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Dentons Poland Review

2016

We are happy to present the Dentons Poland Review 2016. In the opening section, Arkadiusz Krasnodębski, Dentons' Poland Managing Partner, sums up the Firm's performance throughout the past year, and shares his observations on key development areas for the Polish economy.

We are having this conversation in the last week of 2015. What was this year like for Dentons?

I rank this year among the most interesting ever, in regard to our Firm and the evolution it is undergoing. There were twelve major developments in all, ranging from our merger with China's largest law firm, to a consolidation of our presence in Hungary, new offices in Italy and Luxembourg, further development in the US, and expansion into South Africa, Singapore, Australia and Latin America. While differing in scale, all these developments combined have transformed our firm, which is now very different from what it was just twelve months ago.

For us here in Poland, these changes bring both opportunities and challenges. We are looking for ways to offer new benefits to our clients, while maintaining their confidence that the good relationships we have developed will remain as before. We are also committed to upholding the values that have guided us so far: quality, concern for the client's interests, and a practical and proactive approach to the cases we handle.

Are your clients in Poland already seeing the changes you mentioned?

We have begun offering new options to Polish clients thinking of expanding their businesses. I feel, however, that we will have to wait until the end of 2016 to see just how wide Dentons has opened the door to markets outside Europe and how willing our clients will be to pass through it. To begin with, our clients in Poland are more likely to benefit from the changes we are seeing in Europe, such as our expansion in Italy, Luxembourg and Hungary and the reinforcement of our presence in Germany. Polish companies are keeping close tabs on what is going on around them, carefully exploring the potential of various markets and planning their next moves with caution. Eventually, though, I expect them to start coming to us more often in search of the kind of support we are capable of providing beyond our continent.

Arkadiusz Krasnodębski
Poland Managing Partner

Which segments of the Polish market do you expect to grow fastest in the immediate future?
It is clear that the mergers and acquisitions market is rebounding after a few slow years, and I see this as the beginning of a lasting trend. Companies will now be building their value and position by seeking out and acquiring interesting projects, often in their initial stages, and by clinching more transactions.

I also expect to see more work in connection with growth across the broader industrial sector, including heavy industry, manufacturing and transport. It is no accident that Polish companies representing these sectors are expanding their footholds in European markets with ever greater vigor, winning more orders and performing more transactions. Poland is a major road transport player in Europe, and infrastructure development projects will boost growth in this sector.

I would like to see the robust industrial base in our country reinforced with more innovation, enabling us to compete in certain areas of the global markets on par with Western European countries, by developing state-of-the-art and high quality solutions. And we have the potential to do just that. We are often told during our visits to Iran that Polish products may compete well in terms of quality with, say, German products, while selling for much lower prices.

Is this development in the various sectors of the economy reflected in the workload of the various practices at Dentons? Where are the lawyers kept busiest now?
The workload of our lawyers does of course depend to some degree on developments in the marketplace. I mentioned mergers and acquisitions. The upsurge in this market means that our lawyers handling transactions are now busier than before. The same goes for our banking and finance people, since these days, many infrastructure projects and investments are debt financed. An upswing is discernible in the real estate market. Our real estate team, the unquestioned leader in the Polish market, advised on the largest transactions in the country this past year. On the other hand, the unprecedented growth of our litigation practice cannot be directly attributed to developments in any specific market.

Which transactions and matters handled by your law firm do you see as particularly interesting?
I would mention several exceptional projects, among them record-breaking transactions in the real estate market, such as the sale of the Stary Browar shopping center in Poznań and TPG Real Estate's acquisition of TriGranit's portfolio of real properties in Central and Eastern Europe. The TriGranit transaction was worth more than half a billion euros.

Also worth mentioning are infrastructure modernization and energy security projects. We supported the Tauron Group in their project to add a new unit to the Łagisza power plant, implemented jointly with the state-owned investment vehicle Polskie Inwestycje Rozwojowe (Polish Investments for Development). We also advised on the construction of the LNG Terminal in Świnoujście, and the first tanker carrying gas from Qatar docked at the terminal in December 2015.

There are more, equally spectacular examples. We assisted the private equity fund IK Investment Partners in one of the largest transactions in the market: the sale of shares in the Agros-Nova Group, the country's biggest fruit and vegetable processing business. We advised Stadler in connection with the procurement and delivery of Flirt trains for PKP Intercity. All 20 trains that were ordered are already carrying passengers.

For several years now Dentons has been the leader in all the quantitative categories in Poland's largest ranking of law firms, by Rzeczpospolita daily. Apart from size, in what way is Dentons different from the other multinational law firms operating in Poland?
I am extremely proud that we have achieved our leadership position thanks to the efforts of the partners and other members of the Polish team. Most of us joined Salans, which has now become Dentons, from other law firms, bringing our experience with us, and we found ourselves in an open culture of cooperation which suits us very well. Our polycentric culture, which is the hallmark of Dentons globally, empowers us to offer our clients strong local relationships and knowledge in all of the markets where they operate, including here in Poland.

We also enjoy a unique position in the global and regional structures of Dentons. We are the leading European office of the world's largest law firm, and Poles occupy key positions in the firm's European governing bodies.

In 2016 Dentons will be celebrating its 25th anniversary in Poland. How has the market evolved over this time, and what changes have been made to the model of cooperation between law firms and their clients?

In the 1990s, branches of foreign law firms in Poland were mostly managed by foreign nationals, who had to rely on their experience in the region. The period from 2000 to 2003 saw a crisis in Poland's legal services market, brought on not just by the bursting dot-com bubble but also by major management reshuffles taking place at the time. The Polish managers, who then stepped onto the scene, did not see legal advisors as partners worth cooperating with in the long run, and instead saw them as perfectly interchangeable: "These people will do just as well as those people."

This is not an exclusively Polish problem, of course, and it has to be reckoned with in other European countries as well. The Americans have developed an interesting approach to cooperation with outside advisors, by incorporating them into their business teams. That said, things have changed in recent years: increasing business globalization and the complexity of transactions mean that existing methods do not lend themselves to upscaling, and lawyers familiar with the client's business and needs have become valuable assets. We are increasingly becoming partners and business advisors to our clients, and not just people handling the technical and legal aspects of their projects.

When working with our Polish clients, I keep seeing that they tend to focus on details while overlooking the overall picture. It is a great art in transactions to make both parties feel they have achieved success – something that often calls for painful negotiations and concessions on all sides. My impression is that clients sometimes concentrate on just a few aspects, which blind them to the broader implications and prevent them from deciding to go ahead with the deal, because even if this acquisition costs more than initially anticipated, it will open gates to new markets.

What will the law firm market be like in the years to come?

We see the ever-greater presence of the Big Four in the legal market. They have now added legal advisory to their portfolio of services. Some law firms, especially those specializing in general corporate advisory, will face mounting competitive pressure from the Big Four. The way out of this predicament will be specialization, which is something the large law firms, such as Dentons, have already been doing for some time. Competition will be stepping up in the market, and we will not only rise to the challenge, but will also continue to lead the growth of the market, capitalizing on our recognition, range of services, and experience.

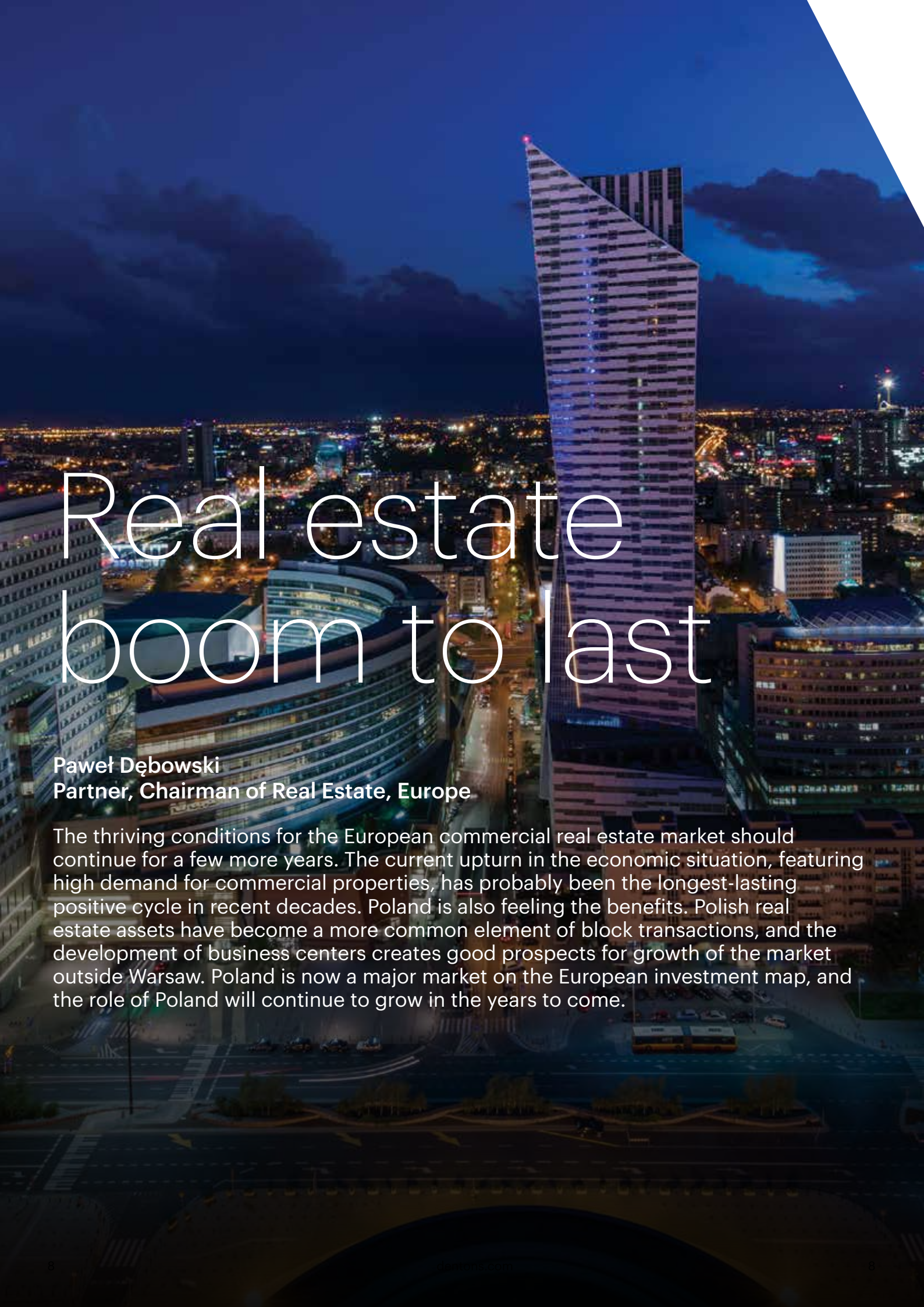
What is it that lawyers find most interesting when working with their clients?

Diversity. The clients we work with often have an entirely different way of looking at things than we do. I specialize in energy, and one of the things I find fascinating is the viewpoint of engineers. When we encounter people with a different knowledge background, we ourselves grow by stepping beyond the confines of the legal world. I strongly encourage my colleagues to cultivate contacts with their clients. And sometimes I also ask our clients to treat us like students who can learn a lot from them.

Contents

TRENDS AND OPINIONS

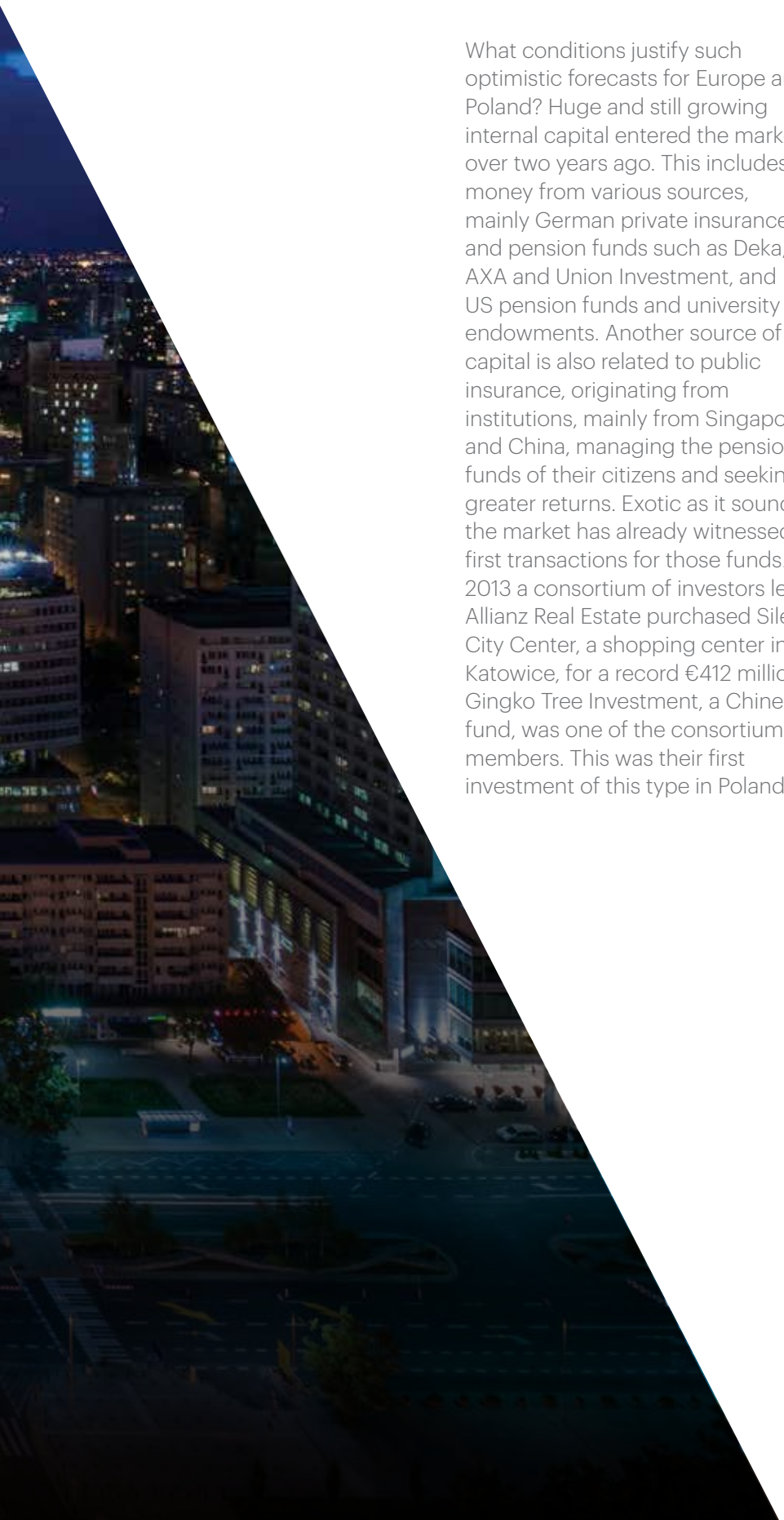
ABOUT DENTONS



Real estate boom to last

Paweł Dębowski
Partner, Chairman of Real Estate, Europe

The thriving conditions for the European commercial real estate market should continue for a few more years. The current upturn in the economic situation, featuring high demand for commercial properties, has probably been the longest-lasting positive cycle in recent decades. Poland is also feeling the benefits. Polish real estate assets have become a more common element of block transactions, and the development of business centers creates good prospects for growth of the market outside Warsaw. Poland is now a major market on the European investment map, and the role of Poland will continue to grow in the years to come.



What conditions justify such optimistic forecasts for Europe and Poland? Huge and still growing internal capital entered the market over two years ago. This includes money from various sources, mainly German private insurance and pension funds such as Deka, AXA and Union Investment, and US pension funds and university endowments. Another source of capital is also related to public insurance, originating from institutions, mainly from Singapore and China, managing the pension funds of their citizens and seeking greater returns. Exotic as it sounds, the market has already witnessed the first transactions for those funds. In 2013 a consortium of investors led by Allianz Real Estate purchased Silesia City Center, a shopping center in Katowice, for a record €412 million. Gingko Tree Investment, a Chinese fund, was one of the consortium members. This was their first investment of this type in Poland.

Another reason for this optimistic approach is that investors are paying mainly in cash and are not as dependent on loans as they were a decade ago. Before the fall of Lehman Brothers in September 2008, a 5–10 percent contribution from the investor itself was enough to buy a property. A bank would lend the balance. However, for several years financial institutions have expected the purchaser to make a contribution of up to about 35 percent, which makes current investments much more conservative. Many institutions are also prohibited from making loans or cannot lend more than 50 percent of the investment value.

A third condition relates to the macroeconomic situation. In many countries, including Poland, inflation is at a record low, sometimes dipping into deflation. In addition, despite the improving forecasts, the global economy continues to be susceptible to various upheavals. In this situation real estate investments offer an interesting alternative, with a rate of return that is predictable and attractive compared to other options. For instance, if a pension fund has to choose between saving on a 0.6 percent deposit account or buying real estate and obtaining a profit of 4–6 percent (and if a bank loan is taken, the rate of return would be even higher), it will attempt to invest its money in real estate. In key real estate trading markets, such as London, Paris or recently Munich, the rate of return for transactions may be as much as 4 percent.

Importantly, there is a growing trend in the real estate market and an interesting phenomenon, where gaps in the profitability of investments in various types of real estate have shrunk. Until recently we saw significant price differences between the rates of return for office, warehouse and retail premises. Now we are seeing rapid growth in prices for warehouse premises, which is related to the changing pattern of trade in Europe, the development of e-commerce and the expansion of logistics centers.

Even though London, Paris and certain German cities continue to be the most popular European markets, the list has been supplemented by Spain and now Italy too, where the number of concluded transactions has been on the up. We have also noticed Poland joining block transactions. Our country is being treated as a market characterized by considerable stability and increasing liquidity, which previously posed a serious problem. The legal safety of transactions and attractiveness of properties make Poland a more popular market than the Czech Republic or Hungary. Investors treat Poland as both an interesting market for individual transactions and one of the locations in their basket of international portfolio purchases. This refers in particular to the acquisition of warehouse premises, but also offices and retail. These are transactions worth hundreds of millions, comprising assets in several countries. Portfolio transactions are not a novelty, but they are becoming increasingly popular. For logistical and economic reasons, it is easier for a buyer to carry out a single transaction of significantly greater value and purchase assets in several countries at the same time than conduct a number of individual transactions.

From the Polish perspective it is also important that the image and scope of portfolio contracts have changed. Previously, transactions involved either joint investments in Poland and the Czech Republic or investments in Western Europe. Last year, we witnessed the first projects that included both Western Europe and Poland. The fact that many international corporations have chosen and continue to choose Poland as the base for their logistics, outsourcing, accounting and legal centers also boosts the upturn on the Polish real estate market.

A good example is Shell, which has its European center with floor space of thousands of square meters in Kraków. Not many people know that if a Shell franchise holder or Shell manager in any European city orders a box of chocolates, the order is processed in Poland. IBM, HP, Motorola, Intel and Credit Suisse also have similar centers in Poland. Corporations are looking for their centers to be located in regional cities that are academic centers, where the real estate prices are lower than in the capital and where qualified personnel can be found.

Interest in the real estate markets in Kraków, Poznań, Wrocław, Łódź and the Gdańsk tri-city area translates into increased liquidity on the commercial real estate markets there. The great interest in capital investment in real estate is already noticeable; last year most transactions involving office space were made outside of Warsaw. Demand for real estate in regional cities is high, and this situation should continue.

Paweł Dębowski
Partner, Chairman of Real Estate, Europe

A good year for commercial properties

Piotr Szafarz
Partner, Head of Real Estate

2015 was a very successful year for the commercial real estate market in Poland. Block transactions took a great share of the market, but there was also a rise in the number and floor space of warehouses. The office market outside of Warsaw saw rapid growth.

