COUNTRY COMPARATIVE GUIDES 2024

The Legal 500 Country Comparative Guides

Poland

INVESTING IN

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This country-specific Q&A provides an overview of investing in laws and regulations applicable in Poland.

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POLAND
INVESTING IN

1. Please briefly describe the current investment climate in the country and the average volume of foreign direct investments (by value in US dollars and by deal number) over the last three years.

The current investment climate is good. Pursuant to World Investment Report, the value of the foreign direct investments in the recent years shows an upward trend. The average volume of foreign direct investments in Poland in the last three years was 24.75 billion US dollars and 219 deals per annum.

2. What are the typical forms of Foreign Direct Investments (FDI) in the country: a) greenfield or brownfield projects to build new facilities by foreign companies, b) acquisition of businesses (in asset or stock transactions), c) acquisition of minority interests in existing companies, d) joint ventures, e) other?

All these forms are typical with the acquisition of business probably most typical one.

3. Are foreign investors allowed to own 100% of a domestic company or business? If not, what is the maximum percentage that a foreign investor can own?

There are no particular restrictions on the stake that the foreign investors are allowed to own in domestic companies or businesses. However, carrying out certain types of regulated business activities is permitted only for companies in which foreign investors have a limited shareholding.

For example, a radio and television broadcasting licence and a permit to manage a public-use airport, may be granted only to a company in which the shareholding of foreign investors does not exceed 49% of the share capital. The requirements concerning the radio and television broadcasting licence does not apply to foreign investors from the EEA, and concerning an airport permit – to foreign investors from the EU, the Swiss Confederation, or any member state of the EFTA.

4. Are foreign investors allowed to invest and hold the same class of stock or other equity securities as domestic shareholders? Is it true for both public and private companies?

Yes, foreign investors are allowed to invest and hold the same class of stock or other equity securities as Polish shareholders in both public and private companies.

5. Are domestic businesses organized and managed through domestic companies or primarily offshore companies?

In Poland, the organization and management of domestic businesses is carried out primarily by Polish companies (i.e., companies with predominantly Polish capital).

6. What are the forms of domestic companies? Briefly describe the differences. Which form is preferred by domestic shareholders? Which form is preferred by foreign investors/shareholders? What are the reasons for foreign shareholders preferring one form over the other?

There are two main types of commercial entities in Poland – companies and partnerships. They differ primarily as to their capital structure, the degree of liability of their shareholders/stockholders (or partners in the case of partnerships) for the company's obligations, as well as the way they are managed and controlled.

In general, the partners' liability for the partnerships' obligations is personal (meaning that creditors can bring claims not only against the partnership, but also directly against its partners) and unlimited, while the shareholders' (stockholders') liability is generally excluded (with certain exceptions) and they risk the amount of their investment in the company. Unlike partnerships, companies have share capital divided into shares.

Typically, partnerships are managed and represented by their partners, while in companies, the management board (which may consist, and usually does, of non-shareholders) deals with the company's affairs and represents it towards third parties. The liability of the members of the management board for a company's debts is subsidiary, meaning that they are liable only if enforcement against the company proves ineffective.

Companies

A limited liability company (*spółka z ograniczoną odpowiedzialnością, or sp. z o.o.*) is the most popular form of corporate vehicle in Poland. The supervisory board in a limited liability company is a voluntary body unless its share capital exceeds PLN 500,000 and there are more than 25 shareholders. Only selected general meeting's resolutions must be minuted by a Polish notary public (e.g. on the amendments to the articles of association), and its accounts are subject to audit only if certain criteria are met.

In a joint-stock company *(spółka akcyjna, or S.A.)*, it is mandatory to establish a supervisory board that exercises constant supervision over the company's activities in all areas of its operations. The joint-stock company has a more formalistic nature (e.g. all the general meeting's resolutions must be minuted by a Polish notary public and the company's accounts must always be audited) than a limited liability company. However, in return its securities may be listed on the stock exchange and there are some options unavailable for a limited liability company, e.g. non-voting shares to which limits on the dividend preferences do not apply.

A simple joint-stock company *(prosta spółka akcyjna, or P.S.A.),* the newest corporate vehicle in Poland, is quite different from other companies. The intention was to create a type of company best suitable for start-ups. Its shares have no par value, are indivisible and do not form share capital. Unusually for companies, the shares can be subscribed for in exchange for the provision of services by the shareholders. Furthermore, there is a choice of whether its corporate governance will be based on a two-tier (typical in Poland) or a one-tier model (where only a board of directors with executive and non-executive directors is appointed).

Partnerships

Partnerships are generally less common than companies but are still often applied.

