Manufacturing in Poland

Foreword

Dear Readers,

The Dentons Europe offices cover a legendary territory for manufacturing and industrial projects, including Spain and France to the west, Russia, Kazakhstan and Uzbekistan to the east, Germany, Poland, Hungary and other Central European countries in the middle and from Italy to Turkey to the south. This territory offers a vast population with strong purchasing power and excellent infrastructure, combined with vast workforce resources and industrial expertise.

Dentons Europe has been at the forefront of the first industrial projects going east after the fall of the Berlin wall, actively advising on greenfield and brownfield projects as well as on acquisitions and joint ventures when Central European countries—Romania, Czech Republic, Slovakia and Poland—joined the European Union. We are now actively witnessing Asian investors' interest for manufacturing in Europe.

The legal environment in the countries we cover has greatly evolved. It is a strong advantage to have been present in some of the emerging economies of Eastern Europe, Caucasus and Central Asia for the past 20 to 30 years, as the legacy legal systems in these countries can still be felt, in particular with regard to land acquisition and environmental norms. Today many jurisdictions, including in Western Europe, offer state aid and tax incentives to attract the best manufacturing projects.

We are well placed to help you choose your entry doors to the European Union and to Eurasia.

We hope the Manufacturing Guide you have selected will be of interest. It aims to give you a general overview of key checkpoints for this jurisdiction. Do not hesitate to contact me or the authors of this guide for any further information.

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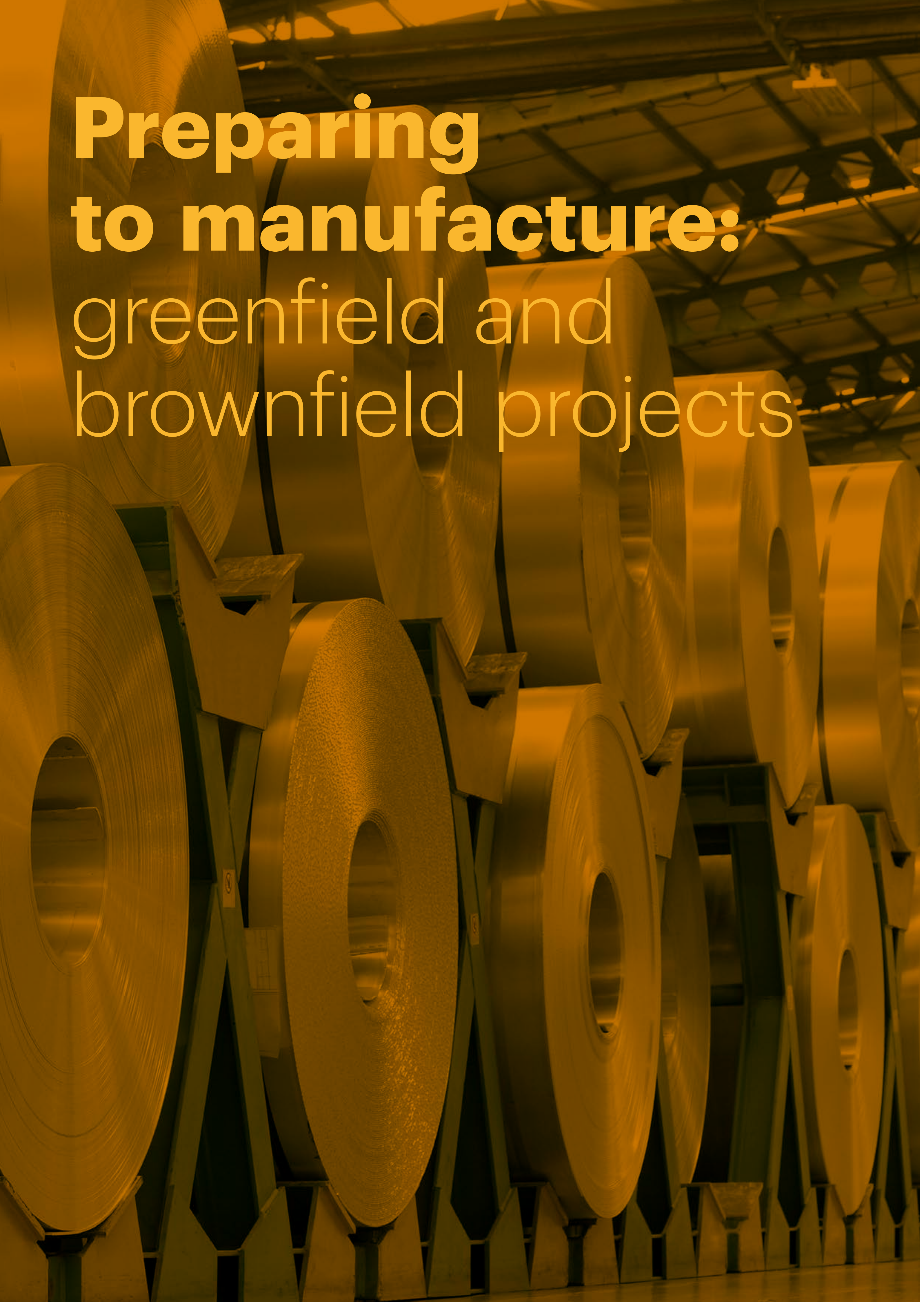


Preparing to manufacture: greenfield and brownfield projects

A. Investment incentives in Poland

Conditions for investment and development in Poland

For years Poland has consistently reported solid GDP growth, including 5% GDP growth in 2018. The Polish population includes a large proportion of higher education graduates (approximately 390,000 annually), typically with good command of English. The Polish workforce is generally considered efficient, skilled and fast learning. Infrastructure, including highways and express roads, as well as fast rail links and regional airports, have significantly improved over recent years. As an EU member state Poland offers a perfect springboard into the EU 27 markets. Important hubs and clusters of various industries, from automotive and aircraft to industrial machinery to food processing, have already been established in Poland, and have attracted further investors and investment (totalling €176 bln so far). Poland regularly ranks amongst the most attractive investment locations, including the second best position in the world, according to CEOWORLD Magazine recently, and in 2018 Poland was announced by FTSE to be the first CEE country to be graded as a developed economy.

Outline of the previous Special Economic Zones (SEZ) system

Until 2018 Poland had granted corporate income tax (CIT) exemptions to investors under the Special Economic Zones (SEZ) programme. To that effect 14 areas had been designated throughout the country, adding up in total to less than 0.1% of the national territory. Tax exemption had been available only if an investor could find and acquire appropriate real property located precisely within the SEZ boundaries, which in certain zones proved challenging. Investors interested in properties located outside the SEZs could still apply for their inclusion in a SEZ, but the procedure required a decree of the Council of Ministers and took time and was rather inappropriate for business needs.

Investors placing their projects within one of the SEZs could apply for a SEZ permit exempting them from CIT until December 31, 2026, at the latest. The actual value of exemption was calculated as a percentage (fixed depending on the region concerned) of discounted eligible investment expenditures.

The new system of investment incentives in Poland

Detailed presentation of the new SEZ system

In 2018 the SEZ system was replaced by the new Polish Investment Zone (PIZ) programme, which was effectively operational from September 5, 2018. Currently investment-related tax exemptions can only be obtained under that new PIZ system. Still, the SEZ permits previously issued obviously continue to apply until their original end date (principally December 31, 2026), without any alterations.

The rationale behind the PIZ system is to attract more investment to those areas, including predominantly rural regions of eastern Poland and declining local centres scattered across Poland, which so far have been struggling to interest investors. Therefore, the general logic driving the new programme is that the more attractive a particular region is, the more demanding are the PIZ conditions and the less extensive the aid. Conversely, the less attractive is a particular location, the easier it would be to obtain aid, and the greater the amount of aid available.

Moreover, with the government fixed on the development in Poland of a more knowledge-based economy, the trend behind the PIZ legislation is also to shift from simple manufacturing facilities to more innovative, R&D-driven projects, as well as to support Poland winning more sophisticated outsourcing functions. In addition, the PIZ rules are designed to facilitate development of small and medium enterprises (SME). Therefore there are correspondingly **more lenient conditions for awarding PIZ aid to projects involving R&D, modern business services centres, declining areas or SME investors.** More stringent conditions (especially as compared with the previous SEZ regime) apply to large investors but, as the early PIZ experiences indicate, they have also tended to be accommodated in the new system.

Principal rules governing the new system

The calculation and amount of CIT exemption under the PIZ regime does not essentially vary as compared with the SEZ rules. The **PIZ exemption value is still calculated as a percentage of discounted eligible investment costs,** depending on the region where the investment is located (in the 2014 – 2020 period anywhere from 25% in most industrialized areas in the southwest of Poland to 50% in the eastern parts, see section 3.1.4. for further details). As previously in the SEZs, investment costs eligible for PIZ exemption include either capital expenditures (in practice the option most popular amongst manufacturing investors) or two years' payroll costs (more attractive for investment in service sectors, which are less likely to require substantial capital expenditures).

Moreover, as in the SEZ programme, **PIZ tax exemptions require that an investor applies for and obtains a PIZ decision,** issued by the local PIZ authority (the previous SEZ manager) in an administrative procedure.

It is the territorial scope, duration and conditions for the award of the tax holiday that make the difference.

Most importantly, the **PIZ programme allows investors to obtain CIT exemption for a location virtually anywhere in Poland** (with the exception of land above undeveloped mineral resources, which requires prior verification). This means that investors no longer need to target only those scarce areas previously designated as SEZs, but may consider any land or premises in Poland that fits their purpose. As a consequence, PIZ decisions are being granted with respect to specific plots of land, indicated by the applicant as the investment location (previously it was only required that an investment is located within the territory of the SEZ where the SEZ permit was issued). Hence the importance of careful selection and indication of the targeted plots (by reference to their land and mortgage register numbers) in the PIZ application.

Unlike SEZ permits, **PIZ decisions are not being granted with any specific validity date.** Instead, they are issued for a period of time, which may be 10, 12 or 15 years. The larger is the potential amount of aid in a particular region, the longer is also the period to apply an issued PIZ decision (see section 3.1.4. for further details).

In addition, as regards quantitative conditions, the **PIZ laws drastically increased the threshold for minimum investment expenditures (especially for large investors).** Moreover, the **new regulations also introduced qualitative criteria for assessing proposed investment projects,** which require that a project must score a certain number of points in order to qualify (see section 3.1.2. for further details).

The procedure for award of a PIZ decision also differs significantly from that previously applicable to obtain a SEZ permit, with the abolition of the bidding procedure and with various new documents and rules to provide and to follow (see section 3.1.5. for further details).

Under the PIZ rules investors may apply for multiple PIZ decisions for subsequent new investments (including modernizations, extensions and reinvestments), or combine PIZ decisions with SEZ permits issued under the previous system and still valid. In such cases tax exemptions stemming from these SEZ permits and PIZ decisions can be combined, which offers an important benefit to investors. Similarly, predominant case law had also previously allowed combining SEZ permits. Therefore, the **PIZ legislation preserves one of the major benefits previously offered by SEZ rules, which consists in combing tax exemption amounts available under multiple decisions (permits).**

In contrast with the SEZ system, in case of public finance concerns the Polish authorities can **suspend the processing of new PIZ applications** for a period they believe appropriate. That suspension would not extend to the investors already recorded in the New Investments Register, who would be able to file their PIZ applications and obtain their PIZ decisions even after and despite the announcement of the suspension.

Furthermore, the **PIZ tax exemption can be revoked** and the aid retrieved from an individual investor, with penalty interest (currently fixed at 8%), **if the investor is charged with abuse of tax law,** whether the abuse directly concerns PIZ regulations or relates to another area of taxation.

Quantitative and qualitative conditions of support

As for **quantitative conditions,** the value of investment expenditures must reach the minimum threshold fixed in the legislation, ranging **from PLN 100 million to PLN 200,000.**

The threshold applicable in an investment location depends directly on (i) the local level of unemployment and (ii) the type of investor or investment considered. It thus varies greatly across the country and from one investment to another, as explained below.

In practice, an investor should first check the **rate of unemployment in the relevant county** (powiat) and compare that rate with the **national average unemployment rate** published by Polish authorities (**5.8% for 2019 applications**), so as to establish what percentage of the national average is the relevant county unemployment rate. Once that proportion is calculated, the investor should verify into which of

the unemployment brackets (see the chart below) **the targeted county falls.**

Furthermore, the investor should also check whether it qualifies as a micro-, small or medium enterprise (which is less likely for international groups). Additionally, it should be verified whether (i) the investment is located in one of the 122 declining cities listed in the legislation or in their neighbouring areas or whether (ii) the investment consists in establishment of a centre for modern business services or involves (R&D activities.

Once these checks are made, the minimum investment expenditures for the county can be calculated as per the following chart:

Level of unemployment (as per the average national rate) unemployment (as per the average national rate)	Minimal eligible expenditures (in PLN mln)					
	Declining cities and their neigh-bouring areas	Large enterprise	Medium enterprise	Small enterprise	Modern business services centre;	System
≤60%		100	20	5	5	2
>60% - 100%		80	16	4	4	1.6
>100% - 130%		60	12	3	3	1.2
>130% - 160%	10	40	8	2	2	0.8
>160% - 200%		20	4	1	1	0.4
>200% - 250%		15	3	0.75	0.75	0.3
>250%		10	2	0.5	0.5	0.2

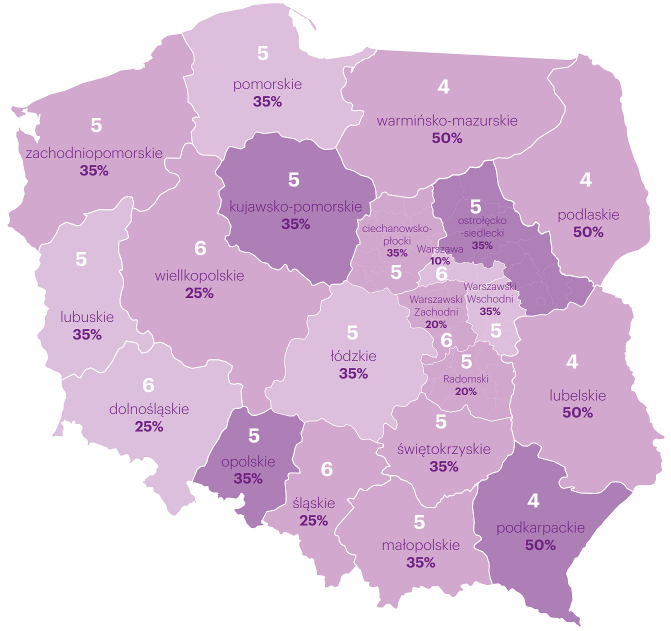
Notwithstanding the applicable threshold of eligible expenditures, each individual investment will be allocated – principally in line with the investor's own proposition in the PIZ application – a **specific floor of eligible expenditures** (the minimum amount that an investor will need to incur, at or above the statutory threshold calculated in line with the chart above), as well as a **specific cap on eligible expenditures** (the amount of eligible expenditures that an investor may exceed, but without receiving any additional PIZ exemption as regards the surplus expenditures above the cap). **The cap on eligible expenditures of a particular investment cannot be more than 130% of their floor.**

These rules imply in practice that: (i) if an investor does not reach the floor of eligible expenditures, no PIZ aid would apply (and any PIZ aid already used will need to be reimbursed with penalty interest); (ii) if the investor incurs eligible expenditures anywhere between the cap and the floor, the PIZ exemption will apply and will be calculated directly in proportion with the eligible expenditures incurred; and (iii) if the investor incurs eligible expenditures above the cap, all the eligible expenses incurred up to the cap will qualify for PIZ aid and any surplus over that cap will remain irrelevant.

In case a tax exemption is provided for a particular investment based on its capital expenditures, the PIZ laws do not specifically impose any specific job creation / maintenance obligations. However, in practice PIZ authorities do insist that investors commit to some employment targets. Since the law does not provide any specific thresholds in that respect, investors may offer a number of new jobs that they consider suitable.

As for **qualitative conditions,** an investment project must score **from 4 to 6 points** (depending on the investment location) awarded in **10 different categories,** five relating to economic development and five relating to social development (at least one point being required in each of these development classes).

The minimum number of points to be scored by a particular project (on the 4 to 6 scale) has been directly linked to the intensity of PIZ aid available in a particular region (voivodship). The regions with 25% aid intensity require that at least 6 points be scored, those with 35% imply a minimum of 5 points and in the 50% regions merely 4 points would suffice to qualify. Due to the capital's special status, the case of the Mazovian Voivodship is slightly more complex, with 5 or 6 points being applicable depending on the part of the region. The point-scoring requirements throughout Poland can be represented as follows:



The point-awarding criteria vary slightly depending on whether a project relates to manufacturing industry or to a services sector. Recapitulating, the points may be obtained as follows:

Manufacturing	Services
Sustainable economic development	
Privileged sector – 10 different sectors are indicated in the PIZ laws, including automotive, aircraft, machinery, electric and electronic equipment, IT and food processing	
Foreign sales ratio - to be compared against the average *ratio published by the statistics authorities for non-financial enterprises in the national economy* for the calendar year (approximately 20%)	
R&D spending R&D ≥ 1% of the operating costs or **Working time allocation** R&D working time allocation: R&D ≥2% of all working time	
SME status	
National Key Cluster – selected in a competition held by the authorities	**Cross-border Business Service Center** – with the value of annual net sales ≥ PLN 0.1 mln.
Sustainable social development	
Specialized workplaces & stable employment at least 80% of employees hired are based on a work contract and holdi a diploma of higher, secondary technical or vocational education, possessing a certificate or other document qualifying them to practice	**Highly-paid jobs & stable employment** average gross remuneration exceeds the national average (approximately PLN 4,200) and a minimum of 80% of employees are hired based on a work contract
Low negative impact on natural environment – certificates such as EMAS, ETV or ISO 14001	
Localization • in a declining city (or in a neighboring area); • in a county with unemployment rate ≥160% of the national average – excluding cities hosting the office of a provincial governor or a regional council	
Training employees/cooperation with schools – employee training or financing education of employees, at a min. PLN 1,000 per year per employee, for at least 50% of the employees, or cooperation with or assistance to schools or scientific research by employees	
In-kind benefits to employees – additional healthcare programs, additional recreational bene-fits, cultural and educational activities, insurance etc. – at least PLN 800 gross per year per employee (for all employees)	

Importantly, in case of PIZ tax exemption based on capital expenditures, the investment must be retained by the investor for five years (or three years in the case of micro-, small- and medium-sized enterprise investors) from completion of the investment. In case of PIZ tax exemptions based on the employment cost (two years' payroll; see section 3.1.1. above) it is the employment level that must be retained throughout the 5/3 years' period mentioned above. In both scenarios the commitments made under the qualitative criteria must also be observed for five years (or three years in case of micro-, small- and medium-sized enterprise investors) from completion of the investment.