Industry analysts estimate that last year, real estate investors spent over €3 billion in Poland. Most of the transactions involved retail space, but the market in warehouse and office space also grew. The Polish economy has been growing rapidly compared to other European countries, mainly due to domestic demand. Real estate prices are still lower than in Western Europe and capitalization rates are higher, making Poland an attractive location for foreign investors.

Last year was particularly interesting in terms of real estate investments in retail space. The value of transactions in this sector exceeded €1.3 billion, mainly thanks to the biggest transactions, such as the sale of Stary Browar in Poznań for €290 million and CH Riviera in Gdynia for almost €300 million.

Several trends were noticeable in this particular market segment. First, there were a growing number of portfolio transactions, in which the owners sold more than one property. Poland is no exception here. These types of agreements have been signed all over Europe.

One of the last transactions of this type in 2015 was the sale of two large retail centers in Silesia: Karolinka in Opole and Pogoria in Dąbrowa Górnicza. Second, investors are more often searching for centers with high development potential, which can be transformed into regional or even multiregional centers within a few years. Investors are increasingly willing to buy average-size facilities located in smaller towns which enjoy a strong position on the local market. The third visible change in this market segment, is a change in the model of investment cooperation in the development of retail centers. It is increasingly often the case that developers and passive investors, e.g. investment funds, become partners.

Read more on page 14...

"Real estate prices are still lower than in Western Europe and capitalization rates are higher, making Poland an attractive location for foreign investors."

Although there is no major increase in interest in retail space on the part of new tenants, we have overcome the stagnation that we saw at the end of the 1990s. Poland is an attractive market for the development of new commercial brands. BNP Paribas Real Estate Poland found that in the last decade the turnover of retail chains grew by 67 percent. Since 2000, Poles have at least doubled their expenditures on clothing and shoes, and purchasing power in Poland has grown by over a fifth over the last 10 years.

It is easy to make a mistake in such a fast-growing market and spend money too fast. As new investments in prestigious locations are hard to come by, sometimes investors buy properties without paying attention to the specific conclusions from their due diligence. Their business plans may then be jeopardized, for example by a major tenant's withdrawal, fit-out deficiencies or technical defects in the building. Such cases have happened in the past.

The market for warehouse space also continues to grow rapidly. This is a result not only of stable economic growth, but also of improved road infrastructure in Poland. As estimated by Cushman & Wakefield, warehouse space grew last year by a million square meters in executed tenancy agreements or newly developed facilities.

New warehouses are being built mainly in the Warsaw area, the Silesia agglomeration, and Łódź province. The market for logistics properties is also growing in regional cities such as Lublin, the Gdańsk tri-city area, Rzeszów and Szczecin, and the new tenants include a growing number of mid-size Polish companies. Among other factors, the increased turnover on this market was possible thanks to falling effective rents. Analysts at Axi Immo estimated that vacancy rates across Poland were less than 10 percent. The greatest number of modules exists in Warsaw and its environs and in Wrocław, the smallest number in Poznań and central Poland.

Last year, the value of transactions on the market for office space outside of Warsaw exceeded the value of transactions in Warsaw, and at the same time, rental demand was higher than in the previous years. However, this is often caused by tenants deciding on new locations and vacating their existing ones. In some cities, such as Warsaw, there are more office buildings than interested tenants. This results in lower rents and better quality office space, in facilities aiming to attracting new tenants.

Private equity– a catalyst for the development of Polish companies

Piotr Dulewicz
Partner, Co-Head of Private Equity, Europe

After more than 25 years of free market economy, private equity funds have become part of the business world in Poland and other CEE countries. There are a range of funds of this type on the market – from local ones to the major European and global market players attracted by the potential of the region. Though levels of activity and engagement fluctuate, their market role is undoubtedly significant, as proved by numerous successful investment projects with the participation of equity funds.

Private equity funds entering the Polish market have found favorable conditions for their development. The private sector, suffocated for decades by the centrally planned economy, virtually exploded after changes to the political system, leading to the formation of numerous private businesses, including family businesses. These have been largely shaping our economy to date – according to PwC's report "Family Businesses Study 2015," up to 90 percent of all companies operating in Poland may be classified as family businesses. They are more and more open to cooperation with financial investors as a result of a range of factors:

- the business is reaching the level where development is impossible without external support
- the owner and/or founder of the family business is approaching retirement
- there is no family successor, or the successor is not interested in taking over the business.

These companies are natural targets for private equity funds, where they can achieve the greatest added value.

Private equity funds add value on several fronts. Firstly, they enhance management processes by introducing professional managers into a company or improving cooperation between existing teams responsible for different areas of a company's business. In the case of investments in minority stakes, representatives of funds often act as advisors and closely cooperate with the main shareholder. Apart from the professionalization of management, funds also contribute know-how to enhance all areas of a company's operations – from sale and product development, through purchases and employment, to marketing and logistics. In the abovementioned PwC study, 37 percent of companies indicated a need for the professionalization of their business as a serious challenge in the coming years, with many of them having already started or have undergone this process.

Read more on page 18...

Financial investors may also add significant value to the business by acting as growth catalysts. Investment funds analyze and conduct a range of investment projects; hence they have access to resources and skills enabling them to objectively assess a company's condition and market potential. Additionally, they are not burdened with any sentimental attachments, which usually characterize the founders of a company. Acting in accordance with best market practices, financial investors can contribute innovative solutions to a company and set ambitious development goals to achieve a greater competitive advantage.

Funds also act as a growth catalyst by contributing the capital necessary to develop, either from its own resources or from financial institutions – which often increases the credibility of the entity in which the fund invests. The financial investor's support and experience with respect to expansion into new markets, mergers and acquisitions and restructurings are also invaluable.

Cooperating with a financial investor also creates the opportunity to build on the business contacts of the fund and increased trust on the part of both trade partners and customers. As a result, a company may win new orders or extend payments dates with its suppliers. These factors can significantly increase the company's revenues and boost its development.

We recently had the honor of advising on a spectacular private equity process. Pan-European fund, IK Investment Partners, invested in the Agros-Nova Group, a leading manufacturer of agricultural products, food and drinks. In 2010 the fund acquired a 99 percent share in the group from the Niewiadomski family. The fund restructured the business, which included restructuring the existing plants, selling the production plant in Kotlin, acquiring a majority stake in Fruktus Kowalczyk, and finally, dividing the company into preservative and beverage divisions. The purpose of these actions was to strengthen the company's position as a leader in the key sectors of the fruit and vegetable processing industry. Last year, we advised IK Investment Partners on the sale of the agricultural and foodstuffs division of the Agros-Nova Group to Maspex. The assets were acquired by a prosperous and rapidly developing Polish group and the transaction was one of the largest in the Polish private equity sector in terms of value in 2015.

The investment in the Agros-Nova Group proves that a fund may contribute real value to its target and then transfer it again into the hands of a leading Polish entrepreneur at the next stage of a company's development. Along with the increasing market maturity and age of founders of family businesses in many industries, the number of companies for sale or looking for a partner will also grow. In many cases a financial investor may be a good choice ensuring further development of such companies.

Piotr Dulewicz
Partner, Co-Head of Private Equity, Europe

Public procurement traps:

The Ten Commandments for contracting authorities and contractors

Aldona Kowalczyk
Partner, Head of Public Procurement

Public procurement has played a major role in Poland's economic development in recent years. In 2014 alone, the aggregate market value of the sector topped €31 billion. We can expect a similar volume in the EU funding horizon of 2014–2020. Suffice it to say that Poland received grants of €82.5 billion from the Cohesion Fund alone. If we add to that the internally generated funds of public bodies as well as other sources of financing, we end up with a sum of more than €100 billion to be spent in public procurement over the next few years.

The vast flow of EU funds and ensuing increase in the number of public procurement contracts awarded has resulted in a considerable professionalization of business transactions in the market. This can be clearly seen in the disputes between contractors in tender proceedings, which involve increasingly complex issues. However, market specialists often warn about what seem to be at first glance the most rudimentary or obvious issues. This raises the obvious question: How can you avoid those traps? The Ten Commandments of Public Procurement might help.

Contractor

Analyze and ask

The basic document in every tender procedure is the terms of reference (ToR), which set out the key terms and conditions of the contract. The document details both the terms of participating in the tender and the technical aspects of performing the contract. Before making a decision about entering the tender, the contractor should analyze these terms carefully.

If any doubts whatsoever arise, the contractor should send the contracting authority a request for clarification. In practical terms, requests of this type frequently contain the contractor's own proposals for desired amendments to the ToR. We recommend to our clients that they ask questions about any provisions of the ToR that are unclear. Importantly, in light of Supreme Court rulings, it is actually an obligation of contractors to do so, as they are required to demonstrate a professional standard of care.

Read the contract before you make your bid

Careful reading of the contract is good practice generally, not only in public procurement. The contractor should always acquaint itself intimately with the form contract – its general terms and key provisions – before making a decision to join a tender procedure, and not leave the reading until it has won the tender, which unfortunately does happen. Areas of particular concern are the provisions setting out the scope of the contractor's obligations, warranty and guarantee-related provisions, contract milestones, and the rules of liability for any failure to perform or to duly perform the contract, including the amounts of liquidated damages set forth by the contracting authority. They form the key elements of legal risks that should be taken into consideration when calculating the bid price.

Read more on page 22...

"Public procurement has played a major role in Poland's economic development in recent years. In 2014 alone, the aggregate market value of the sector topped €31 billion."

Make sure the contract can be amended

While public procurement contracts are civil-law contracts, a unanimous statement of will by the contracting authority and the contractor is not always enough to amend the contract. The possibility of making significant amendments must be included at the stage of the tendering procedure, most frequently in the form of a suitably worded amendment clause to be contained in the form contract or the general terms of contract. The contractor should have enough experience to identify – even at the stage of the public procurement proceedings – all potential risks that might materialize while performing the contract and then analyze from this angle the provisions relating to contract amendments. If they do not cover all potential changes in circumstances that might impact due performance of the agreement, it is reasonable to submit a request to clarify the ToR. The request may contain a proposal to include an amendment clause in the contract or to expand the list of circumstances in which amendment is admissible.

Don't agree with something? Challenge it while you can

When the interests of contractors are or may be affected, they have recourse to the Public Procurement Law to protect their legal interest. This refers not only to decisions of the contracting authority that involve the contractor directly, but also decisions that have an indirect impact on the contractor's prospects for securing the contract, such as a decision to qualify a competitor for the next stage of the tender even if it doesn't meet all the requirements. In the case of decisions made by the contracting authority which only indirectly pertain to the contractor, you should bear in mind that the results of failure to make an appeal may manifest themselves only at a much later stage, when they are already irreversible. We have observed that approximately 30 percent of the claims referred to us by clients who wish to appeal the tender decision should have been raised at an earlier stage of the proceedings and are no longer admissible because they are out of time.

Prepare thoroughly for your appeal

In the vast majority of cases, the National Appeal Chamber (KIO) considers appeals in a single hearing, without any adjournment. It is critically important to prepare properly for the hearing, by gathering all evidence in support of the claims raised in the appeal. Many cases heard by the KIO are very technical or specialist in character. The key to success is to give a clear and succinct presentation of your case in a manner that the lawyers sitting on the KIO adjudicating panel can readily understand. It is an absolute must to set the claims out in a systematic, professional manner, carefully select the relevant evidence and prepare the arguments in a way that makes them coherent and intelligible. In one of our more remarkable cases before the KIO,

it proved useful to present complex reasoning based on mathematical calculations in the form of diagrams prepared in PowerPoint. While the contractor is entitled to file an appeal, the onus is on it to be perfectly prepared for the appeal hearing.

Contracting Authority

Prepare tender documents in an accurate manner

All sides taking part in a tender procedure have an interest in getting a complete set of well-prepared tender documents. This applies mainly to the documents covering the technical aspects of performing the contract. The contracting authority saves time because the contractors ask fewer questions, while the contractors are able to calculate their bid price in a more exact way. Our experience shows that many of the disputes arising between contracting authorities and contractors at the contract performance stage involve omissions or errors in the procurement documents.

Draft the contract well

When asked about the biggest problems affecting the Polish public procurement system, contractors frequently point to public procurement contracts. Why so? Contracting authorities tend to pass most risks to the contractors, including ones which they themselves should theoretically manage, e.g. risks triggered by errors in project documents drafted by the contracting authority. The upshot of that approach is higher contract prices, as they have to reflect potential risks that may only appear when performing the contract. For example, the contractor might go bankrupt, if hard-to-quantify risks actually crystallize or cause a greater impact than expected. Other problems related to contracts involve payment dates and an inadequate number of clauses giving leeway to amend the contract. A well-drafted agreement reflects the interests of both parties and allocates the risk in such a way that each risk falls on the party that is better equipped to handle it.

Give exhaustive and unambiguous answers to questions

While well prepared tender documents should be clear-cut, you cannot seriously expect contractors to have no questions at all about them. Contracting authorities frequently forget that it is in the interest of all parties to the proceedings if the contracting authority provides absolutely clear answers to questions asked by contractors. They are important both in the course of the tendering procedure and in terms of giving pointers when interpreting particular provisions of the contract at the implementation stage.

Think twice about the price being the deciding evaluation criterion

While some limits have been placed on the possibility of employing the price criterion, we have observed that, unfortunately, price is still often the decisive criterion in bid evaluation, with a weighting of at least 80 percent. One should give some thought to applying another criterion

based on the cost of using a given product or structure, as the EU is pushing in its new procurement directives. What looks more expensive when comparing bid prices for the completion of the procurement may actually prove cheaper in the long run owing to lower operation or maintenance costs. Moreover, in the case of specialist work or services, it is often useful to include some technological criteria.

Follow changes in law and monitor case law

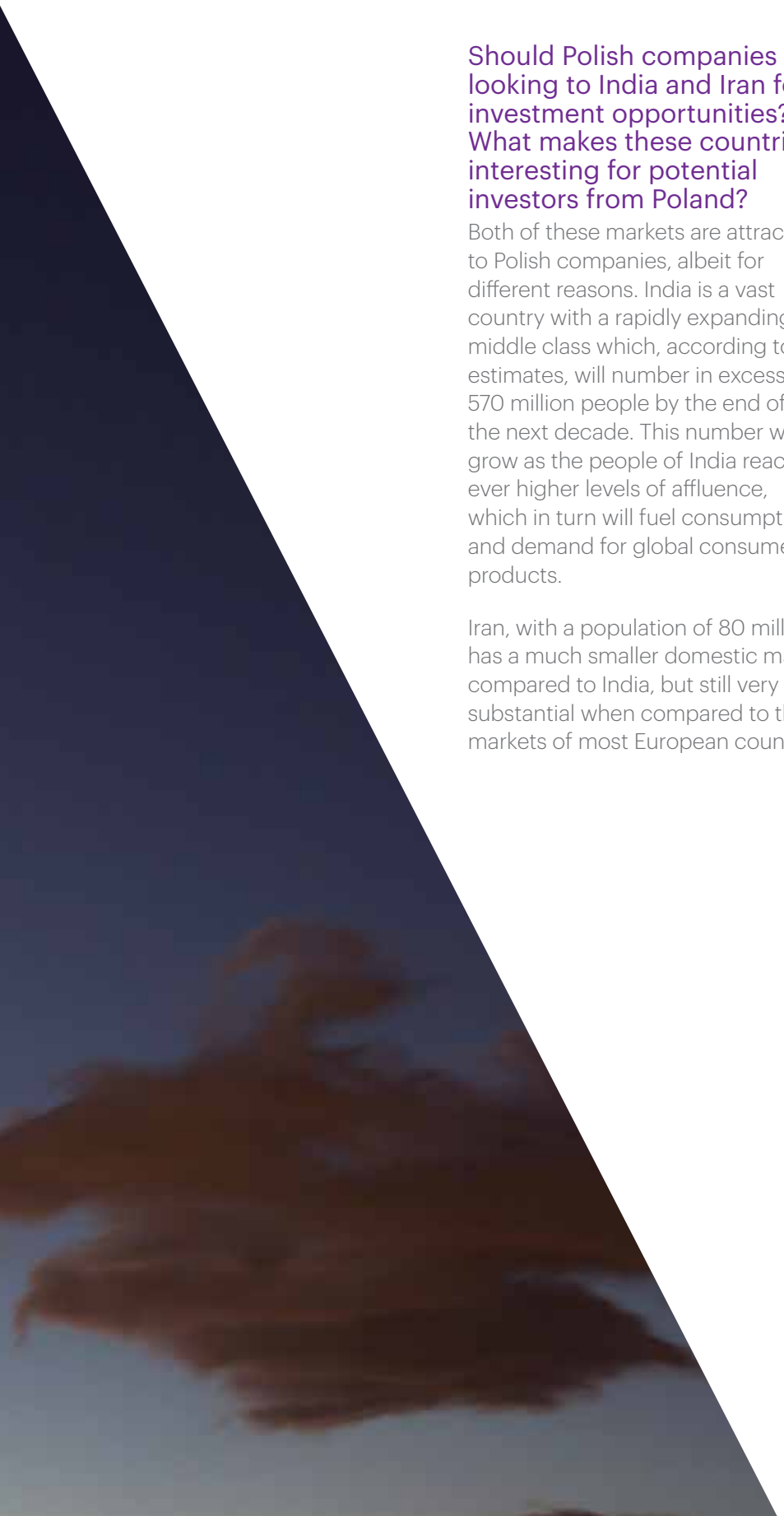
Spotting changes in law is a must for employees with responsibilities for public procurement. Don't forget that changes may affect not only provisions of a strictly procedural nature, but also those related to performance of the contract. In some cases these could impact contracts concluded earlier by the contracting authority. Moreover, it is equally important to monitor the current case law of KIO. It sometimes happens that the standpoint presented by KIO in its case law on a given issue changes or evolves. In our practice, we have encountered several cases where the lack of familiarity with current trends in the KIO's case law exposed the contracting authority to the risk of incurring considerable costs due to contractors' appeals being upheld and tendering proceedings being extended.

"What looks more expensive when comparing bid prices for the completion of the procurement may actually prove cheaper in the long run."

Aldona Kowalczyk
Partner, Head of Public Procurement

India and Iran – countries worth investing in?

An Interview with Pirouzan Parvine, Partner, Head of Manufacturing, Europe and Co-Head of Iran Desk



Should Polish companies be looking to India and Iran for investment opportunities? What makes these countries interesting for potential investors from Poland?

Both of these markets are attractive to Polish companies, albeit for different reasons. India is a vast country with a rapidly expanding middle class which, according to estimates, will number in excess of 570 million people by the end of the next decade. This number will grow as the people of India reach ever higher levels of affluence, which in turn will fuel consumption and demand for global consumer products.

Iran, with a population of 80 million, has a much smaller domestic market compared to India, but still very substantial when compared to the markets of most European countries. It has a strategic geographical position at the crossroads to Russia, India, Turkey, Pakistan and the rich countries of the Arabian Peninsula. This is a market with low production costs and cheap transport, making it an ideal springboard for expansion throughout the region.

Which market areas are the most attractive for Polish companies thinking of investing in the countries you mentioned?

As Indians become richer, they will need more consumer goods. And this is where Polish businesses may come in. There is already one Polish company making hygiene products operating in the Indian market.

As for Iran, the biggest opportunities are in the mining, energy and machinery sectors. There are two reasons for this. First, these sectors are well developed in Poland and our companies enjoy a good reputation in Iran.

Read more on page 28...

"The main challenge in India will be getting to know the market and consumer needs."

The second reason is the boom in the energy and mining sectors that is bound to be triggered by the recent lifting of economic sanctions against Iran. This country, accounting for around one percent of the world's population, sits on top of seven percent of global mineral resources and is the world leader when it comes to combined oil and natural gas deposits. Exports of raw materials will bring money to Iran and a lot of this will have to be spent on modernizing and developing the country's industry and infrastructure.

An historic agreement was reached in July 2015 between Iran and the 5+1 group concerning Iran's nuclear program. How will the lifting of sanctions, which is part of this deal, affect investment opportunities in Iran?

