

SETTING UP BUSINESS IN POLAND



General Aspects

Poland is situated in the heart of Europe, bordering seven other countries. Its monetary unit is the Polish zloty (PLN). Expected date of introducing Euro in Poland is not known. With about 312,000 square kilometres Poland is one of the largest European countries. The total population is around 38 million people. The official language is Polish. People, especially entrepreneurs and young generation, speak English as well.

On 1 May 2004, Poland joined the European Union and thus became a member of the vast European single market where goods, services, capital and labour move as freely as within one country. The accession to the EU crowned years of preparations and reforms. Polish economy is developing much faster than the Euro zone and higher than the average of all EU members (even in economic slowdown in 2008/2009). Poland's growth has been driven to a significant extent by export growth, industrial production and investments.

Investors from countries that are EU and EFTA members may conduct economic activity on the same terms as Polish citizens. Investors from other countries may conduct economic activity on the same terms as Polish citizens only if they hold permits legalizing their stay in Poland and allowing them to conduct commercial activity. Investors from non EU and EFTA countries who do not hold such permits may conduct economic activity through:

establishing limited partnerships, limited joint-stock partnerships, limited liability companies and joint-stock companies; purchasing and acquiring shares in such companies.

Legal Forms of Business Entities

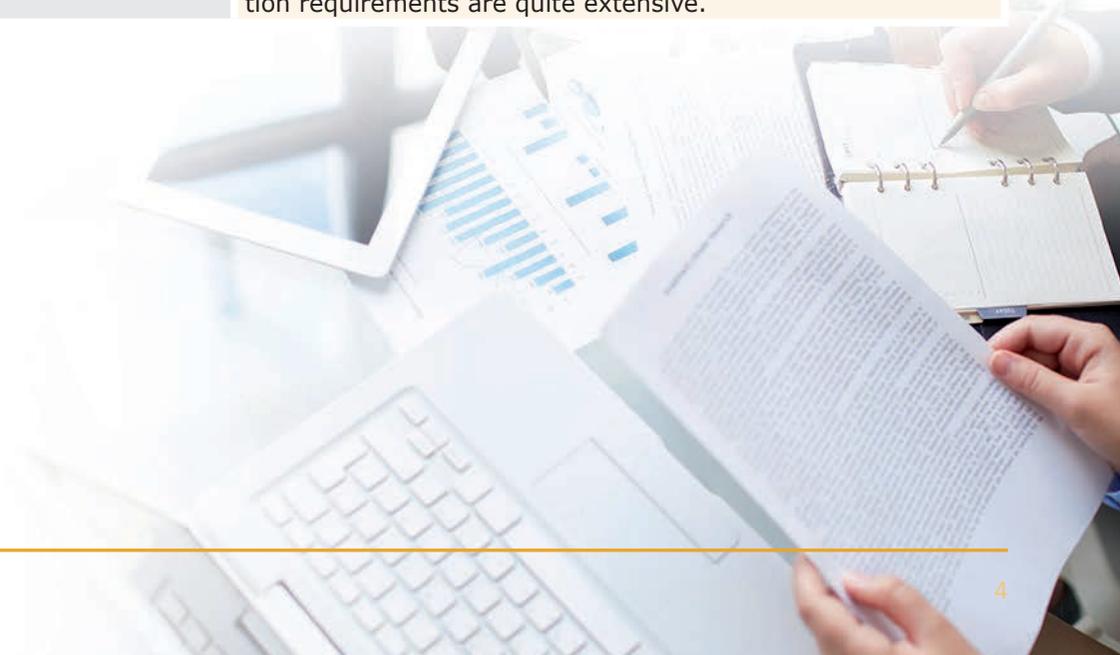
| Legal form | Feature | Remarks |
|------------------------------|--|--|
| Branch | Has no legal identity, but is part of the head office business and its organization. A branch may only conduct activities within the scope of business of the foreign investor who established the entity concerned. | Suitable for foreign companies looking for a presence in Poland to initiate business. |
| Representative Office | A representative office has also no legal identity. It may conduct activity in the area of promotion and advertising of the foreign investor establishing the entity. No other economic activity may be conducted in this form. | Suitable for advertising purposes only and thus not very popular. |
| Sole ownership | Set up by a single natural person, who is personally liable for the debts contracted by the firm, as well as for firm's tax and social security obligations. An entry in register of individual entrepreneurs (CEIDG – Central Register of Individual Entrepreneurs; registration at local municipality or online at www.ceidg.gov.pl) is necessary to commence business activity | Suitable for small businesses and start-ups. Special formalities are not required. |
| Partnership | Any partnership requires at least two partners with a personal commitment. Their liability for the partnership's debts and tax / social security liabilities is generally unlimited (except for limited partnership) and personal, including all private assets. | No minimum share capital is required and the accounting and publication obligations are less extensive than those for corporations |