Incentive effect

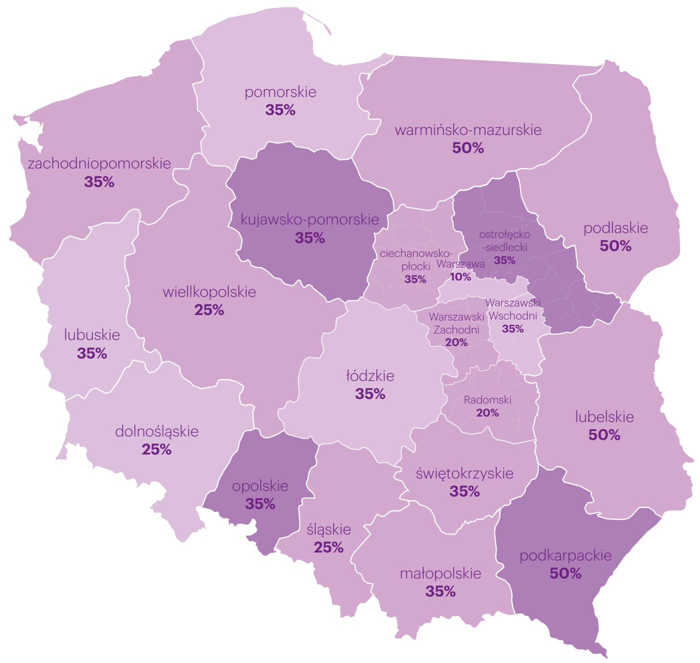
One of the essential rules underlying the PIZ exemption is the incentive effect principle, carried over almost without alterations from the previous SEZ programme. Under that principle, no PIZ tax exemption whatsoever can be awarded to an investment project if work on the project started prior to submission of the PIZ application. Such a **start of work includes launching of construction activities, purchase of machinery or the first firm commitment making the investment irreversible,** whichever occurs earlier. These concepts are often being given a broad interpretation in practice. Consequently, if any of these events happens before the PIZ application is filed, the entire investment (and not just the costs of the activities undertaken prior to the filing) is disqualified from the PIZ tax exemption.

By way of an exception, certain steps – such as, most importantly, **acquisition of real property – do not qualify as a start of work on a project** and, therefore, may be undertaken prior to the PIZ application without disqualifying the investment from PIZ tax exemption. Other examples of such steps include preparatory work such as application for relevant permits and feasibility studies. Still, if these steps, including acquisition of real property, are taken before the PIZ decision is issued, their respective costs would not be eligible for PIZ tax exemption.

Scope of incentives

As mentioned, the **value of the PIZ tax exemption is to be calculated as a product of the eligible discounted expenditures of the contemplated investment and of the regional intensity level applicable in a particular region (województwo)**. The intensity level would **increase by 10% in case of medium-sized enterprises and by 20% in case of small** and **microenterprises.** The rate used for discounting the eligible expenditures is currently 2.87%.

In the 2014 – 2020 period that calculation should be made based on the following map of aid intensities applicable in Poland:



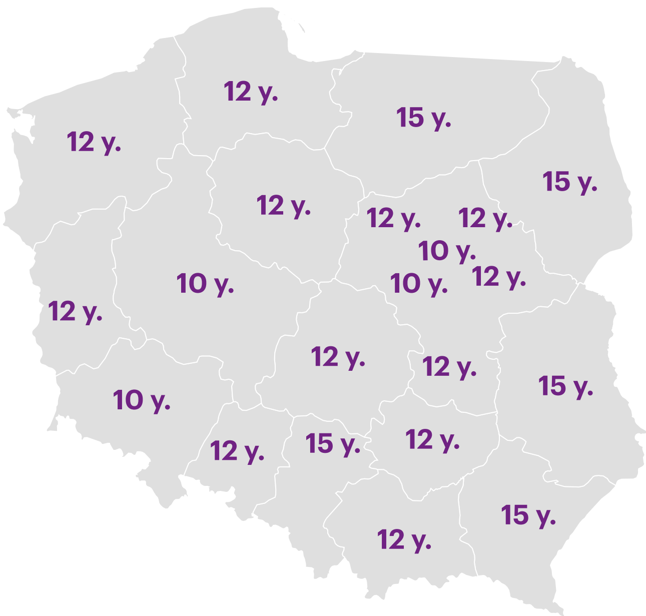
The **eligible expenditures include** the costs of real estate property acquired or developed for the purposes of the investment, as well as the costs of purchase, manufacturing or upgrade of machinery and equipment related to that investment. In case of large investors, all assets must also be new. The cost of leases qualify as eligible as well, subject to conditions. The cost of intangible assets is also considered eligible, provided that these assets are acquired from non-related parties and, in the case of large investors, only to the extent their value does not exceed 50% of the overall eligible expenditures.

In terms of timing, **only the expenditures incurred following the award of the PIZ decision to an investor can be considered eligible.** Accordingly, if certain investment costs are borne prior to the date of the PIZ decision (assuming that they do not render the entire investment ineligible for PIZ aid due to incentive effect rules, see section 3.1.3. above), they would need to be left outside the eligible expenditures pool.

Importantly, the **PIZ tax exemption only applies to the activities expressly listed, as per their statistical PKWiU 2015 codes, in the PIZ decision.** That list is principally based on the detailed catalogue of PKWiU 2015 codes provided by an investor in its PIZ application. Therefore, investors must carefully consider the intended scope of activity to be included in their PIZ application, including certain areas which may not necessarily be obvious to them at first sight (such as processing of production waste, maintenance and repair services or research related to the core business, which can also be covered by the PIZ tax exemption). As in the case of the SEZ regime, the PIZ laws provide also a list of activities that cannot obtain PIZ benefits, such as retail or financial services. While PIZ exclusions generally follow a similar SEZ blacklist, certain adjustments were made as compared with the previous SEZ laws, so that more intangible services can actually be covered by a PIZ decision, particularly including on-line publications, head office, management, architectural, engineering, technical research, specialist design and environmental advice services.

In keeping with the previous SEZ laws, **PIZ tax exemptions cannot be obtained for relocation of business** within the EU/EEA (although it is possible to relocate from outside the EU/EEA to Poland and obtain PIZ tax exemption for such investment). This implies that aid would not be available if the Polish project involves the mere transfer of activity from another EU/EEA member state made within two years prior to or following the investment in Poland.

As far as the duration of a PIZ decision is concerned, in the 2014 – 2020 period it is to be established based on the following map of Poland:



Notwithstanding the above, a special rule also applies **automatically fixing the period of duration of a PIZ decision at 15 years** (whichever region is hosting the investment) **if an investment is located in an area previously forming part of a Special Economic Zone established and operating under the SEZ laws.**

In any event, PIZ decisions are issued in respect of specific plots of land, as per their mortgage and land register numbers. Accordingly, the PIZ tax exemption would only apply to profits from the activities carried out on these plots. Any profits pertaining to activities taking place outside these plots would be ineligible for the tax exemption. The PIZ rules also require that the activities implemented outside the eligible plots be structured into a separate organizational unit within the company and that separate books be kept for these activities.

Application procedure

An investor should first select a specific location for the investment concerned. Based on that location a formal **application for a PIZ decision should be filed with the relevant PIZ authority** competent for that location. Since certain pre-filing formalities may also apply in practice, it would be useful to obtain advice from a legal counsel or authorities ahead of the filing. In any event, a PIZ application must be filed by a Polish subsidiary (and not, for instance, by the foreign shareholder).

The **PIZ application must be submitted using a form prescribed by the law,** which features information such as investment location and description, estimated minimum and maximum amounts of eligible expenditures, their breakdown into classes (real estate property, buildings and infrastructure, machinery and equipment and intangibles) and timeline, start and end dates of the investment, proposed employment target and maintenance period, and PKWiU 2015 classification codes of the intended activity.

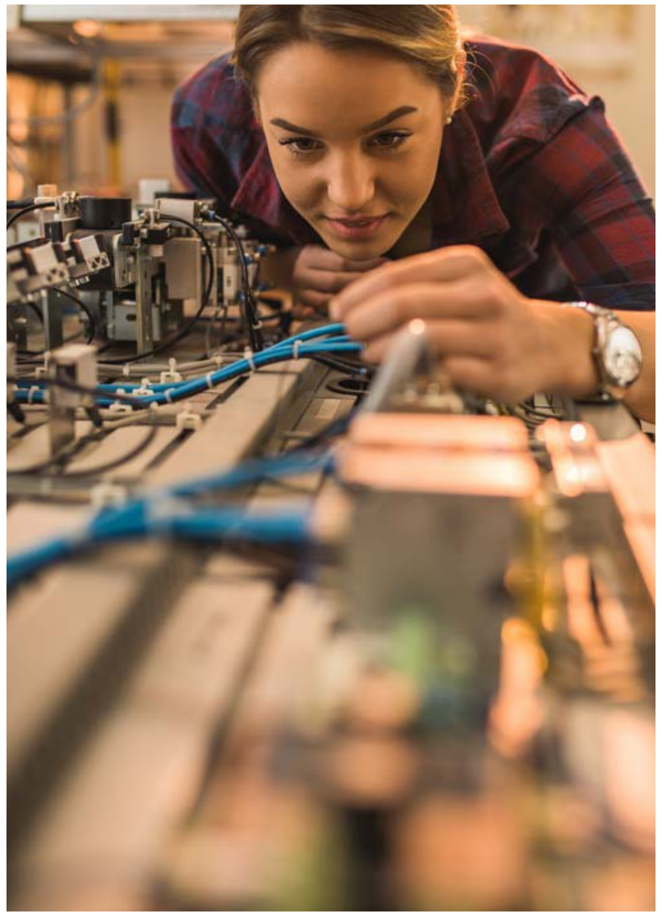
Attached to the form should also be an extensive **state aid questionnaire** providing a variety of information (largely legal) on the investor, investor's group and the investment. In addition, PIZ authorities also require a considerable number of **attachments and statements,** which may address issues such as the criminal record of board members (and shareholders), the geological status of the investment location, relocation of business from elsewhere in the EU/EEA, solvency of the applicant, or exclusion of energy generation and purchasing costs from the pool of eligible expenditures. Excerpts from the land register and maps indicating the plots, certificates confirming absence of arrears in tax and social security contributions, or copies of financial statements for the last three financial years (or equivalent statement and declarations for newly established subsidiaries, as available), are also customarily requested.

In parallel with the PIZ application procedure the applicant should also negotiate with the PIZ authority (usually based on a proposition and template received from that authority) the amount and conditions of the **PIZ fee, a separate payment which the investor is required to pay to the PIZ authorities throughout the life of the investment.** To that effect, PIZ authorities would require that the investor sign a PIZ fee agreement governing these issues.

The application procedure can be expected to culminate in a **PIZ decision within 1 – 2 months of the application (in practice PIZ decisions are often being issued more promptly).** In case the applicant disagrees with any important part of the PIZ decision obtained (for instance, if the conditions of the tax exemption outlined in the PIZ decision are inconsistent with the application), or if the PIZ decision is refused, the applicant may bring an appeal to the Minister of Entrepreneurship and Technology and, subsequently, to a court of law.

Tips for applicants under the PIZ system

- apply for a PIZ decision as early as possible in order not to infringe the incentive effect rules
- if the PIZ application cannot yet be filed or would be premature, at least make sure that your investment plans are entered into the New Investments Register, so as to be able to subsequently file the PIZ application, even if the PIZ system is temporarily suspended
- be sure to include in the PIZ application all plots of land needed for the investment, including at later stages, due to the fact that only activities undertaken on the plots listed in the PIZ decision would be eligible for the PIZ exemption
- carefully revise the activities intended at the Polish facility and provide an exhaustive list in the PIZ application, as per applicable PKWiU 2015 codes
- when selecting the qualitative criteria to score points consider adding one or two criteria above the minimum required, so as to gain flexibility and, in case of any future difficulties, reduce the amount of commitments to the minimum required without losing the PIZ exemption
- in case of investment enjoying the PIZ tax exemption based on the capital expenditures, suggest an employment target and maintenance period that would be entirely convenient for your organization, without any excessive commitments
- seek to combine PIZ benefits with other investment and R&D incentives, as available (see comments below for details), so as to use aid more efficiently and promptly



The current system of government cash grants (based on information made available by PAIH)

Since governmental cash grants are being provided in accordance with internal rules established by the authorities and published from time to time by the Polish Agency of Investment and Trade (PAIH), the information below follows entirely the most recent version of these cash grant rules available.

Governmental grants are provided on the basis of the programme for supporting investments of major importance to the Polish economy for 2011-2030, adopted by the Council of Ministers on July 5, 2011 (amended on October 1, 2019).

Form of support

Support is provided in the form of a grant on the basis of an agreement concluded between the relevant minister and the investor. The agreement lays down conditions for the payment of the grant, which is paid proportionately to the degree of the fulfilment of the investor's commitments (in annual instalments proportionate to investment expenses incurred in a particular year).

Type of cash grants

Under the Programme, the support will be granted based on eligible costs for creating new jobs and eligible costs of investments. The amount of grants may be increased, if training programmes are offered to employees.

Under the Programme, support is granted based on:

1. The number of jobs

EMPLOYMENT GRANT				
Type of investment	Minimum eligible costs (m PLN)	Minimum new employment	Other requirements	Maximum support (per each new job created, in PLN)
BSS	1.5 or 0.3[1]	250 or 50[1]		up to 12000 or 15000[182]
Centre of Excellence	1.5 or 0.3[1]	250 or 50[1]	Advanced processes	up to 12000 or 15000[182]
R&D	1 (under 100k per employee)	10[3]	Most advanced processes as per previous slide)	up to 12000 or 15000[182]

2. Investment costs

INVESTMENT GRANT		
Type of investment	Minimum eligible costs (m PLN)	Minimum new employment
Strategic	160	100
Innovative	7	20
R&D	1 (over 100k per employee)	10[3]

3. New form of support – supplement to the above cash grants

TRAINING GRANT

Maximum support (per each new job created, in PLN) - 25% or 50%[1&2] of training costs

1. in medium-sized cities losing their socio-economic functions or in poviats or cities with the poviat status for which the unemployment rate amounts to not less than 160% of the national average unemployment rate
2. in 5 voivodeships of Eastern Poland (Warmińsko-mazurskie, Podlaskie, Lubelskie, Świętokrzyskie, Podkarpackie)
3. degree holders only (MA, BA, MSc, BSc)

Obligation to fulfil qualitative criteria

In addition to the quantitative criteria, it is necessary to receive min. 60 out of 100 possible points as a result of the project quality assessment carried out by PAIH

1. Qualitative criteria for BSS projects

Structural development

- Creating highly-paid jobs
- Creating work places for people with higher education
- Providing intermediate/ advanced services
- The attractiveness of services on international
- Points for conducted processes
- Geographical scope of the investment

Scientific development

- Cooperation with academic institutions

Territorially sustainable development

- Investments in medium-sized cities losing their socio-economic functions or in poviats with high unemployment rate

HR development

- Employee care services
- Creating specialised work places

Social responsibility

- CSR activities, responsible waste management and the use of environmentally friendly solutions
- Employee share ownership mechanism
- Forecasts of budget revenues

Additional criteria

- Investment experience
- Brand recognition

2. Qualitative criteria for manufacturing projects

Obligation to cooperate with higher education institutions:

Structural development

- Highly-paid jobs
- Work places for people with higher engineering education
- Work places for employees that successfully passed vocational qualifying exam
- Work places for people with higher engineering education
- Significant number of new work places
- Investment in industries being in line with the country's development policy
- The attractiveness of services on international markets
- Capital intensity

Scientific development

- Cooperation with academic institutions
- Conducting R&D activities

Territorially sustainable development

- Investments in medium-sized cities losing their socio-economic functions or in poviats with high unemployment rate
- local economic input

HR development

- Employees' care services
- Creating specialised work places
- Cooperation with secondary technical and vocational education institutions

Social responsibility

- CSR activities, responsible waste management and the use of environmentally friendly solutions
- Employees' share ownership mechanism
- Forecasts of budget revenues

Additional criteria

- Investment experience
- Brand recognition
- Membership in a National Key Cluster

Investor is obliged to incur costs (in the period of maintaining the investment) for cooperation with institutions of the higher education and science system in the amount of at least 15% of the value of the awarded subsidy.

Cooperation with entities constituting the higher education and science system within the meaning of art. 7 sec. 1 point 1-7 of the Act of 20 July 2018 - Law on Higher Education and Science, means:

1. commissioning scientific research or development works to be conducted;
2. commissioning the implementation of study programs;
3. participation in the "Doctoral Implementation" program and other programs or undertakings of the MSWiN related to the implementation of doctoral schools;
4. financing, through scholarships or financing of employment, the participation of students in the practical training process, including dual studies.

Operator of the Programme

The operator of the Programme and the authority granting state aid is the relevant Minister. The Polish Investment and Trade Agency (Polska Agencja Inwestycji I Handlu S.A.) is responsible for preparing and providing the **Interministerial Committee for Investments of Major Importance to the Polish Economy** (hereinafter referred to as the Committee) with the dossier of investment projects and for preparing all documents required to carry out the entire procedure of providing financial support.

Each project is subject to an individual assessment by the Committee on the basis of detailed criteria laid down in the Programme.

Centre for Strategic Investments (CSI) is responsible for providing information on government grants.CSI not only is the operator of the Programme but also supports investors in the following ways:

- Providing information on cash grants, Advice on different forms of public aid
- Tailor-made macroeconomic, HR, legal and sectoral data
- Location advisory services; a database of public and private investment plot
- Facilitating contacts with local and state authorities
- Dedicated Project Manager assistance throughout the investment process
- Organization of site visits for prospective investors
- Networking, identification of suppliers and subcontractors
- After-care services; investors, "spokesperson"

Procedure:

Investor submits to **PAIH**:

1) Information about the project

2) Incentive Effect Analysis

PAIH:

- Verifies the documentation
- Assesses the project
- Prepares a project assessment card and project description
- Prepares a regional opinion

Interministerial Committee for Investments of Major Importance to the Polish Economy issues a recommendation on cash grant amount

The final decision whether to award a grant and on the amount of the grant is made by the Minister responsible for the economy; the offer is sent to the investor by PAIH

If investor accepts the offer (within 30 days, in extraordinary circumstances within 90 days), an agreement between the Ministry and the investor is concluded

Confirmation of innovativeness
in innovative investments; issued by the Minister responsible for the economy

Regional opinion
necessary for all investments; assessment of the project's impact on the environment; the project can get -5 up to +5 points; opinion is prepared by PAIH

Sector al analysis
Applicable in investments with costs ≥ PLN350 million; assessment of the project's impact on the sector/industry at the regional and national level; preparation of the analysis is commissioned to an external entity

Source: www.paih.gov.pl

Other potential incentives for businesses investing in Poland

Real estate tax exemptions

Notwithstanding the PIZ/SEZ benefits, local authorities (at the level of a commune – gmina) may also offer reduced rates or exemptions from real estate tax (RET), which is imposed in Poland on land, buildings and infrastructures. Accordingly, investors are advised to review, ahead of their project, local RET laws, so as to verify whether and which investments may qualify for RET reliefs. Importantly, investors must also file with the local tax authorities, before any work on the project starts, a dedicated RET notification of their intention to use the RET reliefs available. RET benefits would be combined with and will reduce available PIZ/SEZ exemptions accordingly.

R&D reliefs and grants

In addition to investment-oriented incentives such as PIZ/SEZ and RET instruments, a number of tax tools are also offered to encourage R&D activities and investment in Poland.