First of all, we must bear in mind that American and European sanctions were imposed independently of one another. On January 16, 2016, referred to as the "implementation date", European sanctions were lifted together with US sanctions pertaining to non-US persons. American companies, with very few exceptions, are still not allowed to do business in Iran. However, the nuclear agreement opens a window for foreign subsidiaries of American companies to do business with Iran. This situation should give European companies an edge over their American competitors. Entering a market early on is cheaper and increases the chances of winning major market share.

In fact, European companies have been stepping up their involvement in this market for some time now, in sectors not covered by the sanctions, such as tourism. In September 2015, the Accor Group re-entered the Iranian market when it signed a contract to open/manage two hotels there. This will be the first multinational hotel group coming to this country after more than 35 years. I had the honor of advising Accor in connection with that project.

There are a smaller amount of residual sanctions remaining on certain persons and on limited industries. We have prepared several guides and documents for our clients on this topic, and we can provide them on request.

Are investment processes alike in countries as dissimilar to one another as India and Iran?

I believe the optimum approach to investing in these two countries will be similar in both these countries, and will feature several key elements. It is crucial to get to know the local market and the conditions prevailing in it. This is bound to require a substantial expenditure of time and resources. Next we should focus on finding a local partner, initially starting with several partners to give us a better bargaining position.

We must understand how our partner operates in the market, how he goes about organizing the sales network and the production process, and how he calculates the unit cost of each product. This is important because, regardless of whether we end up investing in India or Iran, it will always pay to hand over as much of the day-to-day running of the business to the local partner, provided of course that we know him well and can trust him. It is also essential to allocate the various responsibilities among the parties involved in a way that will be clear to all.

One thing to remember is that the more we know before taking the final decision, the more likely we are to avoid misunderstandings further down the road. Let me give you just one example. Foreign companies are not allowed to directly own land in Iran. When you and your local partner eventually part ways, ownership of land cannot directly revert to the foreign shareholder. What you must have in a situation of this kind is the ability to appraise the value of the land and a way to settle accounts with your partner, by letting him take over the ownership or by splitting the proceeds of the sale. This must be made very clear for both business partners right in the initial stages of the investment process.

It is also a good idea to seek assistance from outside advisors and lawyers familiar with the local scene. Dentons is one of the law firms strengthening their presence in both India and Iran, as clients increasingly turn their eyes to these markets.

What are the biggest challenges facing Polish companies wishing to invest in these countries?

The main challenge in India will be getting to know the market and consumer needs. The country's various states sometimes have different regulatory frameworks, the people there speak different languages and the local market realities are different. Key issues have to be addressed, such as how to organize production and sales processes and deal with logistics in a market that is many times the size of Poland's market. Some aspects of doing business cannot simply be picked up and transplanted to the Indian market. Another key issue is "Indianizing" products, which is to say modifying them to better suit the tastes of Indian consumers.

Iran, in contrast, is much more like Europe in terms of mentality and ways of doing business. Islamic law has relatively little bearing on economic activity. Many regulations governing the operation of companies are patterned on European solutions, albeit those that were developed in our continent several decades ago.

Remember that Iran has only recently started opening up to the world after long years of political isolation. Many business instruments there require an upgrade.

The challenges I am describing must also be seen in terms of opportunities. India's market is gigantic, yes, but this means it can absorb more of our products. The fact that Iran remained in isolation for so many years creates a level playing field for companies from many countries. It's also worth pointing out that Poland, unlike some other European countries, has entered into a bilateral investment treaty and a double tax treaty with Iran, which places our companies at an advantage, when compared to several other European companies.

Underestimated compulsory management

Prof. Katarzyna Bilewska
Partner, Dispute Resolution

Any company may experience a hostile takeover, so owners and investors should learn about compulsory management – a mechanism allowing them to recover control over a company taken over in a hostile manner.

When the owners (or shareholders) of a company want to prove that the company was taken over in a hostile manner either illegally or with procedural defects, they need to go to court. Court proceedings to determine irregularities in the takeover of a company may last three, four or even five years. During this time, the company's business may deteriorate and the value of the enterprise may decrease.

Establishing a compulsory administration is a way to temporarily secure the interests of the owners of the company following a hostile takeover.

The owners of a company that has experienced a hostile takeover usually have no access to corporate matters and cannot control or manage the company. They are exposed to the risk that even if several years down the line the court declares the transfer of their shares (acquisition of the company) to be invalid, the company they regain may be in a much worse business and financial condition. Consequently, their shares may be worth much less.

If the shareholders want to regain indirect influence over the situation in the company, they should seek a declaration of the invalidity of the transfer of the shares or other actions related to the takeover. Meanwhile, under Poland's Civil Procedure Code, the shareholders may seek an injunction to secure the claim, consisting first and foremost of a ban on further sale of the shares. However, the court is also empowered to appoint a compulsory administrator for the company's business. Few companies take advantage of the option of appointment of a compulsory administrator, even though it allows them to effectively safeguard the rights and interests of the wronged parties.

The court will establish a professional compulsory administration if the applicant proves the circumstances justifying such a decision, for example if the company is not paying its current obligations, is entering into disadvantageous agreements, or is dismissing a significant number of its employees without justification. The objective of the court proceedings is to recover the shares. The value of the shares is vital to the shareholders and is determined by the condition of the company's business.

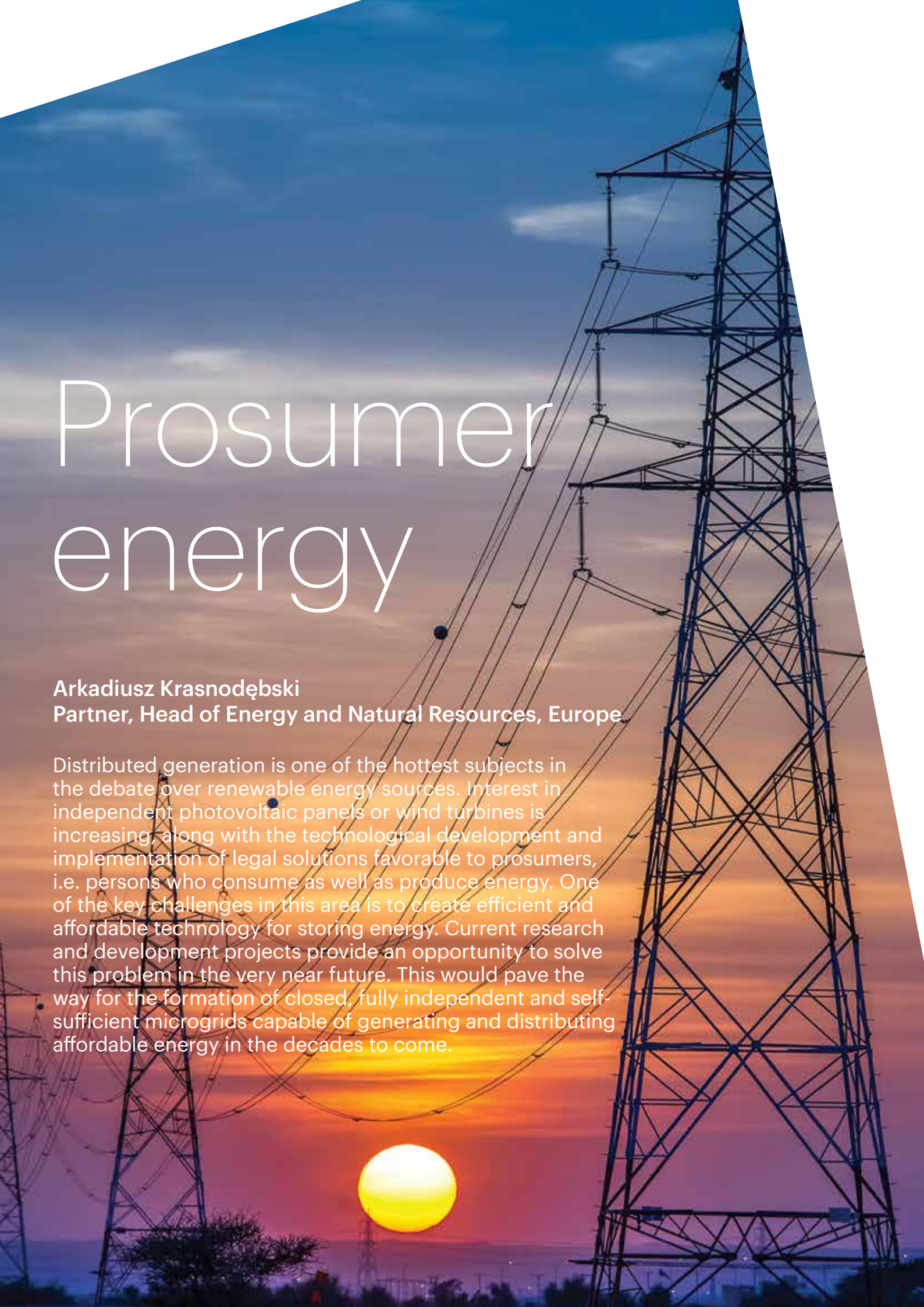
The application for the establishment of a compulsory administration must comply with the formal criteria specified in the Civil Procedure Code. First, it is necessary to substantiate the underlying claim, namely that the transfer of shares was defective. Second, the injured party must show that its rights would be violated or its interests would be prejudiced if security is not established. In other words, it is necessary to prove that the applicant has concerns about the way the company is being managed and about the value of the shares which it hopes to recover, and to show that compulsory administration would be an appropriate form of security.

The application should also include a list of proposed actions which the compulsory administrator should be entitled to take without separate authorization of the court. It is advisable to nominate a person who is qualified to serve as the administrator (the courts usually appoint a licensed receiver to serve in this position).

When the court grants the application for security and appoints a compulsory administrator, the management board appointed by the persons who took over the company in a hostile manner is replaced by the compulsory administrator. The administrator is entitled to manage the entire enterprise and files a monthly activity report with the court.

As a rule, the compulsory administration operates until the main court proceedings are finally completed. During this time, even though the applicant does not exercise direct control over the company's affairs, the applicant is assured that the company taken over in a hostile manner will be professionally managed and its affairs will be handled under the supervision of the court conducting the proceedings for recovery of the shares.

Prof. Katarzyna Bilewska
Partner, Dispute Resolution



Prosumer energy

Arkadiusz Krasnodębski
Partner, Head of Energy and Natural Resources, Europe

Distributed generation is one of the hottest subjects in the debate over renewable energy sources. Interest in independent photovoltaic panels or wind turbines is increasing, along with the technological development and implementation of legal solutions favorable to prosumers, i.e. persons who consume as well as produce energy. One of the key challenges in this area is to create efficient and affordable technology for storing energy. Current research and development projects provide an opportunity to solve this problem in the very near future. This would pave the way for the formation of closed, fully independent and self-sufficient microgrids capable of generating and distributing affordable energy in the decades to come.

The number of people interested in microgeneration, i.e. small-scale production of energy based on renewable (and other) energy sources, is growing slowly but surely. Over the last ten years, more than 200,000 Polish households have made such an investment. People are looking to distributed generation as a way of achieving energy independence and financial savings, and as a result of increasing ecological awareness and interest in modern technology. In some cases, the independent production of energy is a necessity due to location, in particular in rural areas suffering from underdevelopment of the transmission grid.

The Law on Renewable Energy Sources adopted last year introduced favorable changes for prosumers. One of the most important amendments is the introduction of the system of guaranteed tariffs for minor producers of green energy. Prosumers may sell the excess energy they produce for relatively favorable prices, although still approximately 20 percent below the price set for mainstream producers. This change has boosted interest in the purchase and assembly of micro-installations, and companies delivering solutions for distributed generation have recorded an increase in orders.

As solutions for storing excess energy become more popular, prosumers can become more independent of external suppliers. Renewable energy sources have their limits – the supply of solar or wind energy changes with the seasons and weather conditions. As a result, it is not always possible to produce as much energy as a household or a farm demands, which forces prosumers to connect to the grid. Hence, a real revolution in the energy market will come with the popularization of efficient mechanisms which allow prosumers to store energy. Only this will secure their independence from other suppliers, and the installation of larger power storage facilities will enable integration of several energy sources or the development of neighborhood microgrids within residential estates or neighboring farms.

The pace of technological development in this area is impressive and new batteries are constantly entering the market. Last year Tesla introduced a line of house batteries for less than €4,000. The producer estimates that the battery will cut current energy storage costs by half. Costs are still high, but will drop with the development and popularization of the technology. Scientific journals also regularly publish information about innovation in this field. Swedish scientists are conducting research into "power paper" – a device made of nanocellulose and a polymer capable of storing energy. A team of researchers at the University of South Australia have developed an energy storage system based on melted salt. This may be a solution for prosumers as it is low-cost compared to other technologies on the market.

The use of modern technologies to achieve energy independence is more and more realistic and the related development of microgrids will be created not only out of concern for the environment, but for economic reasons as well. Nowadays, as consumers, we may choose a supplier, but there is only one distribution network – which sets conditions like any monopolist. Building an installation and connecting it to the grid will always involve certain costs, as there are still existing technological and market obstacles to overcome. However, in the near future, energy produced in this alternative way may be competitively-priced compared to energy from the traditional grid.

A promising future for Polish coal

Arkadiusz Krasnodębski
Partner, Head of Energy and Natural Resources, Europe

When looking at the prospects for hard coal in Poland, one should consider not only the condition of the mining industry, but also the demands of the energy sector and the economy as a whole. There have not been so many new power units in Poland since the era of Edward Gierek. Coal is here to stay for the foreseeable future, and the decarbonization process will take much longer in Poland than elsewhere in the EU.

If we played word associations, after hearing the word "coal" most people would say "mining" or "miner". Very few would say "energy sector", "electricity" or "hot water" I suppose, though having an economy based on coal-fired power is a Polish speciality. Over 90 percent of energy is produced from coal and over of one half of that comes from hard coal.

This data says a lot about the prospects for coal in Poland. All the more so because, after years of investment slowdown in the energy sector, we are now the largest construction site in Europe. New power units are being built in Opole – two units of 900 MW each, Jaworzno – nearly 850 MW and Kozienice – 1075 MW. Other investments are at an earlier stage of planning – including those in Ostrołęka, Lublin, Pelplin ("Północ" Power Plant). New capacities will be connected to the grid from 2017. They will not only replace older coal units, but will also increase the total volume of energy produced in Poland, the demand for which is still growing.

The power plant in Opole – which is planned to operate for 35 years – will be hard coal fired and is expected to generate approximately 13.5 TWh of energy per year. According to expert estimates, it will consume 4 million tons of coal per year and will produce nearly 8 percent of the total domestic demand for electricity. The new unit in Jaworzono will burn 2.5 million tons of coal per year, of which 80 percent will come from mines owned by the Tauron Group, while the rest will be purchased on the market. The eleventh unit in Kozienice is planned to be the largest hard coal fired unit of its type in Europe. It is scheduled to start working in 2017. Each of these projects also involves a technological change, as the average electricity generation efficiency of these units will be ca 45 percent, i.e. more than 10 percent higher than many of the current power plants.

All in all, it means that Poland cannot say goodbye to coal, even though one of the key planks of the EU's energy and environmental policy is decarbonization. What shall we do then? We must explain our special situation in Brussels so that our arguments give credence to the situation instead of heating the dispute.

An example of this approach is the position Poland presented at the climate summit in Paris in December 2015. We presented ourselves as a country which has greatly reduced its carbon dioxide emissions compared to 1988 – the base year for Central and Eastern European countries as set forth in the Kyoto Protocol. We argued that Poland's goal is to ensure energy security, on the basis of "clean" solutions – by constructing modern power units and improving their electricity generation efficiency. We declared our will to specialize and invest in the development of smokeless coal combustion and its processing in closed circuit combustion installations.

Coal is and will remain the main energy source in Poland for many years to come. The change of energy mix, though necessary, will be gradual in our country. In discussions on international forums we should consistently strive to manifest that environmental protection is important to us and that decarbonization means using clean coal technologies and significantly improving coal combustion efficiency, supplemented with energy from renewable sources, gas sources or maybe nuclear as well – with the latter being another interesting story.

Arkadiusz Krasnodębski
Partner, Head of Energy and Natural Resources, Europe

Tax without borders

Cezary Przygodzki
Partner, Tax Advisory

Many countries are seeking new sources of tax revenue to shore up their public finances. Intense work is underway at the OECD and European Union to combat tax avoidance through a coordinated change in international tax regulations. It is not just the Polish government that sees tightening up the tax system as the right medicine to improve the state of public finances and fund budgets. Such changes will generate additional requirements and risks for business.

The last 10 years have been a period of economic slowdown nearly worldwide. Many countries entered the current decade with huge public debt and in a state of economic crisis. To overcome the crisis, many governments have enacted spending cuts while tightening their fiscal policy. Some countries, including Poland, have introduced industry-based taxes, including a tax on financial transactions and other forms of bank taxes. Considering that the state – in other words, taxpayers – supported the banking sector during the last financial crisis, there is a common view that the banking system should contribute more to national budgets now that it is out of the woods.

Besides introducing new taxes, in recent years both international organizations and individual countries have begun work to minimize budgetary shortfalls caused by tax loopholes or the failure to adapt regulations to current business realities. In particular, they have recognized that tax rules based on double tax treaties drafted in the 1960s or 1970s, when the digital economy did not even exist, are not suited to today's economic reality.

The OECD has estimated that losses of this type globally represent as much as 10 percent of total income tax, or about €220 billion annually. The lost tax revenue has spurred work on solutions to stem base erosion and profit shifting (BEPS) under the auspices of the OECD and G-20 countries. The fruits of this labor were published in the autumn of 2015 and include reports and guidelines on 15 actions in crucial fields. The recommendations include tightening taxation of the digital economy, changing taxation of controlled foreign companies (CFC), neutralizing the effects of hybrid tax-planning instruments, preventing abuse of treaty benefits, limiting base erosion from interest deductions and other financing costs, requiring taxpayers to disclose aggressive tax-planning strategies, and improving transfer-pricing regulations. The overriding principle of this work is to tax profits at the place where value is created, in a manner reflecting the true economic substance of transactions.

Read more on page 40...

“Systemic changes and trends in taxation will undoubtedly impact taxpayers on many fronts.”

Work is now underway on a multilateral instrument that could be signed by over a hundred interested countries. Its goal is to introduce the new tax rules developed in the BEPS project quickly and effectively without the need to renegotiate thousands of tax treaties.

Solutions in this spirit are also being introduced by the European Union. In particular, the Parent-Subsidiary Directive has been amended to include a tax avoidance clause. It is designed to combat arrangements whose only aim is to obtain tax advantages based on artificial constructions without economic justification. In January 2016 the European Commission presented its Anti Tax Avoidance Package, a comprehensive set of measures EU member states can pursue to combat tax avoidance.

Poland is falling in line with these trends by introducing anti-avoidance regulations. For example, on 1 January 2016, a new clause implementing the Parent-Subsidiary Directive in Poland entered into force. This clause seeks to combat abuses in claiming the tax exemption for dividend income and other income from shares in legal persons. As I write, work is underway on a general anti-avoidance rule. Such a rule existed in Poland in the early 2000s, but it was overturned by the Constitutional Tribunal as too sweeping and imprecise. The tribunal outlined the conditions under which such a clause could be introduced into the Polish tax system.

New transfer-pricing regulations were also adopted in 2015 to implement the BEPS recommendations. These regulations will enter into force in 2016 and 2017, introducing among other things a requirement to submit to the tax office a new enclosure presenting information about transactions between related parties. The scope of transfer-pricing documentation and the information provided to tax authorities will also change, enabling them to better identify which taxpayers should be audited. As announced by the Polish Ministry of Finance, review of transfer pricing is going to be one of the ministry’s priorities in the near future.

