

Polska



Polish Law is Closing the Gap to Europe

2015-03-30 16:19:46



A quarter of a century following the downfall of Communism, Poland possesses a legal system that respects civic liberties and, in the sphere of economy, protects free market principles and the security of business trading. What is more, for over 10 years now it has been compliant with the European Union's legal framework.

Poland's commercial law is rooted in the freedom of business principle which is contained in article 20 of the Polish Constitution. The definition of commercial activity stated within the said article includes various types of for-profit activities such as manufacturing, construction, commerce, providing services, prospecting for and mining mineral deposits, as well as performing professional tasks in an organized and continuous manner.

Freedom, ownership, legality

One of the distinguishing features of Polish commercial law is the lack of a single, main code which would contain all legal regulations pertaining to commercial law.

Commercial law, similar to all other regulations that make up the Polish legal system, is defined by a number of overarching principles that govern all economic activity. These are rooted mainly in the Constitution and the basic legal acts that pertain to commercial law, especially the Freedom of Business Act. The overarching principles of commercial law include:

- the freedom of business principle that encompasses the freedom of choosing the type of business activity as well as the freedom of establishing, conducting and terminating a business;
- the protection of ownership principle;
- the principle of legality that requires public administration institutions to operate within the boundaries of law,
- the principle of limited state intervention into the economy
- the proportionality principle that requires all actions to be conducted and all means to be used in line with the desired goal.

The Polish commercial law also includes a principle of three D's – decentralization, demonopolization, deregulation.

The Freedom of Business Act

Despite the lack of a superior economic legal code, one act is considered key in this area. The Freedom of Business Act of 2 July 2004 regulates establishing, conducting and terminating business activity within the boundaries of the Republic of Poland and the associated tasks that state institutions are required to carry out in this area. The act is over 20 years old, but has been amended and supplemented numerous times. Following Poland's accession to the European Union, the law had to be modified to conform with Community regulations.

The act outlines, among others, the obligations of state institutions regarding entities that are establishing or conducting business activity. One of the most important characteristics of these regulations is associated with barring state institutions from making their decisions regarding establishing, conducting and terminating business activity by a given person subject to an extra set of arbitral conditions. A state institution may not, for

example, require an individual to present documents or data that are not listed in respective legal regulations. This principle is fundamental for shaping the relations between entrepreneurs and public administration bodies and is known as the “everything which is not forbidden is allowed” principle. It effectively curbs attempts at abusing power by institutions and forces state officials to issue decisions that are free from arbitrary bias.

The public administration supports business

Poland’s legal regulations not only limited the actions that may be undertaken by public administration institutions, but also broadened the scope of their responsibilities. These include creating favourable conditions for establishing and conducting business activity and, consequently, facilitating growth of entrepreneurship.

Public administration institutions are obliged to perform their duties in line with the interests of entrepreneurs and do it in a timely manner. When performing their duties, state administration institutions are obliged to cooperate with employers’, employees’, and entrepreneurs’ organizations, as well as professional and commercial self-governing bodies.

File a complaint with the court

Entrepreneurs who conduct their business in Poland may resolve their conflicts in general courts, whereas complaints related to decisions made by state administration institutions are resolved by administrative courts.

In matters related to commerce, general courts examine cases that fall into the following areas: civil law, commercial law, labour law, company registration regulations and bankruptcy law.

Poland has a two-tier court system. There are no dedicated commercial courts in the Polish legal system. Commercial cases are ruled by general courts, usually by their commercial divisions.

Poland has a total of 242 district courts (large cities usually have several courts). They operate as courts of first instance when deciding property law cases in which the value of the object of litigation does not exceed 75 thousand zlotys. In the case of commercial proceedings – i.e. litigation between entrepreneurs – this limit is higher: 100 thousand zlotys.

There are also 45 regional courts. They operate as courts of second instance, ruling over appeals against decisions issued by district courts. They also serve as courts of first instance for cases in which the value of the object of litigation exceeds 75 thousand zlotys, as well as cases which relate to areas of law which require the ruling to be made by a regional court (e.g. non-material law cases, copyright and intellectual property protection cases, cases associated with prevention of or counteracting unfair competition and petitions for revoking or declaring invalid acts enacted by public bodies).

Appeal courts, of which there are 11, serve as courts of second instance and rule over appeals against decisions issued by regional courts.