The research and development (R&D) relief

Of particular interest is the R&D tax relief, which allows businesses engaging in R&D activities in Poland to deduct from their taxable basis 100% of the eligible R&D expenses, notwithstanding the use of these expenses as tax-deductible costs under the general rules (special R&D-dedicated centers may even obtain 150% deduction of eligible R&D expenses). The R&D relief has been applicable since 2016 but has become especially attractive since 2018, following important improvements of the underlying conditions.

Expenses eligible for the R&D relief include a number of cost categories listed exhaustively in the legislation, such as, subject to conditions, the cost of employment of R&D staff (whether hired based on a work contract or under civil law agreements), the cost of R&D-related fixed assets, equipment and materials, the cost of external R&D work and services purchased or cost of legal protection of intellectual property.

The R&D relief has proven to be particularly attractive due to its liberal conditions. It does not require a business to obtain any permit or decision from the authorities (which is the case of SEZ/PIZ benefits) and applies in an almost identical manner to both large and SME investors. Moreover, the R&D process subject to relief does not need to lead to any specific outcomes (and, in particular, may also prove unsuccessful) and even if it does generate specific solutions, these do not need to be implemented. In addition, while R&D activity necessarily involves an element of novelty and innovation, the R&D relief does not establish any specific requirements as to how groundbreaking a particular process must actually be (in particular, the items under research may already be available in the market but must be new to the investor itself). In case the investor's annual profits happen to be insufficient to consume the entire amount of the R&D relief generated in that fiscal year, the surplus may be carried forward for deduction within six subsequent years.

Formal requirements linked to the R&D relief are also remarkably limited and mainly include keeping separate internal records capturing eligible R&D expenses and submission of an annual tax form. Still, it is best business practice to carry out, prior to implementation of the R&D relief at a Polish subsidiary, a mapping exercise, so as to identify the processes and areas of activity that qualify as proper R&D within the meaning of the tax laws, to estimate potential eligible R&D expenses and the resultant tax benefits and to list and complete practical actions that may need to be taken to ensure seamless application of the relief.

Under the current tax rules the R&D relief may be combined with the PIZ tax exemption, as well as with the SEZ benefits, if still available, subject to conditions. It can also be combined with EU-funded subsidies.

The Innovation Box

Starting from 2019 businesses may also apply the Innovation Box, which is a new tool supporting R&D activities in Poland. Under this measure, qualified income of Polish companies from commercialization of eligible intellectual property, such as patents or copyrights to computer software, are subject to 5% CIT (as compared with the general 19% CIT rate applicable to corporate income). The Innovation Box would start applying even before specific intellectual property is registered (and such registration may be effected either in or outside Poland, within recognized intellectual property platforms), as soon as the application for registration of particular intellectual property is filed (and in case of computer software, no registration is required at all).

The income from qualified intellectual property eligible for the 5% CIT rate includes income from sale or licensing of such intellectual property, but also the proportion of the price of goods or services corresponding with that intellectual property (as well as indemnities for breach of such intellectual property obtained based on an arbitration award or a court judgment).

Importantly, eligible income from qualified intellectual property attracts the 5% CIT rate only to the extent that the intellectual property was developed by the Polish subsidiary through its own R&D activities or based on R&D services purchased from unrelated parties. Therefore, if intellectual property is received or purchased by the Polish subsidiary, or is based on intra-group R&D services, the fraction of the eligible income that can be put into the Innovation Box will diminish accordingly.

As in the case of the R&D relief, substantial and formal requirements for the Innovation Box to apply are rather limited and include mainly keeping of internal accounts. However, since the accounts must be separately kept for each intellectual property item (and the part of a company's income eligible for the Innovation Box must be singled out), these compliance duties may prove slightly more complex than it is the case for the R&D relief.

It appears possible to apply the Innovation Box in parallel with the PIZ tax exemption as well as SEZ benefits, if still available. It can also be combined with EU-funded subsidies.

EU funds

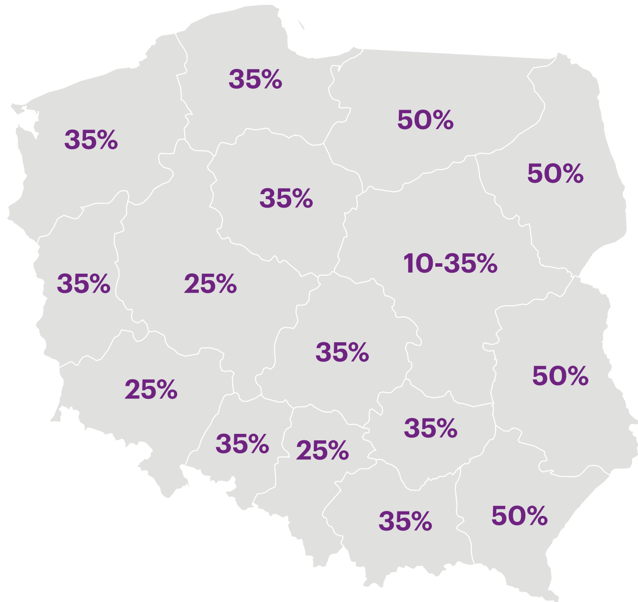
Poland is currently the biggest beneficiary of the EU funds. In EU Financial Framework 2014-2020 Poland was granted EUR 82.5 B from the cohesion policy budget and the funds will be allocated – through several operational programmes – for i.a. research and development (R&D) activities, development of infrastructure, entrepreneurship, digitalization and environmental projects. Funds for development of R&D activities are granted regardless of the company size. Large entrepreneurs investments may benefit from EU funds when the concern creation or development of R&D centers and environmental projects.

One of the purposes of the aforementioned operational programmes is to increase of innovation of the Polish economy. This objective will be achieved mainly by increase of enterprise expenditure on R&D. Actions taken under the programmes focus mainly on strengthening links between business and science, and thus on enhancing the degree of R&D results commercialization and practical application in the economy, and supporting company innovation.

The most important operational programmes assumption is the support for research and development projects implemented by entrepreneurs or by scientific-industrial consortia, along with the introduction of the results of these projects onto the market.

For large entrepreneurs intensity level may reach:

- For R&D activities aid at developing of new technologies: **up to 65%** (industrial research) / **up to 40"% (**development works) of costs related to i.a. employees remunerations, commissioned services, testing materials, testing equipment and CAPEX outlays (only for prototyping purposes);
- in case of SMEs, the aid intensity levels are increased respectively by 20 percentage points for micro- and small-sized companies (not more than 80% in total) and 10 percentage points for medium-sized companies.
- For R&D results pre-implementation: **up to 90% and up to EUR 200 k** of costs related to i.a. employees remunerations, commissioned services, testing materials;
- For creation or development of R&D centers: **up to 50%** (aid intensity in line with the Regional Aid Map – please see the graphics) of costs related to i.a. acquisition of real estate, purchase of construction and building materials, purchase of fixed and intangible assets, costs R&D related technical knowledge / consultancy services and costs of materials. In case of SMEs, the aid intensity levels are increased respectively by 20 percentage points for micro- and small-sized companies and 10 percentage points for medium-sized companies.



National funds - preferential loans/grants

Support granted for environmental projects e.g. biogas plants, waste management, renewable energy sources. Funding available in the form of grants and preferential loans from national and voivodeship funds for environmental protection and water management.

B. Corporate vehicles for investment in Poland

Private companies

If a company intends to stay private, **the limited liability company** (in Polish: *spółka z ograniczoną odpowiedzialnością; sp. z o.o.*) is the best fitting vehicle because of its flexibility, low maintenance costs and simple management rules and the limited liability of its shareholders. Its main characteristics are:

The Polish limited liability company has the following corporate bodies:

i. Management board (in Polish: *zarząd*) – governing body, competent to make decisions in all matters which are not in the exclusive competence of the general meeting or supervisory board; the management board is composed of members (in Polish: *członek zarządu*) who have, in principle, the same rights and obligations; the company's statutes may provide for the function of president of the management board (in Polish: *prezes zarządu*) and grant him specific functions and competences.

ii. (Supervisory board (in Polish: *rada nadzorcza*) – supervision body, exercising permanent supervision over all areas of the company's activity. Contrary to the joint-stock company, the supervisory board is obligatory only in the companies having more than 25 shareholders and share capital higher than PLN 20,000 (both thresholds should be met). Otherwise, the supervisory board is optional.

iii. Audit committee (in Polish: k*omisja rewizyjna*) – supervision body, duties of which include evaluating the financial statements and management board's annual reports from the company's activities. The audit committee is obligatory only in companies having more than 25 shareholders and share capital higher than PLN 20,000 (both thresholds should be met) and which do not have a supervisory board appointed (if the above thresholds are met, the company is obliged to appoint either the supervisory board or the audit committee).

iv. Shareholders' meeting (in Polish: *zgromadzenie wspólników*) – the forum where the company's shareholders are represented. The shareholders' meeting usually adopts resolutions in key matters related to the company (such as amendments to the company's articles of association, granting consent to performing certain transactions or actions by the management board's members, dissolution or winding up of the company, merger or transformation etc)

Liability is limited to the share capital.

If the vehicle needs to be tax transparent, the limited partnership (in Polish: *spółka komandytowa*) may be a good choice. The limited partnership has two types of partners: (i) a general partner (in Polish: *komplementariusz*) whose liability is unlimited; and (ii) a limited partner (in Polish: *komandytariusz*), whose liability is limited only to the amount specified in the company's articles of association. The other main characteristics of the limited partnership are as follows:

i. governance: a general partner manages the partnership's affairs and represents it before third parties;

ii. liability: as for the general partner – unlimited but subsidiary liability (a partnership's creditor may conduct execution from the general partner's assets only if execution from the partnership's assets proves ineffective, which means the partnership is liable first, and the general partner only at a second stage),

iii. taxation: transparent (the taxation is done at the partners' level).

Public companies

If a company intends to proceed with an initial public offering (IPO), the joint-stock company (in Polish: *spółka akcyjna, S.A.*) is usually the most common corporate form used by Polish public companies.

Its main characteristics are:

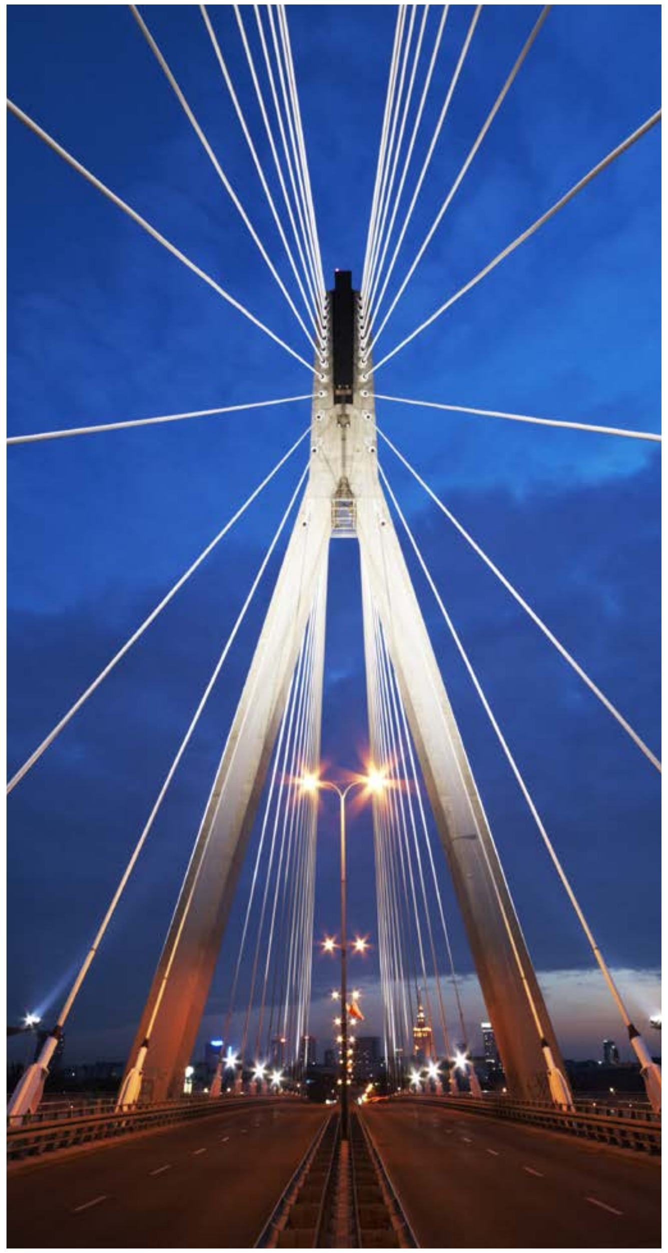
The Polish joint-stock company has almost the same corporate bodies as the limited liability company:

i. Management board (in Polish: *zarząd*) – governing body, competent to make decisions in all matters which are not in the exclusive competence of the general meeting or supervisory board; the management board is composed of members (in Polish: *członek zarządu*) who have, in principle, the same rights and obligations; the company's statutes may provide for the function of president of the management board (in Polish: *prezes zarządu*) and grant him specific functions and competences.

ii. Supervisory board (in Polish: *rada nadzorcza*) – supervision body, exercising permanent supervision over all areas of the company's activity.

iii. General meeting (in Polish: *walne zgromadzenie*) – the forum where the company's shareholders are represented. The general meeting usually adopts resolutions in key matters related to the company (such as amendments to the company's statutes, dissolution or winding up of the company, merger or transformation etc).

Liability is limited to the share capital.



C. Real estate acquisition

Obtaining title to real property

Manufacturing projects may include:

- the acquisition of a property (developed or undeveloped land) as an ownership or right of perpetual usufruct (RPU), in any case in the form of a notarial deed (property rights)

As in all legal systems, the right of ownership is subject to certain limits prescribed by statute. For example, the sale of real estate may be subject to pre-emption rights (where applicable), the owner of real estate is subject to zoning legislation, building regulations, heritage and environmental protection laws.

Land records in Poland

There are two types of land registers:

i. land and mortgage registers (LMR), which describe the legal status of the land (real property) – these are held by the local courts; and

ii. municipal land registries, which describe, among others, the physical position, area, designation and occupier of the land – these are kept by the local authorities.

The LMRs include historical, chronological information regarding a given real estate, including details on changes thereof, in particular details on:

iii. transfer of title to real estate;

iv. changes of its designation;

v. buildings/structures located on the land (in case the land is held in RPU);

vi. encumbrances established over and in favor of the real estate (e.g. easements);

vii. mortgages;

viii. Optionally, restrictions and other rights towards the real estate (e.g. right arising from preliminary purchase agreements or right of first refusal), and

ix. indications of grounds (documents), on the basis of which all the above were registered in the LMR.

Reliability principle

As to the rule, the entries in the LMR are conclusive as to the legal status of the real estate. The legal interests of third parties (such as interests under lease agreements or pre-emptive purchase rights) can also be found in the LMRs.

Generally, the principle of the public warranty of LMRs protects those who acquire real estate relying in good faith on the entries in the LMR. However, those who acquire real estate gratuitously cannot claim protection based on this principle.

In some cases, the principle of good faith may require that the buyer should check some additional information about the real estate.

Basic checks an investor should consider when buying a real estate include:

i. the LMR kept for the real estate;

ii. the agreement under which your seller (and/or any previous sellers) acquired the title to real estate;

iii. easements, mortgages and other encumbrances of the real estate;

iv. if the real estate is designated for public purposes in the zoning plan;

v. that your planned use of the real estate complies with the zoning plan;

vi. if the real estate is agricultural or forest land;

vii. if anyone holds pre-emption rights or other rights over the real estate;

viii. If there are restitution claims to the real estate.

Main requirements and risks

Status of foreigners

Foreigners generally need consent to buy real estate. Citizens or commercial entities of member states of the European Economic Area (EEA) do not need a permit to buy real estate in Poland (with reservation to special restrictions for agricultural and forest land – see below section "Agricultural and forest land").

Generally, all other foreigners need to obtain consent before buying real estate in Poland. However, setting up a company in the EEA and using it as the buyer is an alternative.

Statutory pre-emption rights

State Treasury or local municipalities (and some other entities) have statutory pre-emption rights regarding some real estates.

Examples include: undeveloped real estate previously acquired by the seller from the state or a local authority, an RPU to undeveloped land, real estate entered in the register of monuments (if such pre-emption right is disclosed in the LMR), real estate located in a Special Economic Zone (the entity managing the SEZ has this pre-emption right).

In such events the sale is carried out in two steps, i.e. (i) a conditional sale agreement is concluded (i.e. under a condition that the beneficiary of the pre-emption right waives it first); and (ii) final agreement is concluded (after the pre-emption right is waived).

Pre-emption rights must be checked carefully. An unconditional real estate sale contract is invalid if it precludes the exercise of a statutory pre-emption right.

Agricultural and forest land

Generally, no corporate entity can buy agricultural land in Poland, unless it is permitted by an administrative decision issued by the Agricultural Properties Agency. There are some exceptions to this ban, e.g. buying agricultural land with an area of less than 0.3ha or agricultural land covered as at 30 April 2016 by a zoning permit designating it for non-agricultural purposes.

Certain restrictions apply also to buying forest land.

Historically expropriated real estate

Prior owners or their legal successors hold certain rights with respect to real estate that was expropriated during the period 1945-1989. These rights may lead even to recovery of the real estate to its prior owner (or his legal successors).

Sale by public entities

Public entities must sell real estate by tender. Usually, a public entity (e.g. a municipality, the State Treasury) must sell real estate by tender. Exceptions apply, including: (1) the sale of real estate to someone who already holds an RPU; and (2) the sale of land which may improve the development conditions of neighboring land and which may not be developed unilaterally.

Exceptions must be checked very carefully. If a tender is required, any sale without a tender is invalid.

Third party suretyship on the plant

In the case a plant is sold and/or acquired, the encumbrances established on that plant (its components – real properties, machines, etc.) such as mortgages, pledges or registered pledges established under Polish law do not expire by themselves. The creditors of the seller may satisfy their claims against the encumbered assets irrespective of the transfer of the ownership. Thus, when acquiring a plant it is advisable to see what encumbrances are established on the particular assets forming such a plant and discount their value vis-à-vis the sale price and/or make sure the creditors of the seller are paid off and/or otherwise agree to lift the existing encumbrances.

When your company is buying or selling a plant under Polish law, it is more likely than not that such a plant under Polish law will constitute an enterprise (and/or an organized part thereof). Under Polish law, the buyer of an enterprise (and/or an organized part thereof) is jointly and severally liable with the seller for the seller's obligations associated with the operation of the enterprise.

Thus, if your company is planning to buy an enterprise, it is essential to conduct a thorough due diligence before finalizing the transaction. This is because your company will be held liable not only for the debts known to you as the buyer, but also for those which your company should have known about, if it acted with due diligence.

The liability of the buyer is limited to the value of the acquired enterprise (in that case – a plant) as it stood at the moment of the acquisition and in conformity with the prices at the time the creditor's claim is satisfied.

Most importantly, the buyer's liability for the seller's obligations cannot be effectively excluded by the parties to the sale contract vis-à-vis the seller's creditors without their express consent. Nevertheless, the parties may add an indemnification clause obliging the seller to reimburse the buyer with any amounts the buyer would be obliged to pay to the seller's creditors.