Poland is also following the global trend toward seeking new sources of budgetary inflows. The first sectoral taxes are already in place, for the extraction of copper and silver. The Special Hydrocarbon Tax Act entered into force in January 2016, covering profits from extraction of hydrocarbons (oil and natural gas). The scope of the mining tax has also been expanded beyond copper and silver to cover oil and gas. But the effective payment of these new sectoral taxes was postponed by five years, to 2020. In February 2016 the tax on certain financial institutions entered into force, imposing a new burden on the financial sector, particularly banks and insurers. As I write, work is also underway on taxation of retail sales, and not only at big-box stores, with an additional tax based on turnover.

The government also wants to plug VAT loopholes, as VAT is the most important tax for the state budget. It is estimated that in 2015 the shortfall due to VAT fraud and other irregularities in VAT settlement was over €11 billion. According to the government’s pronouncements, the Ministry of Finance intends to present a bill that will overhaul the VAT system to increase enforcement and combat existing abuses.

These systemic changes and trends in taxation will undoubtedly impact taxpayers on many fronts, generating numerous challenges and risks. Existing investment structures and new solutions all need close analysis in light of the new requirements. Additional tax burdens for example in the financial or retail sector will impact taxpayers’ business models. Additional costs are also certain to emerge in connection with new administrative duties in tax reporting. Taxpayers can also expect more tax audits and disputes. Overall tax risk for business will therefore grow, ensuring plenty of work for tax advisors.

Cezary Przygodzki
Partner, Tax Advisory

Transparent as a benchmark

Marcin Bartczak
Partner, Co-Head of Capital Markets

The Polish financial system is facing a major change concerning benchmarks. As soon as the European Union adopts laws reforming the financial indicators, the Polish institution handling reference rates will be changed within a year.

The Polish market was spared the scandals seen in the last 10 years in the UK, US and Germany to name but a few, where the banks manipulated the reference rates to show their financing costs were lower than they actually were. The practice of rigging the LIBOR rates first came to light in mid-2012 when the British Financial Services Authority (FSA) fined Barclays Bank and issued a statement about the scale of abuse. It turned out that Barclays had been manipulating the LIBOR and EURIBOR rates since at least 2005.

The financial market regulators imposed total fines in excess of €14 billion on major banks such as Barclays, RBS & RBS Securities, Deutsche Bank AG, USB, Citigroup, Rabobank and JPMorgan. But that was just for starters. The scale of abuse galvanized the financial supervision authorities, central banks, governments and international institutions into action – first to investigate and then eventually to introduce remedies.

The British government ordered Martin Wheatley, the then Chief Executive of the FSA, to independently review the issues surrounding the fixing and use of the LIBOR rate. The two documents prepared by Mr. Wheatley presented the errors and omissions of the LIBOR system together with a raft of reforms. His recommendations formed the basis for the changes presented in the Financial Services Authority Policy Statement 13/6 and MAR8 (Market Conduct Sourcebook). According to the solutions binding from April 2013, the administration and supply of data for LIBOR purposes became a regulated activity.

Information about the manipulation initiated works on the reform of financial indicators in the European Union. After numerous analyses, a proposal was drawn up for a new regulation of the European Parliament on indices used as benchmarks in financial instruments and financial contracts.

The regulation proposes unified standards to ensure the robustness and integrity of benchmarks used in EU member states. Many of the proposed solutions converge with the British ones. In its justification of the new regulations, the European Commission draws attention to the significance of benchmarks in assessing financial instruments and for consumer contracts .The regulation also underlines the importance of benchmarks in relations between monetary policy and the real economy. The regulation provides guidelines which the indicators need to meet in areas such as management, quality of the benchmark, quality of methodology and responsibility.

The institution looking to issue benchmarks – the administrator – will need to have a license from the supervisory authority in charge. The law will require the institution to present the calculation methods (the methods of setting them) and the "weaknesses" of the benchmarks and the underlying data. The institution will be required to introduce a legally binding code of conduct for the panel participants, detailing the duties and responsibilities of the data contributors (mainly banks) and the situations which trigger conflicts of interest. Any banks or financial institutions engaging in manipulation could face a maximum fine of 10 percent of their annual income or one million euros, whichever is the greater.

The new regulations will require the administrator to have robust governance arrangements, which feature a clear organizational structure, including an independent supervisory body, with well-defined, transparent and consistent lines of responsibility of all persons engaged in issuing the indicator. The standards cover the activities of both the administrator and the financial institutions that cooperate with the administrator.

The proposed regulation was adopted by the Council of the European Union and provided for its solutions to be implemented in all EU member states within 18 months after its publication. This means that the financial institutions in the member states where the manner of determining benchmarks has not been reformed to date will not have plenty of time. This includes Poland and the WIBOR (Warsaw Interbank Offered Rate) and WIBID (Warsaw Interbank Offer Bid Rate) reference rates. Three years ago, the Polish Financial Market Association ACI Polska, a fixing organizer, brought in new rules and regulations. In addition, a new supervisory body was established – the WIBID and WIBOR Benchmark Council – whose goal is to safeguard the quality and reliability of benchmarks.

However, in view of the regulation coming in, the said solutions will need to be modified substantially to comply with the new requirements. As an association, a non-profit organization, it would be difficult without logistical and financial support for ACI to perform the administrator function provided for in the regulation. Thus far no entity has been put forward that could possibly perform this function. The body would need to have a proper organizational and financial background to facilitate the implementation of the requirements imposed by the regulation. In addition, it is equally important for the body to enjoy public confidence.

And of course, establishing the said institution is simply the starting point for the changes. The banks should also prepare themselves for the changes ahead, as they will have to adjust to the new regulations. To comply with the standards demanded by the proposed regulation, the banks will have to bring in new procedures. The framework set by the new regulation, however, will in fact lower the risk of discretionary penalties.

Marcin Bartczak
Partner, Co-Head of Capital Markets

Advanced-therapy medicinal products

Zofia Ulz
Managing Consultant, Life Sciences

The growth of biomedical research in the areas of genetics, cell biology and tissue engineering has led to the creation of a wide range of potential advanced-therapy medicinal products (ATMPs) which may offer innovative new therapeutic options. These highly innovative medicinal products provide great hope of new possibilities for battling illnesses that were previously untreatable or for which the available therapies do not bring satisfactory results, such as cancers and genetic, autoimmune and neurodegenerative disorders. Tissue engineering therapies – used for correcting, replacing or reconstructing tissues such as skin and organs – make up a particularly large and growing segment of ATMPs.

In 2007, the European Commission decided to regulate therapies of this type by issuing the ATMP Regulation (1394/2007), which has been in force in all EU member states since December 30, 2008. The purpose of the ATMP Regulation is primarily to promote the public health of EU citizens, to harmonize the Community market for ATMPs, and to encourage innovative research and development in biotechnology.

The ATMP Regulation introduced the requirement for central registration of ATMPs throughout the EU. However, products were already offered on the markets of some member states which after introduction of the regulation were classified as ATMPs – mainly tissue-engineered products (TEPs) and borderline products known as "combined ATMPs" (cATMPs). For this reason, the ATMP Regulation included a four-year grace period to comply with its requirements.

Central registration of medicinal products at the European Medicines Agency requires huge financial outlays and unique regulatory knowledge, and takes a relatively long time. ATMP technologies are developed mainly at academic centers, hospitals and by SMEs. For many of these entities, central registration is not feasible. For a very limited group of ATMP therapies, Article 28(2) of the ATMP Regulation created an exemption from central registration, known as the "hospital exemption." This was done by adding Article 3(7) to the Medicinal Products Directive (2001/83/EC), referring to the possibility and specific conditions for applying ATMP therapies in human treatment under the hospital exemption.

Under this article, the directive does not apply to any ATMP "which is prepared on a non-routine basis according to specific quality standards, and used within the same Member State in a hospital under the exclusive professional responsibility of a medical practitioner, in order to comply with an individual medical prescription for a custom-made product for an individual patient." Furthermore, the Directive sets out strict manufacturing controls. "Manufacturing of these products shall be authorised by the competent authority of the Member State. Member States shall ensure that national traceability and pharmacovigilance requirements as well as the specific quality standards referred to in this paragraph are equivalent to those provided for at Community level in respect of advanced therapy medicinal products for which authorisation is required pursuant to Regulation (EC) No 726/2004".

Directive 2001/83/EC requires all of the member states to implement the hospital exemption rules into national law.

Read more on page 48...

“More and more individual medical practices are using ATMPs.”

A lot of R&D work is underway in Poland on technologies that should be classified as ATMPs under EU law. In some clinical centers, experimental therapies are being conducted using TEPs, cell therapies or genetic technologies, such as TREG vaccinations and therapies based on multiplied stem cells.

Poland is currently seven years late in implementing the EU rules in this area. This threatens numerous R&D projects now being conducted in Poland. The lack of ATMP regulations presents a risk for entities financing R&D work with EU funding. The lack of specific regulations also constitutes a violation of applicable EU law, and consequently a serious threat to public health.

Poland’s failure to implement EU regulations exposes patients to risks as there are no relevant procedures for authorizing these therapies for human treatment and no methods for evaluating the quality and safety of these therapies. This also poses a threat for researchers because of the consequences of treating patients with therapies which under current law cannot be used on humans without the approval of the competent national authorities.

Ignoring the implementation obligation may consequently expose the Polish state to claims by patients, who could seek damages for possible complications or death resulting from undergoing experimental therapies at hospitals based only on approval granted by Poland’s National Center for Tissue and Cell Banking (KCBTiK) or Main Pharmaceutical Inspectorate (GIF). This is because approval by KCBTiK covers only collection and storage, while GIF approval covers only manufacturing.

Non-implementation of binding EU regulations also carries financial risks for the state.

The legal system in force in Poland in the area of ATMPs is scant, limited to Article 38a of the Pharmaceutical Law, which refers to the hospital exemption for ATMPs but does not address the manner of authorizing ATMPs for use in treatment.

In Poland, more and more research centers and even individual medical practices are using ATMPs for numerous patients under the hospital exemption, without obtaining even the basic approvals required by Polish law. Sometimes they are not even aware of the need to obtain them. In some EU countries, using an ATMP for more than 10 patients requires commencement of research on the product with the aim of obtaining central registration.

The general rule is that the hospital exemption can no longer be relied on when a fully validated, centrally registered ATMP is available for the same patient population and the same indication.

For these reasons, it appears that the lack of full and transparent implementation into the Polish Pharmaceutical Law of the EU’s ATMP regulations is undermining the full development and supervision by the competent authorities of innovative therapies, which undoubtedly will have serious consequences for patients and will also threaten investments by the industry based on advanced therapies.

Zofia Ulz
Managing Consultant,
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It's a debtor's world

Anna Maria Pukszto
Partner, Head of Restructuring, Insolvency and Bankruptcy

With the new bankruptcy and restructuring regulations entering into force in Poland in January 2016, restructuring proceedings are poised to become a basic tool for resolving companies' insolvency-related problems. This will provide a platform for creditors and debtors to conclude debt restructuring arrangements (compositions). The initiation of restructuring proceedings is envisaged to prevent debtors from bankruptcy and the consequent liquidation of their assets. This heralds the rise of a debtor market, where creditor interests will be put on the back burner.

Experience tells us that in the past only one in five or six companies filing for bankruptcy in Poland was given a chance to conclude a composition with creditors under the composition bankruptcy procedure. Unfortunately, in the vast majority of cases, the courts simply declared liquidation bankruptcy. This unconstructive tendency was flagged by the Polish business and legal community. The World Bank and the European Commission repeatedly stressed that new legal solutions needed to be put in place in order to reduce the number of liquidation bankruptcy cases. Notably, in its Recommendation of March 12, 2014 on a new approach to business failure and insolvency, the European Commission emphasized that bankruptcy proceedings had been designed to put the second chance policy into effect.

The overriding goal of bankruptcy proceedings should be to give a company a chance to restructure its debts and, consequently, to stay in business and continue as a going concern. Needless to say, liquidation bankruptcy often involves the dissolution of a business, layoffs and may have a knock-on effect, triggering problems or even bankruptcy of the company's business partners. The Restructuring Law which came into force this January and the Bankruptcy Law both incorporate the EC's recommendations. They give priority to debt restructuring by way of concluding a composition with creditors and restructuring the debtor's business over full satisfaction of creditor claims.

The new restructuring system has been prudently and coherently structured. It provides four different types of restructuring proceedings: prepackaged composition proceedings, accelerated composition proceedings, composition proceedings and reorganization proceedings. The broader the scope of protection against creditors of a business and its assets in the process of being restructured, the tighter the control over the debtor is and the more restricted the debtor's right to manage its business becomes. The purpose of all restructuring proceedings is to prevent the declaration of bankruptcy and the initiation of bankruptcy proceedings aimed at liquidating of the debtor's assets.

The first proceedings are deformalized to a large extent. In this procedure, the debtor practically single-handedly collects the creditors' votes in favor of the composition. Having gathered the required majority of votes, the debtor reports to the court and files an application for the court to approve the composition. Once approved by the court, the composition is binding on creditors. Accelerated composition proceedings and standard composition proceedings are designed to facilitate the conclusion by the debtor of a composition with its creditors. In principle, the debtor keeps the right to manage its assets, yet under the supervision of a court-appointed supervisor. The most far-reaching restrictions as regards the debtor's ability to run its business come with the reorganization proceedings whose purpose is to "cure" and thoroughly restructure the business. They combine the potential of composition proceedings with the measures recently available in liquidation bankruptcy. In reorganization proceedings, an administrator takes over the business, whereas the debtor may at best be free to act in the normal management of its business. The administrator may cause the debtor's assets to be sold on terms favorable to purchasers, free of any collaterals and liens established to the benefit of the debtor's creditors. The administrator is also given the power to rescind unprofitable contracts. In return for these limitations, the debtor is given the broadest extent of protection against creditors' actions. The protection remedies include a ban on enforcement proceedings binding on secured and unsecured creditors and even some of the security instruments established in favor of creditors becoming ineffective by operation of law.

Partial composition is an interesting innovation in the new law. Formerly, once the bankruptcy procedure was initiated, it involved all unsecured creditors. Currently, the new regulations enable the restructuring of only some of the debtor's liabilities, which means that the procedure may involve only a select group of creditors. For example, this makes it possible to launch a procedure solely involving credit claims. In such an event, all other claims deriving from transactions essential to keep the debtor as a going concern, e.g. with suppliers, will not be subject to restructuring proceeding and the debtor will be allowed to pay them as they become due.

Visibly, creditor interests seem to have been put on the back burner. Owing to the new principle of primacy of restructuring proceedings, creditors have been deprived

"The introduction of new regulations in respect of companies as of 2016 was a necessary step."

of the ability to counteract the initiation of proceedings by inefficient or untrustworthy debtors who will attempt to treat restructuring proceedings as a tool of exerting pressure on creditors so as to goad them into making concessions regarding the restructuring of their debts. Even if a creditor files for bankruptcy in the belief that a liquidation of assets will offer a fuller satisfaction of its claims, particularly in a situation when the debtor's chances of extrication from its predicament seem rather slim, the debtor may take defensive action by filing a counter-petition to launch restructuring proceedings. In this case, the court will consider the restructuring filing in the first instance.

Additionally, in accordance with the new regulations, a debtor will be free to pick a convenient moment for making the restructuring filing. It can lodge a restructuring petition even if the prospects of insolvency are only looming on the horizon and the symptoms of its deteriorating financial position are unnoticeable to creditors. Consequently, the debtor may employ the surprise factor, stalling the creditor's ability to take measures so as to protect its interests against the consequences of restructuring proceedings. The consequences of initiation of restructuring proceedings could be materially adverse to the creditors as they will become unable to terminate certain contracts (e.g. leases, including financial leases, bank facilities) without the approval of the bankruptcy judge or the creditors' council, and the collateral posted by the debtor in the creditors' favor may become ineffective by operation of law.

Notwithstanding the foregoing, a few issues in the new regulations seem to have been poorly conceived. One of them is the inadequately regulated status of 'fresh money', meaning new funds provided to the debtor, including for the purpose of funding the restructuring. In particular, there are no incentives to provide such funding that are present in other legal systems.

For example, in the U.S., the crucial privilege of a creditor who makes a decision to provide support to a debtor pending its restructuring is that the creditor is granted "superseniority". This type of funding (DIP financing) is specially protected. All collateral posted in connection with DIP financing takes precedence over any previous collateral, which means that if the DIP financing is not repaid, the supersenior's claims are satisfied before other secured creditors. The new Polish regulations do not afford similar privileges to financing creditors. If the restructuring procedure ends in a fiasco and the financing is not secured, the creditor who lent his/her hand must stay alert as his/her claims will enjoy priority in a subsequent bankruptcy proceeding only if the bankruptcy petition is filed immediately, and in no event later than within two weeks, after the debacle of the restructuring procedure. If this deadline is not kept, the claim will be satisfied in accordance with generally applicable principles (as a second category claim), together with all unsecured creditors.

Another soft spot in the new regulations is the issue of trading in the debts of the entity being restructured. Investors buying distressed debt are a phenomenon known to many markets. This type of transaction may benefit a creditor who is willing to sell and cash in a claim and does not want to wait for a composition to be concluded or the debt to be repaid on the terms and conditions of the composition. There are many other reasons for the existence of a thriving and efficient market for trading in debt. It offers creditors interested in adopting a composition the ability to buy debts in bulk, thereby strengthening their voting power. By buying debt, investors can use restructuring proceedings to take over control of the debtor and its business (loan-to-own). Unfortunately, the Polish legal system still lives by the rule that debts purchased on the free market after the starting date of the restructuring procedure (or formerly, after the declaration of bankruptcy), do not carry voting rights. This is due to the common misconception

that only the debtor is able to properly restructure its business and the assumption of control by creditors is undesirable. Conversely, debtors sometimes make inefficient, unreasonable, irrational decisions and the takeover of control over their businesses by creditors or an investor could present a good opportunity benefiting the company and boosting its chances of survival.

Without a shadow of a doubt, the introduction of the new restructuring regulations in respect of companies as of 2016 was a necessary step. It brought a remedy to some practical shortcomings of the former regulations which insufficiently enabled debtors to restructure their debts and business. It is the first but by no means last step towards creating a restructuring-friendly legal system. The next challenge yet to be faced is to build up "institutional" support for restructuring proceedings, by which we mean efficient restructuring courts staffed with highly competent judges knowledgeable of the reality of economic processes. Only if the two elements, i.e. sound laws as well as sound courts and restructuring judges – are combined, will restructuring proceedings stand a realistic chance of full success.