There are the following partnerships in Polish Law

| Legal form | Feature | Remarks |
|---|---|--|
| Civil Law Partnership (spółka cywilna) | An association of individuals or enterprises united in the achievement of a joint contractual purpose. The partnership agreement should be drawn up in writing. | Suitable for small or new companies. Partners have to register in the register of individual entrepreneurs. |
| Registered Partnership (spółka jawna) | Partnership conducts business under its own business name, which has to include at least one of partners' surname. The partnership agreement must be drawn up in writing to be valid (no notarial form required), and the partnership must be registered in the National Court Register. | The classic company form for small and medium-sized businesses. |
| Partnership Company (spółka partnerska) | Only natural persons can be partners. The personal liability of the partners can be excluded with regard to professional errors for which one individual partner is alone responsible. | A legal form specifically designed for the joint exercising of professional freelance activities. |
| Limited Partnership (spółka komandytowa) | The difference between a registered (spółka jawna) and a limited partnership (spółka komandytowa) is that in the second one at least one partner (limited partner) has limited liability towards partnership's creditors. Consequently, there are two groups of partners in the limited partnership: general partners – which have exactly the same legal status as partners in a registered partnership, and limited partners, which: have limited liability towards partnership's creditors (civil right obligations) and are not responsible for partnership's tax obligations | Suitable for medium-sized companies seeking additional start-up capital from persons who prefer a limitation of liability. Limited partnership has to run full accountability (identical as in limited liability company / sp. z o.o.) and submit financial statements with National Court Register. |
| Limited Joint-Stock Partnership (spółka komandytowo-akcyjna) | The difference between a registered and a limited joint-stock partnership (spółka komandytowo-akcyjna) is that in the second one at least one partner is a shareholder. Consequently, there are two groups of partners in the limited joint-stock partnership: general partners – which have exactly the same legal status as partners in a registered partnership, and shareholders, which are not liable for obligations of the partnership (neither civil, nor tax ones). The general meeting (GM) in the limited joint-stock partnership has the similar competences as the one in a limited liability and a joint stock company. | Unites the limitation of liabilities with the flexibility of a non-incorporated business. |
| Companies (spółki kapitałowe) | Independent legal entities and "full legal persons", meaning that the holder of rights and obligations is not the individual shareholder, but the company itself. Shareholders are only liable for company's debts to the amount of their capital share. | |

There are the following companies in Polish Law:

| Legal form | Feature | Remarks |
|--|---|---|
| <p>Limited Liability Company (spółka z ograniczoną odpowiedzialnością – sp. z o.o.)</p> | <p>Limited Liability Company may be formed by one or more persons. Minimum share capital of limited liability company is PLN 5,000 (approx. Euro 1,250). The articles of association should be drawn up in the form of a notarial deed, and the company needs to be entered into Register of Entrepreneurs (part of the National Court Register). The company is managed and represented by the management board (board members do not have to be Polish residents), appointed – as to the rule – by the shareholders’ resolution. Shareholders have equal rights and duties in the company, unless the statute or articles provide otherwise. The shareholders are not liable for company debts.</p> | <p>The most popular company legal form, with high flexibility and relatively few obligations. The costs of the founding process are quite low provided that the initial registered capital is PLN 5,000. Limited liability company has to run full accountability. Shares can be transferred easily.</p> |
| <p>Joint – stock company (Spółka akcyjna)</p> | <p>Formation requirements are identical as for limited liability company, except for minimum registered capital that amounts to PLN 100,000 (approx. Euro 25,000). Representation and management rules are identical as for limited liability company. A supervisory board must be appointed in the company. Shareholders have equal rights and duties in the company, unless the statute or articles provide otherwise. The shareholders are not liable for company debts.</p> | <p>Shares can be transferred easily, a joint – stock company can be listed publicly on the stock exchange and enjoys a high market reputation. The costs of the founding process are quite high in comparison to a limited liability company. Joint – stock company has to run full accountability. There is a statutory requirement for a joint-stock company to carry out an annual audit. The organizational and accounting obligations and the publication requirements are quite extensive.</p> |