A general partnership (*spółka jawna, or sp.j.*) is a basic type of partnership. It is managed and represented by its partners. In principle, each of the partners is entitled to deal with the general partnership's affairs and represent it; however, the partnership deed or a resolution of the partners may provide that the partnership is managed by one or several partners. All the partners are jointly and severally liable for the general partnership's debts, but this liability is subsidiary – i.e. the partnership's creditors should first seek satisfaction from the partnership's assets.

A professional partnership *(spółka partnerska, or sp.p.)* is intended exclusively for individuals practising certain freelance professions (e.g. lawyers, tax advisers, doctors). Its partners are not liable for the partnership's obligations arising in connection with the other partner (or his/her employees) practising his/her profession. Unlike in the other type of the partnerships, the management of a professional partnership's affairs may be entrusted to a management board modelled on the one in a limited liability company.

In a limited partnership *(spółka komandytowa, or sp.k.),* there are two group of partners – (i) general partners, with unlimited liability for the partnership's obligations and the right and duty to manage the partnership's affairs and represent it towards third parties, and (ii) limited partners, whose liability is limited up to the agreed amount.

A limited joint-stock partnership (*spółka komandytowo-akcyjna, or S.K.A.*) is a combination of a joint-stock company and a limited partnership. It is the only partnership in which there is a minimum share capital requirement (PLN 50,000) and which can issue equity securities. In addition, it has two corporate bodies typical for companies, i.e. the general meeting and the supervisory board (optional, unless the partnership has more than 25 shareholders), but it does not have a management board and its affairs are managed by the general partners. The general partners' liability is unlimited, while the shareholders are not liable for any debts of the partnership.

Which form is preferred by domestic shareholders?

The limited liability company is the most popular form of company among Polish shareholders.

Which form is preferred by foreign

investors/shareholders?

Like Polish shareholders, foreign investors mainly choose the limited liability company to conduct their businesses activity.

What are the reasons for foreign shareholders preferring one form over the other?

The popularity of the limited liability company is associated with, in particular, the low level of financial commitment (the minimum share capital is PLN 5,000 while in case of the joint stock company it is PLN 100,000) and the exclusion of personal liability of shareholders for the company's debts (as opposed to the rules of liability in partnerships). It is also less formalised than the joint stock company.

7. What are the requirements for forming a company? Which governmental entities have to give approvals? What is the process for forming/incorporating a domestic company? What is a required capitalization for forming/incorporating a company? How long does it take to form a domestic company? How many shareholders is the company required to have? Is the list of shareholders publicly available?

Which governmental entities have to give approvals?

Although no governmental approvals are required to register a company, running regulated business activity in certain sectors does.

The most regulated sector is finance, with the Polish Financial Supervision Authority granting permits for companies to operate in banking, insurance and asset management.

In addition, starting a venture in the mining, weapons and ammunition, energy, protection of people and property, radio and TV broadcasting and air transport sectors or running a casino requires a permit from the competent minister or other governmental authority.

What is the process for forming/incorporating a domestic company?

The process of forming a company starts with the founders' executing the basic constitutional documents (e.g. articles of association, statutes, deed of formation). In the case of companies, as well as limited partnerships and limited joint-stock partnerships, those documents should be executed in the form of a notarial deed drawn up by a Polish notary public. In the case of other types of partnerships, written form is sufficient.

The shareholders should then make contributions to cover the share capital and the corporate bodies should be appointed. Subsequently, an application should be filed with the business register.

A partnership is established upon registration in the business register, while the company comes into existence upon the conclusion of the constitutional documents and can immediately start its business operations, but receives legal personality only upon registration in the business register (*KRS*).

General partnerships, limited partnerships, limited liability companies and simple joint-stock companies may be also established electronically in the S24 system. In such a case, there is no requirement to draft the constitutional documents in the form of a notarial deed and they are executed based on the template provided in the system instead, but those templates are customisable only to a certain extent.

What is a required capitalization for forming/incorporating a company?

It depends on the type of the company. In the case of a limited liability company, the minimum required share capital is PLN 5,000, a joint-stock company – PLN 100,000, and a simple joint-stock company – PLN 1,000, and a limited joint-stock partnership – PLN 50,000.

How long does it take to form a domestic company?

The most time-consuming part of the process of forming a Polish company is registration in the business register. It may also take some time to open a bank account (mainly due to KYC procedure).

Standard registration usually takes up to several weeks. Establishing a company in the S24 system (available for general partnerships, limited partnerships, limited liability companies and simple joint-stock companies) may be completed in as little as 24 hours, but usually takes up to 7 days.

How many shareholders is the company required to have?

All three types of companies are required to have at least one shareholder (however, they may not be formed by a single-member limited liability company).