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Pre-pack sale – a new solution for insolvent companies, investors and creditors

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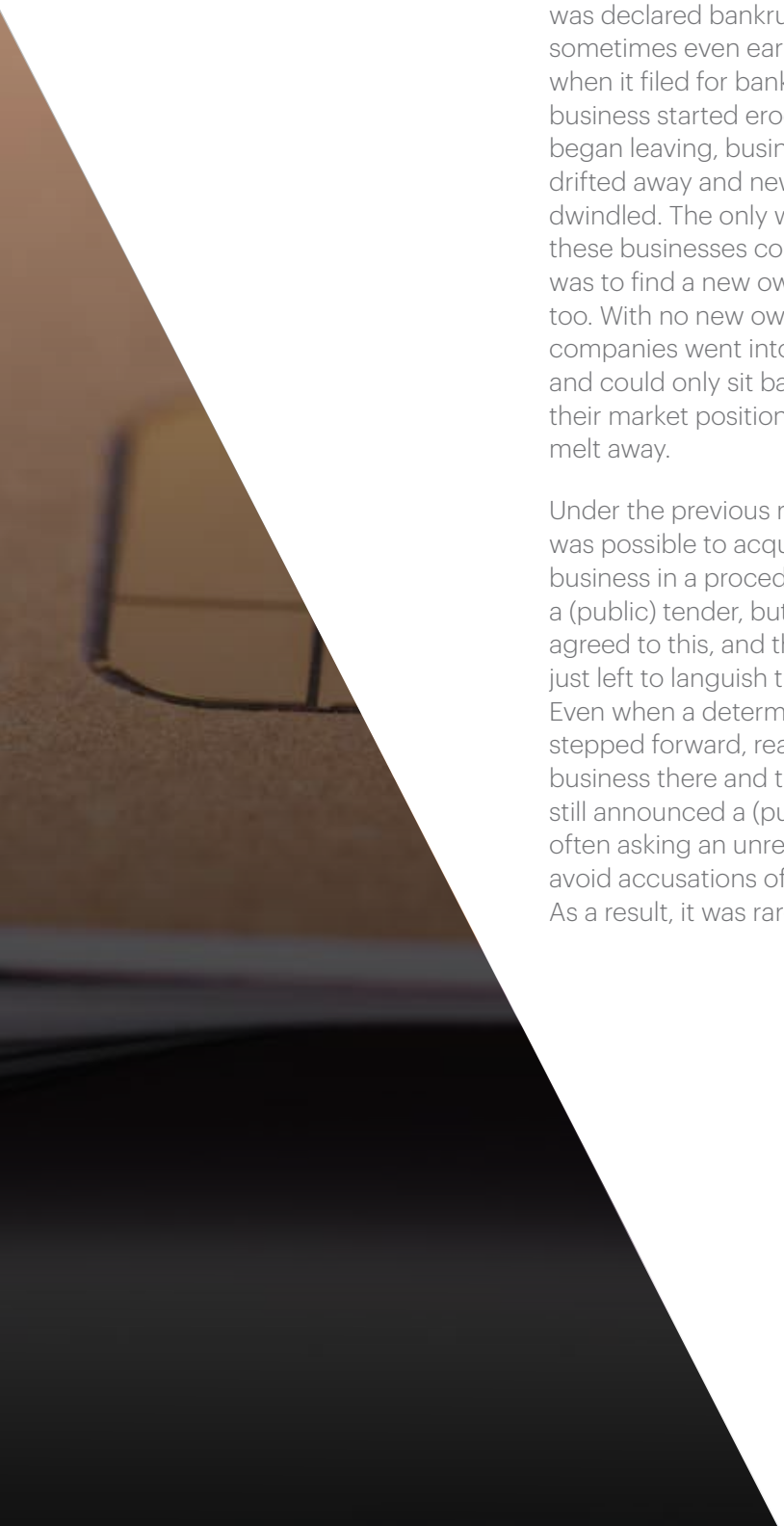
As of this year, companies in dire straits may opt for pre-pack sale, a quick way to sell a business in bankruptcy proceedings.



One of the foremost problems in bankruptcy proceedings commenced before the end of 2015 was that it took ages to sell the debtor's assets. When a company was declared bankrupt—and sometimes even earlier than that, when it filed for bankruptcy—its business started eroding. Employees began leaving, business partners drifted away and new orders dwindled. The only way many of these businesses could keep afloat was to find a new owner, and quickly too. With no new owner on board, companies went into business limbo, and could only sit back and watch their market position and value melt away.

Under the previous regulations, it was possible to acquire the debtor's business in a procedure other than a (public) tender, but receivers rarely agreed to this, and the business was just left to languish that much longer. Even when a determined investor stepped forward, ready to buy the business there and then, receivers still announced a (public) tender, often asking an unrealistic price to avoid accusations of selling cheaply. As a result, it was rarely possible to sell business in the first or even the second tender, despite gradual price reductions. Potential investors, having spent months waiting for reasonable terms and conditions of the deal to materialize, eventually walked away.

The pre-pack sale procedure in the amended Bankruptcy Law is meant to speed up sales of the debtor's business (or its organized parts, or major asset components) to new investors by "pre-packaging" the deal. In the new procedure, it will be possible to sell the debtor's business soon after it is declared bankrupt, thus boosting its chances not only of survival but also of growth. The proposition to sell the debtor's business, or its organized part, or any of its major asset components (such as real properties) and a description of the terms and conditions of the envisaged transaction must be filed together with the bankruptcy petition. The petitioner must indicate at least the sale price and the buyer, but may also attach a draft sale agreement negotiated with the potential buyer. This kind of petition may be filed by the creditor and the debtor alike.

Read more on page 56...

The bankruptcy court now has three options available to it. It must allow the petition and approve the terms and conditions of the sale in its decision declaring bankruptcy if the proposed price exceeds the amount that could be obtained in regular bankruptcy proceedings involving liquidation in accordance with the generally applicable rules less the costs of the proceeding that will be "saved". The court may also approve the terms and conditions of sale if the price comes close to this amount and if such approval is advisable in light of public interest or if it helps the debtor's business to survive. Finally, the court may dismiss the petition if the proposed price is deflated. If the court allows the petition, the receiver should conclude the proposed sale agreement with the indicated buyer within 30 days of the court's decision becoming final and non-appealable.

The decision approving the terms and conditions of sale may be appealed by any of the creditors within a week of the declaration of bankruptcy being announced. In its appeal the creditor must demonstrate that it is entitled to claims against the debtor and explain the reasons for appealing the court's decision by, for example, charging that the bankruptcy court erroneously assumed that the price it approved is higher than the amount that could have been salvaged in liquidation in accordance with the generally applicable rules. The receiver may also refrain from entering into the sale agreement on the approved terms and conditions if the value of the assets to be sold changes substantially as a result of changed or new circumstances. If this happens, the receiver must file a petition with the bankruptcy court to set aside or amend the decision approving the terms and conditions of sale, indicating, in particular, a new price. If the court sets aside its decision, the pre-pack sale will not go ahead and the receiver will liquidate the bankruptcy estate in accordance with the generally applicable rules. If the court amends its decision, thus amending the terms and conditions of sale, the sale agreement will be concluded in accordance with the amended terms and conditions.

Pre-pack sale is designed to prevent the value of the debtor's business (its organized parts, or major asset components) from eroding. A quick sale also helps stem other adverse consequences that are often triggered by declaration of bankruptcy and impact the value of business. Pre-pack sale may translate into tangible benefits for both creditors and buyers. Creditors may hope to satisfy their claims sooner and recover more money. Buyers can be sure they will be buying the business on the terms and conditions negotiated before the bankruptcy is declared, and can negotiate the sale agreement that will be concluded by the receiver. Also, the businesses they acquire will be free of any encumbrances: mortgages, pledges or third party rights and claims. And, most importantly for investors – they will not be liable for the bankrupt's debts.

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Brownfield investment projects: opportunities and hazards

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Interest in brownfield development projects has been growing in Poland over the past few years. Properties once used for industrial purposes, including existing facilities as well as degraded land, buildings and infrastructure, are being acquired for conversion to new business uses.

Brownfield projects now account for the majority of direct investment projects in Poland, with investors focusing primarily on the provinces of Silesia, Lower Silesia, Mazovia, Małopolska and Wielkopolska.

Poland has an abundance of degraded areas that may be attractive to investors. According to the available data, there are more than 8,000 square kilometers of degraded land in the country, with another 39,000 square kilometers at risk of becoming degraded by industry. This is more than 2.5 times the area of Małopolska province.

In most cases, brownfield investors acquire land where industrial activity was discontinued but which has not yet been used for other purposes. These properties fall into three categories: former industrial properties (such as former mines, steel mills, factories, warehouses or landfills), areas taken up by facilities ancillary to industrial properties (including administrative and retail buildings and municipal infrastructure for manufacturing facilities), and areas impacted by industrial plants, degraded as a result of extraction of natural deposits, production and storage of materials, and waste generated in technological processes.

Degraded industrial areas are especially plentiful in the province of Silesia, which ranks among the most extensively degraded and devastated regions in Europe. Much of the almost 6,000 square kilometers of this degraded land was once used by the coal mining and sand extraction industries for stockpiling waste, and it includes disused pits and excavations, stone and sand quarries, as well as former industrial facilities in built-up areas.

Investors are most attracted to former industrial properties in city centers or very close to city centers. This is often the only land available in these convenient locations. A drive to acquire properties of this kind has been discernible for years and has recently been picking up pace.

There are two reasons brownfield projects are particularly interesting to investors. First and most importantly, they require less investment outlays than greenfield projects. Degraded land is cheaper to buy, and the facilities and infrastructure already in place may often be put to use after suitable adaptation. The other key reason is that less time is required to complete the development project, which means that business operations may be commenced sooner.

Read more on page 60...

Investors must reckon, however, with the serious risk that they may be acquiring contaminated land. No reliable statistics are available, as not all information about soil and groundwater condition is disclosed, but in practice much of the land acquired for brownfield projects is in fact contaminated.

To cope with this problem, investors should carry out thorough legal and environmental due diligence studies and safeguard themselves prudently in the transaction documents. In some cases, however, they must accept that liability for the contaminated land may pass to them when they acquire the property. That said, this does not necessarily mean that they will have to spend millions to remediate the land by removing the contamination or reducing contamination levels. A law passed in September 2014 provides for a variety of other ways of coping with land contamination, and businesses are now beginning to use them.

One solution is to seek an exemption from the remediation duty, which means that nothing has to be done on the property. An exemption of this kind is granted only if the contamination does not pose any significant risk to human health or the condition of the environment.

A special environmental assessment is required to demonstrate this. Last year we obtained precisely such exemptions for a multinational developer erecting an office building to replace a former steelworks and for an energy company which operates a heat and power plant on a property once used for a different kind of industrial activity. It is also possible to obtain a decision ordering the new owner to remediate the contaminated property to a limited extent only. In this case the contamination does not have to be removed but, for example, only monitored, or the land has to be left for self-cleaning. The latter option is available only after proof is presented of special circumstances, as when no technologies or other measures are known that can be used to clear the contamination.

The availability of these solutions will no doubt encourage even more brownfield investments in Poland in the coming years, as they will make it possible to develop even those properties that have so far been shunned by potential investors fearing massive remediation costs.

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Regulatory pressures increase in Poland

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Under Poland's new conservative Law & Justice (Prawo i Sprawiedliwość– PiS) government, a wholesale change of the ruling political elite is under way. What should the business community expect from the new government? How should we react to the approaching changes in the legal framework?

In a nutshell, Corporate Poland should brace itself for greater regulatory pressure, new policy tools, and more robust enforcement. A response must be measured and pragmatic. Clients should identify policy shifts early on, carefully pick winnable policy battles, and, be ready to take the government to court if dialog fails.

Increased regulatory pressure

The reformist ambitions of the new Polish government will put businesses under stronger regulatory pressure, especially those in key sectors, such as energy, pharmaceuticals, banking, and retail. We have already seen an early sign of this trend. Following the new ministers' statements calling for special taxes on financial institutions and superstores, Parliament was quick to impose such measures. The incoming Finance Minister's publicly voiced concerns about the market dominance of foreign banks are a sign of more changes to come.

That said, more regulation, often with distinct protectionist undertones, is by no means a uniquely Polish phenomenon. The global trend towards regulation is a fact. It is also clear that even if big reforms have been quickly pushed through and implemented by Parliament, it will take more time for them to bear fruit.

Therefore, it is a safe bet that the PiS government will look for opportunities to score points by prioritizing measures that are easier to implement, in addition to its long-term projects. Here, Kaczyński's team is likely to borrow strategies that have worked elsewhere.

Playbook of a hands-on regulator

We expect that the dominant themes of the regulatory effort in Poland will include the expansive use of executive powers, testing the boundaries of legal authority; instrumental use of popular legal frameworks, and stronger, focused enforcement.

When governments feel thwarted in their ability to shape policy by passing laws, they look for alternatives. However, unlike Victor Orbán in Hungary or FDR in the United States, the current Polish government lacks the power to introduce its own "new deal" by removing systemic obstacles on the constitutional level. Instead, the PiS majority will take an expansive view on the boundaries of the government's existing powers and use them to the fullest.

It is almost certain that the expected regulatory push will bring new regulations, and almost as probable that some of those will be issued under flimsy statutory authority. Bluntly, the government will cut it close because it stands a good chance of getting away with it. Some rules can prove impactful even if they are ultimately invalidated – due to high costs of noncompliance, immediate application of the measure, or because the old rule is replaced with a new one that differs little in substance.

The current argument over the Constitutional Tribunal is a good illustration. At issue are five justices appointed fast and loose by the outgoing Parliament and the government's compliance with the Constitutional Tribunal rulings. PiS asserts that Parliament, where it has a majority, prevails over the Tribunal's rulings and authority. Here, and likely elsewhere, the government is using its powers to keep the judiciary in check. It is framing the power struggle in populist terms, blaming the Tribunal for blocking reforms out of political spite.

This last observation is symptomatic of a larger theme: the government is likely to try and shroud regulation in popular legal frameworks such as consumer protection, competition and antitrust, labor relations, or fair access to public contracts.

Read more on page 64...

"The government is using its powers to keep the hostile judiciary in check."

For example, a more aggressive interpretation and enforcement of antitrust laws is already being discussed as a means to prompt the exit of foreign investors from certain industries.

More generally, apart from robust rulemaking, the Polish government may creatively reinterpret existing laws. Such reinterpretation can change the law as applied virtually overnight. For instance, the new Minister of Finance ordered the revenue service to treat certain losses recognized on currency hedging instruments as tax-deductible, reversing policy on the neuralgic issue of structured FX options. That welcome change was well publicized; but "stealthy interpretations" are also possible, and vigilance will be needed to detect and challenge them in time.

Just as it can abandon one meaning of a rule in favor of another, a government can also shape policy by choosing which rules to enforce and when. In the Polish context, being tough on crime has been the hallmark of the Kaczyński party since its founding. The fact that the head of the Central Anti-Corruption Bureau was quickly replaced is no coincidence, neither is the plan to extend statutes of limitation for "serious crimes" and rein in prosecutors. Accordingly, we anticipate a greater emphasis on white-collar crimes and regulatory compliance.

Taking the bull by the horns

The challenge of the likely flurry of regulatory activity in Poland is not just in the legal changes and the extra regulatory burden they will cause. It is also in the process of change itself, because it will make the legal environment less stable.

In such circumstances, it is essential for the business community to reach out to the government in order to understand what is coming and why, and to educate the policymaker. Sometimes, the trouble is not as much with the implemented policy as with the unintended consequences of clumsy drafting or business ignorance.

When pushing back, it is crucial to identify realistic objectives. Client experience shows that overreaching regulations are best dealt with by engaging the regulating authority at an early stage and focusing on key issues that go too far.

Bilateral Investment Treaties protection: another form of engagement

We readily acknowledge that persuasion can shift the government's stance only so much. At times, due to politics, economic calculus or bureaucracy, clients are inevitably going to face unwelcome "facts on the ground." When that happens, investors can look to Bilateral Investment Treaties (BITs) for protection. As the ancient Romans used to say, if you want peace, prepare for war.

BITs are international agreements between states providing citizens and companies from a contracting state with a right to bring a direct claim against the other state for breaches of international standards established by these agreements, in particular for expropriating any asset without providing adequate and prompt compensation, but often also for arbitrary and discriminatory measures adopted by a state. Poland is currently a party to approx. 60 BITs, including BITs with almost all EU Member States (except for Ireland, Italy and Malta) and global economic powers such as the

United States, Canada and China. As opposed to Polish law litigation in domestic courts, treaty arbitration puts the investor on an equal footing with the government and offers both a well-structured, formal opportunity to compromise before a legal battle begins. To explore the opportunities of BIT protection – or treaty shopping as some call it – investors should review the structure of their current investments in Poland and check the scope of protection available under the relevant investment treaties.

Recently the Polish Government announced that it would consider terminating bilateral investments treaties (BITs). This initiative opened a flood of questions on whether the new Government intends to carry out far-reaching reforms that might be at odds with certain BITs. Should Poland decide to terminate BITs, the impact on existing investments would only be marginal in the worst case scenario, as "sunset clauses" extend BIT protection to existing investments for, typically, 10 to 20 years. While Poland also announced that it might seek to negotiate a reduction or even cancellation of the sunset clauses, it is doubtful how effective this process could be given that it would necessarily require consent from the other contracting states, which is unlikely in the case of developed countries such as France, Germany and the Netherlands. On the other hand, investments made after termination of the treaty would not enjoy protection available under the BITs and would be subject to Polish law only.

Whether in local courts or in arbitration under an investment treaty, dispute resolution options are exactly that: different ways of resolving a disagreement. Even if things do get adversarial, there might still be overarching "policy" reasons (next to the immediate benefit of the potential win) to see the case through. Both regulators and the regulated tend to play the long game. It usually pays off to take a calculated risk and check the opponent's cards to make sure that rules are obeyed or to signal that overplaying one's hand might be a costly strategy best avoided in the future.

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Class actions in Poland

Patrick Radzimierski
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Class actions celebrate fifth anniversary in Poland. Although class action has been available as a litigation measure for five years now, only several dozen class action lawsuits are currently pending in Polish courts. Evidently, this remedy is still relatively little known. The lengthy preliminary procedure and the limited scope of cases where class action can be used seem to act as additional deterrents, even though the potential gains would outweigh the inconvenience for the parties involved and the judiciary alike.

Class action enables individuals to assert claims against more potent defendants in strictly defined types of lawsuits. This remedy helps plaintiffs in that it substantially lessens the financial and organizational burden which would otherwise discourage individual plaintiffs from seeking justice in court by filing a standard statement of claim, especially where the amount in controversy is small. For a matter to qualify for class action, certain conditions must be fulfilled. Class action may be filed by at least 10 injured parties willing to litigate the same claim based on the same or substantially identical facts of the case.

The Class Action Act permits this legal procedure to be used in three types of cases. The first category includes consumer claims, where a private individual signs a contract with a professional entity. The second type of case concerns dangerous product liability, where a potentially damaging product or substance is marketed. The third category is the broadest, and includes tortious liability (e.g., traffic or construction accidents). For example, this procedure is being used by people injured in the construction accident at the International Katowice Fair, who want the court to determine who was responsible for the collapse of the exhibition hall which they claim had been built and operated in breach of applicable laws and regulations. It is unclear why the legislators decided against including certain categories of cases within the remit of the Class Action Act, such as labor disputes, which seem to be ideally cut out for class action litigation. In this field of law, entire groups of employees can file numerous statements of claim against employers based on an identical or very similar factual background. Class action cannot be used to assert any claims on account of infringement of personal interests.

In practice, the majority of currently pending class actions concern claims for a collective preliminary ruling, i.e., an award whereby liability will only be adjudicated in general, without considering the quantum. In other words, they are cases where a group of plaintiffs jointly file a statement of claim against the alleged perpetrator of damage, requesting that the court confirm that the perpetrator is responsible for the damage. This means that at this stage the court does not examine individual financial claims, which significantly simplifies and expedites the case. Only after the preliminary award is issued and the question of liability is judged will each claimant be able to file a statement of claim for damages.

Class action lawsuits consist of three phases. In the first phase, the court checks whether this procedure is permitted in the given case. Then the court determines whether necessary premises have been fulfilled. Subject to positive findings in phase one, in the second phase, the court determines the group of plaintiffs. The lawsuit is not limited to plaintiffs on whose initiative the class action was filed – other injured parties may join this group.. For this reason, the court must publish in a national newspaper a notice of the pending class action, requesting all interested parties to join the case by the court-set deadline. Unlike the US, Poland belongs to the majority of countries where class actions are processed by the court in an opt-in system, which means that each interested party must expressly join the class action to be a party and to be bound by the award. Conversely, certain legal systems follow the opt-out system, where each person meeting certain predefined criteria is automatically deemed to belong to the group of plaintiffs, e.g., all purchasers of a defective product, and must expressly opt out so as not to be party and not to be bound by the court award.

Once all parties have been vetted and the composition of the group has been verified, the procedure enters the third phase, where the merits of the case are considered. Notably, the initial procedure considerably draws out the class action in time as compared with a traditional lawsuit. The two initial phases may take many months, sometimes even years, to complete. This discourages potential plaintiffs from using this legal measure, although ultimately they all benefit from the fact that the case is resolved in one single procedure instead of a multitude of identical lawsuits. Naturally, this also benefits the judiciary. There is an added financial benefit, in the sense that the court fee in class actions is 2 percent of the amount in controversy, instead of the standard rate of 5 percent.