Organizational Questions

| Topic | Feature | Remarks |
|--|--|---|
| National Court Register (NCR) | Partnerships and Companies must be entered in the Register of Entrepreneurs, which is the part of the National Court Register managed by district courts, except for civil law partnerships (spółka cywilna). The commercial register is managed electronically, and company's excerpts from the register may be obtained online at https://ems.ms.gov.pl/krs/wyszukiwaniepodmiotu | A partnership may commence its operations after it is entered in the register. This rule does not apply to companies, which may commence their activity before they are entered in the register. A company is entered in the register upon an application made by its management board |
| REGON and NIP numbers | For the business to become fully operational statistical identification number (REGON), as well as taxpayer number (NIP) are necessary. Business registered with National Court Register fill necessary applications with this register (first registration and any subsequent changes), while civil partnerships and sole proprietorship owners with CEIDG – Central Register of Individual Entrepreneurs. | |
| Bank Account | To open a bank account individuals from UE states need a valid passport. Companies need an excerpt from the commercial register, some banks require also articles of association and the confirmation of obtaining statistical identification number (REGON). | Identity of banks' clients is checked when an operation's value exceeds PLN 20,000 (approx. EUR 5,000). |
| Transfer of Goods and Machinery | Within the EU goods and machinery can circulate freely. Imports from non-EU states to Poland cause customs, import VAT, and in some cases special excise taxes. | Imports of certain goods (e.g. fuels) may require permits |
| Transfer of Capital | Within EU capital can be moved in and out of Poland without any restrictions. Capital transfers from and to non-EU counties are subject to various restrictions. | Certain capital transfers must be reported to the National Bank of Poland (Narodowy Bank Polski), for statistical purposes. |
| Visa and Residence permit | All EU citizens can set up business and take up self-employed work in Poland without the requirement of any permit. Stay over a period of 3 months must be registered at local authorities. Most of the non-EU nationals need a visa to enter Poland, but there are several exceptions. | |

Employment

| Topic | Feature | Remarks |
|-------------------------------|--|--|
| Work permit | <p>EU citizens are released from the obligation to obtain a work permit. Foreigners from the aforesaid countries and their families will have to register their stay in Poland, if it is longer than 3 months.</p> <p>As a rule non-EU citizens, as employees or board members of Polish companies, require work permits, which are granted only if an employer who intends to employ a foreigner has obtained a work permit promise (<i>przrzeczenie</i>) and the foreigner has obtained an appropriate visa or permit to live in Poland for a limited period. However for certain jobs and certain citizen groups (mostly from ex-U.S.S.R. countries) no work permit is required and the procedure is simplified (in such case the sole requirement is filling by employer an appropriate information with local work office – <i>powiatowy urząd pracy</i>).</p> | <p>Working visas are granted by the consulate in the foreigner's permanent place of residence upon presentation of the work permit promise.</p> |
| Labour law | <p>Polish labour law issues are mainly regulated in the Labour Code. It specifies the rights and duties of all employees, regardless of the category of work and the legal basis of the employment relationship. This does not apply to workers rendering services on the basis of civil law contracts (i.e. service contracts).</p> <p>The minimum remuneration for work for full-time employees is specified by law and in 2015 amounts to PLN 1,750 (gross amount, i.e. prior to the payment of any taxes, social security or other mandatory payments). A first time employee may receive 80% of this amount only. A minimum of 20 days of paid holidays a year is guaranteed (26 days for employees with 10 years seniority). In general, working time may not exceed eight hours per day and an average of 40 hours per week in a five-day week on average within a reference period not exceeding four months. The total weekly working time with overtime hours cannot on average exceed 48 hours in a reference period.</p> <p>The notice period for termination of employment depends on seniority of the employee and ranges between 2 weeks and 3 months</p> | |
| Social security system | <p>The social security system consists of retirement pension (19.52% of gross income), disability pension (8%), health insurance (9%), illness insurance (2.45%) labour fund insurance (2.45%), and Fund of Guaranteed Employee Benefits 0,1%. The social security contributions are shared roughly 50/50 by employer and employee. The accident insurance (ranges between 0,67% and 3,86%, basic value 1,93%) has to be financed by the employer in total, while the illness insurance (2.45%) is financed by the employee only. All payments are made by employer.</p> | <p>The yearly basis for retirement pension and disability pension contributions is limited in 2015 to PLN 118 770 (these contributions are not due from the gross income of person insured that exceeds that said amount).</p> |