The right of perpetual usufruct

The right of perpetual usufruct is a quasi-ownership interest, limited by reference to time and purpose. The land being the subject of RPU is owned either by the State Treasury or by a municipality. The perpetual usufructuary may use the land in a similar way to an owner The rights of the owner of land held in perpetual usufruct (i.e. the State Treasury or a municipality) are very limited compared to those of the perpetual usufructuary and consist, predominantly, of receiving the RPU fee and controlling/enforcing the compliance of the perpetual usufructuary with the law and the contract or decision establishing this right.

Usually, the term of the perpetual usufruct is 99 years but it is renewable. In most cases the perpetual usufruct right is established on land located within the administrative borders of towns. The purpose to which the land may be put is defined in the administrative decision or contract creating the perpetual usufruct right. In the case of existing perpetual usufruct rights created on the basis of an administrative decision, the purpose is often generally expressed. Recently established perpetual usufruct rights often contain a more detailed description of the purpose, the structures that are to be constructed on the land and the deadline for construction.
The characteristics of any perpetual usufruct right should be examined before its acquisition to check that the purpose is not restrictive and that there are no unfulfilled obligations (such as an obligation to construct a building).

For the duration of the perpetual usufruct, the perpetual usufructuary must pay an annual fee. If the perpetual usufruct is established by contract, the perpetual usufructuary must also make an initial payment of between 15% and 25% of the current market value of the land. Annual payment amounts vary from 0.3% to 3% of the current market value of the land, depending on the designation of the land. For commercial uses, it is usually 3%. An owner of land may revaluate the market value of the land, which would lead to an increase of the annual fee. Such a revaluation may not take place more often than once per three (3) years, on the basis of a new valuation of the land, and is subject to appeal by the perpetual usufructuary to the courts. The annual fee may also be increased as a result of the improper use of the land by the perpetual usufructuary. The annual fee is payable by 31 March of each year.

- the conclusion of: (i) a lease (*najem*) under which the tenant's right is limited to use of the leased premises, or (ii) a tenancy (*dzierżawa*) under which the tenant has a right to use the leased premises and collect proceeds generated from them (contractual rights)

Generally the landlord and the tenant are free to define the circumstances in which a commercial lease or tenancy can be terminated. But there are statutory notice periods for termination for non-payment of rent. These depend on the frequency with which the rent is payable under the lease. Broadly speaking, if rent is payable monthly, it will take three (3) months to terminate the lease if the tenant stops paying the rent. As to the rule, a similar principle applies to the tenancy but the landlord shall give a tenant an additional three-month grace period for payment.

If a lease between business entities or tenancy is concluded for a fixed period longer than 30 years, after expiration of this maximum period the contract automatically becomes a contract for an indefinite period of time, which may be terminated by notice by either party. The length of the notice is dependent on the frequency of payment of rent. There are methods for creating longer term landlord and tenant relationships but these require careful structuring.

Zoning

There are two general sources of zoning determining the designation of areas and development conditions: these are **zoning studies** and **master plans** and both are adopted by city councils of relevant municipalities (*rada gminy*). Zoning studies cover the whole territory of a municipality and are more general in wording, while master plans may cover smaller areas and are more detailed. Master plans must be consistent with relevant zoning studies. Master plans are binding with respect to the conditions of the future development on the particular real estate. If no master plan has been adopted for a certain location, development may be executed on the basis of conditions determined in an individual decision – the zoning permit (*warunki zabudowy*).

Generally, in order to construct a building in Poland, the investor should apply to the relevant authority for:

x. A building permit – if the construction area is covered by any existing local master plan; or

- xi. a zoning permit and afterwards a building permit – if the construction area is not covered by any existing local master plan (which is common with respect to significant parts of Poland).

In most cases, the works may be commenced only after the building permit becomes final.

In respect of certain less complex objects/works, a building notification must be made, instead of obtaining the building permit. If the construction authorities do not object within 21 days of filing the building notification with the authorities, the investor may commence the works.

Before use of the constructed object, the investor should:

8. **Obtain a final occupancy permit – for specified types of objects or for which the obligation to obtain such a permit was imposed in the building permit**.
   Before an occupancy permit is obtained the investor must notify the relevant authorities (i.e. the State Fire Brigade and Sanitary Inspectorate) of the completion of the building works and the intended use of the building. The authorities are obliged to take a position as to whether the building was constructed in conformity with the building design. If within 14 days the authorities do not take any position, it is understood that they have no reservations or comments.
9. **Notify relevant authorities of the intended use of the object – with respect to other objects the construction of which requires that a building permit be obtained (or, in some cases, the building notification be made). In this case, the investor is permitted to start use of the object if within 14 days of delivery of the notification the authorities do not raise any objections.**
   Generally there is no market "standard" type of construction contract. Nevertheless FIDIC and other international model construction contracts are often used for major, complex developments.

   Commonly, under the construction contract the contractor is obliged to provide the investor with a performance bank guarantee for the period of the construction works and a bank guarantee for the period (or part thereof) of the statutory warranty and/or quality guarantee.

D. Environmental-related obligations prior to the launch of manufacturing

Under Polish law the entity, prior to applying for a building permit or a zoning permit, is obliged to obtain a decision on environmental conditions (in the past, the environmental impact assessment procedure within the proceedings for the issuance of the said decisions was required) under the condition that the project is classified as a project likely to have a significant impact on the environment according to the respective regulation.

Moreover, in the Polish legal system two types of remediation decision exist, i.e. in accordance with historical contamination of the earth's surface and environmental damage. Environmental damage means a negative, measurable change in the environment caused by activities carried out by the entity using the environment. The said entity is obliged to undertake immediate corrective and preventive actions. Corrective actions mean, inter alia, remediation, afforestation, restoration of the natural balance in the damaged area or removing threats to human health. Preventive actions mean actions to reduce the negative impact on the environment, focusing on elimination of particular emissions. The historic contamination of the soil's surface means soil surface contamination that occurred before 30 April, 2007, or results from activity that was discontinued before 30 April 2007.

In general, the liability for contamination depends on the date the contamination occurred. Under applicable laws, if the contamination occurred before 30 April, 2007, every holder of the property shall be liable for contamination. If the contamination occurred after 30 April, 2007, the polluter is liable in that respect.

E. Employment model

General comments

Employees in the manufacturing sector are usually hired on indefinite term employment contracts. The minimum content of an employment contract includes: type of work, place of work, remuneration (including designation of pay components), working time and date of commencement of work. The employer may use fixed-term employment contracts. The fixed term cannot last for more than 33 months and there is a maximum of three fixed-term contracts per individual. The contract should be in writing.

A trial period of up to three months is admissible for every type of employment.

Additionally, the manufacturer may also consider engaging temporary workers. Temporary workers may work for a manufacturer for not more than 18 months within a 36-month period.

Foreign workforce

Work permits are required when employing non-EU foreigners. All the administrative obligations connected thereto lie on the side of the employer.

Employing citizens of Belarus, Ukraine, the Russian Federation, Georgia or Moldavia for six months in any 12-month period does not oblige the employer to obtain a work permit. The foreigner must apply for a short-term work visa in the country of origin and the employer must notify the local labor office about the hire.

EU foreigners are not viewed as foreigners for employment purposes. They must register their stay in Poland if it exceeds three months (for evidentiary purposes).

Minimum salary

The statutory minimum salary applies to employees irrespective of the sector. In 2019 it will be PLN 2,250 gross (approx. €520) a month.

F. Insurance

Different types of insurance are recommended in the "construction" phase and "operating" phase of the investment. Some of them should be obtained by the investor / owner of the production plant, others should be requested from the general contractor and other parties involved in the construction process.

Insurance policies covering the risk during the construction phase

General comments

In general, taking out insurance policies covering construction risks is optional. Only in some cases are such insurance policies compulsory. In particular, architects and civil engineers are obliged to obtain professional liability insurance (the insurance amount prescribed by the statutory regulations is low, so additional coverage should be requested).

Optimal insurance coverage depends, in particular, on the terms of the policies, so it is crucial to customize them to the particular investment project by including relevant extensions and exclusions of the insurer's liability. One of the key factors is the insurance amount, which should correspond to the project's parameters (including the value of construction works).

Construction All Risks (CAR) / Erection All Risks (EAR) insurance

At its core, CAR / EAR insurance provides coverage against the risk of accidental physical damage to construction works, machinery and equipment on the building site. Normally it also covers liability towards injured third parties for injuries or losses incurred in connection with the construction process.

The CAR / EAR insurance is usually taken out by the investor or the general contractor.

Usually the investor or the general contractor is the insuring party / policyholder insured under the CAR / EAR policy. Typically all the entities involved in the construction process, including the investor, general contractor, subcontractors, architects and civil engineers are co-insured under this policy.

Usually the CAR / EAR insurance coverage is divided into two sections. Section I (property coverage) typically covers:

- all construction works, materials and devices;
- the construction equipment and machines / facilities to assemble;
- the construction area and its surroundings;
- the property of the investor and property under the control of the contractors.

Section II (liability coverage) typically covers the liability of the policyholder / the insured for losses and injuries incurred by third parties in connection with the construction works covered by the insurance in section I. Normally it only covers tortious (*ex delicto*) liability and not the liability for non-performance or improper performance of a contract.

Usually the policy is taken up for one year (renewable) or for the entire duration of the construction works. In each case it should cover the construction works from their commencement until the handing over of the completed production plant to the investor. It can also cover the warranty period for the performed construction works.

Liability insurance

In addition to the CAR / EAR insurance policy it is recommended that the investor requires the general contractor and other parties involved in the construction process to take out general and professional liability insurance policies. Such policies, which are usually taken out for one year, should be procured for the entire duration of the construction works or even the warranty period for the performed construction works.

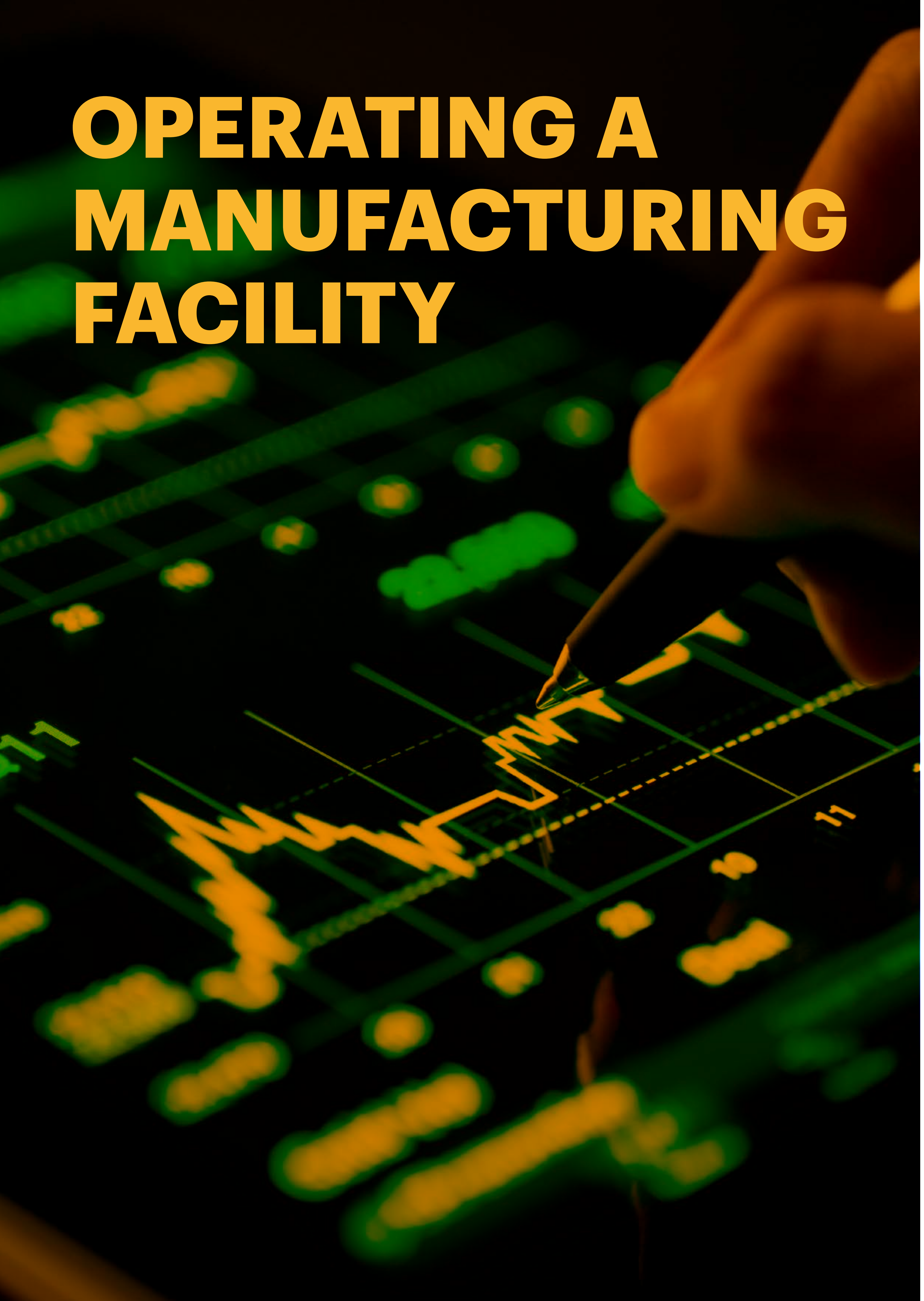
The liability of architects and civil engineers insurance

Architects and civil engineers are the policyholders/ insureds under this compulsory policy.

Further to the statutory regulations, this insurance covers liability for damages incurred by third parties incurred as a result of actions or omissions of the policyholder during the insurance period in connection with the performance of independent technical functions connected with the construction process.

The insurance covers damages reported during the insurance period and after its expiry, if the event causing the damage occurred during the insurance period.

OPERATING A MANUFACTURING FACILITY



A. Environment-related permits to be obtained

To operate in accordance with Polish law, the company is obliged to obtain certain environmental-related permits.

- **Permit for emitting gases or dusts into the air**
  The company operating an installation emitting pollutants into the air is obliged to obtain the permit determining the emission limit values. Pursuant to Polish law, the said permit is not required for the operation of gas-fired heating boilers with a total capacity of up to 15 MW. However, the operation of gas-fired energy installations with a total nominal capacity between 1 MW and 15 MW must be notified to the competent environmental authority.
- **Water permit**
  Pursuant to Polish law, the entity needs to obtain a water permit for e water delivery and sewage discharge. The wastewater discharged into municipal sewage systems must meet certain quality standards. The discharge of rainwater to surface water or the ground, as well as the discharge of industrial sewage containing certain substances particularly damaging to the natural environment to a sewage system owned by another entity requires a relevant water permit.
- **Waste generation/collection/treatment permit**
  Under Polish law, entities generating waste are obliged to obtain a waste generation permit if generating more than 1 tonne of hazardous waste, or more than 5,000 tonnes of other waste, annually, generated in relation to the operation of an installation. The above-mentioned requirements do not apply to the generation of communal waste (odpady komunalne). The entity needs to obtain the waste collection permit or waste treatment permit, if the entity operates in this regard. Moreover, the waste generation permit may include waste collection or/and treatment.
- **Integrated Pollution Prevention and Control (IPPC) permit**
  The IPPC permit shall be required for the operation of an installation whose functioning, due to the type and scale of activity pursued in that installation, may cause significant pollution of individual elements of nature or the environment as a whole. Installations requiring the IPPC permit shall comply with environmental protection requirements arising from the

best available techniques, and in particular they may not result in emission limit values being exceeded.

- **Greenhouse gas emissions permit**
  Under Polish law the company is obliged to obtain the greenhouse gas emissions permit if the installation emits greenhouse gases and the operation is covered by the system for greenhouse gas emission allowance trading. The said system is a tool to fight climate change and to reduce greenhouse gas emissions in a cost-effective way.

B. Connecting to utilities

There should be no difficulty for the company to connect to water and energy utilities, though site selection should include initial assessment of connection conditions and cost.

Like in other EU countries, network operators for power and gas are unbundled from the generation and sale utilities; providing access to infrastructure is considered to be a public service obligation, save for considerations of lack of technical conditions or cost.

Depending on off-take requirements, the company would interface most likely with one of two gas utilities (high/low pressure networks), while for power it would be either the Transmission System Operator (TSO) (400-110kV) or one of five major Distribution System Operators (DSOs) (110 kV and below;, depending on location).

Special attention should be paid to management of energy supply:

i. all offtakers enjoy the freedom to select the supplier of electricity; large offtakers may purchase power on the Polish Power Exchange. Change of supplier should be effected within 21 days;

ii. intense power consumers may sign up for certain reliefs (renewable surcharge/green certificate obligations, excise duty on power).

It is advisable to consider installing renewable energy production facilities feeding into the grid, optimizing loads through behind the meter production ("self-consumption"). Support schemes are in place (renewable sources – auction-based Contracts for Difference or feed-in tariffs for small installations) or under development (high efficiency cogeneration).

Recently (July 2019) the Polish Government submitted to the Parliament a draft law simplifying administrative procedures for the expansion of low pressure gas networks and interconnecting self-consumption power and/or heat units to high pressure networks. The law, expected to be adopted and enter in force within a few months, will further support investment requiring optimizing power and heat consumption.

C. Health and Safety

Basic internal regulations

Remuneration rules and other benefits might be regulated in a collective bargaining agreement ("CBA") between the employer and trade unions operating at the workplace (if any).

Employers with 50 employees and more who are not covered by a CBA are required to regulate the work organization rules and remuneration conditions in the Workplace Rules and Remuneration Rules respectively. If there is a trade union operating at the employer these rules must be agreed with trade unions. If there is no trade union, the employer may introduce and amend these rules without consulting them with the employees.

The employer may adopt other internal regulations or policies as it sees fit.

Flexibility of working time arrangements

Generally, labor law provides for a 40-hour working week. The weekly working time may not exceed on average 48 hours (including overtime) in the applicable calculation period (in certain situations even up to 12 months).

Labor law provides for some flexibility in working time arrangements. Various working time systems exist which may allow working hours to be adjusted to meet production needs.

Flexibility may be included by a non-standard approach to an employee's work time schedule. If needed, it may provide for varied work start times on scheduled workdays or an optional time range for an employee to decide when to start work on a given day.

Employee representation bodies

Workers (employees and civil law contractors) are allowed to form trade unions. A trade union is founded based on a resolution of at least 10 entitled persons. Trade unions amongst others represent employees in relations with the employer in individual or collective matters and supervise health and safety at the workplace. Selected members of trade unions enjoy a number of rights, e.g. protection against termination of employment.

Employees may also establish another independent entity to represent them before the employer, namely a Works Council. A Works Council might be established when the employer has at least 50 employees and at the initiative of at least 10% of the employees.

Health and safety information duties

The employer is responsible for health and safety in the workplace. Therefore, the employer should prepare mandatory documents related to occupational risks and hazards and take appropriate measures to protect health and safety at work. The employer has to inform and consult all activities related to health and safety at work with employees or their representatives.