Partnerships are required to have at least two partners. In the case of a limited partnership, one partner needs to be the general partner and the other the limited partner, and in the case a limited joint-stock partnership – one partner needs to ne the general partner and the other the stockholder.

Is the list of shareholders publicly available?

It depends on the type of the company.

In the case of a limited liability company, a full list of the shareholders must be submitted to the business register and is publicly available online at: https://prs.ms.gov.pl, if filed after 1 July 2021, and at the courthouse storing the paper files of the relevant company, if filed before that date. Furthermore, information on shareholders holding more than 10% of the share capital is visible in the excerpt from the business register easily available online at: https://ekrs.ms.gov.pl/web/wyszukiwarka-krs/strona-glowna/index.html.

In the case of a joint-stock company and a simple joint-stock company, as a rule, the list of stockholders is not publicly available, unless it is a single-member company, in which case the details of the sole stockholder must be submitted to the court register and are therefore publicly available. In addition, following the compulsory dematerialisation of stock certificates of private joint-stock companies in 2021, all stocks in digital form are registered in the stockholders' register usually maintained by brokerage houses (or, in the case of simple joint-stock companies, by a Polish notary public), which is publicly available but only for the company and its stockholders. In addition, the list of stockholders of a public joint-stock company holding more than 5% of the share capital can be found on its website.

As regards partnerships, details of all the partners are publicly available in the court register and visible in the excerpt from the business register easily available online.

8. What are the requirements and necessary governmental approvals for a foreign investor acquiring shares in a private company? What about for an acquisition of assets?

Acquisition of shares or assets in a Polish company may require merger control clearance, an FDI filing or the filing for the acquisition of Polish strategic companies (i.e. no objection from the relevant authority). In addition, the acquisition of shares or stocks of a company that is the owner or perpetual usufructuary of real estate located in Poland may require the approval of the minister in charge of internal affairs. The merger control regime applies to mergers, acquisition of (joint or sole) control, acquisition of assets and the creation of a JV if the combined turnover of the parties to the transactions exceeds EUR 1 billion globally or EUR 50 million in Poland. The thresholds may be satisfied by one party only (for instance in the case of acquisition of control – the buyer(s) or the target).

However, a *de minimis* exemption applies if:

- in the case of the acquisition of control and/or assets – the target's/assets' turnover generated in Poland did not exceed EUR 10 million in either of the two financial years immediately preceding the transaction; or
- in the case of a merger of two or more independent companies or the creation of a joint venture – the turnover of any party to the merger or joint venture generated in Poland did not exceed EUR 10 million in either of the two financial years immediately preceding the transaction.

For a description of the FDI regime, please section 19).

Furthermore, any acquisition of shares or stocks of a company that is the owner or perpetual usufructuary of real estate situated in Poland (or any other transaction resulting in such company's becoming a controlled company, i.e. when a foreign investor comes into possession of such number of shares or stocks that give it more than 50% of the votes at the shareholders' meeting or general meeting in the company, or a dominant position), requires a permit from the Polish Minister of Internal Affairs. This requirement does not, however, apply to entities from EEA member states or the Swiss Confederation. A permit may be issued only if the acquisition of real estate will not cause a threat to defence, state security or public order, and is not in conflict with considerations of social policy and public health, and if the foreign investor demonstrates circumstances confirming its ties to Poland.

If the planned transaction involves an agricultural property, additional restrictions may apply with respect to the acquisition of shares or stocks under the Act on the Agricultural System of 11 April 2003. In the case of share deals, the National Agricultural Support Office (*Krajowy Ośrodek Wsparcia Rolnictwa*) ("**KOWR**") has the pre-emptive right to purchase shares or stocks in: (i) a entity which is the owner or perpetual usufructuary of agricultural property with an area of five hectares or more or of agricultural properties with a total area of five hectares or more; (ii) a dominant company which holds

shares or stocks in the entity referred to in point (i) above. If shares or stocks in such companies are acquired based on an act in law other than a sale, KOWR is entitled to purchase those shares or stocks. In the case of KOWR's pre-emptive right, the parties to the transaction are obliged to conclude a conditional sale agreement, in which the condition is KOWR's not exercising its pre-emptive right. If KOWR's purchase right is triggered, the transaction must be notified to KOWR to ensure that KOWR may exercise its right to purchase the shares or stocks.

9. Does a foreign investor need approval to acquire shares in a public company on a domestic stock market? What about acquiring shares of a public company in a direct (private) transaction from another shareholder?

