Legal Aspects of Starting A Business in Poland

Key Issues

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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
1. Starting and running a business in Poland

- Starting and running business in Poland: differences in comparison to Finland and the Nordics
POLAND: The Wild East?
1. Starting and running business in Poland

…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 the EU law which regulates many areas of business
• Positive GDP growth throughout the financial crisis
• Focus on infrastructure projects (public funding and EU funds): UEFA EURO 2012
• Strong domestic consumption: one of the factors behind the GDP growth
• So far so good. BUT… Long-term perspective: several reforms will be necessary
2. The Playground: Wild East?

• Typical fears and anticipated issues:
  – Corruption
  – Bureaucracy and access to information
  – Language and cultural differences
2. The Playground: Corruption Benchmark

World map of the 2010 Corruption Perceptions Index by Transparency International
2. The Playground: Challenges and Improvements

- **Bureaucracy**: Communist Legacy - unfriendly approach of authorities and officials but this is improving (Nordics: inspiration!)
- **Limited access to information**: in particular limited on-line access to information but this is improving
- **Lengthy court and administrative proceedings**
- **Lengthy enforcement proceedings** and not always efficient enforcement of payments
Online Access to the Register of Entrepreneurs

http://krs.ms.gov.pl

- Official register held at the Ministry of Justice
- http://krs.ms.gov.pl
- Information regarding companies
- Finding an entity using name of the company, KRS number (the National Court Register Number), REGON (Statistical Number) or NIP (Tax Identification Number)
- Immediate access to data regarding Management Board Members, representation, date of entry, liquidation or bankruptcy information, etc.
Online Access to the Land and Mortgage Register

http://ekw.ms.gov.pl

- Official register held at the Ministry of Justice
- http://ekw.ms.gov.pl
- Information regarding real estate in the National Land and Mortgage Register
- Finding real estate in the Land and Mortgage Register using the land and mortgage number
- Immediate access to plot numbers, ownership issues, mortgages, rights, claims and limitations, etc.
• The total forested area of Poland is 9.089 million hectares (HA) which is 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 forests in Poland are publicly-owned, of which 77.5% are forests under the management of the State Forests (Fig. 5). The ownership structure of forests in the post-war period has remained almost unchanged. (Source: Forests in Poland 2011 – Centrum informacyjne Lasów Państwowych).
2. The Playground: E-Solutions

- Since 2007, State Forests have sold 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. This has resulted in the situation where the major companies’ demand was not covered, while significant amounts of wood remained available for smaller companies.

3. Setting up a Company in Poland

- 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 a company’s earnings and profits, as well as the right to dispose interests in the company or its business.
- Foreign entities from outside the EEA may undertake and do business only in the form of a limited partnership, limited joint-stock partnership, limited liability company and joint-stock company.
• Foreign entities from the EEA may do business in the following way:
  – Individual business activity (sole-trader business) which is reserved for natural persons
  – Partnerships
  – Capital companies
  – Branch office
  – European company
3. Setting up a Company in Poland: Partnerships

- 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
- Private limited 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
3. Setting up a Company in Poland: Branch Office

- **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 in the original company’s name.
- The Branch office is not attributed with 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 showing it is a branch office.
  - keeps separate books in Polish in accordance with the provisions of Polish accountancy laws.
4. Limited Liability Company: Formation and Registration

- To set up a Limited Liability Company its founders must agree on its statute and terms of association.
- Private limited companies have their statute (by-laws regulating internal matters) and terms of association between partners or 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.**
- Also power of attorney to represent e.g. Finnish mother company must be prepared by a notary public and appostiled.
- All companies are entered into the National Court Register (KRS).
- The time required for registering a company varies between 3 and 6 weeks.
- **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.)**
4. Limited Liability Company: Costs

- **Costs:** the cost of establishment of 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, registration in 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) of a bank account.

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

- Easy to form a Company but more complicated to wind it up
4. Limited Liability Company: Differences

- Watch out! Differences!

- Differences between Management Board in Poland and Finland: Role of the Managing Director
4. Limited Liability Company: Corporate Bodies

- **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
4. Limited Liability Company: Liabilities

- **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 liable jointly and severally with all their assets for any tax arrears the company may have if enforcement against the company proves ineffective, unless board members can show that a petition for bankruptcy was filed or arrangement proceedings were initiated in due time, 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 property on which the enforcement can 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 up to the value of shares contributed
4. Limited Liability Company: Corporate Bodies

• 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, but can lead to liability of Directors towards the company for breach of the Articles of Association, resulting in the possibility of dismissal of the responsible Member of the Board and possibly compensation claims.

• According to Finnish Law, a transaction entered into, by a representative of the company shall not be binding on the company if: the representative has violated a restriction of the representative’s competence to represent 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.

• Supervisory Board (Hallintoneuvosto): may be optionally appointed
4. Limited Liability Company: Corporate Bodies

- Management by fax does not work
- You need to be present or have a really good local manager
• **Personal Income Tax:**
  – 18% for income up to PLN 85,000 per year (approx. 20,000 EUR)
  – 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 from 1 January 2011
• Low labour costs
• Social Security contributions amount to ca: 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.
• Polish labour law seems to be a little more flexible compared to the Nordics.
6. Hiring Staff: Employment Contract

- Typically, in small and medium sized companies individual employment contracts are applied. **In very large industrial enterprises collective agreements are more common. But compared to 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, but there shall be Polish version as well.
6. Hiring Staff: Termination of an Employment Contract

• **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 is:
  – 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
6. Hiring Staff: Alternative Engagement Solutions

• Commonly, consultants, advisors and other professionals of defined character are employed pursuant to 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
7. Business Culture: Formalities

- More formalised: 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
• **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)
Thank you

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