If a company employs more than 100 employees, a health and safety service must be set up to perform an advisory and supervisory role concerning health and safety at work. If there are more than 250 employees, the employer must establish a health and safety committee as its advisory and opinion-making body.

D. Financing operations of a Polish manufacturing subsidiary

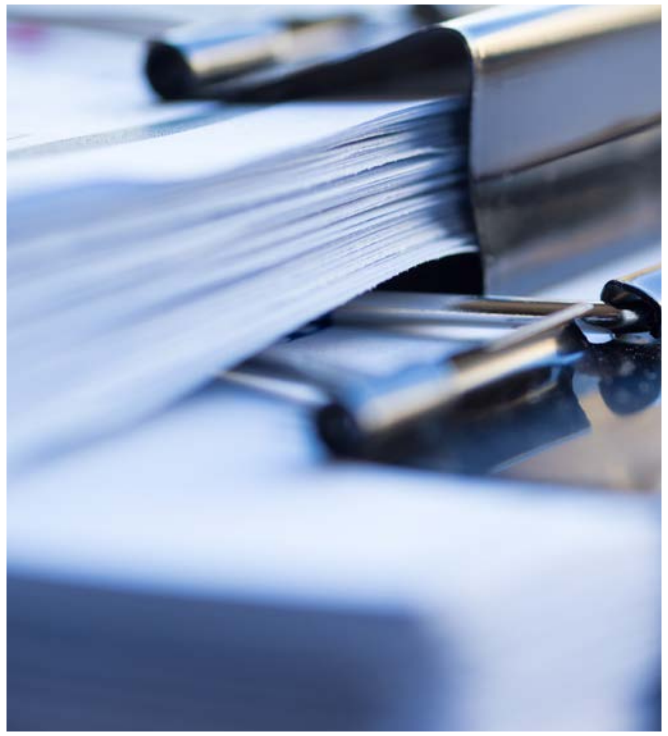
Taxation of equity

Corporate Income Tax

Assuming that a Polish subsidiary does not use any external financing, it could finance its investment and operations through either intra-group equity or debt.

To start with equity, this can be contributed to a Polish subsidiary either as a cash injection or in kind. A Polish subsidiary shall be free from any corporate income tax (CIT) upon any such contribution.

Injection of cash would not involve any CIT liabilities for the injecting shareholder. Moreover, in case of an in-kind contribution being made by the foreign shareholder into a Polish subsidiary, as well as in case of any such cash in-kind contributions being made by another foreign entity from a jurisdiction having a tax treaty with Poland (a tax treaty jurisdiction), the



contribution in-kind (unrelated to real property located in Poland) should not trigger any CIT implications in Poland for the contributing shareholder either. In any event, specific advice on CIT implications of any such contribution in kind would require detailed information on the assets being contributed to a Polish subsidiary and the manner of their actual transfer to a Polish subsidiary within the framework of the contribution.

VAT

Injection of cash into a Polish subsidiary would have no effect in the area of Value Added Tax (VAT). A brief introduction outlining major rules of VAT taxation is also provided below.

However, an in-kind contribution of assets (for instance, of a production line) by a foreign shareholder into a Polish subsidiary could attract VAT at a Polish subsidiary. Specific advice on VAT implications of any such contribution in kind would require detailed information on the assets being contributed to a Polish subsidiary and the manner of their actual supply to a Polish subsidiary within the framework of the contribution.

PCC

Both a cash injection and an in-kind contribution would trigger in Poland a tax on civil law activities (commonly abbreviated in Polish as PCC) at the rate of 0.5% of the nominal value of the share capital issued by a Polish subsidiary in consideration for the injection or contribution (exemptions from PCC may apply in that respect, for instance in case of a going concern being contributed to a Polish subsidiary in kind). Assuming that the share capital increase is executed in the form of a notarial deed, the PCC reporting and payment duties would be dealt with by the public notary.

Please note that in case a share premium arises upon an increase of the share capital in a Polish subsidiary (i.e. when the nominal value of the respective shares issued by a Polish subsidiary is fixed above the value of the cash injection or of the in-kind contribution), only the nominal increase attracts the 0.5% PCC, the share premium being free from any PCC. This approach has been so far consistently accepted by Polish tax authorities and, consequently, has been frequently used in Polish business practice in equity funding operations. In any event, it is highly recommended that such allocation of the contribution to a company's share premium be supported by a sound business justification.

Taxation of debt

CIT: general rules

If a loan is extended to a Polish subsidiary rather than an equity contribution, the principal amount of the loan would not give rise to any CIT exposure for either a Polish subsidiary or the lender; in particular, it would represent for a Polish subsidiary neither taxable income upon receipt nor a tax-deductible cost upon reimbursement. It would not involve any CIT implications for the lender (including the foreign shareholder, as the case may be) either.

VAT

A loan extended to a Polish subsidiary would have no VAT effects.

PCC

Conversely, that loan can trigger PCC in Poland, payable by a Polish subsidiary within 14 days of the loan agreement at the general rate of 0.5% on the nominal amount of the loan. However, in practice various exemptions from PCC could apply so as to eliminate any PCC exposure. The most popular measures include loans granted by a direct shareholder as well as loans granted by the lenders within the scope of their financial services activity, which are both free from any PCC.

CIT: deduction of interest at a Polish subsidiary

As a matter of principle, interest on loans relating to the ordinary business of the borrower is deductible on a cash basis, when paid or deemed to be paid (e.g. when compounded or set off). Still, in case of loans relating directly to investment in fixed assets, the interest is directly deductible only if paid after the fixed assets concerned are available for use, whereas any interest paid prior to that date will add to the depreciable value of these assets and become deductible only by way of depreciation write-offs.

Notwithstanding the above, Polish tax laws disqualify excessive interest from any such deduction. In that area Poland has introduced, as from 1 January, 2018, new, more restrictive interest deductibility rules. Under these new rules any surplus of financing costs over interest income (referred to as net financing costs) is deductible by the borrower, for CIT purposes, only up to 30% of its adjusted EBITDA, subject to a safe harbour of PLN 3 million (€0.7 million) [1].

These new interest limitation rules apply to financing from any entities, whether related or unrelated (including unrelated banks). Net financing costs which cannot be deducted during a tax year due to application of these new thin capitalization rules may be carried forward for deduction within five subsequent years immediately following that tax year.

1 It is currently debated how these thresholds interplay with each other. As per the date of this memorandum Polish tax authorities seem to be taking the view (less beneficial to businesses) that these thresholds cannot be cumulated and only the higher of the two applies. The issue is likely to be decided in the case law of administrative courts (which are taking opposite views) or through a legislative amendment (although no such amendment is currently in the pipeline).

E. Taxation of a Polish subsidiary's profits in Poland

Any profits earned by a Polish subsidiary would be subject to CIT at the rate of 19%.

Under the rules applicable from 2018, CIT would be levied and calculated separately on capital income of a Polish subsidiary (such as, for instance, dividends, royalties or income from disposal of shares or securities) and on the remaining income items (referred to as business income). This implies in practice that, amongst others, losses incurred from a Polish subsidiary's capital investments could not be set off against its regular business income.

The tax will first be calculated and paid by way of monthly advances (based on monthly profits, if any, without any CIT returns filed at that stage). A Polish subsidiary would subsequently be required, within three months from the end of its tax year, to calculate its annual CIT liability (or loss), file an annual CIT return and, in case of profits being reported, pay the amount of the annual CIT liability to Polish tax authorities (less the advances paid already during the year).

In addition to the annual CIT statement a Polish subsidiary would also be required to issue its annual financial statement within six months following the end of a financial year and file that financial statement, including a report of a statutory auditor if mandatory, with Polish tax authorities within 10 days of that financial statement being approved by the company's shareholders meeting (similarly, that financial statement should also be filed with a commercial registry court, within 15 days of the financial statement being approved as mentioned above).

The tax year of a Polish subsidiary would by default be equal to a calendar year, unless the company chooses otherwise, within the limits established in the tax legislation. In particular, a Polish subsidiary could apply a tax year of 12 months different from a calendar year or even apply a tax year longer than a period of 12 months (from 12 to 23 months). Other alternative rules could also be opted for upon tax registration of a Polish subsidiary's activities in Poland, such as, for instance, an accounting-based foreign exchange (FX) calculation method (as opposed to tax-based FX calculation method applicable by default).

A tax loss incurred by a Polish subsidiary in a particular tax year, if any, could be carried forward for deduction within five tax subsequent years immediately following that tax year, up to 50% of that tax loss during a tax year. Alternatively, as from 2019, the tax loss may also be deducted in a single tax year within the five tax years' deduction period without the 50% limitation, albeit up to the amount of PLN 5 million (the outstanding part of the tax loss remaining available for deduction in the subsequent tax years of the five tax years' deduction period, subject to the 50% limitation).

It may also be useful to take note of new CIT rules targeting specifically commercial real property, designed to impede tax planning strategies in the real property sector. Starting from 1 January, 2019, all buildings made available for use in Poland by corporations (under a lease or any similar contract) will, subject to certain exceptions, attract in Poland a distinct income tax (referred to as a minimum buildings tax), levied at the rate of 0.035% of the current depreciable value (less the allowance of PLN 10 million) of the property (similar rules have already applied as from 1 January, 2018, but solely in respect of shops and office buildings). The amount of the minimum buildings tax is available for deduction from regular CIT liabilities of a corporation. Still, since a Polish subsidiary's principal business shall mainly involve manufacturing and thus any buildings forming the Polish plant will be used for that purpose and not for any lease (or similar purposes), the minimum buildings tax is less likely to have a genuine impact on activities of a Polish subsidiary.

F. Distribution of profits from a Polish subsidiary

Under Polish business practice, profits can typically be distributed as dividends, interest, royalties or service fees. Divergent tax implications of these distribution patterns are briefly outlined below.

Dividends

A foreign shareholder receiving dividends from a Polish subsidiary would fall subject to withholding tax (WHT) in Poland on these dividends. The default WHT rate would be 19% but in case of shareholders from tax treaty jurisdictions a reduced WHT rate (typically in the range of 5-15%) could apply.

The tax treaty WHT rate would apply provided that the dividend recipient is the beneficial owner of the dividends and various formalities required by Polish law are met, such as delivery by the shareholder to a Polish subsidiary of a valid tax certificate demonstrating the shareholder's fiscal residence in the home jurisdiction.

Moreover, in case of an EU/EEA shareholder holding at least 10% of shares in a Polish subsidiary for an uninterrupted period of at least two years, the dividends would be entirely exempted from any WHT in Poland, subject to conditions.

Dividends will not be tax-deductible at a Polish subsidiary.

WHT

A foreign lender lending to a Polish subsidiary would principally fall subject to WHT in Poland on the interest income from such a loan. The default rate of that withholding tax in Poland would be 20%, but in case of lenders from tax treaty jurisdictions a reduced WHT rate (typically in the range of 5-15%) could apply.

In case of a tax treaty jurisdiction lender, the withholding tax rate for interest can be reduced down to a tax treaty rate (usually –5-15%) or a WHT exemption can apply, provided that that lender is the beneficial owner of the interest, the interest rate and terms have been fixed at arm's length[2], and various formalities required by Polish law are met, such as delivery by the lender to a Polish subsidiary of a valid tax certificate demonstrating the lender's fiscal residence in the home jurisdiction.

Moreover, in case of an EU/EEA lender (for instance, an EU/EEA[3] subsidiary from within the investor's group) holding at least 25% of the shares in a Polish subsidiary for an uninterrupted period of at least two years, the interest would be entirely exempted from any withholding tax, subject to conditions.

As regards CIT implications for a Polish subsidiary as the borrower, the interest paid under the loan facility would principally be deductible, subject to detailed interest deductibility and transfer pricing comments.

Royalties

A foreign recipient of royalties would fall subject to WHT in Poland on the royalties paid by a Polish subsidiary. The default WHT rate would be 20%, but in case of royalty recipients from tax treaty jurisdictions a reduced WHT rate (typically in the range of 5-15%) could apply.

The tax treaty WHT rate or exemption for royalties would apply, provided that the royalty recipient is the beneficial owner of these royalties and various formalities required by Polish law are met, such as delivery by the royalty recipient to a Polish subsidiary of a valid tax certificate demonstrating the royalty recipient's fiscal residence in the home jurisdiction.

2 In case of interest found by Polish tax authorities to be in excess of the market level, the surplus could be subject to WHT in Poland at the default 20% rate mentioned above.

3 EEA stands for the European Economic Area, which comprises of all the EU member states, as well as Norway, Iceland and Lichtenstein.

Moreover, in case of an EU/EEA royalty recipient holding at least 25% of shares in a Polish subsidiary for an uninterrupted period of at least two years, the royalties would be entirely exempted from any WHT, subject to conditions.

As regards CIT implications for a Polish subsidiary as the payor of royalties, royalties by a Polish subsidiary would principally be deductible, subject to detailed comments on intangible services fees below.

A Polish subsidiary can be required to charge VAT on the royalties paid to a foreign recipient (under a reverse charge mechanism), although that tax would also typically be deductible for the Polish subsidiary and actual VAT cash flows could be avoided.

Service fees

As a matter of principle, a foreign recipient of service fees paid by a Polish subsidiary, established in a tax treaty jurisdiction, would not fall subject to any CIT or 20% WHT in Poland, provided that various formalities required by Polish law are met, such as delivery by the service fee recipient to a Polish subsidiary of a valid tax certificate demonstrating the recipient's fiscal residence in the relevant tax treaty jurisdiction. Nevertheless, under certain tax treaties concluded by Poland such service fees could actually qualify as royalties and fall within the scope of Polish WHT on that account; in such a case the comments above on WHT treatment of royalties (including available WHT exemptions or reduced rates under a tax treaty) would apply accordingly.

As regards CIT implications for a Polish subsidiary as the payor of service fees, these fees would principally be deductible, subject to detailed comments on intangible services and transfer pricing below.

A Polish subsidiary can be required to charge VAT on the service fees paid to a foreign recipient (under a reverse charge mechanism), although that tax would

also typically be deductible for a Polish subsidiary and actual VAT cash flows could be avoided.

Intangible services fees

Although service fees would principally be deductible for a Polish subsidiary, certain important limitations can also apply in that respect in accordance with the new laws introduced in Poland as from 1 January 2018.

Under that new regime fees paid by Polish corporations directly or indirectly to related recipients for various intangible services listed in the legislation can be deducted, for CIT purposes, only up to 5% of adjusted EBITDA of the payor, increased by PLN 3 million of a safe harbor. The limitation applies to services such as advisory, market research, advertising, management, data processing or insurance. It also covers royalties paid in consideration of copyrights, licences, industrial property and know-how.

The limitation mentioned above does not apply if, inter alia, such services are directly related to production of goods or provision of services by the payor of the fees or if the fees at hand are covered by an advance pricing agreement concluded with the Polish tax administration. Intangible service fees which cannot be deducted during a tax year due to these new limitations may be carried forward for deduction within five subsequent years immediately following that tax year.

G. New Polish Withholding Tax Requirements

Notwithstanding the comments above on taxation of dividends, interest, royalties and services, effective as from 1 January, 2020, Polish laws also require that withholding tax (WHT) should first be collected on these payments at default rates (20% for interest, royalties and services, 19% for dividends) and any WHT rate reductions or exemptions could only be applied at a subsequent stage, as explained below.

Under the revised withholding tax scheme, there will be two regimes applicable to the collection of withholding tax depending on the value of interest payments.

i. if the aggregate value of payments exceeds PLN 2,000,000 per fiscal year to one recipient, the remitter must collect withholding tax at the statutory rate of 20% or 19% (applicable to any surplus over the PLN 2 million threshold) but this can be mitigated by:

   a. a tax refund; or

   b. an exemption based on a specific declaration of the remitter filed with the fiscal office; or

   c. an exemption based on a tax opinion obtained from the tax office.

This effectively means that the current treaty / domestic exemption regime is replaced with a "pay and refund" regime subject to exemptions that may be granted on a per transaction basis.

ii. If the aggregate value of payments is lower than PLN 2,000,000 per fiscal year to one recipient, the previous regime applies, but the remitter is obliged to demonstrate special due care when verifying conditions for exemptions or for not withholding tax.

Mitigation: Tax refund

The recipient or the payor withholding the tax, depending on who incurred the economic burden of the tax, will have the right to apply for a refund of the tax. The refund request will have to be accompanied by extensive documentary evidence, including tax residence certificates, bank transfers, contractual or corporate documentation, other declarations and statements showing the conditions for WHT mitigation (e.g. that the relevant conditions for the application of preferences are met, that the recipient is the actual beneficial owner of payments and conducts genuine business activity in the country of tax residence). As can be seen, some of these documents will have to be provided by the recipients.

A refund will be made within six months, subject to a possible extension of that period by the tax office.

Mitigation: Exemption based on a remitter's declaration

Polish payors obliged to withhold and remit the tax will have the right to apply for exemption from withholding based on a declaration made under pain of criminal liability (fines or imprisonment) and additional tax liability (additional 10% of the tax base) that confirms that all conditions for a withholding tax exemption are met and that the remitter holds all the required documents evidencing the satisfaction of all conditions for an exemption.

Making such a declaration will require the collection and verification of similar documents required for a tax refund as discussed above. In other words, substantial due diligence work will be required to demonstrate that the remitter exercised due diligence.

Mitigation: Exemption granted under a tax office opinion

An exemption from withholding will also be available based on an opinion obtained from a tax office upon the remitter's application. This exemption may be applied only if the exemption from withholding were to apply within the ambit of relevant EU directives, i.e. within the EU/EEA and for intra-group payments.

An application for an opinion will have to be accompanied by extensive documentation that is similar to the documentation required for a tax refund, as discussed above.

There will be a six-month deadline to issue the opinion, subject to a possible extension. An opinion will have a validity period expiring after a maximum of 36 months (therefore, for instance, in financing for a period exceeding three years the borrower will have to apply multiple times for the exemption).

H. General Comments on Value Added Tax (VAT)

The Polish VAT system is based on EU VAT legislation common to all EU member states. Accordingly, Polish VAT rules can be expected to be essentially similar to those applicable in other EU member states, which considerably facilitates EU trade in goods manufactured in Poland.

VAT-taxable transactions include principally:

i. supply of goods and provision of services for consideration;

ii. export of goods outside the EU and import of goods into the EU;

iii. intra-EU acquisition of goods for consideration;

iv. intra-EU supply of goods for consideration.

The standard VAT rate in Poland is currently 23%. Certain goods or services attract reduced VAT rates of 5% or 8%.

Notwithstanding the above, various VAT exemptions apply, including in areas such as financial services, public interest services (such as health care) or certain real property transactions. Moreover, certain transactions, such as a transfer of a going concern or a standard sale of shares in a company, may fall outside the scope of VAT.

As a rule, VAT is levied on consumer expenditure. This effect is achieved by allowing businesses to deduct from their output VAT liability (the VAT charged on their sales) the amounts of input VAT they were charged by their suppliers in the price of the goods or services purchased for the purpose of VAT-taxable activities. In the case when an input VAT amount for a particular reporting period exceeds the respective output VAT amount, the business concerned can claim a refund from the tax authorities of the surplus VAT in cash directly to its bank account (or carry forward that surplus for deduction in future reporting periods). In Poland the standard recovery deadline is 60 days (subject to extensions if an additional review is required), albeit 25 or 180 days' recovery periods may apply in certain circumstances.