In general, acquisition of shares in a public company (whether made directly on the market, or in a direct transaction with another shareholder) does not require any approvals other than those required in the case of a private company (e.g. a potential investor might be obliged to seek merger control clearance and make an FDI filing or a filing to acquire a strategic Polish company (for more details, see sec. 8) and 19)). Moreover, in the case of companies operating in regulated industries (e.g. banks, payment services providers), prior approval from the relevant regulator may be required (for more details, see sec. 7)).

Nevertheless, the purchase of a significant stake in a public company results in several disclosure obligations.

Firstly, anyone who achieves or exceeds a threshold of 5%, 10%, 15%, 20%, 25%, 33%, $33^{1/3}$%, 50%, 75% or 90% of the total number of votes in a public company is obliged to notify the Polish Financial Supervision Authority (*Komisja Nadzoru Finansowego*) (the "**PFSA**") and the company.

Moreover, the obligation to make a notification also arises in the event of:

1) a change in the previously held share of more than 10% of the total number of votes by at least:

- 2% of the total number of votes – in a public company whose shares are admitted to trading on the main market, or
- 5% of the total number of votes – in a public company whose shares are admitted to trading on a regulated market other than those specified in letter a) or introduced into an alternative trading system;

2) a change in the previously held share in excess of 33% of the total number of votes by at least 1% of the total number of votes.

Such information is then made available to the general public by the relevant public company through publication in the system dedicated to current reporting (i.e. ESPI).

This obligation does not arise if, after settlement of several transactions concluded on the same day, the change in the total number of votes in a public company at the end of the settlement day does not result in the relevant threshold's being reached or exceeded.

The obligation to notify also applies to a situation where the said thresholds of the total number of votes have been reached or exceeded:

1. through the indirect acquisition of shares in a public company or the occurrence of a legal event such as acquisition of an enterprise comprising shares in a public company, or other cases of universal succession, or

2. by way of an arrangement to: (i) directly or indirectly acquire or take up shares in a public company, (ii) vote in concert at a general meeting, or (iii) implement an ongoing policy towards the company – whereby all parties to such arrangement are subject to the disclosure obligation, regardless of their individual shareholding.

A failure to comply with such disclosure obligations results in the defaulting entity's(entities') being deprived of its (their) voting rights under all the shares it(they) holds(holds) in the public company, and administrative fines of up to 5% of the defaulting entity's annual turnover.

10. Is there a requirement for a mandatory tender offer if an investor acquired a certain percentage of shares of a public company?

In general, acquiring a stake exceeding 50% of the total number of votes in a public company requires a mandatory tender offer to be announced for all outstanding shares. In addition, the investor is obliged to announce a tender offer if anyone intends to delist a public company listed on the Warsaw Stock Exchange or NewConnect (a so-called 'delisting tender offer'). A mandatory tender offer should be announced within three months of the threshold's being exceeded, while a delisting tender offer should be announced before the

general meeting passes a resolution to delist the company.

Announcement of a mandatory tender offer is not required in the case of the acquisition of shares:

- of a company whose shares are introduced to trading on NewConnect only, or are not traded on the Warsaw Stock Exchange;
- from an entity belonging to the same capital group;
- in accordance with bankruptcy law and enforcement proceedings;
- under a financial collateral agreement;
- encumbered with a pledge, in order to satisfy the claims of a pledgee entitled to the foreclosure of the pledged asset;
- as part of compulsory restructuring proceedings;
- if the 50% threshold was exceeded because of the conversion of capital bonds into shares of a public company; and
- if the threshold was exceeded as a result of settlement of a voluntary tender offer.

A mandatory tender offer cannot be announced as subject to any condition precedent. In particular, any regulatory clearances for the acquisition of shares should be obtained prior to the tender offer launch.

If a shareholder fails to comply with the mandatory tender offer obligation, it may not exercise voting rights under any of its shares that are the subject of a legal transaction or other legal event causing the threshold to be reached or exceeded. In addition, the PFSA may impose a fine of up to PLN 10,000,000 on anyone who violates the mandatory tender offer regime.

11. What is the approval process for building a new facility in the country (in a greenfield or brownfield project)?

Brownfield and greenfield investment processes share certain similarities when it comes to obtaining key administrative permits. During a typical investment process, the following decisions must be obtained: (i) an environmental permit; (ii) a zoning permit (if no local master plan is in force for the area in question); (iii) a building permit; and (iv) an occupancy permit. In recent years, however, Polish construction law has been materially simplified and currently mainly complex development projects require building permits while simple ones require only notification to the competent building authority of the intention to carry out building works.

The first milestone in the approval process is a decision on the environmental conditions, which is required for any project potentially likely to have a significant impact on the environment. This decision is critical and affects further permits to be issued in the construction process by other public authorities.