The Supreme Court oversees decisions made by general courts and examines extraordinary means of filing complaints against final decisions made by courts of second instance (both regional courts, in minor cases, and courts of appeal). However, the Supreme Court may not resolve complaints associated with findings of fact which means that it does not hold evidence and witness hearings.

Disputes with state institutions settled by the administrative court

The competence of administrative courts is to oversee decisions issued by the state administration. They determine whether ordinances enacted by local government bodies conform with legal acts, as well as normative acts issued by the government administration.

The courts also resolve disputes over competences between local and central government bodies. They pass resolutions which aim to clarify legal questions pertaining to specific cases. Administrative courts are also responsible for resolving disputes between citizens and state administration bodies. The majority of disputes settled by administrative courts occur between citizens or business entities and the tax administration.

When doubts arise concerning the compliance of Polish law with European Union regulations, citizens and entrepreneurs may seek assistance from the Court of Justice of the European Union based in Luxembourg. Whereas complaints regarding human rights and civil liberties may be directed to the European Court of Human Rights based in Strasbourg. Polish authorities recognise and implement decisions made by these courts.

Independent judges, trusted lawyers

Polish judges are independent when making their rulings. They are appointed for life by the President and their independence is ensured by regulations contained in the General Courts Act. The independence of the judiciary is upheld by the National Justice Board, a body that may not be influenced by the government and whose members are appointed, in equal proportions, by the Sejm, Senate and the President.

Polish entrepreneurs and individuals may receive legal services and aid from lawyers and legal counsels. These are two legal professions that date back to the times when lawyers used to advise individual people, whereas legal counsels provided legal aid to companies. Currently, the competences and qualifications of both professions are identical. Both of them are professions of public trust, similar to doctors, pharmacists, medical analysts, a status that is stated in the Constitution and regulated in detail by special professional acts. Professional self-governing bodies watch over the standards of service provided by their members with membership being obligatory for both legal professions.

Also numerous foreign lawyers conduct their practice in Poland. Lawyers from EU countries do not need any additional permits to do so – they are only required to join the local self-governing body of lawyers or legal counsels.

Many international law firms have their offices in Poland. Many Polish law firms belong to international companies which ensures that similar standards of service are provided.

Take your contract to the notary

The security of all legal transactions is also handled by the notary. The notary regulations in Poland are similar to

those present in other countries where legal systems are based on principles originating in Roman law. The activity of notaries and their professional self-governing bodies are regulated by the Notary Law Act, whereas the system rules that govern the notary self-government are outlined in article 17 paragraph 1 of the Constitution of the Republic of Poland. The article states that the professional self-government, representing individuals performing a profession of public trust, is obliged to ensure that its members perform their duties within the boundaries of public interest and serve to protect it.