Since VAT can be imposed on a particular taxable transaction only in one member state, it is crucial to establish where that taxable transaction is deemed to be carried out. A transaction deemed as carried out in a specific member state would trigger VAT in that member state, at the rate and in accordance with detailed tax rules provided in the national VAT laws of that member state (and may also involve an obligation for the supplier to VAT register in that member state). For that purpose EU laws establish detailed rules on place of supply addressing various types of business transactions.

In particular, a sale of goods located in a member state that are not moved, or are moved within that member state, will be subject to VAT in that member state. In the case of a sale of goods moved within the EU, the sale will be subject to exemption/0% VAT in the member state of origin and, as a separate taxable transaction, in the member state of destination, at the rate applicable in that member state (similar mechanisms will apply also to import and export of goods from and into the EU). As far as B2B services are considered, these are deemed to be provided in the member state where the recipient is based (and thus would not trigger VAT in the member state where the service provider is based).

Specific features of EU and Polish VAT system include also the reverse charge mechanism, applicable to intra-EU acquisition of goods, as well to acquisition of services from abroad. Under that mechanism it is the purchaser (and not the seller, as would principally be the case for any VAT-taxable transaction) which charges and reports to relevant tax authorities the VAT due on a transaction; however, that VAT amount is also deductible for the purchaser as an input VAT amount and, consequently, no VAT would typically become payable on such transaction (with the exception of imports, which require an actual payment upon customs clearance of import VAT, subject to subsequent deduction or refund), provided that the goods or services are directly linked to business activities of the purchaser that is VAT-taxable under the general rules.

Businesses carrying out activities subject to VAT should register as VAT taxpayers in the relevant member state or states where these activities are deemed to be carried out (see above).

In Poland in case of large undertakings VAT is being reported on a monthly basis and the VAT due, if any, should be paid by the 25th day of the month following the month being reported.

VAT taxpayers are also obliged to prepare and submit on a regular basis Standard Audit Files for Tax (SAF-T). Additional compliance obligations may apply to businesses engaging in intra-EU transactions or trading in sensitive goods.

One of the systemic VAT issues in the recent period has been VAT fraud, involving essentially various schemes applied to obtain a VAT cash refund without the corresponding output VAT payments being made to tax authorities. These schemes can also affect legitimate businesses, which occasionally face the refusal by tax authorities of VAT deductions or refunds on account of the fact that the goods or services they acquired were at a certain point in the supply chain used by other entities for such VAT fraud as mentioned above. The major debatable issue in such cases was whether purchasers were acting with due diligence when verifying their suppliers and their mutual transactions, so as to avoid acquisition of goods or services used for VAT fraud at a certain stage of the supply chain.

It is thus important to note in that regard that the Ministry of Finance released in April 2018 detailed guidelines indicating the procedures that purchasers of domestic goods are expected to follow to demonstrate due diligence within the meaning above. A Polish subsidiary would be well advised, as far as its Polish supplies are concerned, to examine to what extent such a VAT fraud issue could have an impact on its Polish operations and, if so, whether and which due diligence procedures it should follow with reference to the guidelines of the Ministry of Finance mentioned above.

In addition to the above, a voluntary B2B split payment has been introduced in Poland as from 1 July 2018. Under that system all businesses have VAT accounts established for them by the banks running their regular accounts (consequently, a Polish subsidiary would also have VAT accounts established for it by the banks running the company's regular accounts in Poland). A purchaser of goods or services can choose, at its sole discretion, to pay the entire amount due to the seller or provider into their regular bank account, or to split the price payment between the net amount allocated to the seller's or provider's regular account and their VAT account.

Amounts deposited in the VAT accounts can only be used by taxpayers for specific purposes listed in the tax legislation, including payment of VAT to tax authorities or payment of the VAT part of the price to their own supplier's or provider's VAT account.

Under certain conditions taxpayers in a regular VAT situation can also request a local tax authority to agree that the amounts available in their VAT accounts be released into these taxpayers' regular accounts. Tax authorities are required to decide on such requests within 60 days.

Various tax benefits are available to taxpayers using the split payment mechanism in their transactions, including a (rebuttable) presumption of due diligence within the meaning discussed above (and thus increased legal comfort in the area of VAT deduction).

A Polish subsidiary should consider effects which the split payment mechanism could have in its business, including both a potential decision as to the application of that payment method in transactions with a Polish subsidiary's suppliers, as well as the risk of that payment method being opted for by a Polish subsidiary's major client or clients in Poland.

A number of adjustments in the split payment system are anticipated to enter into force in 2019. Furthermore, it is also expected that as from 2019 the split payment system will become mandatory for a list of 150 goods and services deemed as sensitive. A failure to apply the split payment mechanism to such sensitive goods and services would be subject to substantial fines and, potentially, even criminal liability.

I. VAT and customs duties on major flows into and from a Polish subsidiary

VAT

Imports of goods from outside the EU

In case of importation of goods by a Polish subsidiary from outside the EU, a Polish subsidiary can be required to charge VAT in Poland at the rate of 23% (although an optional procedure may also apply, subject to conditions, allowing for the imports to be VAT-reported in Poland without any actual cash payments upon importation). That tax would principally be payable upon customs clearance, before the goods can be released for circulation within the EU. Still, if the goods are intended for use in the company's standard business activities, that tax would also principally be deductible for a Polish subsidiary and importation should essentially be VAT-neutral (notwithstanding the cash flow required upon importation).

Acquisition of goods from other EU member states

In case of acquisition of goods by a Polish subsidiary from another EU member state, a Polish subsidiary can be required to charge VAT in Poland at the rate of 23% (under a reverse charge mechanism), although if the goods are intended for use in the company's standard business activities, that tax would also principally be deductible for a Polish subsidiary in its current VAT return and actual VAT cash flows could be avoided. Please also note that in order to further facilitate intra-EU acquisitions of supplies a Polish subsidiary could agree with a supplier from another EU member state that that supplier should establish in Poland a call-off stock. In such a case the EU supplier could warehouse its goods in proximity to the Polish plant, allowing a Polish subsidiary to collect goods needed for its current operations as and when required by a Polish subsidiary. Notwithstanding potential business benefits, the major VAT benefit of that arrangement would be to delay imposition of VAT until the time when (and impose VAT only to the extent that) particular goods kept in stock are needed and collected by a Polish subsidiary.

Domestic sale of goods

In case a Polish subsidiary sells goods in Poland to a Polish client without moving these goods, or if these goods move solely within the territory of Poland, a Polish subsidiary would be required to charge VAT in

Poland at the rate of 23%. The tax would increase the sales price of the goods and as such will be recovered by a Polish subsidiary from the purchaser. In turn, assuming that the client acquires goods for use in its standard business activities, the VAT charged by a Polish subsidiary would also principally be deductible for the client and would not represent any definite cost.

Sale of goods to other EU member states

In the case when a Polish subsidiary sells goods to a client VAT-registered in another EU member state and in that respect the goods actually move to another member state (in line with proper evidence collected by a Polish subsidiary), the Polish subsidiary would charge VAT in Poland at the rate of 0% and thus no actual VAT cash flows would arise in Poland for the Polish subsidiary. Please also note that, similarly as in the case of intra-EU supplies acquired by a Polish subsidiary (see above), in case of an established relationship with a client or clients in other EU member states the Polish subsidiary could consider establishment of a VAT call-off stock in these member states, if and as local VAT laws allow.

Accordingly, the client would typically be required to charge VAT in the member state of destination of the goods at the relevant rate applicable in that member state (under a reverse charge mechanism), although if the goods are intended for use in the client's standard business activities that tax would also principally be deductible for the client and would not represent any definite cost.

Exports of goods outside the EU

In the case when a Polish subsidiary sells goods to a client and in that respect the goods are customs-cleared for exportation and actually move outside the EU (as demonstrated by proper customs documents held by the Polish subsidiary), the Polish subsidiary would charge VAT in Poland at the rate of 0% and thus no actual VAT cash flows would arise in Poland for the Polish subsidiary.

Customs

Any goods imported by a Polish subsidiary from outside the EU would need to be submitted to customs clearance before they can be admitted for circulation within the EU. Consequently, the Polish subsidiary would need to register in Poland for customs purposes and obtain to that effect its own EORI number (which may require establishment of a financial security on account of potential customs debt), as well as file a customs clearance declaration in respect of each consignment. In practice these processes could be outsourced to a reputable Polish customs agency. Once customs-cleared for circulation the goods could be moved throughout the EU without triggering any further customs duties or similar fees.

In any event, it is also worth noting that the applicable customs laws provide for a number of convenient customs procedures, other than a mere customs clearance mentioned above, which particular goods may be submitted to in accordance with specific business needs of a Polish subsidiary or its partners. For instance, inward processing allows for work being carried out on certain items brought temporarily to Poland effectively without exposure to customs duties. Other procedures, such as a customs warehouse, may also allow goods to be moved through Polish territory without triggering any customs duties.

A. Transfer pricing restrictions

Polish tax law provides for detailed transfer pricing (TP) rules requiring essentially that transactions with related entities (or with entities, related or not, based in tax havens) be made at arm's length (i.e. under such conditions as unrelated businesses would accept). Elaborate TP documentation requirements have been also laid down (see below) to ensure that the arm's length principle is observed.

In case Polish tax authorities conclude that particular transactions between a Polish corporation and its related (foreign or domestic) entity do not conform to the arm's length standard, they can assess profits or losses of the Polish corporation at a level they consider compliant with TP rules. Any adjusted profit may be taxed at a penalty rate, increased by 10%, 20% or 30% compared to the standard 19% CIT rate (0% being the minimum additional tax imposed in case of an assessment of additional income based on TP regulations, while 20% or 30% may be used if additional conditions are fulfilled). Polish tax authorities have recently enhanced and improved targeting of TP inspections, which leads to increased TP assessments and additional TP risks for corporations.

Under the TP regulations currently applicable, a Polish corporation can be required to collect, maintain and update (and share upon request or file with Polish tax authorities, as the case may be) the following TP documentation items:

i. A local file – TP documentation focused on the Polish corporation and its transactions with related entities, required from Polish corporation taxpayers whose related party transactions exceed the statutory thresholds (PLN 10 million for financial and goods transactions, PLN 2 million for others), with annual revenues or expenses exceeding €2 million (as per the preceding tax year; in case of a Polish subsidiary that local file requirement would be triggered in the first tax year during which the €2 million threshold is exceeded), to be produced within nine months as from the end of the tax year of the Polish corporation (as regards TP reporting for 2018).

ii. A TP statement – a written communication from the Polish corporation, required from Polish corporations obliged to prepare the TP documentation, in practice signed by the company's management board members, filed by the Polish corporation (within nine months as from the end of the tax year of the Polish corporation) with Polish tax authorities and confirming that the TP documentation has been produced by that Polish corporation as required by applicable Polish laws, as well as that the prices set in transactions with related entities are at arm's length.

iii. A TP return – a special form, required from Polish corporations obliged to prepare TP documentation (or exempted from the obligation to prepare TP documentation but realizing transactions with related entities fulfilling statutory criteria), filed with the tax authorities (within nine months as from the end of the tax year of the Polish corporation), providing data on the transactions with related entities as per the mandatory template.

iv. A benchmarking study – an analysis, required as part of the local file (see (i) above), providing data on conditions of transactions between unrelated parties comparable to the TP transactions reported by the Polish corporation, so as to demonstrate that that corporation engaged in these transactions under market conditions.

v. A master file – a group TP documentation, to be produced within 12 months as from the end of the tax year of the Polish corporation, outlining the group's capital structure, TP policies, significant intangible assets and financial status, required from Polish corporations belonging to capital groups whose consolidated turnover exceeds PLN 200 million.

vi. A country-by-country (CbC) report – documentation required from taxpayers belonging to groups with consolidated revenues above €750 million, which provides information on profits, tax exposure and activities of the group members separately per each of the jurisdictions where the group is present; each entity belonging to a capital group whose consolidated revenues exceed in a given year an equivalent of €750 million is obliged to submit the CbC notification in which it informs the Ministry of Finance that it is a parent company, a designated entity or another type of entity filing a CbC report or it indicates the entity submitting the CbC report (its name, address, tax identification number), specifying the country or territory where the CbC report will be submitted; the CbC notice must be filed by no later than the last day of the fiscal accounting year of the given corporate group.

The applicable laws do not require all intra-group transactions to be included in the TP documentation, but only those with value above the reporting thresholds established in Polish TP regulations. Depending on the level of income of the Polish corporation the TP reporting threshold for transactions with related entities may vary from €50,000 (for corporations with income in the €2-20 million range) to €500,000 (for corporations with income above €100 million).

Notwithstanding the statutory thresholds for the TP documentation, Polish tax authorities can also request that TP documentation be produced by a Polish corporation even if the thresholds mentioned above have not been exceeded, if these authorities have grounds to believe that that corporation may be incompliant with the arm's length standard.

In addition, in certain circumstances Polish laws allow tax authorities to reassess profits or losses reported by a Polish corporation, even if TP rules do not apply to its specific transactions (for instance, taxable income can be allocated to a Polish corporation in case it obtains from a related or unrelated entity certain benefits at a consideration below the market level or for no consideration whatsoever).

B. Payroll taxation and social security contributions

Personal Income Tax

Remunerations paid by a Polish subsidiary to employees under work contracts (Polish: *umowa o pracę*) will be subject in Poland to personal income tax (PIT) at the progressive rates of 18% and 32% (the law permits only negligible tax-deductible costs). The taxable basis would include both the cash part of the salary and, if directly allocable to individual workers, the in-kind benefits (private health coverage, fitness packages and the like) customarily offered in Poland to employees. Similar rules would apply also to remunerations and fees of board members.

In such a case a Polish subsidiary would be required to calculate and report monthly PIT advance amounts on behalf of its employees, as well as collect that tax from their monthly remuneration and remit that tax to Polish tax authorities.

Alternative employment schemes, such as a services contract (concluded with individuals acting within the framework of their registered business activity), currently allow these individuals to reduce their PIT exposure to 19% (with any business expenses fully deductible), as well as to mitigate the cost of social security contributions (as discussed below); moreover, the PIT reporting would be handled entirely by the individual service providers themselves. However, such alternative schemes are only appropriate in certain cases and typically more for white collar staff.

In addition to the above, please also note that directors, managers or employees expatriated or delegated from foreign jurisdictions most likely may, following their arrival in Poland, become tax resident in Poland. That would imply that not only their remuneration received from a Polish subsidiary (if any) falls subject to PIT in Poland, but also their income originating from other jurisdictions (including income from work or services

provided to the shareholder, or their personal income from real property or financial investment). In any event, specific PIT advice can only be provided on a case-by-case basis, taking into account all personal circumstances of a particular expatriated or delegated person, such as the length of their stay in Poland or their family situation.

Social security contributions

Poland operates a public and mandatory social security system involving obligatory social security contributions paid by the employer to the Social Security Office (ZUS), including (i) pension contributions, (ii) disability contributions, (iii) sickness contributions and (iv) industrial injury contributions.

Pension and disability contributions are funded partly by an employer (from its own resources) and partly by an employee (which has their part of these contributions withheld from their monthly salary), while sickness insurance contributions are covered exclusively by the employee and the industrial injury contributions are covered exclusively by the employer. The current rates of the respective contributions (charged as a percentage of the calculation basis principally equal to the gross amount of a salary) are as follows:

Type of insurance	Rate of contribution	Employer's part	Employee's part
pension	19.52%	9.76%	9.76%
disability	8%	6.5%	1.5%
sickness	2.45%	n/a	2.45%
industrial injury	0.67 – 3.33%	0.67% - 3.33%	n/a

Additionally, the employee pays health insurance contributions (at the rate of 9%) and the employer pays contributions into the Labor Fund (at a rate of 2.45%) and into the Guaranteed Employee Benefits Fund (at a rate of 0.1%).

Altogether the costs of employment amount to approximately 48% of a net salary paid to an employee. Alternative forms of employment, mentioned above, help reduce these costs significantly.

Employee Capital Plans

In addition to the above, new regulations would impose on employers the obligation to establish an Employee Capital Plan (abbreviated in Polish as PPK). PPKs will be set up to systematically accumulate savings that will be paid to participants after they reach 60 years of age. In that respect the employer will be required to (i) enter into respective agreements with a financial institution, (ii) set up the PPK and (iii) pay contributions at the minimum amount of 3.5% of the salary (out of which 1.5% would be funded by the employer and 2% would be funded by the employee).

The largest employers (having at least 250 employees) may be faced with an obligation to set up their PPK as early as 1 July 2019.

C. Real estate tax

Corporations holding real property in Poland are subject to real estate tax (RET) collected by local municipalities (and not by local tax offices handling matters such as CIT, PIT and VAT). Although the general legal framework for RET is established at the national level, it is the local municipalities who fix (within the general legal framework) the RET rates applicable in their respective territories and also have the authority to provide (within the limits of EU law on state aid) general exemptions from RET applicable in their respective territories to specific activities (other than the exemptions already applicable across the national territory under the general framework).

The taxable real properties include land, buildings and other infrastructure, which attract varied tax rules and treatment. In case of land, RET is imposed on the bare surface of the property, whereas in the case of buildings RET is imposed on their usable area, and in case of other infrastructure RET is imposed on their initial depreciable value (as established for CIT purposes). The maximum RET rates applicable in 2018 in the case of real property used for business purposes are as follows:

Taxable property	Land	Buildings	Infrastructures
2019 RET rate	PLN 0,93/m2	PLN 23,47/m2	2%

If RET exemptions relevant to the Polish investment currently apply in a particular location, in order to introduce any such exemption discussions should be launched with the local authorities and, eventually, a relevant resolution providing such RET exemption should be passed by the city council. Careful review under EU state aid rules would be required to ensure that that resolution is properly structured and also meets the business needs of the investor.

In case of land and existing buildings and infrastructure RET is triggered as from the month following the month of acquisition of such property. Consequently, in respect of land (and any buildings and infrastructure which may already be located on that land) a Polish subsidiary would fall subject to RET as from the month following the month when the final real property agreement is executed. In that respect the Polish subsidiary should also file with the local authorities, within 14 days of acquisition of the land, a RET return reporting on the acquisition and providing data required for RET calculation.

In case of newly erected buildings and infrastructure, RET shall be triggered as from 1 January of the calendar year immediately following the calendar year during which these items were completed and released for use. Consequently, in respect of the buildings and infrastructures raised as part of a Polish plant, a Polish subsidiary would fall subject to RET only as from January of the calendar year immediately following the calendar year during which constriction of the Polish plant is completed and the plant is released for use. In that respect the Polish subsidiary will also be required to file with the local authorities an update of its RET return reporting on the completion and release for use of new buildings and infrastructure, including also data required for RET calculation.

D. Management of Polish tax risks

Tax risks, including the risk of detrimental assessment of facts or interpretation of law by tax authorities in a taxpayer's individual case, is inherent in any business activity. Such risks may translate into significant tax arrears, penalty interest, refusal of VAT deduction or refund, additional VAT liabilities, time-consuming tax inspections or even fines imposed on the board members and other corporate officers in charge of tax matters. It is thus customary for businesses to employ various tax risk management methods available under Polish law.