Depending on the type of development, whether greenfield or brownfield, different approvals or consents may be required before a building permit is applied for. In the case of a greenfield investment, it can be a decision to exclude the land from agricultural or forestry use, a permit for the location of access to a public road and often a water permit. In a brownfield investment an investor will likely need to obtain a demolition permit, potentially a decision from the competent monument protection officer if the site is located in a heritage protection zone or if the existing building structure is under protection. Depending on the zoning situation in the area in question, the investor applies either for a zoning permit or directly for a building permit, if a local master plan is in force.

The approval process ends with receipt of an occupancy permit or the lapse of 14 days from the date of notification of the building supervision authority of the completion of the construction works. Before applying for an occupancy permit, the investor must notify the fire brigade and the state sanitary inspectorate that the works have been completed. In parallel, before the commencement of the operation of a new facility for which an environmental decision was issued due to its potential significant environmental impact, the investor must notify the competent environmental protection authority of its planned use.

12. Can an investor do a transaction in the country in any currency or only in domestic currency? a) Is there an approval requirement (e.g. through Central Bank or another governmental agency) to use foreign currency in the country to pay: i. in an acquisition, or, ii. to pay to contractors, or, iii. to pay salaries of employees? b) Is there a limit on the amount of foreign currency in any transaction or series of related transactions? i. Is there an approval requirement and a limit on how much foreign currency a foreign investor can transfer into the country? ii. Is there an approval requirement and a limit on how much domestic currency a foreign

investor can buy in the country? iii. Can an investor buy domestic currency outside of the country and transfer it into the country to pay for an acquisition or to third parties for goods or services or to pay salaries of employees?

Yes. As a rule, in Poland foreign exchange is free and the transactions may be done freely in any currency.

The limitations and restrictions imposed by the Polish law in particular concerns transfer of the currencies out of Poland and to the entities from the third parties other than from EU/EEA/OECD member states.

Is there an approval requirement (e.g. through Central Bank or another governmental agency) to use foreign currency in the country to pay:

- **in an acquisition, or**
- **to pay to contractors, or**
- **to pay salaries of employees?**

There is no requirement for any authority to approve payment in foreign currency in an acquisition, to pay to contractors or to pay salaries of employees and the parties may freely choose the currency of payment, as long as the currency is not transferred to the countries outside the EU/EEA/OECD. However, payment of VAT to contractors must be made in PLN

Is there a limit on the amount of foreign currency in any transaction or series of related transactions?

No, there is not.

However, in transactions between the entrepreneurs, a cash payment limit applies (regardless of whether the payment is made in Polish or foreign currency) and payments for the transaction (or a series of the transactions) exceeding the equivalent of PLN 15,000 must be made through bank accounts.

Is there an approval requirement and a limit on how much foreign currency a foreign investor can transfer into the country?

There is no regulatory approval requirement or limit on the amount of foreign currency a foreign investor can transfer into Poland.

However, anyone transferring currency (whether Polish or foreign) with a value exceeding EUR 10,000 (or its equivalent) into (or out of) the EU is obliged to declare it to the custom authorities or border guard authorities. No fee is payable on this declaration. A failure to declare, stating an untruth in the declaration, or a failure to present the currency to the authorities on their request is subject to a fine for a fiscal offence. The authorities are also authorised to take action in relation to an amount below EUR 10,000 if there are indications that the money is linked to criminal activity.

Additionally, banks are required to inform the Chief Inspector of Financial Information (*Generalny Inspektor Informacji Finansowej*) of transfers of amounts above EUR 15,000. The Chief Inspector may, at his/her discretion, refer any transaction to the relevant Internal Revenue Service for verification. In addition, banks may apply their own restrictions on the maximum amounts of money to be transferred.

Is there an approval requirement and a limit on how much domestic currency a foreign investor can buy in the country?

Apart from the reporting obligation referred to above, there is generally no approval requirement or statutory buying limits. However, exchange offices' terms and conditions usually state how much money may be exchanged in a single transaction.

Can an investor buy domestic currency outside of the country and transfer it into the country to pay for an acquisition or to third parties for goods or services or to pay salaries of employees?

Yes, Polish law does not prohibit the buying of domestic currency outside of Poland or its transfer into the country to pay for an acquisition or to third parties for goods or services or to pay salaries of employees.

13. Are there approval requirements for a foreign investor for transferring domestic currency or foreign currency out of the country? Whose approval is required? How long does it take to get the approval? Are there limitations on the amount of foreign or domestic currency that can be transferred out of the country? Is the approval required for each transfer or can it be granted for all future transfers?

An approval for the transfer of domestic or foreign currency out of the country by a foreign investor is not generally required.

Whose approval is required?