When the case reaches the third phase, standard civil lawsuit procedures apply throughout except that the case is considered at the first instance level in the Regional Court by a panel of three professional judges. Additionally, it is mandatory that the parties to a class

action lawsuit are represented by professional counsel. At the time of filing the lawsuit, the group must appoint its representative (a group member or a consumer ombudsman) to make all submissions, statements and procedural requests on behalf of the group.

Despite being a potentially powerful litigation tool, class action is still very rarely used in Poland. Less than 200 class action lawsuits have been initiated since the Act took effect. It seems that the new procedure needs more time to entrench itself in judicature and legal practice. Additionally, the initial procedure takes too long to complete and the scope of cases where class action can be used is limited. Legislation experts realize that the scope of the Act must be extended to include, for example, labor law dispute cases. The Supreme Court seems to be promoting class actions in its rulings by broadly interpreting premises permitting the application of class action procedure. For instance, there are cases where the trial and appellate courts rejected class actions and the Supreme Court overturned their decisions, e.g., the Katowice exhibition hall disaster, where the Supreme Court ruled that class action had been specially designed for this type of case.

In the present practice, more than half of class action cases concern the liability of Polish state and other public agencies, including local governments. This type of statement of claim is also used to sue financial institutions, notably with mixed results, because like a flash in the pan, they make headlines but die off once the statement of claim has been filed.

By limiting the scope of application of the Class Action Act, the legislators seem to have intended avoiding situations known to other jurisdictions, where class action is abused to exert 'litigation blackmail'. In such cases, claims are structured on a narrow basis so as to goad the defendant, under the pressure of media and in the face of a looming long lawsuit, into signing a settlement to avoid the loss of reputation or financial loss. Although this risk is genuine, it must not make us blind to the substantial benefits which may be derived from an efficient use of class action as a litigation tool. That said, the remits of class action seem to have been defined too narrowly in Poland and for this reason the current regulations need serious revisions to meet initial expectations.

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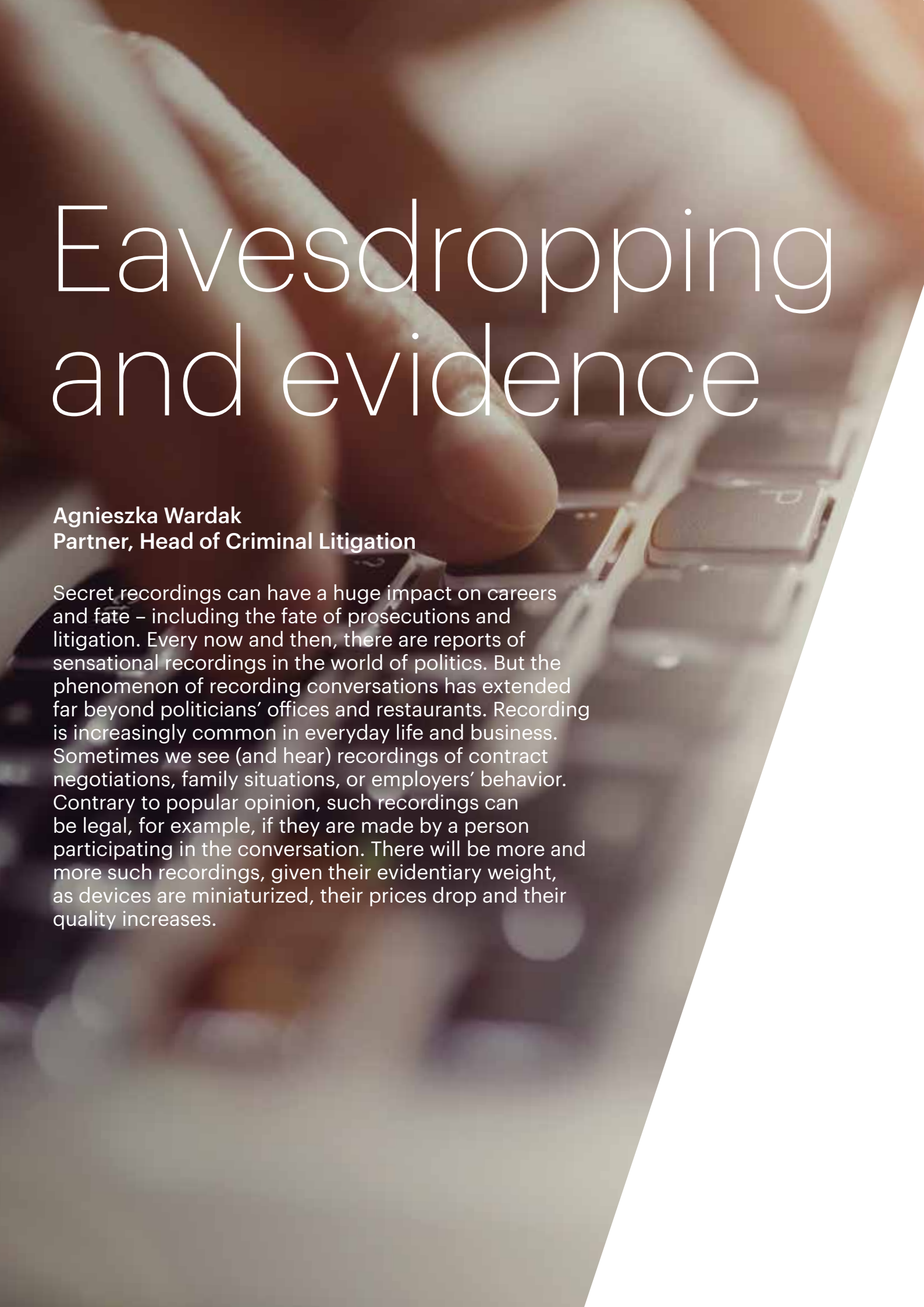

Eavesdropping and evidence

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Partner, Head of Criminal Litigation

Secret recordings can have a huge impact on careers and fate – including the fate of prosecutions and litigation. Every now and then, there are reports of sensational recordings in the world of politics. But the phenomenon of recording conversations has extended far beyond politicians' offices and restaurants. Recording is increasingly common in everyday life and business. Sometimes we see (and hear) recordings of contract negotiations, family situations, or employers' behavior. Contrary to popular opinion, such recordings can be legal, for example, if they are made by a person participating in the conversation. There will be more and more such recordings, given their evidentiary weight, as devices are miniaturized, their prices drop and their quality increases.

If an employer records employees at the workplace, has a legitimate interest in doing so, and warns them in advance, there are no grounds to dispute the legality of the recording. This setup may be regarded as one aspect of transparent and clearly stated rules in force at the workplace. Recording conversations by the customer service and sales divisions should be considered justified, which is relevant for firms that enter into contracts, accept orders and hear complaints via telephone. The situation is different when all conversations are recorded, regardless of whom the employee is talking to. This is impermissible because it interferes excessively in the employee's personal affairs. The European Court of Human Rights in Strasbourg has addressed this issue several times and limited the rights of employers in this respect.

Recently when advising on an internal investigation, we spoke with a group of employees. When the first employee handed us recordings of telephone calls and meetings with superiors, we were pleased because the matter would be easier to resolve with such a wealth of evidence. But when we received recordings from the next four employees, all of whom, were recording their work-related discussions, and one of whom had installed a listening device in the shop run by a colleague, the atmosphere grew truly uncomfortable. Is that legal? And can such recordings be used?

Under Article 267 of the Penal Code, anyone who, without authorization, obtains access to information not intended for them by opening a sealed letter, connecting to a telecommunications network, or breaking or bypassing electronic, magnetic, computer or other special form for securing the information, is subject to a fine, probation or imprisonment up to 2 years.

The same punishment may be imposed on a person who installs or uses a listening, visual or other device or program in order to obtain unauthorized access to information.

In other words, it is mainly a punishable offence to eavesdrop on other people's conversations (although only if some type of technological barrier is breached), but not to record one's own discussions without the other person's knowledge.

In our example, all of the employees had lawfully recorded their own conversations, except for the one who eavesdropped in the store. However, the matter was not so obvious, because the listening device was planted in a publicly accessible place, and any customer present at that location would have heard the same discussions that were recorded. So here again, it seems the law was not broken, but the matter is debatable and beyond the scope of this brief analysis.

A key issue is whether a recording is admissible evidence. Open recording with the consent of the subjects has been admitted for a long time, for example in arbitration proceedings. There is no regulation expressly excluding private recordings as a source of evidence in a civil trial. There is a dispute over this topic in both case law and commentaries, based on public policy concerns as well as the doctrine of the "fruit of the poisonous tree," i.e. using evidence obtained unlawfully. Article 168a was recently added to the Criminal Procedure Code, expressly prohibiting the admission in a criminal trial of evidence in the form of an illegally obtained recording.

Returning to the employees who were so eager to use recording devices, the case ended completely differently from our initial assumptions. On the basis of the recordings, the employees' supervisor lost his job, as did the colleague running the shop, because the shop was directly competing with the business of our client. But that's a whole other story, and concerns mainly the issue of conflict of interest.

I'll end this brief note with another instructive anecdote from a criminal matter we were working on. A witness came to our client and said that he was going to testify against the client, but if the client paid him money he would switch his story. Our client managed to record the conversation, however, and thanks to that the case was quickly over.

Labor law in the age of globalization

Changes in operating models, international network building and globalization affect the approach of legal counsel specializing in employment law. Their services increasingly involve putting together comprehensive solutions across multiple jurisdictions to help multinational corporations efficiently manage human resources.

An interview with Aleksandra Minkowicz-Flanek
Partner, Head of Employment and Labor

How has international expansion affected the work of legal counsel specializing in employment law?

HR directors admit that managing globally dispersed teams can get difficult. For this reason, they need effective advice and assistance. Over the last several months the demand for cross-border advice has grown considerably. Management teams and HR managers want their questions concerning multiple jurisdictions answered by one professional, all at once. Their role in global corporations is to manage change and coordinate the implementation of efficient solutions across entire regions rather than individual countries. Legal counsel are expected to keep pace with their clients' management teams, understand their needs and provide added value.

A large number of corporations have had dispersed organizational structures for a long time now. So why in your opinion has the scope of services needed by corporations changed?

Globalization is a process. Just a few years ago corporations would have head offices or branches in several countries, but the current trend is to have a presence in anywhere from 10 to upwards of 50 jurisdictions.

This means that HR specialists in international companies who started off as HR heads for five countries have now been assigned, say, 20 branches within the space of a year. This means they are expected to coordinate employment-related matters not only in Europe but also in Asia and South America.

In a global company, contracts and employment files used throughout the corporation must be reviewed for compliance with the local laws of every single country where it employs staff. Naturally, the costs of employment and termination or layoffs will also vary from country to country. A global corporation must visualize and take all of the above into account in its organizational and financial plans. The recent changes in the scope of duties of HR departments have a direct bearing on the way that we as legal counsel react to client needs. For example, we recently worked for an international client who required urgent legal advice in Singapore. The issue referred to us was quite straightforward, but it had to be dealt with in less than 24 hours. The client expressly reserved the right to seek different counsel if we failed to deliver on time.

Read more on page 74...

"Nowadays, practicing employment law is much more complex than it used to be."

Will a law firm without a well-developed international network be able to face these challenges?

That could be difficult. Naturally, what we have on the market are networks of independent law firms whose partners give mutual support in situations of this sort. However, this type of networking is based merely on the good will of all the parties involved. Global or globally expanding corporations require a consistently high standard of service, which is not easy to deliver when it involves several independent counsel based in different markets who are working in line with their own standards. Additionally, when assuming this mode of legal advice, it may be difficult to choose one lawyer from among several different law firms to coordinate work performed in, say, 10 jurisdictions.

Are there sectors where demand for coordinated multi-jurisdictional legal services is on the rise?

We have not noticed any substantial difference between the various sectors. Globalization is a process involving all sectors of the economy. What matters most is the client's organizational structure. That said, there is one very perceptible shift on the market, namely one towards eastern markets in the area stretching from China to the Pacific Basin.

Which labor regulations do global firms find the most taxing?

Let's take local regulations concerning overtime for example. There are vast differences in this area. Polish regulations tend to be rigid and stringent, which is a problem for our Japanese, UK or even German clients who are used to certain mechanisms whereby the working hours of managerial staff can be made more flexible. They are surprised to hear that managers in Poland could be eligible for overtime pay notwithstanding the express regulations of the Labor Code to the opposite effect, and that corporations run the risk of being sued if their work hours are not properly organized, with the courts likely to uphold management staff claims.

Are Polish labor laws less flexible than employment laws in other countries?

Currently, Polish labor law is quite flexible as regards the forms of employment. Despite widespread complaints that labor costs in Poland are allegedly high, there are countries in Europe where costs are significantly higher and the relevant regulations tend to be even less flexible. Foreign investors find it surprising that group layoff costs are not as high as in other jurisdictions. That said, US corporations do not understand the numerous restrictions concerning the gathering and processing of personal data of employees in Europe or the obligation to keep all employee files in hard copy form.

Are Polish managers hired as salaried employees?

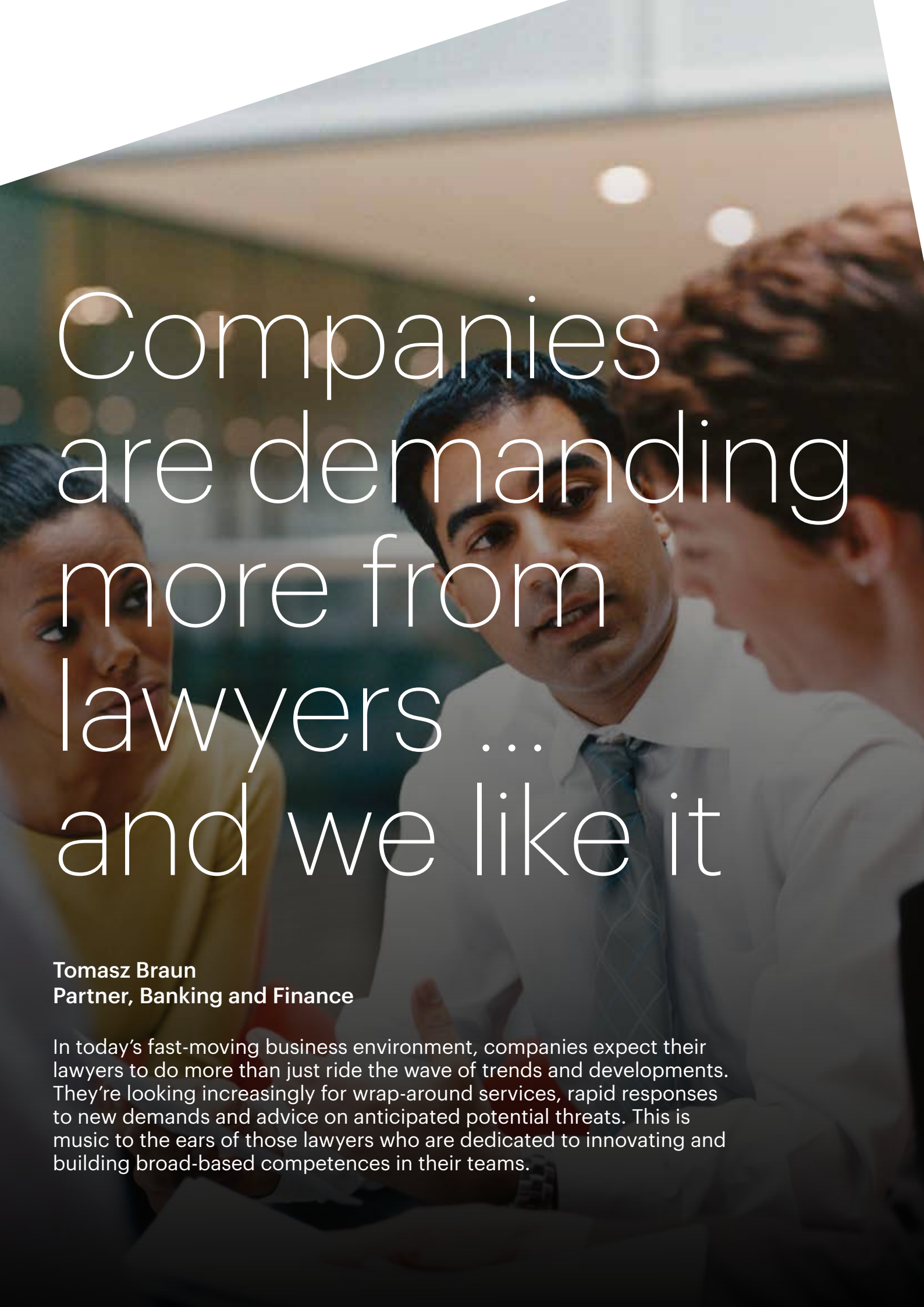
Not necessarily, but it is very frequently the case in Poland. Notably, you may find it surprising from the practical point of view that a Polish labor court issued a ruling whereby a discharged board member may claim reinstatement at work if the dismissal was defectively made. Yes, you heard me right, not damages but reinstatement, and reinstatement even if someone else has been hired in place of the dismissed employee. When we warn our clients of this risk, they find it perplexing and hard to believe.

What kind of employment law support do international corporations typically expect from their legal counsel?

We very often advise clients on restructuring related issues, e.g. where a company is reorganizing its business and intends to lay off some of its staff in different parts of Europe or even outside of our continent. HR departments need well-structured action plans complete with succinct descriptions of procedures, costs and risks, presented in clear, easy-to-follow ways. Depending on how well-defined the organization's assumptions and expectations are, a restructuring project may take anything from two weeks to several months, especially if the project priorities or business assumptions change in the course of the restructuring. Smaller organizations want us to tackle problems connected with their key members of staff being employed simultaneously in several countries on a split contract basis.

Nowadays, practicing employment law is much more complex than it used to be. In addition to typical legal advice on Labor Code regulations, we add extra value by advising on related tax, social security, and corporate issues. We are always prepared to keep pace with our clients across geographical borders and keep our eyes on the wider perspective, be it regional or even global.

Aleksandra Minkowicz-Flanek
Partner, Head of Employment and Labor



Companies are demanding more from lawyers … and we like it

Tomasz Braun
Partner, Banking and Finance

In today's fast-moving business environment, companies expect their lawyers to do more than just ride the wave of trends and developments. They're looking increasingly for wrap-around services, rapid responses to new demands and advice on anticipated potential threats. This is music to the ears of those lawyers who are dedicated to innovating and building broad-based competences in their teams.

Today's businesses are facing high-volumes of information from multiple sources and millions of transactions per nanosecond. Thousands of pages of new legal acts and regulations are issued every year, new alternative business institutions are sprouting up, and we are seeing growing pressure from market regulators. All of these factors are creating new business challenges. There is absolutely no reason why lawyers cannot keep up with this brave new world. They just need to be flexible and to seize the chances as they come.

The key to it all is that lawyers must learn to think and act like their clients. Businesses expect their advisors both to understand processes and to manage them as well. They must not only respond to client needs, but also propose innovative solutions. They need to identify existing risks as well as anticipate potential risks that may arise in the future. Above all, businesses expect to see workaround solutions, not just to be told about potential risks.

Many institutions have recently paid a high price for negligence in the area of risk management. In the case of regulated institutions, administrative penalties have hit the millions (sometimes even the billions). Businesses can also face equally high costs of disputes and settlements with clients. Unfortunately, in the case of many institutions, the risk comes from both quarters.

Hence, lawyers acting in their clients' interests are duty bound to offer them solutions that protect them against risks that have already impacted others in the market.

In short, lawyers must understand and adapt to business conditions, while anticipating and managing risks. Success is measured in terms of not only what a lawyer has achieved, but also what he has managed to avoid. Businesses and their lawyers alike should draw equal satisfaction from the costs of penalties and lost trials a client avoided as well as the value of successfully settled disputes. While we're on the subject, we should mention that even seemingly unrelated factors may be a source of legal risk: non-transparent organizational structure, products that don't meet client needs, delayed compliance with regulatory duties, unreliable management processes, and many others. Risks are present in each and every aspect of doing business and they vary from company to company.