Taxation

Companies in Poland are usually taxed on one level: Corporations are subject to corporate income tax (podatek dochodowy od osob prawnych, also called CIT), whereas partnerships and sole proprietorships are subject to personal income tax (podatek dochodowy od osob fizycznych, also called PIT). Both taxes are levied by the tax act (voted in the Polish Parliament – Sejm).

| Tax | Feature | Remarks |
|---|---|---|
| Corporate Income Tax (CIT) | <p>The standard corporate income tax rate is 19% on all taxable earnings of the corporation, whether retained or distributed profits.</p> <p>However, once profits are distributed to the shareholders, these must pay personal income tax on the dividends.</p> | <p>Some expenditures, are not tax-deductible e.g. entertainment costs, some kinds of administrative or contractual penalties, etc.). Advertising costs are entirely tax deductible, while representation costs are not.</p> |
| Personal Income Tax (PIT) | <p>From 2009 there are only two rates of personal income tax 18% and 32% for an annual income exceeding the tax-free allowance of PLN 556.02 (Euro 130).</p> <p>Up to the income of PLN 85, 528 the tax amounts to: 18% minus PLN 556.02</p> <p>Above income of PLN 85,528 the tax is calculated in the following way: PLN 14,839.02 + 32% of taxable income over PLN 85,528</p> <p>There are also types of flat taxation (flat rate on income without costs) or even lump sum taxation available as an option for very small business</p> | <p>Tax bonuses are available for children (two and more).</p> <p>Capital gains from trading in shares , sale of real estate and other securities derived by individuals outside the scope of their economic activity are taxed at a 19% rate.</p> |
| Personal Income Tax in case of partnerships and persons running its own business | <p>As partnerships are not separate legal entities but associations of partners, the partners themselves generally are subject to the personal income tax, with the individual tax rate applicable to each shareholder (according to the 18 and 32 % tax rates). However partners and persons running its own registered business activity may also choose the flat rate taxation at 19% (no matter how big the income is).</p> <p>The tax year for individuals is the calendar year. In general, cash and benefits put at an individual’s disposal constitute his taxable income, unless a particular income is tax exempt in Poland according to Polish domestic law and/or the appropriate Double Taxation Treaty.</p> | |

Value Added Tax (VAT)

From 2012 the basic VAT rate is 23%, a lower rate of 8% is charged for convenience goods and services needed on a day-to-day basis, such as food, certain children's goods and to some construction works and residential property. 5% rate is applicable to some unprocessed agricultural products, juices and natural drinks. A reduced 0% VAT rate may be applied to some domestic supplies, e.g. equipment for selected ships and airplanes. Some services, including banking and other financial services, healthcare, are VAT-exempt. For certain services rendered by a foreign entrepreneur, the reverse-charge-system has to be applied.

Each entrepreneur should apply for a VAT-Identification-number, which is particularly necessary for intra-EU supplies and services. VAT exemption may be applied at a very low turnover (up to 150 000 PLN).

Transfer Tax (PCC)

The following acts are subject to transfer tax:

- sales agreements and agreements on the exchange of goods and property rights;
- loan agreements;
- donation agreements - to the extent regarding the acquisition of debts and encumbrances by the recipient or the donor's liabilities;
- annuity agreements;
- agreements on the division of inheritance and agreements on the dissolution of co ownership in the part concerning repayments or contributions;
- establishment of mortgages;
- establishment of usufruct for consideration, including improper usufruct and servitude, for consideration;
- irregular deposit agreements;
- company deeds (Articles of Association).

The transfer tax rates are as follows:

On sale agreements:

- a) real estate, property rights related to real estate and tangible assets - 2%;
- b) other property rights - 1% of the fair market value of the object of the transaction



Local Taxes (e.g. Real Estate Tax)

Local taxes include:

- real estate tax;
- road vehicle tax (generally imposed on trucks and buses);
- agricultural tax;
- forestry tax;
- inheritance and donations tax.

Local communities are entitled to establish rates and/or exemptions for the above taxes within the limits set by Parliament (except for the inheritance and donations tax the rates for which are set by Parliament).

Every property owner in Poland is annually liable to real estate tax. The tax rate depends on the category of real estate, private housing use, commercial use etc.

Non-resident Taxation

Non-resident individuals and companies in Poland receiving income generated in Poland, are subject to Polish limited taxation with their Polish-sourced income. Double taxation of this income is avoided by double taxation agreements between Poland and other countries. In case of a non-resident company the tax treatment depends on its kind of income.



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