10 Tips Worth to Consider
When Starting a Business in Poland

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About Us

- Full-service independent law firm focusing on the Baltic Sea Region
- Seamless regional coverage through its own offices and strategic alliances (Belarus, Denmark, Estonia, Finland, Germany, Latvia, Lithuania, Norway, Poland, Russia, Sweden)
- Strategic alliances with top law firms outside the region including, among others, UK, China and USA
- Each office has expertise, quality and resources to handle complex international transactions and projects
Independent Views

The Lawyer European Awards 2011
Law Firm of the Year, The Nordics: Winner

The British Legal Awards 2010 and 2009
The European Law Firm of the Year: Finalist
No other law firm from Northern Europe was shortlisted in 2009 and 2010.

Chambers Europe 2008
Top ranked by Chambers Europe Guide 2008
10 Tips worth to consider

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2. Test the Waters – Forest sector
3. Facing the Challenges
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POLAND: The Wild East?
…or maybe the land of law?
• Polish law is based on the continental system of law

• It has many legal institutions similar to those existing both in the German and French legal systems

• It is harmonized with EU law which regulates many areas of business
The total forested area of Poland is 9.089 million hectares (HA), which constitutes 29 percent of its territory. This ranks Poland seventh in the EU in terms of forested area (after Sweden, Spain, Finland, France, Germany and Italy).

With regard to their ownership structure, 81.5% of the forest in Poland is publicly-owned, of which 77.5% of the forest is under the management of the State Forests (Fig. 5). The ownership structure of the forests in the post-war period has remained almost unchanged. (Source: Forests in Poland 2011 – Centrum informacyjne Lasów Państwowych).
Since 2007 the State Forests have been selling wood under a new system including on-line auctions (quantity and price are evaluated). However, the biggest companies from the forestry sector have criticized the system as they have received much smaller quantities than ordered. Consequently, demand of the major companies was not covered, while significant amounts of wood remained available for smaller companies.

Tip No. 3 – Facing the Challenges

- **Bureaucracy**: Communist Legacy - unfriendly approach of authorities and officials, but this is improving (Nordics inspiration!)
- **Limited access to information**: in particular limited online access to information, but this is improving
- **Lengthy court and administrative proceedings**
- Lengthy enforcement proceedings and not always efficient enforcement of payments
- **More formalised background: company stamps, power of attorney**
  - Notary public
- **Many agreements need to be notarized**:
  - Formation of the limited company
  - Purchase of the real estate
  - Transfer of shares
• Foreign entities from the European Economic Area (comprising the EU and EFTA) may undertake business on the same terms and conditions as those applying to Polish entities.

• Consequently, the form of business may be freely chosen among those currently recognized and regulated by law. The form is crucial here since this affects tax treatment, exposure to personal liability, administration, access to the company’s earnings and profits, as well as the right to dispose interests in the company or its business.
Foreign entities from the EEA may do business in the following manner:

- **Registered partnership** (equivalent of: *avoin yhtiö*)
- **Professional partnership**: addressed specifically to professionals conducting business in the form of a partnership such as lawyers, accountants, architects
- **Limited partnership** (equivalent of: *kommandiittiyhtiö*)
- **Limited joint-stock partnership**
- **Limited liability company** (equivalent of *osakeyhtiö*) must have a minimum subscribed capital of PLN 5,000
- **Joint-stock limited company** (equivalent of *julkinen osakeyhtiö*) must have a minimum subscribed capital of PLN 100,000

**Small business**: Individual business activity (sole-trader business) which is reserved for natural persons
• **Branch office:** A foreign company registered in any EEA Member State may conduct business in Poland through a branch office
• A branch office conducts business from a fixed place within Poland and under the original name of the company
• The Branch office is not attributed with a separate legal personality
• A branch office:
  – uses the original name of the company, together with the Polish translation and with distinction in the Polish language presenting it as a branch office
  – keeps separate books in Polish in accordance with the provisions of the Polish accountancy law
Tip No. 5 – Industrial standard –
Starting with LLC – formalities & timing

• Limited Liability Company have their statute (by-laws regulating internal matters) and terms of association between shareholders incorporated in one document that is typically referred to as the Articles of Association
• Articles of Association must be prepared by a notary public
• A power of attorney to represent e.g. Finnish mother company must also be prepared by a notary public and affixed with an appostile
• All companies are entered into the National Court Register (KRS).
• In practice, it usually takes 4-6 weeks to have a fully registered limited liability company ready for business from the time we receive all necessary powers of attorney and documents from the client (poa, specimen signatures, excerpt from the commercial register of the parent company, etc.)
Costs: the cost of establishing a Polish limited liability company (spółka z o.o.) with standard Articles of Association and the share capital amounting to PLN 5,000

Court fees and notarial fees: (where the share capital amounts to PLN 5,000 the costs should not exceed EUR 500)

Legal services: preparation of standard Articles of Associations (in Polish and English) together with all related declarations, entry into the Company Register (the National Court Register - KRS) and obtaining all standard registration numbers for the company: REGON (statistical number) and NIP (tax identification number), registration for tax purposes (CIT and VAT) and opening (or assistance in opening) a bank account.