Importantly and interestingly, some businesses operating in heavily regulated markets, including financial institutions, are currently under obligation to implement policies defining their "legal risk appetite" (Legal Risk Appetite Statements), based on the characteristics of the business, including a statement of grounds and methods for measuring and keeping control of the risks.

Enforcing competition law infringement claims will soon get easier

Anna Gulińska
Senior Associate, Competition and Antitrust

If a company's supplier or competitor abuses its dominant position or is a member of a cartel, its actions may inflict damage on other businesses. Until recently, claims for damages arising from these types of infringements have been more notional than real in Poland. This is set to change with the implementation of the Damages Directive (2014/104/EU) of November 26, 2014. Its purpose is to facilitate the pursuit of compensation claims for violating antitrust laws in EU member states. This may mean that it will be easier for companies to obtain compensation if they experience problems with cartels or other antitrust practices and offenders will face a greater risk of civil liability for collusion.

First civil actions for violation of competition law in Poland have highlighted a number of issues which the Damages Directive seeks to address. Firstly, a company seeking compensation has to prove the value of the damage incurred, i.e. to quantify the losses (or lost profit) caused by the wrongful actions of other entities. That is not easy, not least due to the limited possibility of reviewing documents held by the offenders. Under Polish civil law, as a rule you first have to file a statement of claim which includes a request for the other party to disclose its evidence. This request must be limited to documents constituting factual evidence that has a bearing on the given proceedings.

Another practical problem is striking a balance between overcoming obstacles to obtaining evidence and protecting the confidentiality of information presented to the antitrust authorities in leniency requests. In such requests, offenders make a voluntary disclosure at their own initiative to the Office of Competition and Consumer Protection and provide evidence enabling it to determine the violation. This is done to entirely avoid or significantly reduce the fine imposed by the authority. On the one hand, the evidence and explanations provided by offenders in leniency requests would be very interesting and helpful in the context of private claims. On the other hand, the option to make them available to claimants would discourage offenders from submitting leniency requests, which significantly contribute to successful public enforcement of competition law.

Poland is not the only country experiencing problems with competition law infringement claims. To date private enforcement in the EU has only developed in Germany, the UK and the Netherlands. Implementation of the Damages Directive – which member states are required to carry out by December 27, 2016 – is set to harmonize the rules for pursuing claims through private enforcement procedures and at the same time provide a level playing field for claimants in all EU jurisdictions. Cartels and other competition restricting practices are a problem for the entire European Union. According to the European Commission, the damage caused by illegal collusion alone costs around €37 billion per year.

The new regulations mean many simplifications, and their implementation in Polish law will benefit anyone who has suffered a loss from competition infringements. For instance, the simplified procedure for obtaining evidence, partially based on common-law, may offer a great chance for the jurisdictions of continental Europe. However, this depends on whether the chance is taken and whether the directive is thoughtfully implemented. If this succeeds, aggrieved companies will have easier access to documents, under court supervision, which in consequence will enable them to prove an infringement and assess the damage suffered. In certain cases, the aggrieved party will be able to request that the evidence collected in the proceedings conducted by the Office of Competition and Consumer Protection concerning a particular violation be made available.

Read more on page 80...

Another important matter is that the statute of limitations will be extended to a minimum of five years from the date when the aggrieved party learned of the violation. The limitations period will not run while the antitrust authorities take action, and the period will not end earlier than one year after a final decision in antitrust proceedings is issued. At present the limitation period is much shorter, which often prevents companies from pursuing their claims.

The practicality of private enforcement has already been noticed by major corporations based in Western Europe or the US. Companies are increasingly resorting to this type of claim as an additional source of earnings. Deutsche Bahn is an interesting example right on our western doorstep. The German railway proudly boasts of its team of specialist lawyers who handle only select cases and supervise the work performed by outside law firms in pursuing claims through private enforcement actions. The company even has a website where it posts news on its case against cartel members in the air freight market. The amount sought by Deutsche Bahn – in excess of €2 billion – proves that there is something worth fighting for.

There is another interesting recent example from the Netherlands. The court ordered HAS Alstom to pay €14.1 million in damages to TenneT, a Dutch electricity grid operator, for inflated prices charged because of Alstom's participation in a cartel in the gas-insulated switchgear market.

The Polish market has also witnessed legal precedents. At the end of 2014 Orange Polska and Netia reached a settlement regarding Netia's claims stemming from Orange abusing its dominant position, which the European Commission had previously determined in a decision. The parties agreed to settle the claims, with Orange Polska paying Netia around €33 million net. It seems that the telecommunications sector will play a vital role in the development of private enforcement in Poland, as there is another unprecedented case pending before the Warsaw District Court involving violations on the telecommunications market.

Private enforcement may become an effective tool in enforcing competition law at the European level and in enabling companies to recover funds. Poland, like other EU member states, is required to implement the EU solutions by the end of 2016. Regardless of the final shape of the Polish regulations, we can already assume that the new solutions will strengthen the position of aggrieved parties and result in an increase in the number of claims filed for violation of competition law. But this is a double-edged sword. When assessing antitrust risks stemming from their market behavior, companies must consider not only the risk of fines imposed by the Office of Competition and Consumer Protection, but also the risk of possible damages. This is because the Damages Directive gives the right to seek full compensation, which, as shown by Polish and foreign practice, may run into many millions of euros.

Revolution on our roads

Igor Ostrowski
Partner, Head of Telecommunications, Media and Technology, Europe

Marek Trojnarski
Counsel, Intellectual Property and Technology

Although you might find it hard to believe when looking at the cars whizzing past you today, we are just a few years away from a veritable revolution in how cars are used and made. Experts no longer dispute whether the revolution will come, as they all agree that it definitely will, but instead argue over the character it is likely to assume. There is also no doubt that the imminent revolution will not be confined to technology alone, but that it will have major legal implications as well.

Autonomous, self-driving cars are already the stuff of today, no longer something you would see only in a sci-fi movie. More and more companies are working to develop driverless road vehicles – not just the goliaths of innovation in technology such as Tesla or Google but traditional car makers too. Volvo and Nissan have announced they are committed to putting fully autonomous cars on the road as early as 2020. Mercedes-Benz wants to see computer controlled trucks in series production in under a decade.

The companies wishing to redefine the existing market and those now playing first fiddle on the roads are choosing one of two competing concepts of driving automation. Car companies are seeking to harness computers to do some of the work now done by drivers, opting for cooperation between man and machine. The new players meanwhile are usually out to eliminate drivers from cars entirely. Regardless of which idea emerges victorious and before the revolution on our roads actually takes off, there are a few questions that will have to be answered – not least questions of a legal nature.

The first stage in this revolution, already underway in some countries, is that of testing autonomous cars on the public highway. Regulations allowing this have already been adopted in the UK, Sweden and some states in the USA, including Nevada and California. These tests will probably reveal the full extent of the technological challenges ahead and the related legal issues to be resolved. Regardless of the conclusions drawn from this research, a few areas where regulation will be needed are already apparent. It seems that foremost among them is liability in the event of a malfunction or accident involving the autonomous vehicle, safety, and the right to privacy of road users.

Probably every law governing road traffic today was drawn up on the assumption that there will be a driver behind the wheel of every car. It is the driver's responsibility to comply with basic road safety rules, and it is the driver who is liable under civil, criminal and administrative law for any event caused by his/her failure to comply with the regulations or his/her lack of care on the road. So what happens if there is no driver in the car?

It is still unclear at this time whether the changes in legislation and technology that we see in the pipeline will eliminate drivers from cars entirely. This is not likely to happen any time soon, and not only for technological or legal reasons, but because safety on the road will remain an important concern. After all, the giant leaps in automation in the aviation industry have still not prompted anyone to decide that pilots are no longer needed in cockpits. If cars do get fully automated, it seems that liability for road incidents would be transferred to the makers and vendors of the vehicles and of the systems fitted in them, provided of course that a given accident or malfunction is caused by a technical failure of the vehicle.

Read more on page 84...

"The opportunities offered by autonomous cars also come with challenges in areas such as privacy and personal data protection, including cybersecurity."

This does not mean that other legal problems will go away. Traditional vehicles will continue to drive alongside automated vehicles for a long time to come. There will always be pedestrians and cyclists on the road. Machines will thus have be to "taught" to anticipate mistakes and breaches of traffic laws by humans so as to properly react to unexpected situations. This is not just a technical problem, but a legal one too. Lawmakers will have to decide how to allocate liability when a minor mistake or traffic offense by a driver leads to a serious accident just because a machine was unable to react adequately to the irregular situation, such as by violating traffic rules to a small degree. Tests show that automated vehicles are more "sensitive" and take different decisions to humans in the same situations. And this can lead to unexpected events. So who is to be seen as the perpetrator of an accident here? Can we say that the damage was caused by man or by the maker of the machine? Another question to ask is whether legislators ought to require car software developers to cause the vehicles in emergencies to take decisions that are technically unlawful? This seems inevitable.

The future is also rife with moral problems. One can imagine a situation when an autonomous car will have to choose between hitting a driver or a pedestrian, or between crashing into a car carrying a family or just the driver. Legislators will have to decide whether to devise rules opting for the lesser evil or leave things to chance. Will certain social groups find themselves discriminated against, such as truck drivers, solitary drivers or motorbike riders? One must bear in mind that nearly every reaction by a machine is programmed in advance. So how should the reactions of autonomous road vehicles be programmed, and should this issue be subject to detailed legal regulations in the first place?

It does not seem that manufacturers and their trade organizations can be left to decide all these issues on their own. We will probably be seeing a set of uniform rules of operation of autonomous cars designed with safety on the roads in mind.

The revolution we speak of here does not have to end up with the full automation of cars however. It is conceivable that the law will require the presence of a driver in the car who could "grab the controls" if need be. This solution gives rise to more questions about the limits and allocation of liability for malfunctions and accidents. While a particular person or company may be held liable for most incidents, borderline situations sometimes occur – and many of these may happen when autonomous cars are involved. The first question that comes to mind is: When is the driver supposed to take control of the vehicle? Should s/he monitor the machine at all times or can s/he sometimes relax and take a break? And what if the driver takes control of the vehicle but the accident happens anyway? Or if the driver does not take control although s/he could have done so, thus avoiding a collision, in theory at least? Legislation regulating the liability of man, manufacturer and vendor in situations of these kinds appears inevitable.

And then there are safety issues requiring regulation: Can unaccompanied children or drunken people ride in autonomous cars? Should there be restrictions on the use of autonomous cars, depending on the season, time of day or location (such as in the vicinity of schools)? Another issue inseparable from safety and liability for damage is car insurance. Insurance rules will have to be modified in line with the new rules of attributing liability for collisions and accidents. The new regulations will of course depend on the technology that will be developed

and, conversely, some of the new technologies will have to be developed in response to new laws being promulgated. This goes for all the areas considered here.

The opportunities offered by autonomous cars also come with challenges in areas such as privacy and personal data protection, including cybersecurity. The software being developed will be gathering valuable data about the people using the vehicles and other road users. This information may be used to identify those responsible for causing accidents, to improve the vehicles and to increase road safety, but may also be utilized by private entities for dedicated marketing purposes or may fall into the hands of criminals. Thanks to the technical revolution, it will also be possible to follow the whereabouts of vehicle users, to get to know their habits and the places they like to frequent. Regulations will have to be put in place to determine what data may be stored, for how long, who and when can have access to it, and how it is to be supplied. Also to be decided is whether consent should be given to process this data and if so, when. Will the owner of the vehicle and every person using it have to give explicit consent to process the gathered data or should the very fact they take a seat in the vehicle be deemed implied consent to process the data? What should be done with the personal data of other road users collected by the cameras mounted on the vehicle?

All the new technologies will require appropriate regulations to ensure the security of data storage and processing. It takes little imagination to see felons following the car owner in order to steal the vehicle or burglars breaking into the car owner's house when he is known to be far away in his car. Securing sensitive data is primarily a technical issue, but legislators must chip in as well, defining the basic standards and requirements for protecting personal data in this particular area.

Given the complexity of the whole issue, the revolution on our roads is likely to be a gradual process, coming first to the most developed countries that are ready to tackle it, such as Germany, Japan and the US. The first one hundred self-driving Volvo cars will appear on the streets of Gothenburg in 2017. It will be the first autonomous vehicle project of this scale to be launched in the world. The Swedish authorities are expecting they will have to modify some of the traffic rules to take into account the driverless vehicles. Which rules? No one knows for now. The pilot project will tell.

Digital Single Market: true reform or facelift?

Karol Laskowski
Senior Associate, Intellectual Property and Technology

The European Commission set the goal of building the Digital Single Market in A Digital Single Market Strategy for Europe published in May 2015. While this is just one of many challenges faced by the EU, the Commission is very ambitious when it comes to the implementation of this goal. It has drafted a detailed schedule for work on regulations shaping e-commerce and the media and telecommunications markets. The proposals put forward show that the digital market is to serve as a pillar of the European Union, but also reveal how much is yet to be done.

In its work on the Digital Single Market, the European Commission rightly diagnosed that it is necessary to review copyright law, which is only fragmentarily regulated at the EU level. There are several directives harmonizing intellectual property issues, related to software, enforcement of IP rights, activities of cable operators and satellite broadcasters, and operations of collecting societies. Now the Commission must determine whether it is possible to pass an EU copyright law or there are certain areas where new regulations may facilitate the building of the single market.

In the long term, adopting an EU copyright law definitely seems to be the main goal. The European Commission has already stressed clearly that it aims to adopt a new directive within two years that will cover three main issues relating to copyright: rules on jurisdiction, rules on copyright limitations and exemptions, and liability of Internet platforms. These areas should certainly be revised, but it may wreak havoc on the legal landscape for online distribution.

To start with rules on jurisdiction, it should be noted that service providers wishing to deliver their content in many EU member states argue that their major problem is the "one-stop shop" purchase of licenses from collecting societies. The European Commission is aware of this and has made it the subject of public consultation concerning the woefully outdated Satellite and Cable Directive (93/83/EEC), which has not been amended for twenty years. At this point, it is not really possible to predict what solutions, if any, will be proposed in this respect. In particular, it will be interesting whether the rules adopted in the SatCab Directive which allow identification of only one "country of origin" for the purpose of satellite broadcasting will be simply extended to online distribution, or whether the European Commission would rather take anotherapproach. For instance, multi-territorial licensing could be an alternative, and has already been used for online music distribution under the Directive on Collective Management of Copyright (2014/26/EU).

Rules on exemptions and limitations at the EU level, which are now regulated under the InfoSoc Directive (2001/29/EC), definitely require a stricter approach if the European Commission is seriously thinking of creating a Digital Single Market. In the current state, the InfoSoc Directive only creates a framework for the member states to adopt relevant limitations and exemptions, but does not really harmonize them at the EU level. Consequently, each member state may decide whether to include a given limitation or exemption in national law or not, and if so, how to adopt them in light of the InfoSoc framework. Why is that important? If certain content is made available across the EU it could be legal to offer the content under the exemptions and limitations in one jurisdiction, while in another it could result in copyright infringement. That certainly does not encourage online distribution.

Last but not least, the liability of Internet platforms would be a bone of contention for the market – simply because the rules on liability of intermediaries were adopted over 15 years ago in the E-commerce Directive (2000/31/EC)

and have shaped the boundaries of what is legal and illegal on the Internet for many years. Even though these boundaries have become quite elastic and have shifted in recent years as new models for online distribution evolved, it would be hard to re-invent them now. The European Commission seems to believe this is needed and looks forward to striking a new balance between copyright holders and users to ensure the development of the creative sector.

These issues will still be up for discussion, and we may expect some more formal proposals in mid-2016, but on the subject of preventing unjustified geo-blocking the European Commission has already prepared a draft regulation. The draft was published at the end of last year and is expected to be adopted by the end of 2016 at the latest. It governs the rules under which providers of audiovisual services should provide their customers with access to purchased content when they are temporarily staying abroad. Not only does this issue not seem to be a priority for consumers or for the formation of the Digital Single Market, but more importantly it may raise many doubts on the market. The European Commission is already considering clarifying some of the doubts in additional guidelines to be published along with the new regulation.

Almost simultaneously with the public consultation on the SatCab Directive, the Commission commenced discussions on the Audiovisual Media Services Directive (2010/13/EU), which governs traditional broadcasting as well as all other forms of providing content on the Internet, including online broadcasting and provision of "on demand" services. There is a debate on the potential jurisdiction of individual member states over entities based outside the EU but providing services for EU citizens. Regulations of this kind have already been adopted at the national level – recently in Lithuania. However, we can't really say if similar solutions will be adopted in the AMS Directive. If so, then providers from the United States would have to ensure that their services comply with local regulations on advertising and promotion of European works. It remains unclear to what extent these regulations could be enforced by local regulators. Instead of pursuing this, it may be worth considering how to reduce the burden imposed on local providers.

This is not the end. As part of building the Digital Single Market, the European Commission also considers it necessary to review regulations on personal data processing, with the adoption of the EU's General Data Protection Regulation as a priority. The Commission has announced a review of regulations on consumer protection and cybersecurity. This year the Commission also intends to present its conclusions on amendment of the framework regulations concerning the telecom sector, although this is the subject of separate discussions on the telecoms single market.

Considering the scope of the regulations the European Commission wants to review in the course of its work on the Digital Single Market, we should expect quite significant changes. It is difficult to predict at this stage if they will actually lead to the emergence of the Digital Single Market or only refresh the current regulations, but it is certainly worth examining the proposals and contributing to the discussions before any decisions are made.

Dentons in Poland

Our Warsaw office is the largest law firm in Poland with a market presence going back 25 years. Clients are assisted by more than 200 lawyers, tax advisors and consultants, offering full scope advice to entities from all major industry sectors.

You benefit from our combination of international standards with deep knowledge of local regulations and the business environment. We are your trusted advisor focusing on providing you with comprehensive solutions and support as you grow.

Industry sectors

- Aviation and Defense
- Energy and Natural Resources
- Financial Institutions
- Infrastructure and PPP
- Life Sciences and Healthcare
- Manufacturing and Automotive
- Private Equity
- Real Estate
- Technology, Media & Telecommunications

Areas of law

- Banking and Project Finance
- Capital Markets
- Competition
- Corporate and M&A
- Employment and Labor
- Environment
- Insolvency and Restructuring
- Intellectual Property
- Litigation and Arbitration
- Public Procurement
- Tax

Facts and figures

337 Total staff

195 Number of lawyers

131 Legal advisors and tax advisors

34 Number of Partners

Increase in the number of lawyers in the last decade

Clients served in 2015

876

1971
Client cases handled in 2015

Hours worked in 2015
238933

53 lawyers

24 practice areas

Ranked by ***Chambers Europe* 2015 *and Chambers Global* 2015**

Chambers Europe Awards for Excellence 2015 –
"Law Firm of the Year in Central and Eastern Europe"

Four-time winner in the biggest ranking of law firms in Poland organized by Rzeczpospolita daily in all leading categories: **headline number of lawyers, number of advocates and legal advisors, revenue.**

*All data valid for December 31, 2015 excepting the number of partners. As of 2016, three more lawyers have been promoted to partner in Warsaw and one partner joined the Firm in February.

Looking back over a quarter century: 25 client work highlights

Investment in Poland's largest fruit and vegetable processing company

We represented IK Investment Partners, the pan-European private equity fund, in its investment in Agros Nova, a leading food manufacturing group in Poland. Dentons assisted in the acquisition – the first large leveraged buyout in Poland after Lehman Brothers collapse – and subsequent restructuring of this group, in the acquisition of the Fruktus brand, and in the sale of the group's assets to the Maspex Group. As a result, two production facilities and several popular grocery brands, such as Łowicz, Krakus, Kotlin, Włocławek, Fruktus and Tarczyn, went to new owners.