As mentioned above, no approval is required.

How long does it take to get the approval?

As mentioned above, no approval is required.

Are there limitations on the amount of foreign or domestic currency that can be transferred out of the country?

As in the case of bringing currency into the EU (see sec. 12) above), transferring currency (either Polish or foreign) with a value exceeding EUR 10,000 (or its equivalent) out of the country must be declared to the custom authorities or border guard authorities, and international transfers of money exceeding EUR 15,000 (or its equivalent) relating to the exchange of foreign currency must be done through authorized banks or payment institutions.

Is the approval required for each transfer or can it be granted for all future transfers?

Although currently there are few material restrictions and the approvals for transfers of foreign or Polish currency are not generally required, the limitations in foreign exchange dealing may be lifted by a general foreign exchange permit issued by the Minister of Public Finance, or an individual foreign exchange permit issued by the President of the National Bank of Poland.

A general permit applies to all entities (or a certain category of entities) and to all acts (or a certain category of acts) specified therein. An individual permit waives the restriction or obligation as to which the general permit has not been granted or lays down conditions other than those set out in a general permit.

14. Is there a tax or duty on foreign currency conversion?

Non-commercial conversion of own cash (the operation of converting cash in foreign currency into cash in PLN) is tax-neutral since there is no payment or other form of cash outflow (in a non-commercial case). However, if the buying and selling of currency is for profit, there may be certain tax consequences.

If the currency trading transactions are a business activity (undertaken in an organized and continuous manner and aimed at making a profit), there may be tax consequences.

Transactions involving the buying and selling of foreign currency are exempt from VAT.

15. Is there a tax or duty on bringing foreign or domestic currency into the country?

No, there is no tax/duty on bringing foreign or domestic currency into the country. However, there are some reporting obligations related to the transfer of Polish or foreign currency into or out of the EU (see sec. 12) and 13) above). Moreover, if a person enters (or leaves) the EU with cash with a value of EUR 10,000 or more (or the equivalent in another currency), she/he should file a foreign exchange declaration in writing and, on request, present such cash to the competent authorities (in Poland these are Customs and Fiscal Service and the Border Guard).

16. Is there a difference in tax treatment between acquisition of assets or shares (e.g. a stamp duty)?

Acquisition whether of assets or shares is subject to the tax on civil law transaction (stamp duty). Stamp duty on the acquisition of shares is 1% of the market value of the shares. Stamp duty on the acquisition of asset is 2% on the sale of real estate and movables or 1% on other property rights of the market value of an asset determined based on the average prices of the assets of the same type (taking into account their location, condition and degree of wear and tear) as at the date of the transaction, without any deduction of debts or burdens.

Also, a contribution in kind in the form of shares or other assets to cover newly issued shares in the increased share capital is subject to the tax on civil law transactions (stamp duty) at the rate of 0.5% of the nominal value of the share capital increase (but not share premium).

Furthermore, a contribution in kind of tangible assets may be a subject to value added tax at the applicable rate if the seller sells the shares as part of its business activity.

17. When is a stamp duty required to be paid?

In Poland, stamp duty (tax on civil law transactions) is payable on: (i) an agreement for the sale and exchange of tangible property and property rights, (ii) an agreement for a loan of money or tangible property defined generically, (iii) a donation agreement – in a case where the recipient acquires the donor's debts, encumbrances or liabilities, (iv) a lifetime estate

agreement, (v) an agreement to partition an estate and an agreement to terminate joint ownership – insofar as it concerns payments or additional payments, (vi) the establishment of a mortgage, (vii) the establishment of usufruct for consideration, including irregular usufruct, and an easement for consideration, (viii) an irregular deposit agreement, (ix) articles of association, company and partnership deeds. Amendments to these agreements are also subject to stamp duty if the amendment results in an increase in the tax base for the tax on civil law transactions.

Stamp duty (tax on civil law transactions) is payable within 14 days of the day the tax liability arises (e.g. conclusion of the agreement, adoption of the resolution to increase share capital).

18. Are shares in private domestic companies easily transferable? Can the shares be held outside of the home jurisdiction? What approval does a foreign investor need to transfer shares to another foreign or domestic shareholder? Are changes in shareholding publicly reported or publicly available?

In general shares in private domestic companies are generally easily transferable, save for some exceptions (e.g. the transfer of stocks in a simple joint-stock company that have not been paid up in full requires the company's consent to be valid).

Certain restrictions on the transfer, such as the requirement to obtain the consent of the company, its shareholders or supervisory board, may be introduced in the company's articles of associations (or statutes). Furthermore, some limitations on the disposal of shares may also be introduced contractually by and between the stockholders (e.g., lock-ups, pre-emptive rights, rights of first refusal, tag-along and drag-along rights, shotgun clauses). However, the latter do not prevent a transfer but may result in tort or contractual liability between the parties.