Such tax risk management measures include, most importantly, individual tax rulings issued by tax administration in writing upon the request of taxpayers. Should a Polish subsidiary seek such a tax ruling on any tax issue of concern, the tax administration would be required by the law to provide a tax ruling within three months of the request (in recent practice tax rulings have typically been issued to our clients well ahead of that deadline). Once issued, a tax ruling would bind all Polish tax authorities until it is amended or revoked (if ever), or until the facts or laws underlying the ruling change, thus providing the Polish subsidiary with reasonable comfort on a particular tax issue covered by the ruling. What is more, even if a tax ruling is amended or revoked (which in practice occurs rather rarely), such amendment or revocation would have no retroactive effect. In general, subject to certain limitations, tax rulings are available for any tax area and any tax issue, including in the area of local taxes such as RET.

Further to the above, since tax rulings are binding on the assumption that the facts were reported by the applicant comprehensively and accurately, tax authorities might challenge a tax ruling issued to a Polish subsidiary if the facts outlined in the ruling application were contested. However, with proper drafting of the ruling application such a risk is limited or even negligible.

In addition to tax rulings, other tax risk management measures include internal tax audits and internal tax review procedures, assistance and opinions of tax counsels in strategic matters, proper internal delegation or outsourcing of tax processes, advance pricing agreements (in the area of transfer pricing, although in practice these are rather unpopular with businesses), statistical classifications (in cases when VAT treatment of products, dependent on their statistical classification, raises doubts), leniency applications or voluntary adjustment of tax returns.

Please also note that starting from 15 July, 2016, a general anti-abuse rule (GAAR) applies in Poland, which allows Polish tax authorities to disregard or re-characterize, as far as tax implications are concerned, transactions deemed to be undertaken by businesses without economic substance solely or mainly with a view to obtain tax benefits. GAAR regulations have a crucial impact on tax planning in Poland and should be taken into account in consideration of any structuring and transactional matters.

E. Compliance monitoring – anti-bribery, anti-money laundering and whistleblowing rules in Poland

Operating business activities in Poland requires companies to comply with laws designed to prevent corporate misconduct, as briefly discussed below.

Anti-bribery compliance

Polish criminal law penalizes direct and indirect bribery both in case of public officials and in business-to-business relations. While criminal liability for these offences applies primarily to individuals, the authorities have instruments at their disposal to penalize companies for the misconduct of their employees and representatives.

Renewed emphasis on preventing and combating corruption, as well as pursuing corporate liability for criminal offences, is reflected in upcoming legislation (the Transparency Act and the Liability of Collective Entities Act), which – once enacted – will require companies to implement specific compliance measures within their organization.

Companies conducting business in Poland would be required to adopt effective internal policies and procedures aimed at preventing bribery-related irregularities within the organization, including periodic testing thereof.

These policies would be communicated to all staff along with general training on the principles of criminal liability for bribery and corruption.

Appropriate anti-corruption clauses should be introduced into commercial contracts.

The Central Anti-Corruption Bureau (CBA) would be in charge of controlling the implementation and effectiveness of anti-corruption compliance programs, in addition to its present active role in investigating cases of bribery and corruption.

Additionally, the Warsaw Stock Exchange (GPW) has recently published a set of non-binding compliance best practices for publicly traded companies, including recommendations on specific issues to be covered in the companies' compliance procedures, the appointment of a compliance officer and periodic compliance testing.

Anti-money laundering compliance (AML)

Most AML obligations under Polish law stem from EU directives. While most manufacturing sectors are not themselves subject to these obligations, they may encounter increased scrutiny from banking and financial institutions as a result of their client due diligence obligations.

Whistleblowing system

At present, no binding legal requirements exist for the implementation of whistleblowing procedures. However, the abovementioned upcoming legislation is expected to require the introduction of internal reporting channels and the investigation of reported violations of the law on pain of financial penalties to companies that fail to address such reports adequately.

In case of external on-site investigation at the company's offices or plants, conducted by law enforcement authorities, companies should bear in mind that:

i. Investigations may be anticipated through the training of relevant employees at all levels;
ii. internal or external legal counsel should be contacted immediately and, if possible, the investigation should be suspended until the arrival of said counsel;
iii. the company should cooperate with the authorities but may take steps to limit the investigation's disruption of the company's operations e.g. through inviting the officers to a dedicated

conference room and accompanying them in all their activities;

iv. the scope of a search or seizure warrant should be examined closely so that no unnecessary documents are provided that have not been requested;

v. documents covered by legal privilege or containing trade secrets should be secured adequately;

vi. it is important to retain a copy of all documents seized by the authorities, as well as the handover record.

F. Competition law investigations

The consequences of any anticompetitive conduct can be severe and include fines of up to 10% of yearly turnover for companies and up to PLN 2 million for managers. In order to prevent a violation, an antitrust compliance program should be put in place. This is especially important if a company operates in a highly concentrated market. Such a program should include trainings for management and commercial teams on anticompetitive agreements, anticompetitive exchange of information and abuse of a dominant position.

As a matter of good practice, a company should also provide a dawn raid training to its employees (which can be combined with a general training on criminal or administrative inspections). The Office of Competition and Consumer Protection (UOKiK) and the European Commission have very extensive investigating powers, including an ability to conduct dawn raids. Dawn raids are unexpected onsite inspections during which the authority can search premises, copy or seize documents, computers, telephones and interview employees. A dawn raid is a very unlikely event but its consequences can be very serious. Apart from penalties for anticompetitive practices identified during a dawn raid, a company can be punished for hindering or preventing a dawn raid (e.g., delaying its initiation) with a fine of up to €50 million (in case of UOKiK's dawn raid) or up to 1% of yearly turnover (in case of the European Commission's dawn raid). It is therefore important that employees are well trained to behave appropriately during such an inspection.

G. Commercial and Insolvency related risks borne by suppliers

General comments

The main commercial and/or insolvency risk in relation with suppliers appears to be the non-delivery of goods in breach of contract. As under Polish law sale and supply contracts are mutual contracts, the rules concerning insolvency of a party to a mutual contract apply (on condition that the contact is governed by Polish law and there are no specific contractual or statutory provisions). In accordance with these rules, if the supplier has become insolvent and/or is late in delivering the goods, the purchasing company has multiple rights. Depending on the circumstances, that company may be entitled to e.g. demand the immediate delivery of the goods regardless of the stipulated date of delivery, refrain from payment until the supplier delivers the goods and/or provides collateral, or terminate the contract.

If the supplier becomes insolvent, under Polish law the supplier (or its representatives) is under the statutory duty to file for bankruptcy. Additionally, suppliers (its representatives) which are threatened with insolvency and/or already insolvent may also file for the opening of restructuring proceedings.

Under Polish law any contractual provisions modifying and/or terminating a contract to which the debtor (supplier) is party based on the fact that, (1) the petition for its bankruptcy and/or a restructuring motion was filed and/or (2) the debtor was declared bankrupt and/or its restructuring proceedings were opened, are null and void by operation of law. More importantly, this nullity cannot be excluded by the parties and/or circumvented by having foreign law

govern the contract. Thus, boilerplate in-the-event-of-bankruptcy clauses need to be carefully modified in order not to be outright invalid under Polish law.

Selected consequences of declaring the supplier bankrupt

- the right to manage the debtor – from the moment of declaration of bankruptcy the bankrupt (its representatives) loses the right to manage its business to a court-appointed bankruptcy receiver;
- ineffectiveness of particular legal actions – certain legal acts taken by the bankrupt in a specified time before the opening of the bankruptcy proceedings (in general up to one year) may become ineffective by the virtue of law and/or upon the bankruptcy judge's decision. This applies to, e.g., transactions between affiliated companies (to a certain degree of affiliation) and/or grossly undervalued transactions.
- changes in contractual relationships with the bankrupt – a number of contracts to which the bankrupt is a party are either deemed terminated or modified as of the date of bankruptcy and/or may be terminated by the bankruptcy receiver. In particular, the bankruptcy receiver has a right to terminate unperformed mutual contracts (such as e.g. framework supply contracts) upon the bankruptcy judge's consent. This holds true even if the bankrupt had no right to end those contractual relationships and/or that right was lawfully and explicitly excluded in the relevant contract.
- Specific rules on the satisfaction of claims – most importantly and subject to specific exceptions, pre-bankruptcy claims may in general only be satisfied by the bankruptcy receiver through the division of the funds obtained from the bankrupt's assets (their satisfaction is deferred in time and usually the amount obtained is reduced). Claims are to be filed with the bankruptcy judge by way of written proof of claims.

Selected consequences of the supplier's restructuring proceedings

- the right to manage the debtor – in general, the debtor (its representatives) retains the right to manage its business during the restructuring proceedings, but is limited in managing its assets. In certain situations (e.g. as a rule in reorganization proceedings – a type of restructuring proceeding) a court-appointed trustee replaces the debtor in managing the debtor's business.
- changes in contractual relationships with the debtor – there are specific rules that affect contracts concluded by the debtor before the opening of a restructuring proceeding – which differ depending on the type of the restructuring proceedings. In most proceedings the debtor e.g. cannot terminate certain important agreements without the approval of the creditors' council and/or of the restructuring judge; in reorganization proceedings the court-appointed administrator may terminate unperformed mutual contracts (such as e.g. framework contracts) upon the restructuring judge's consent.

If restructuring proceedings of the supplier are opened, in most situations the claims of your company will most likely be subject to the composition. Such claims cannot in general be satisfied as long as the supplier's restructuring proceedings are pending. This does not pertain to claims not subject to composition – most importantly claims secured on the supplier's assets (by e.g. way of mortgage, registered pledge, etc.) to the extent such claims can be satisfied from encumbered assets. If the supplier adopts a composition with its creditors in the restructuring proceedings, the claims of your company will be subjected to specific restructuring methods indicated in the composition (e.g. haircut, deferral of payments, debt-to-equity swap, etc.).

H. Industrial Risk & Insurance

Insurance policies covering the risks during the operating phase

General comments

In general, taking out insurance policies covering risks connected with conducting business (e.g. manufacturing) activities is optional. In some cases, however, taking out specific insurance is compulsory. For example, the entity conducting agricultural activity is obliged to insure the agricultural buildings against property risks. Nevertheless, it is a general recommendation for all those conducting business activity to procure appropriate insurance policies covering, in particular, property and liability risks. Certain types of these policies are mentioned below.

Similarly to construction risks insurance, optimal insurance coverage depends, in particular, on the terms of the policies, so it is crucial to adapt them to the commercial activity conducted by the insured, the size of its business, potential risks (e.g. towards the customers), etc.

Property (casualty) insurance policy

Typically the owner of the property or a party using it (e.g. a tenant) is a policyholder. Normally, the insurance covers the loss of or damage to the current and fixed assets, resulting from various misfortunes, especially fire, explosion, lightning, fall of an aircraft, landslides, hurricane, hail, flood, etc. Typically the insurance policy is taken out for one year. The insurer's liability depends on the terms of the policy (e.g. losses occurred or reported during the insurance period, etc.).

The commercial activity liability insurance

Entities, e.g. manufacturing companies, conducting commercial activity are policyholders of the insurance. The insurance covers liability towards third parties for damage caused in connection with conducting business activity and possessing property used in this business. Typically the insurance policy is taken out for one year. The insurer's liability depends on the terms of the policy (e.g. losses occurred or reported during the insurance period, etc.).

The business interruption (BI) insurance

Entities, e.g. manufacturing companies, conducting commercial activity are policyholders of the insurance. The BI insurance is typically taken out along with property (casualty) insurance. The BI insurance covers the estimated gross profit of the insured entity that would have been obtained from the manufacturing and sale of products or provision of services, if this economic activity had not been interrupted due to the property damage. Typically the insurance policy is taken out for one year. The insurer's liability depends on the terms of the policy.

Industrial Risk & Insurance

In this section we point out legal aspects of reacting to an industrial incident and key aspects of dealing with the insurer and other third parties involved in the incident. Our remarks refer to particular phases of the crisis situation connected with the incident.

Crisis management

In this first phase the key aim of affected entities (e.g. the manufacturing company) is to deal with the general immediate consequences of the industrial incident and notify the insurance event to the insurer. In general, these consequences can be two-fold:

- losses (either material or immaterial) incurred by the insured entity in connection with the industrial event. In that respect:
- the insured entity needs to notify all the insurers providing coverage under various property (casualty) policies held by the insured of the event and of its potential consequences; notification should be made immediately, within the time prescribed in the policies or general terms of insurance;
- the insured entity needs to take action to mitigate the scope of the incident and its losses by implementing relevant protective measures;
- liability towards third parties for losses incurred by these parties in connection with the industrial event. In that respect:
- the insured entity needs to notify all the insurers providing coverage under various liability policies held by the insured of the event and of its potential consequences; notification should be made immediately, within the time prescribed in the policies or general terms of insurance;
- the insured entity needs to take action to mitigate the scope of the incident and its liability towards third parties.

In order to coordinate these and other crisis management actions it is worth setting up a "crisis unit" at the insured entity. Crisis management actions would have both an internal and external dimension.

Internally, they would include, particularly, implementation of the interim protective measures in view of mitigating the scope of the incident and losses and resuming activity as soon as possible.

Externally, they would include, particularly, supporting the injured individuals and other persons or entities affected by the industrial incident, by providing them, as the case may be, with immediate material assistance. They would also include public relations actions including communications to the press and other media.

Recourse preparation

In this phase, which starts simultaneously with or shortly after the crisis management phase, the key aim is to establish the facts of the case (particularly the reasons of the incident and the scope of losses) and the entities or individuals responsible, to secure and collect relevant evidence and take preliminary action against the liable entities or individuals.

All these actions aim at securing the claims of the insured entity and the recourse claims of the insurers against the entities or individuals responsible for the incident, who should eventually take the burden of losses incurred by the insured or affected third parties and covered by the insurer. It's worth noting that securing the recourse claims of the insurer is one of the duties of the insured entity under an insurance contract.

Claims of the insured entity could be based on a contractual liability basis and/or tort liability basis and cover, in particular, compensation of the losses suffered and costs incurred in connection with the industrial incident.

Claims of the insurer are based on the subrogation principle, i.e. upon paying the insurance compensation the insurer acquires the claims of the insured against the entity or individual responsible for the incident.

Claims management

In this phase, which should be implemented in the same timeframe as the recourse preparation, the key aim is to deal with the legal consequences of the industrial incident, for which the insured entity is directly liable towards the injured or affected persons and entities, who are entitled to be fully compensated for their losses (subject to specific contractual limitations, if any).

To that end, it is worth setting up a "claims management unit" which could deal, in particular, with:

i. implementing the claims management process, established ahead of the industrial incident (loss adjustment process, etc.);

ii. coordinating contacts with the injured / affected third parties, insurers, experts, loss adjusters, including the process of notification of losses and gathering evidence;

iii. preparing, coordinating and implementing compensation actions towards the injured / affected third parties, in cooperation with and upon the consent of the insurers.

To that end it is worth noting that it is a general requirement under insurance contracts not to accept claims of or conclude settlements with the injured / affected third parties without the prior consent of the insurers which – in breach of this obligation – may refuse insurance compensation, depending on the circumstances and terms of the insurance policy.

J. Protecting intellectual property

In recent years, the manufacturing businesses increased their focus on research and development, innovation and process efficiencies. The protection of the output of such activities requires not only formal protection in form of registered patents and designs. The equal emphasis should be made on copyright and know-how transfer from the skilled workforce.

Copyrights

Polish copyright law protects copyrights to works (including software) inter alia created by Polish and EEA nationals and those protected under international agreements. As the result, most of the foreign works would be protected in the territory of Poland. The copyright protection is afforded regardless of the compliance with any formal requirements (e.g. registration).

Copyrights transfer agreements and exclusive licenses must be made in writing under the pain of nullity. Assignments and licenses must specify fields of use and the remuneration for the use of a work in each separate field of use.

As a rule, the employer acquires by virtue of law economic rights to all copyrightable works created by the employee as part of performance of the employees' duties upon acceptance of the work. This rule does not apply to other contracts (e.g. civil law agreements). With respect to civil law contracts, it is vital to include full copyright transfer clauses in case the duties of the contractor include any original or innovative activity.

Industrial property rights

In Poland, protection of industrial property rights includes:

i. inventions (patents);

ii. utility models;

iii. industrial designs (including Unregistered Community Designs);

iv. trademarks;

v. geographical indications;

vi. opographies of integrated circuits.

Apart from the Unregistered Community Designs, the protection of the above depends on their registration with the Polish Patent Office and/or international offices such as the World Intellectual Property Organization, the European Union Intellectual Property Office and the European Patent Office. Unregistered trademarks may also be protected under the laws of unfair competition.

Polish industrial property applications may really on the priority rights arising from applications filed in most of the foreign countries, i.e. six months (for industrial designs and trademarks) and twelve months (for patents and utility models) from the date of filing of the foreign applications.

Industrial property rights may be transferred and licensed. An agreement shall be made in writing under the pain of nullity. The transfer should be notified to the register.

In case of inventions, utility models and industrial designs made by an author as part of performance of the obligations arising from employment contract or civil law contracts, the right to file for a patent and design protection is generally afforded to the employer and the ordering party.

The period of protection for patents is 20 years and for utility designs 10 years from the date of filing subject to payment of renewal fees. The protection of industrial designs is granted for 25 years subject to 5-year protection periods requiring payments of renewal fees.

Protection period of the Polish and the EU trademarks is 10 years from the filing date. It may be afterwards extended for subsequent 10-year periods (indefinitely; subject to payment of renewal fees).