After registration you will have to cover the costs of the accountant, bank account and rent for the office.

Easy to form a Company but more complicated to wind it up
Watch out! Differences!

- Role of the Managing Director
- Liability of Management Board
• **The Management Board:** consists of one or more members and is entitled to represent and sign for the company; almost full executive power

• As a rule, appointed and dismissed by shareholders

• **A different concept of the Management Board in Poland compared to Finland** and the Nordics. In Poland the Managing Director is usually the Chairman of the Board. Members of the Management Board are taking an active part in the management of the company (and are liable)

• The rights of a Member of the Board to manage the affairs of the company and its representation, applies to all judicial and extrajudicial activities of the company
• **Representation**

The rights of a Board Member to represent the company cannot be reduced to the legal effect against third parties, i.e., a contract signed with a third party, despite the lack of the appropriate consent of the Supervisory Board or the Shareholders Meeting, remains valid, yet may lead to liability of the Directors towards the company for breach of the Articles of Association, resulting in the possibility of dismissing the liable Board Member and possibly raising compensation claims.

• According to Finnish Law, a transaction entered into by a representative of the company shall bind the company if: the representative has violated its competence regarding representation of the company or the representative has exceeded his or her authority and the other party to the transaction knew or should have known of the authority having been exceeded.
• **Scope of Liability of MB in Poland**
  – Tax Liability
  – Bankruptcy law – obligation to declare bankruptcy

• **Liability of the Management Board Members**: Management board members are jointly and severally liable with all their assets for any tax arrears the company may have if the enforcement against the company proves ineffective, unless the board members may show that a petition for bankruptcy was filed or arrangement proceedings were initiated in due course, or that failure to file a petition or enter into arrangement proceedings was not due to a fault on their part, or if they indicate assets from which the enforcement may be effected.

• **Liability of Shareholders**: Shareholders in general are not liable for debts and liabilities of the Company, the shareholders are not liable for the company’s obligations, they bear a risk solely up to the value of the contributed shares.
Tip No. 7 – Management by fax does not work

- You need to be present or have a really good local manager
- Possible solutions:
  - Polish based member of the Management Board
  - Appointing a commercial proxy
Tip No. 8 – Basic Tax Information

- **Personal Income Tax:**
  - 18% for income up to PLN 85,000 per year (approx. EUR 20,000)
  - 32% for income in excess of PLN 85,000 per year.

- **Corporate Income Tax:**
  - 19%

- **Social security:** approx. 35% (including payments paid by the employer)

- **VAT**
  - 23%

  - The new *Convention for the Avoidance of Double Taxation* and *the Prevention of Fiscal Evasion with Respect to Taxes on Income* between Poland and Finland applies as of 1 January 2011
Tip No. 9 – Choose Wisely: Hiring Staff (1)

Basic Information

- Low labour costs
- Social Security contributions amount to approx.: 35%
- Average salary amounts to: EUR 1000.
- Despite increasing employment costs, Poland maintains a competitive position in the entire EU. Employment costs in Poland are 4 times lower than in Scandinavia.
- The Polish labour law seems to be a little more flexible compared to the Nordics.

Employment Contracts

- Typically, in small and medium sized companies individual employment contracts are applied. **In very large industrial enterprises collective agreements are more common, however, compared to the Nordics, very seldom**

- An employment may be agreed for:
  - an indefinite period
  - a definite period
  - the time required to complete a specific task
  - the period of absence of another employee

- Contract for an indefinite period may be terminated by notice.

- **An employment contract should be concluded in writing in the Polish language version.**

- **Employment documentation shall be in Polish.**
- You may sign English version, however there shall be Polish version as well.
Tip No. 9 – Choose Wisely: Hiring Staff (3)

Termination

- **Termination of the employment contract by the employer always must be justified and must be in writing.**
- The period of notice for an employment contract concluded for an indefinite period depends on the duration of employment with a given employee and amounts:
  - two weeks if the employee has been employed for less than six months
  - one month if the employee has been employed for at least six months but not longer than three years
  - three months if the employee has been employed for at least three years
- **Specific additional regulations apply in the case of collective termination of employment contracts due to restructuring of the employer**
Tip No. 9 – Choose Wisely: Hiring Staff (4) Alternative Solutions

- Commonly, consultants, advisors and other professionals of defined character are employed under the so-called civil law contracts
- **Own economic activity and invoices instead of labour relation** (flat 19% tax)
- Results: more flexible arrangements with respect to termination, beneficial taxation system and higher degree of responsibility of the service provider
Tip No. 10 : Writing is better than saying

• Business culture: Negotiations, what are negotiations in Poland like?
  – Compared to the Nordics more arrangements are confirmed in writing, less issues may be confirmed by telephone (but it is changing and market practice is becoming less formalised)
  – Always ask for a signed document
    • No signature – no agreement (still negotiations)