An agreement on the transfer of shares in a limited liability company must be in written form with the signatures certified by a notary public. In the case of a transfer of stocks in a joint-stock company, simple joint-stock company or a limited joint-stock partnership, the transfer is effective only upon registration in the stockholders' register held by a brokerage houses or other authorised entity keeping the register. In our experience, although Polish law does not introduce requirement as to the form of the agreement on transfer of stocks, most of the brokerage houses require the transfer agreement to have signatures certified by a notary public or to be signed in the presence of an employee of the brokerage house to register the change of the stockholder.

Can the shares be held outside of the home jurisdiction?

Currently, all stocks of joint-stock companies, simple joint stock-companies and limited joint-stock partnerships are dematerialised into digital form and are registered in stockholders' registers kept by [\brokerage houses or other authorised entities. Other types of companies may not issue any securities, certificates or documents in respect of their shares.

What approval does a foreign investor need to transfer shares to another foreign or domestic shareholder?

Apart from merger control clearance, an FDI filing or an application to acquire strategic Polish companies as referred to in sec. 8) and 19), no specific approvals are required to transfer shares to another foreign or domestic shareholder.

Are changes in shareholding publicly reported or publicly available?

In general, the changes in shareholding must be reported to the relevant registers. For more details on the public availability of the list of shareholders refer to sec. 7) above.

19. Is there a mandatory FDI filing? With which agency is it required to be made? How long does it take to obtain an FDI approval? Under what circumstances is the mandatory FDI filing required to be made? If a mandatory filing is not required, can a transaction be reviewed by a governmental authority and be blocked? If a transaction is outside of the home jurisdiction (e.g. a global transaction where shares of a foreign incorporated parent company are being bought by another foreign company, but the parent company that's been acquired has a subsidiary in your jurisdiction, could such a transaction trigger a mandatory FDI filing in your jurisdiction? Can a governmental authority

in such a transaction prohibit the indirect transfer of control of the subsidiary?

Yes, there is a Polish mandatory FDI filing applicable to the direct and indirect acquisition of control (dominance) over, or a significant participation in, or acquisition of assets of, certain Polish companies by non-EU/EEA/OECD investors.

Additionally, the acquisition of strategic Polish companies, regardless of the investor's country of origin, requires notification to, and may be blocked by, the relevant government authority, if they are listed by name in the Regulation of the Council of Ministers.

With which agency is it required to be made?

FDI filings should be made to the Polish Competition Authority (*Prezes Urzędu Ochrony Konkurencji i Konsumentów*) (the "**PCA**").

Filings made for the purpose of acquiring strategic Polish companies should be made to the competent minister mentioned in the Regulation of the Council of Ministers.

How long does it take to obtain an FDI approval?

After an FDI filing, the PCA has 30 business days to either: (i) approve the transaction or (ii) initiate control proceedings. The control proceedings may last up to 120 calendar days, but the clock stops whenever the PCA requests additional information, so in practice the actual timing may be significantly longer.

In case of filings made for the purpose of acquiring strategic Polish companies, the relevant authority has up to 90 days to issues a decision, however the clock stops each time the authority requests additional information.

Under what circumstances is the mandatory FDI filing required to be made?

At the Polish FDI filing is required for transactions resulting in a foreign investor's acquiring or achieving a significant participation in, or a dominant position over, the target, the aforesaid being:

- a 20% or 40% shareholding or voting rights, or profit participation, post-transaction, or
- the majority of the shares or votes, or profit, or
- the power to decide on the directions of the target's activities, including control/management and/or a profit transfer agreement over a Polish entity, or
- the acquisition or lease of an organised part of an enterprise from a Polish entity or the acquisition of the majority of the votes in a Polish entity.

Transactions concerning the following Polish entities fall under the FDI regime:

- a public company listed on the Warsaw Stock Exchange;
- an entity that owns "critical infrastructure" (within the meaning of Act of 26 April 2007 on Crisis Management);
- an entity that conducts economic activity in the energy, fuels, chemicals, weapons and military technologies, transhipment in ports, medical equipment and pharmaceuticals and food processing sectors;
- entities active in the development or modification of software used in the supply of electricity, fuels and heat; the supply of water and waste treatment; the transmission of voice or data or processing or storage of data; cash/card payments, securities and derivatives transactions and insurance services; hospitals, the sale of prescription drugs, and laboratories; transportation; the supply of food; and cloud computing.

A de minimis exemption applies if the target's Polish turnover was below EUR 10 million in each of the two years preceding the transaction.

