protection of Industrial Property, TRIPS Agreement and European Patent Convention.

²Certain variations apply.

Dentons – your gateway to Poland



With the broadest range of legal services in the country and a deep understanding of local business and culture, Dentons is uniquely positioned to support international investors looking to enter or expand in the Polish market. Our lawyers will guide you through a wide spectrum of issues relating to the investment process: government relations, business incentives, state aid, tax, construction and real estate, corporate vehicles, intellectual property, employment, environmental aspects, manufacturing and sales.

Examples of our team's experience in serving international investors in Poland include:

- **Cadbury:** Advising on a Greenfield investment in Skarbimierz, including due diligence and purchase of the real estate, obtaining permit for carrying on operations in the Special Economic Zone, constructions agreements and permit.
- **Dell:** Advising on a Greenfield investment in Łódź, including extension of the Special Economic Zone to include the target real estate, due diligence, purchase of the real estate, obtaining permit for carrying on operations in the Special Economic Zone, constructions agreements and permit.
- **CapGemini:** Advising on tax exemption based on costs of employment, works on the methodology of allocation revenues and costs for the purposes of the Special Economic Zone, including financial modeling.
- **SWM International:** Advising on two permits for carrying on business operations in the Łódź Special Economic Zone, including negotiations with the Ministry of Economy, preparation of the documentation regarding an SEZ permit; advising on methodology of revenues and costs allocation in SEZ; further negotiations with the Ministry of Economy on extending an SEZ permit.
- **Guardian:** Advising on two major projects involving development of float glass production plants on Southern Poland, including negotiations with the Special Economic Zone, tax and corporate structuring, land acquisition, assistance in the construction process and contracts with supplies.
- **Bauer:** Advising on all aspects of the Greenfield investment in Kamiennogórska SEZ, including due diligence and purchase of the real estate, obtaining the SEZ permit for carrying on operations, constructions agreements and permit.

Our Warsaw office is the largest law firm in Poland.

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