Other intellectual property rights protected in Poland

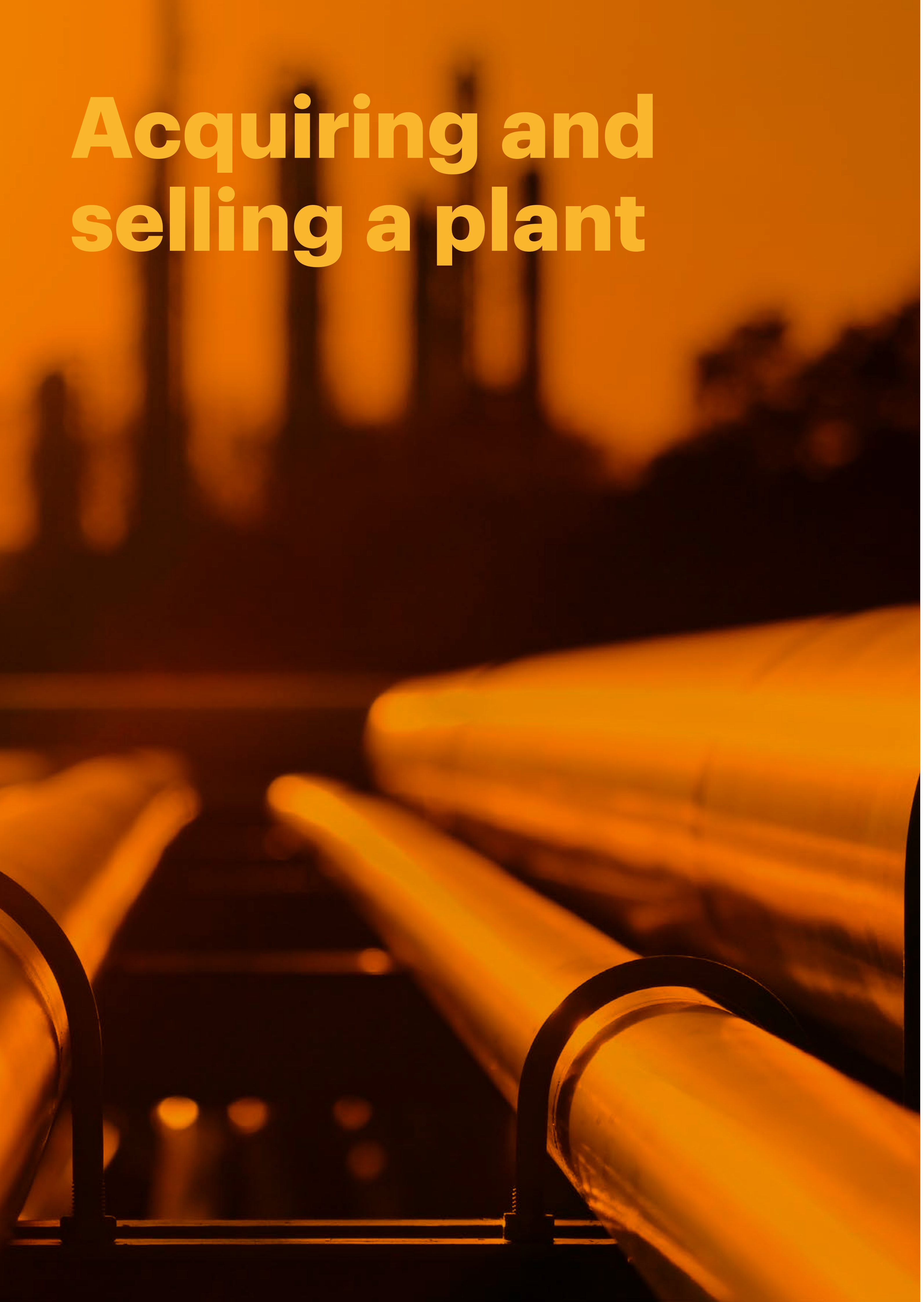
Polish law also affords protection of rights arising from:

i. trade secrets/know-how;

ii. unfair competition laws;

iii. registration of domain names;

iv. protection of plant varieties.



Acquiring and selling a plant

A. Share deals & asset deals

Under Polish law the asset deal may be effected as a transfer of standalone assets or a transfer of the whole enterprise.

The following paragraphs address the differences between a share deal and an asset deal (performed as a transfer of standalone assets or a transfer of the enterprise) from a corporate and tax standpoint.

STANDALONE ASSETS TRANSFER		
	PROS FOR SELLER	PROS FOR SELLER
	a. transaction documentation is much simpler than in the enterprise transfer deal and share deal; b. scope of representations and warranties is smaller and easier to negotiate; c. (unless a specific problem is discovered that requires insurance) no need for representations and warranties insurance, unless the seller wants to bear no liability after the closing or the buyer requests the seller to provide such title and/or representations and warranties insurance due to insufficient financial covenants of the seller to secure the seller's warranties after the closing,	a. obligation to translate sale agreements into Polish (higher transaction costs); b. the seller would typically be subject to 19% CIT in Poland on any profits from the sale of the assets; c. depending on the character of the assets purchased and on the conditions of the transaction it may be subject to VAT in Poland (the default VAT rate being 23%), which the seller would typically need to charge on the net price, collect from the buyer as a part of the purchase price and report and pay to Polish tax authorities.
	PROS FOR BUYER	PROS FOR BUYER
	a. the buyer is not liable for past liabilities connected to the business activity of the seller; b. simpler due diligence process (lower transaction costs); c. transaction documentation is simpler than in the case of the enterprise transfer deal and share deal; d. the buyer can benefit from a step-up on the value of the assets purchased, i.e. use the purchase cost of the assets as the tax value of these assets, for the purpose of tax depreciation or subsequent assets disposals.	a. obligation to translate sale agreements into Polish (higher transaction costs); b. higher notarial fees in comparison to the share deal; c. no goodwill may accrue upon the purchase of standalone assets; d. to the extent VAT applies to the transaction and is added to the purchase price, the buyer would need to finance that additional cash flow and to recover that VAT amount (if possible) from Polish tax authorities only subsequently (within 25, 60 or 180 days, depending on the case); e. to the extent VAT does not apply, the buyer may be subject to 1% or 2% PCC on the market value of particular assets and rights being purchased (in case respective values of assets/rights classes attracting 1% and 2% PCC rates cannot be separated, 2% PCC rate applies to the entire taxable value of the assets purchased).

ENTERPRISE TRANSFER

PROS FOR SELLER	PROS FOR SELLER
a. if the representations and warranties insurance (including title) is acquired by the seller to the benefit of the buyer, the seller will bear no liability after the closing. Also, the premium for the representations and warranties insurance will be lower than in the share deal as there is no need to insure tax warranties; b. easier mechanism for calculation of the price and no need to adjust it after the closing as in the share deal; c. a sale of an enterprise is not subject to VAT.	a. additional costs of premium for representations and warranties insurance; b. if there is a deductible under a representations and warranties insurance a part of the price equal to the deductible under the representations and warranties insurance is to be left on the escrow account for the agreed period of time (depending on the time limitations of the seller's liability) or secured otherwise; c. a more complex transaction than the share deal (including, inter alia, an obligation to translate sale agreements into Polish) – the description of the transferred enterprise must be very detailed to ensure that all statutory elements of the enterprise provided for in the Civil Code are included that give higher chances of obtaining a positive tax ruling. The object of the sale will include books, ledgers, correspondence with tenants, know how etc. etc.; d. the seller would typically be subject to 19% CIT in Poland on any profits from the sale of the enterprise.

PROS FOR BUYER	PROS FOR BUYER
a. easier mechanism of calculation of the price and no need to adjust it after the closing as in the share deal; b. the buyer can depreciate for tax purposes any goodwill that could accrue (as a surplus of the purchase price of the enterprise over the market value of particular items comprised in the enterprise) upon the purchase of an enterprise; c. a sale of an enterprise is not subject to VAT.	a. all past liabilities of the seller (other than taxes) will be assumed by the buyer (the buyer is jointly and severally liable with the seller for the past liabilities related to the enterprise up to the amount of the consideration); b. a more complex transaction (including, inter alia, an obligation to translate sale agreements into Polish) – the description of the transferred enterprise must be very detailed to ensure that all statutory elements of the enterprise provided for in the Polish Civil Code are included that give higher chances of obtaining a positive tax ruling; a more complex transaction increases the transaction costs for the buyer; c. more due diligence is required (the necessity to review all active agreements and the history of the development process to identify potential liabilities); more due diligence increases the transaction costs for the buyer; d. higher notarial fees in comparison to the share deal but the same as in the case of an asset deal; e. the buyer may be subject to 1% or 2% PCC on the market value of particular assets and rights comprised in the enterprise (in case respective values of assets / rights classes attracting 1% and 2% PCC rates cannot be separated, 2% PCC rate applies to the entire taxable value of the assets purchased); f. although a sale of an enterprise is not subject to VAT, the purchaser could be required, depending on the VAT treatment of the purchaser's activities, to reimburse to Polish tax authorities the whole or part of the VAT amount deducted by the seller upon acquisition of the assets comprised in the enterprise; g. the buyer may be liable jointly with the seller for business-related tax arrears of the seller existing as of the date of the sale, up to the value of the enterprise, unless specific tax certificates are obtained by the purchaser confirming the absence of any such tax arrears

ENTERPRISE TRANSFER

PROS FOR SELLER	PROS FOR SELLER
a. if the representations and warranties insurance (including title and tax) is acquired by the seller to the benefit of the buyer, the seller will bear no liability after the closing; b. in case of a foreign seller, a sale of shares in a Polish corporation (other than a corporation holding mainly Polish real property assets) would not be subject to CIT in Poland, c. a sale of shares is not subject to VAT.	a. additional costs of premium for representations and warranties insurance; b. If there is a deductible under a representations and warranties insurance, a part of the price equal to the deductible under the representations and warranties insurance to be left on the escrow account for the agreed period of time (depending on the time limitations of the seller's liability); c. if there are any defects in the title to shares, the premium for title insurance covering the risk that the seller is not the legal and beneficial owner of the shares might be significant; d. more complex mechanism of calculation of the price and its adjustment after the closing; e. more due diligence is required (the necessity to disclose the full history of the target company, all liabilities of the target company, all active agreements, all powers of attorney granted by the target company, employment issues (if applicable), all documents related to court and administrative proceedings, all documents related to the development process); f. it is likely that the buyer will ask for compensation for the depreciation loss (the fact that it will continue depreciation of the assets at their current book value, not at market value, and it will also have a tax impact at the exit from the asset by the buyer in the future

PROS FOR BUYER	PROS FOR BUYER
a. no obligation to translate the transaction documentation into Polish as in the asset and enterprise transfer deals; it decreases the transaction costs for the buyer in comparison to the asset and enterprise transfer deals; b. distinctly lower notarial fees in comparison to the asset and enterprise transfer deals;	a. all past liabilities of the target company (including tax) stays with the buyer; b. more complex mechanism of calculation of the price and its adjustment after the closing; c. more due diligence is required (necessity to review full history of the target company, all liabilities of the target company, all active agreements, all powers of attorney granted by the target company, employment issues (if applicable), all documents related to court and administrative proceedings, history of development process to identify potential liabilities); more due diligence increases the transaction costs for the buyer; d. the buyer will be subject to 1% PCC on the market value of the shares.

B. Merger control

Filing obligation

Parties involved in an acquisition (of shares or assets), merger or joint venture, must report it to the Polish competition authority ("UOKiK") prior to its implementation if their turnovers exceed certain thresholds. Implementing a transaction before obtaining clearance may result in UOKiK imposing a fine of up to 10% of the annual worldwide turnover of the undertaking concerned, and a fine of up to 50 times the average monthly salary on a manager. In the case of an acquisition, the filing obligation rests with the buyer.

Turnover thresholds

The filing obligation applies if:

- the combined worldwide turnover of the parties involved in the financial year preceding the year of the transaction exceeds the equivalent of EUR 1 billion; or
- the combined turnover in Poland of the parties involved in the financial year preceding the year of the transaction exceeds the equivalent of EUR 50 million.

Exemptions

Acquisitions: there is no filing obligation in the case of acquisitions (of shares or assets) if the combined turnover of the target does not exceed EUR 10 million in Poland in either of the two financial years preceding the transaction.

Mergers and joint ventures: there is no filing obligation in the case of mergers and joint ventures if the turnover of each of the parties to a merger or to a joint venture does not exceed EUR 10 million in Poland in either of the two financial years preceding the transaction.

Other exemptions: the filing obligation does not apply to certain other specific types of transactions, like intra-group transactions and certain transactions made within insolvency proceedings.

Timing

In practice, merger control proceedings usually take about one or two months in simple cases and 6 months to more than a year in more problematic cases. The Polish law does not provide for simplified or fast-track procedures.

A notification can be filed as soon as the transaction structure and principal terms have become reasonably clear, on the basis of acts preceding the execution of the final agreement (e.g. a letter of intent or a public offer – but not on the basis of any unilateral declarations of intent by the purchaser).

Things to watch out for

Gun jumping: parties to a transaction cannot close it before UOKiK issues a clearance decision or coordinate their behaviour before they formally close the transaction.

Information exchange: the exchange of strategic information between competitors can violate competition law, so, in transactions between competitors, the parties should normally use a clean team for the purposes of a due diligence.

Acquisition as a joint venture: sometimes UOKiK may qualify an acquisition (especially of shares in a newly created entity) as a joint venture. In such a case, the EUR 10 million exemption for acquisitions (mentioned in point 3.1. above) does not apply.

Multi-stage transactions: in the case of a multi-stage transaction (acquisition from the same corporate group within a period of two years or less), the turnover of all targets acquired over the two-year period preceding the transaction must be added up to verify the turnover thresholds (mentioned in points 2. and 3. above).

C. Employment & trade unions

Buying (selling) a collection of organized assets or an organized part of a business usually results in the automatic transfer (by operation of law) of the employees to the buyer. The buyer becomes the new employer of the transferred employees. The employment relationship with the new employer is based on the same terms and conditions as applicable on the transfer date.

Key check points for the buyer

The buyer should verify whether:

i. transferred employees receive any pay benefits apart from basic remuneration – if yes, the buyer is obliged to observe them (unless terms and conditions of pay are changed);

ii. any employees are entitled to additional benefits resulting from the transfer, e.g. employment guarantees – if yes, address this issue in the transaction documentation;

iii. there are any outstanding obligations resulting from employment obligations or arrears in paying taxes or social security contributions – the buyer will be liable for them solely or severally with the seller depending on whether, respectively, all or part of the undertaking was transferred;

iv. there are any employee representative bodies (trade unions, works councils, etc.) at the seller – they may be subject to transfer together with the employees;

v. (there are any employees protected against termination – e.g. trade union activists, employees in the pre-retirement age, pregnant employees, employees on maternity leave, etc. This may affect any potential restructuring process after the transfer.

The buyer should also:

i. follow the relevant information and/or consultation procedure with employees or employee representative bodies (trade unions, works councils) as the case may be.

ii. complete post-transaction obligations, in particular collect personal files of the transferred employees, register the acquired employees from the Social Security Office (ZUS), implement relevant internal regulations if needed.

Key check points for the seller

The seller should verify whether:

i. any employees are entitled to additional benefits resulting from the transfer, e.g. employment guarantees – if yes, address this issue in the transaction documentation;

ii. there are any outstanding obligations resulting from employment obligations or arrears in paying taxes or social security contributions – the seller will be liable for them severally with the buyer if part of the undertaking is being transferred;

The seller should also:

i. follow the relevant information and/or consultation procedure with employees or employee representative bodies (trade unions, works councils) as the case may be;

ii. complete post-transaction obligations, in particular provide the buyer with personal files of the transferred employees, deregister transferred employees at the Social Security Office (ZUS) and amend relevant internal regulations if needed.

D. Issues specific to distressed assets

Selected rules related to the acquisition of manufacturing plant in the context of insolvency

As a general remark, it is important to keep in mind that if a company is insolvent, any sale of its assets outside of e.g. enforcement proceedings, bankruptcy proceedings and/or restructuring proceedings may be suspicious to the creditors and may in extreme situations be perceived as asset stripping. Under Polish law asset stripping may lead to various negative consequences, from e.g. ineffectiveness of underlying transactions (ex lege or through actio Pauliana claims) to even criminal liability of persons engaging in such activities. Thus, if your company is insolvent and contemplates selling off its assets (its plant) extreme care should be taken.

Selected rules related to the acquisition and divestment of manufacturing plant in the context of insolvency

Bankruptcy proceedings

The acquisition of a plant in bankruptcy proceedings is the safest option as far as acquisition of distressed assets is concerned. This is because the buyer acquires the plant not only free of the vast majority of encumbrances on the assets forming the plant (apart from certain exceptions e.g. rights of way or easement of transmission), but also does not become personally liable for the bankrupt's debts. With respect to the divestment – if your company is declared bankrupt, it is the bankruptcy receiver (replacing your company's representatives in the day-to-day management of the company) who has the right to sell the plant belonging to the company.

Pre-pack arrangements

Pre-pack sale is available, i.e. under certain specific conditions (most importantly – based on a specific pre-pack motion) the bankruptcy court may approve the sale of the bankrupt's enterprise (its organized part and/or its most important assets) to a selected purchaser at the moment bankruptcy of the debtor is declared.

Restructuring proceedings

Restructuring proceedings are aimed at the restructuring of the debtor's debts and putting it back on an even keel. Thus, sale of assets (in particular enterprises – such as plants) is uncommon in the course of such proceedings.

This is even more so since as a rule – unlike in bankruptcy proceedings – encumbrances on the assets sold do not expire as an effect of the sale, and buyers of enterprises (and/or organized parts thereof) are jointly and severally liable for the debts of the debtor associated with the operation of the enterprise. "Safe" acquisition of the debtor's assets (similar to that effected in bankruptcy proceedings) is only possible under certain specified conditions in reorganization proceedings. Sale of more important assets (such as a plant) within the restructuring proceedings requires either the consent of the court supervisor (if the management board retains management over the debtor) and/or is effected by a court-appointed trustee (if the debtor is removed from managing its assets).

Enforcement proceedings

Acquisition of a plant (being an enterprise and/or an organized part thereof) in enforcement proceedings is not a safe option as (1) the encumbrances on the assets forming the plant do not expire as a result of the sale; (2) the purchaser of the plant is jointly and severally liable with the seller for liabilities associated with the operation of the enterprise disclosed during the enforcement proceedings.

It is also possible to acquire the assets forming a plant piecemeal. Then, the purchaser acquires specific assets free of encumbrances and of the joint and several liability, but it is hardly a convenient and fast way of purchasing a plant.

With respect to the divestment – in these proceedings it is the bailiff who organizes and carries out the sale of the plant. The debtor has very limited options to influence the sale and its conditions (price, person of the seller, etc.).

E. Transfer of rights and obligations arising from the environmental-related permits

1. **Decision on environmental conditions**
   Under Polish law all rights and obligations arising from the decision on environmental conditions may be transferred from the entity, which obtained such a decision, to another entity by administrative decision. The appropriate authority transfers all rights and obligations after obtaining the consent provided by both entities.

2. **Emitting gases or dusts into the air permit**
   Pursuant to Polish law, the emitting gases or dusts into the air permit generally follows the installation. The entity that becomes the new operator of an installation takes over all rights and obligations arising from the said permit. The entity which acquired the entire installation should submit an application to amend the emitting gases or dusts into the air permit to reflect changes in ownership of this installation.

3. **Water permit**
   Under Polish law all rights and obligations arising from the water permit may be transferred from the entity which obtained such decision to another entity by administrative decision. The appropriate authority transfers all rights and obligations after obtaining the consent provided by both entities.

4. **Waste generation/collection/treatment permit**
   Pursuant to Polish law, the waste generation/collection/treatment permit generally follows the installation. The entity which acquired the entire installation should submit an application to amend the waste generation/collection/treatment permit to reflect changes in ownership of this installation.

5. **IPPC permit**
   Pursuant to Polish law, the IPPC permit generally follows the installation. The entity that becomes the new operator of the installation takes over all rights and obligations arising from the said permit. The entity that acquired the entire installation should submit an application to amend the IPPC permit to reflect changes in ownership of this installation.

6. **Greenhouse gas emissions permit**
   Pursuant to Polish law, the greenhouse gas emissions permit generally follows the installation. The entity that becomes the new operator of the installation takes over all rights and obligations arising from the said permit. The entity which acquired the entire installation should provide information about changes in the ownership of this installation to the appropriate authority within 21 days from the day of acquisition.

7. **Remediation decision**
   Under Polish law, it is not possible to transfer the remediation decision.

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CSBRAND-22865-Poland Chapter-04 — 14/02/2020