For strategic Polish companies' regime, the thresholds are 20%, 25%, 33% or 50% (as relevant) of the shares, votes or profit.

If a mandatory filing is not required, can a transaction be reviewed by a governmental authority and be blocked?

If neither an FDI filing nor a filing for acquisition of a strategic Polish company is required but the transaction raises concerns, the relevant authority may request information to verify whether the transaction is indeed not subject to either of those filings. If it is confirmed that neither of those filings is required, the relevant government authority cannot review or block the transaction.

If a transaction is outside of the home jurisdiction (e.g. a global transaction where shares of a foreign incorporated parent company are being bought by another foreign company, but the parent company that's been acquired has a subsidiary in your jurisdiction, could such a transaction trigger a mandatory FDI filing in your jurisdiction?

Yes, the Polish FDI regime covers also indirect acquisition of Polish targets.

Can a governmental authority in such a transaction prohibit the indirect transfer of control of the subsidiary?

Yes, the PCA has the same powers in relation to both direct and indirect acquisition of Polish targets.

20. What are typical exit transactions for foreign companies?

The most typical exit transaction is a private sale. IPOs and asset sales are not unheard of though.

21. Do private companies prefer to pursue an IPO? i. on a domestic stock market, or ii. on a foreign stock market? iii. If foreign, which one?

In our experience, private companies operating in Poland prefer to pursue IPOs on the domestic market. This includes the largest of recent IPOs, of Allegro and Pepco, who operate mostly in Poland and chose the Warsaw Stock Exchange as their listing platform, despite having foreign shareholders and/or other operations abroad.

In some cases, several businesses, already known to foreign investors or operating in specific sectors chose foreign markets as their listing venues. InPost, the largest Polish logistics operator listed on Euronext Amsterdam as at May 2021, is a recent example of such a business, which linked its international IPO with the start of international expansion.

While choosing mostly the Polish stock market as their listing venue, domestic businesses often use foreign listing vehicles – usually from Luxembourg (e.g. Allegro) or the Netherlands (Pepco). In this way those companies partially fall under the regulatory scrutiny of their domestic regulator, which may be less rigid than the Polish Financial Supervision Authority.

22. Do M&A/Investment/JV agreements typically provide for dispute resolution in domestic courts or through international arbitration?

Arbitration is much more common in this kind of agreements. This is either domestic arbitration (usually preferred by domestic parties) or the international arbitration (usually preferred by non-domestic parties).

23. How long does a typical contract dispute case take in domestic courts for a final resolution?

The length of proceedings before domestic courts has been steadily increasing over the years. The average duration of a contract dispute is nearly two years (21 months) before a court of first instance; filing an appeal further extends it to more than three years (39 months). However, as many as 44% of such cases wait longer than 36 months for a final resolution.

The figures may be significantly higher in Warsaw, where the percentage of matters heard longer than three years is almost twice as high as in other major business centres.

The Supreme Court hears only extraordinary remedies. If it accepts a motion, the ruling is handed down within two and half to three and a half years after the issue of the second instance ruling.

24. Are domestic courts reliable in enforcing foreign investors rights under agreements and under the law?

Courts do not show any apparent leanings based on the nationality of the parties. There is a degree of leniency if the State Treasury is on the respondent’s side, as the State Treasury is usually favoured, even in disputes with no foreign element. The main problem is the duration of proceedings, which is one of the longest in the EU.

25. Are there instances of abuse of foreign investors? How are cases of investor abuse handled?

Instances of abuse of foreign investors are generally rare. There are currently seven investment arbitration proceedings against Poland. Based on publicly available data, approximately one-third of BIT disputes (in which Poland was the respondent) were decided in favour of the State.

26. Are international arbitral awards recognized and enforced in your country?

Polish courts are generally favourably inclined towards arbitration and rarely (only in approx. 10% of all cases) refuse to recognize foreign arbitration awards. Refusals usually result from the strict application of the formal requirements of the arbitration agreement.

As Poland is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, the regime of recognition and enforcement in national law complies with the Convention.

27. Are there foreign investment protection treaties in place between your country and major other countries?

Poland has signed investment treaties with most major non-EU countries, such as the USA, China, Canada, India, Australia, South Korea, Saudi Arabia, Turkey and Japan. There are no BITs in force with Russia, Brazil or Great Britain. All treaties signed by the EU are directly applicable in Poland.

As a result of the European Court of Justice ruling in case C-284/16 (Achmea) all bilateral investment treaties concluded within the EU are no longer binding. Poland has signed the Agreement for the Termination of Bilateral Investment Treaties between the Member States of the European Union (Brussels, 5 May, 2020).

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