Sale of part of a global hotel group in Central Europe

We advised the Accor Group on the transfer of shares in companies operating in Poland, Romania, Hungary and the Czech Republic to Orbis. We also assisted Accor in concluding a general licensing agreement under which Orbis may operate Accor-brand hotels until 2035 in 16 countries across Central and Eastern Europe. Dentons coordinated this transaction in multiple jurisdictions. The transactions were worth more than €140 million.

Strategic investment in one of Poland's major media groups

Dentons advised the Canal+ Group when it was forging a strategic partnership with the ITI Group and TVN. As part of the cooperation that ensued, two paid TV companies operating in the Polish market merged to form the nc+ digital platform. In 2015, we supported the Canal+ Group in their sale of a controlling stake in TVN to Scripps Networks Interactive. This American company paid €580 million for a 53 percent stake in TVN and assumed the company's debts of some €840 million. This was the biggest transaction in the media sector in Poland in 2015.

Prestigious investments by the local government authorities in Warsaw

We advised the Capital City of Warsaw in all public procurement proceedings relating to the construction of the Maria Skłodowska-Curie bridge spanning the Vistula river. This was one of the most prestigious and complex investment projects handled by the City in recent years. We provided services at all stages of the project, from the planning and design stage, to verification of the tender bids, support for the Tender Committee, all the way to completion of this public procurement. We provided advice concerning not only Polish civil and construction laws but also EU regulations as the project was co-funded by the European Union. We also advised the Capital City of Warsaw in connection with the project to revitalize Krakowskie Przedmieście, one of the City's most elegant thoroughfares.

Record-setting dispute over a Polish telecom

We represented Vivendi in a complex 11-year dispute over shares in Polska Telefonia Cyfrowa, a mobile operator in Poland. The case involved several dozen court proceedings and several dozen arbitration proceedings in multiple jurisdictions, with the participation of more than 20 law firms. Eventually, we won the biggest ever compensation granted in the history of disputes in Poland for our client – €1.9 billion – with our client ending up receiving €1.2 billion under a final settlement in the case. This was the most protracted dispute of its kind in Central and Eastern Europe and the longest-lasting case we handled in our 25-year-long history.

One of the biggest acquisitions in the retail sector

We advised the French retailing giant Carrefour on its acquisition of Ahold Polska. As a result of this transaction, Carrefour acquired 183 supermarkets, 15 mini-hypermarkets and a number of petrol stations. In terms of value, this was one of the largest transactions in Central and Eastern Europe. In order to get conditional clearance for this transaction, we represented Carrefour in an unprecedented proceeding before the chairperson of Poland's antitrust authority UOKiK. Dentons is currently advising the Carrefour Group in other matters relevant to its operations in the Polish market.

One of the highest-profile cases in the history of Poland's pharmaceutical sector

We represented the pharmaceutical company Jelfa (since renamed Valeant) in civil, administrative and criminal proceedings concerning the company's liability for marketing the Corhydron drug. The "Corhydron Scandal" – one of the highest-profile affairs in the history of Poland's pharmaceutical sector – concerned sales of a poor-quality medicinal product which put the life and health of many people at risk. The investigation launched by the prosecutor's office lasted several years and was one of the largest ever. Its files filled more than a thousand volumes and 15,000 witnesses were examined. In the end, the investigation was discontinued and no charges were pressed.

Record transactions in Europe's telecom market

We advised the European Bank for Reconstruction and Development on an indirect investment in the Polkomtel telecom. EBRD invested €200 million in a special purpose vehicle to acquire this mobile operator. The sale of a stake in Polkomtel to Spartan Capital was the biggest transaction of its kind in Europe. We also provided support to the EBRD in the acquisition of shares in Cyfrowy Polsat following the acquisition of the company which owned Polkomtel. This was the EBRD's biggest capital investment in Central and Eastern Europe.

Merger of two financial institutions

We advised Raiffeisen Bank Polska in connection with its operational merger with Polbank EFG. We drafted the legal part of the merger approval application and represented both banks in a proceeding before the Financial Supervision Authority which cleared the deal. We also handled the transaction at corporate level, drafting the merger plan and the merger resolutions, as well as registering the merger with the National Court Register. The new bank, Raiffeisen Polbank, now has more than 700,000 clients and operates 350 branch offices.

Sponsorship of Euro 2012, the biggest sports event ever hosted in Poland

We advised the Coca-Cola Company on its sponsorship of the UEFA EURO 2012, European Football Championship tournament held in Poland and Ukraine. Among other things, we negotiated and drafted all the agreements executed by our client in connection with the event. One of our lawyers was permanently assigned to work at the client's offices as part of this project.

Record-breaking transaction in Poland's real estate market and debut at the Warsaw Stock Exchange

We advised Immofinanz, the Austrian real estate group, on the sale of Silesia City Center, one of Poland's five largest retail and entertainment centers, for €412 million. This was the largest purchase transaction to be completed in Poland in 2013 and the biggest yet sale of a single property in this country. In that same year we advised Immofinanz in preparation for its debut on the Warsaw Stock Exchange, with more than 1.1 billion shares worth more than €3 billion.

Development and operation of an oilfield in the Baltic

We advised Lotos PetroBaltic in their efforts to start extraction of oil and natural gas from the B8 deposit in the Baltic Sea. This was the first project finance-type venture in the extraction industry in Central Europe, and the first transaction to involve the Polish Business Investment Fund. Lawyers representing more than a dozen specializations, including banking, environmental protection, energy, taxes, state aid and public procurement, were called in to work on this extremely complex project. Oil extraction from the B8 deposit commenced in 2015 and is expected to eventually peak at 5,000 barrels a day. This investment project represents a major step forward in consolidating Poland's energy security needs.

Modernization of Poland's railways

Our association with the Stadler Rail Group, the Swiss manufacturers of rolling stock, goes back ten years. We have been advising these companies competing for public contracts to deliver rail vehicles, including trains and trams, worth a total of around €1 billion. We provided support to Stadler in its involvement in one of the biggest investments in the history of the PKP Intercity carrier, calling for the delivery of 20 Intercity-class trains. We also advised on an ambitious project involving the delivery of 20 trains for the regional rail carrier in the Łódź Conurbation. We assisted this client in obtaining authorizations for placing its vehicles in service from the President of the Office of Rail Transport. More than 50 Stadler vehicles are currently running, all of them made in the company's manufacturing facility in Siedlce.

Biggest investment in Poland's conventional energy sector

We advised PGE Górnictwo i Energetyka Konwencjonalna in the biggest tender yet announced in the power sector in Poland, for the construction of two new generation units in the Opole Power Plant. We represented PGE in a proceeding before the National Appeal Chamber to appeal the choice of the best tender bid and in the court proceeding that followed. We also represented PKO BP in connection with this same investment project, assisting the bank in developing a model for the involvement of a contractor consortium and key subcontractors. The construction of the Opole Power Plant is the largest infrastructure project in Poland, at an estimated cost of more than €2.5 billion. The new units in the Opole Power Plant are due to come on line in 2018 and 2019.

Ten-year long dispute in the telecom sector

We were among the attorneys of the Danish Polish Telecommunication Group in a proceeding for Telekomunikacja Polska to recognize and perform an award handed down by the Arbitration Tribunal in Vienna. The dispute arose in 2001 over the interpretation of an agreement for the sale and installation of a fiber optic system known as the North–South Connection. Our client made a settlement and received compensation of €550 million. This case for recognition of a foreign award involved the highest amount in dispute on record in Poland.

Stock exchange debut of Poland's largest IT company

We advised the private equity fund Enterprise Investors in connection with a restructuring exercise and sale of shares in Asseco Poland, through an IPO at the Warsaw Stock Exchange. We also helped launch other members of the Asseco Group, Asseco Business Solutions and Asseco Slovakia, on this exchange. Asseco is now the largest IT company in Poland.

Privatization of Poland's energy sector

We have been involved in most of the privatization transactions and acquisitions of companies in the power sector in Poland. We advised GDF Suez, one of Europe's largest energy groups, on its successful acquisition of the 1800 MW Połaniec Power Plant. We also represented the State Treasury in the privatization of the Energa Group, an energy company operating in northern and central Poland.

Mega-transaction in the Central European real estate market

We advised TPG Real Estate, a real estate platform of global private investment firm TPG, on the acquisition of TriGranit Development. TPG Real Estate purchased more than 30 vehicles in five countries, including TriGranit's portfolio of top-quality, award-winning assets in Poland, Slovakia, Hungary, Croatia and Cyprus, together with TriGranit's development and asset management platform. The transaction was worth in excess of €500 million, making it one of the largest deals of this kind in 2015 in Europe.

Acquisition and sale of one of Warsaw's most prestigious office buildings

We advised the London & Regional Properties investment fund, first in securing financing and then in purchasing the Rondo 1 office building for more than €225 million. On the date of the transaction, this was the highest amount ever paid for an office building in Poland. Our law firm later handled the sale of this building by its new owner, the BlackRock Real Estate fund, to Deutsche Asset & Wealth Management for €300 million, which was the largest transaction in the commercial real properties market in 2014. Rondo 1 is an AAA-class building, this category being awarded only to buildings in the choicest locations, with a state-of-the-art fit-out and exceptionally fine architecture. Our law firm occupies four floors in this 40-storey building rising to a height of 192 meters.

Direct investment of a US paper manufacturer in Poland

We advised SWM, the world's largest supplier of special cigarette paper, regarding multiple investment projects in the Łódź Special Economic Zone. We headed the complex process of bringing an investor into Poland, conducted negotiations with the Zone authorities and the Ministry of Economy to obtain an operating license for our client, and developed a comprehensive methodology of accounting for its operations in the special economic zone. We also advised SWM on the expansion of its operations and subsequent investments in the Łódź Special Economic Zone.

Record-breaking sale of the biggest retail center in Poland

We advised Apsys, Foncière Euris and Rallye in the sale of the Manufaktura retail center in Łódź to Union Investment Real Estate. This transaction, worth €390 million, was the largest single assets transaction in the commercial real estate market in 2012. With close to 112,500 square meters of leasable space, Manufaktura is currently the largest retail center in Poland, and it operates at full capacity with no vacancies. This facility, converted from a 19th-century textile factory, is among of the most recognizable symbols of the city of Łódź.

International expansion of the largest restaurant chain in our region

We advised a consortium of four banks operating in Poland which teamed up to finance the expansion of the AmRest Group in Poland, Russia, the Czech Republic, Spain, USA, Bulgaria, France, Serbia, Croatia, Slovenia, Hungary, China, Germany and India. The transaction was worth more than €225 million, and we helped AmRest arrange €436 billion in financing. AmRest is the largest independent company operating a chain of restaurants in Central and Eastern Europe, operating close to 850 restaurants across 12 countries. The company's portfolio includes brands such as KFC, Pizza Hut, Burger King, Starbucks, La Tagliatella, Blue Frog and Kabb.

Development of one of the largest energy groups in Poland

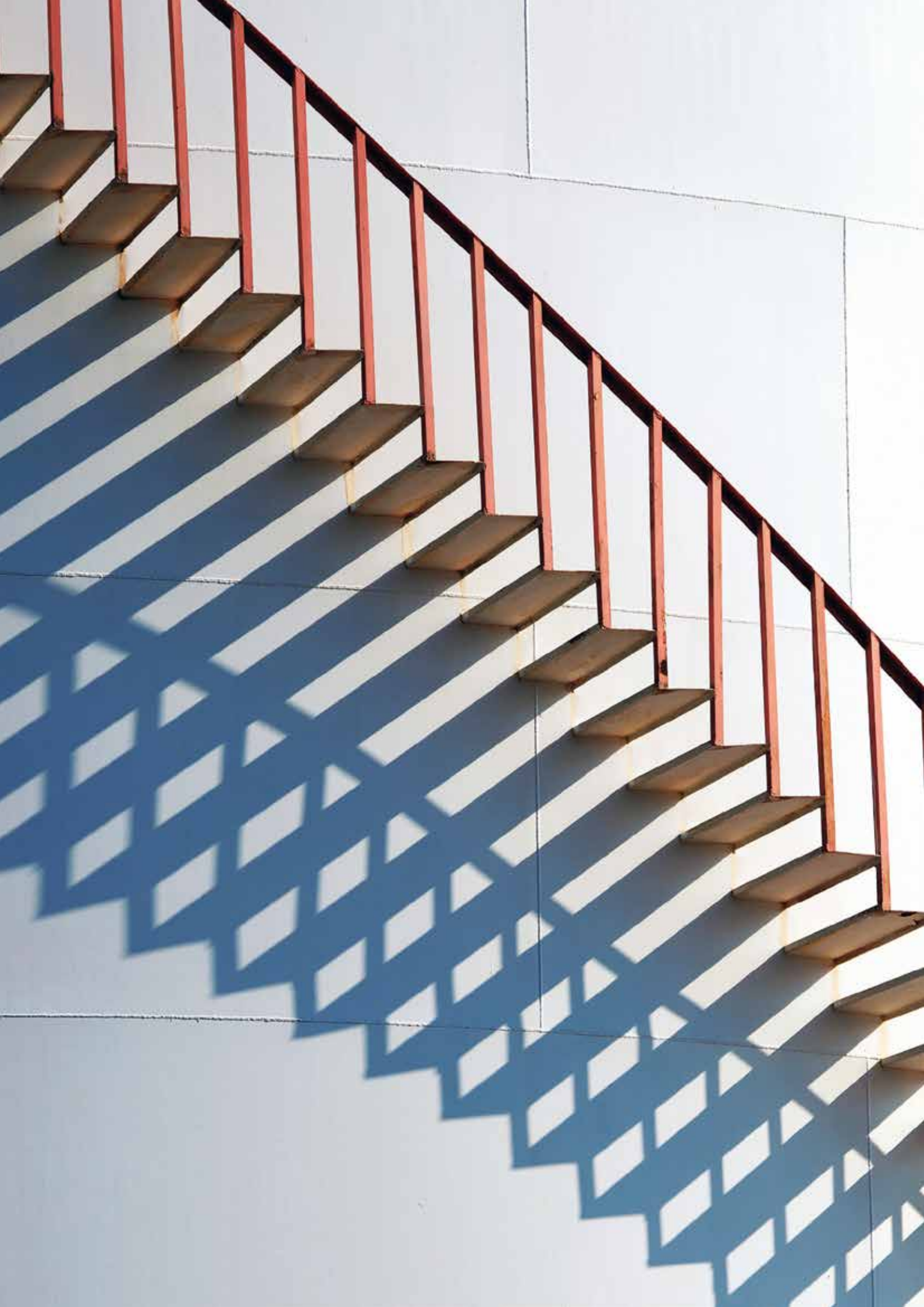
We advised the Tauron Group in the preparation and handling of documentation required to issue bonds worth more than €3.2 billion in total. Two of the bond issues, one worth more than €1.6 billion and the other more than €1.3 billion, represented the largest transactions of its kind ever seen in Poland's energy sector. The bonds were issued to finance the group's investments over the coming years. We also represented the Tauron Group in connection with a contract for the construction of a 413 MW combined cycle gas and steam unit in the Łagisza Power Plant in Będzin, in cooperation with the state-owned investment vehicle Polskie Inwestycje Rozwojowe . The unit, being built at a cost of more than €340 million, is expected to become operational late in 2019.

The biggest renewable energy projects in Poland

We advised a consortium of nine Polish and foreign banks in the financing of the construction and operation of the biggest complex of wind farms in Poland and Central Europe, located in the vicinity of Darłowo in the north of Poland, with a planned total capacity of more than 250 MW. The project, to be completed in three stages, was worth more than €300 million. Dentons played a key role in advising the financing banks, coordinating the efforts of all the parties to the transaction and all the lawyers from several countries that were involved in the transaction. Since the first days of our law firm in Poland, we have been providing advice regarding renewable energy investment projects to clients from Japan, France, Spain, Israel, Great Britain and Austria, and the total capacity of facilities in all the projects we were involved in exceeds 1,000 MW.

Investments in the strategic EU energy projects

We advised PSE, a Polish transmission system operator, on the construction of LitPol Link, an energy interconnection between Lithuania and Poland which helped integrate Lithuania and the other Baltic states into the Western European power system. This investment, worth more than €550 million, was listed among the European Union's strategic projects. We also advised PSE in the acquisition of SwePol Link, the energy interconnection between Poland and Sweden, worth €120 million. This interconnection, with a capacity of 600 MW, enabled the two national transmission systems to come together to improve the stability of power grids in Poland and the Scandinavian countries.



Pro bono initiatives

If you are reading this report, we have probably advised you, are advising you, or will advise you on business matters. Among our projects there are a great many we are engaged in just as strongly as yours, but which we pursue pro bono publico. And every year we handle more and more pro bono matters. We believe that assisting NGOs and local communities delivers personal and professional growth to our lawyers and staff, and allows us to have a positive impact on the world around us.

Dentons' Warsaw office conducted a pilot program encouraging lawyers to do pro bono work. It was so successful that Dentons has used the lessons learned by our office to launch so successful that Dentons has used the lessons learned by our office to launch a pro bono policy at the European level. Using an approach in which pro bono cases are treated the same as all other matters, we managed last year to participate in a record number of interesting and essential initiatives, some of which we helped create.

We cooperate regularly with more than a dozen NGOs of varying profiles. We provide them legal assistance in matters small and large. We particularly value our cooperation with organizations involved in improving the quality of education, combating poverty, improving access to high-quality legal assistance, protecting the environment, and promoting civic freedom.

The projects we are involved in may be of local importance – like the case of a local government official who posted a picture online of himself hunting an endangered species of bird, or a blogger who reported on the activities of the local authorities in his small town and was then prosecuted as an alleged press publisher. We also take on cases of a more strategic nature, such as the comparative study, together with other Dentons offices, of the regulations governing surveillance of citizens in different countries. We reward selected lawyers every year for their contribution to pro bono initiatives.

Not only do we share our know-how, but we also provide financial support. For example, for the past three years we have cooperated with the Care Home of the Sisters of Divine Providence in Łąka. We collected funds to pay for the summer vacation of the young handicapped residents, and we are now building them a playground and planning the next vacation. We are very pleased that one of our clients also wants to join in this cooperation.

We heartily encourage you to join in all types of corporate social responsibility projects, and to take this aspect into consideration when selecting suppliers, service providers and other entities you cooperate with. You can be architects in rebuilding Poland's tradition of everyday charity.

Dentons worked with the following NGOs and institutions in 2015

- Big Brothers Big Sisters Foundation
- Care Home of the Sisters of Divine Providence, Łąka
- Centrum Pro Bono
- Dobra Wioska Foundation
- Effectus Papilionis Foundation
- Family for Family Foundation
- Helsinki Foundation for Human Rights
- IUS Animalia Foundation for Protection of Animals
- Karkonosze Regional Council for Persons with disabilities
- Katalyst Engineering Foundation
- Lech Wałęsa Institute
- Niech Żyją Foundation
- Open Society Foundation
- PILnet: The Global Network for Public Interest Law
- Polish Legal Clinics Foundation
- Polish Triathlon Association
- Polish-American Freedom Foundation
- Polska Młodych Foundation
- Projekt: Polska Foundation
- Scottish Ball
- Social Wolves Foundation
- Valores Foundation
- Workshop for All Beings
- Zachęta National Gallery of Art

Agnieszka Wardak
Partner, Member of Global Pro Bono Committee

Dentons is the world's first polycentric global law firm. A top 20 firm on the Acritas 2015 Global Elite Brand Index, the Firm is committed to challenging the status quo in delivering consistent and uncompromising quality and value in new and inventive ways. Driven to provide clients a competitive edge, and connected to the communities where its clients want to do business, Dentons knows that understanding local cultures is crucial to successfully completing a deal, resolving a dispute or solving a business challenge. Now the world's largest law firm, Dentons' global team builds agile, tailored solutions to meet the local, national and global needs of private and public clients of any size in more than 125 locations serving 50-plus countries.

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CS28914-Dentons in Poland Publication_100516__ENGLISH — 31/05/2016