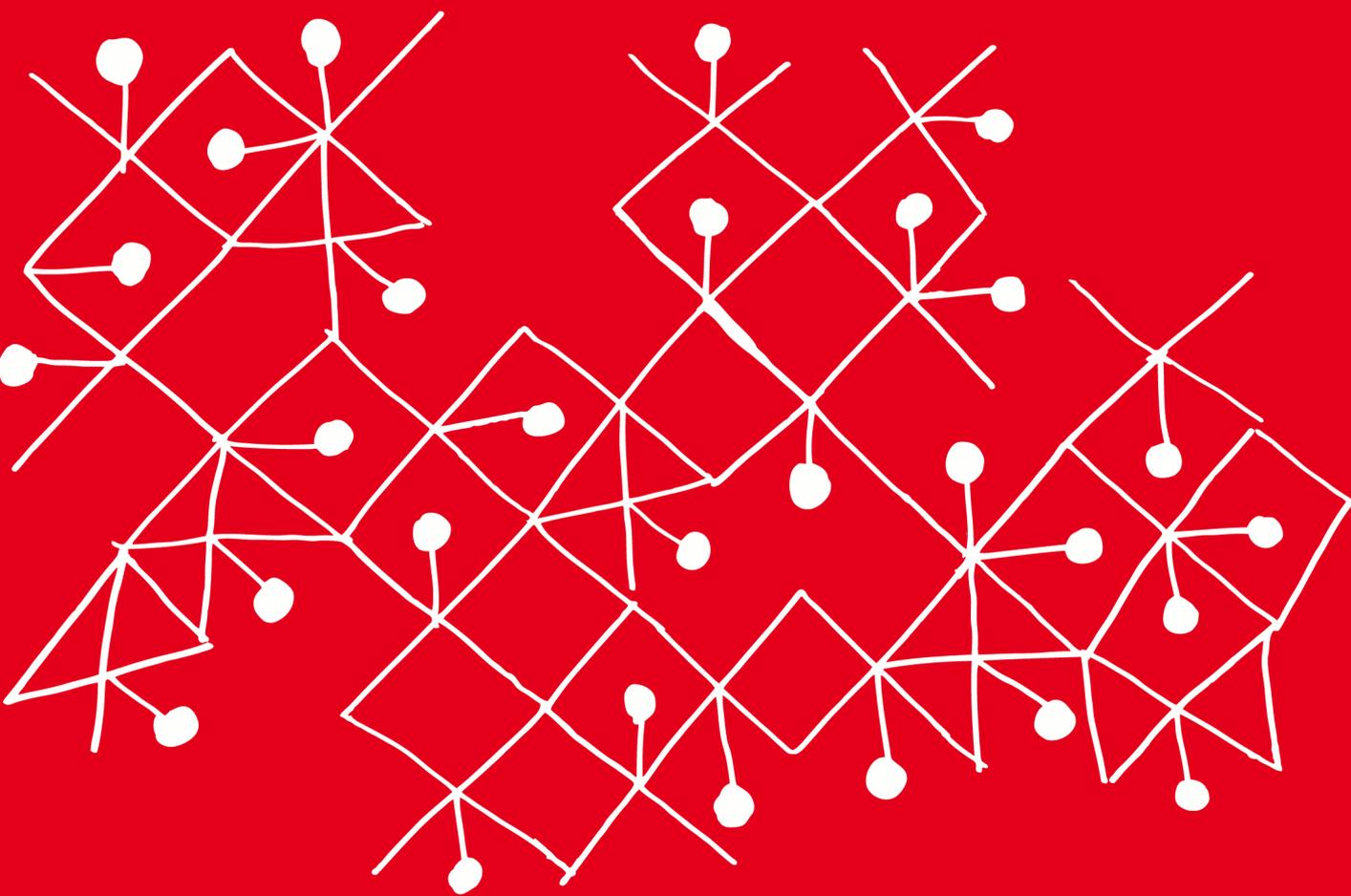
Moderately-high taxes

Poland's taxation level falls into the European average. The income tax rate is currently 19 percent for legal entities and 18 or 32 percent for natural persons. The base VAT rate is 23 percent (temporarily raised from 22 percent due to the ongoing financial crisis) with two preferential rates of 8 and 5 percent (for food products, books on all kinds of physical media and magazines). Poland's average level of taxation in 2014, calculated on the basis of the share that public sector spending has in the GDP, was 45% and was therefore higher than, for example, in Croatia, but the Italians, Scandinavians, Belgians and the Dutch still have to work longer than Poles to cover public spending.

Conditions for doing business are improving

The commercial law and conditions for doing business in Poland regularly come under heavy criticism. This is often due to the fact that legal regulations are excessively complicated and change too frequently. However, when viewed from an international perspective, this is not as bad as it would seem. For example, the most recent "Doing Business" World Bank report placed Poland at the 32nd place, just behind France and before Spain.

The 2015 report notes that, for example, transferring assets has become easier due to the implementation of procedures which allow for some formalities to be taken care of online and lower notary fees. Cross-border trade has also been made easier. Establishing new companies has also become easier, mainly due to some requirements, including the need to register the company with the National Labour Inspectorate, being abolished. It has also become easier to obtain a building permit. The general view is that in recent years many procedures were simplified and made more convenient for the sake of entrepreneurs – as reported by the World Bank's overview of changes made to Polish legal regulations.



INNOWACYJNA GOSPODARKA
NARODOWA STRATEGIA SPÓJNOŚCI



**MINISTERSTWO
ROZWOJU**

UNIA EUROPEJSKA
EUROPEJSKI FUNDUSZ
ROZWOJU REGIONALNEGO



Projekt jest współfinansowany przez Unię Europejską ze środków Europejskiego Funduszu Rozwoju Regionalnego