



# **P**ending or announced changes in Polish law affecting the market

selected issues

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## 1

**Provisions will be introduced to computerise activities of entities responsible for performing public duties for administrative courts**

Status: this act will come into force on 15 May 2018

Enables court files to be kept electronically in court and administrative proceedings. It specifies to what extent the parties to the proceedings can access files kept electronically and file pleadings, powers of attorney and complaints electronically. It specifies the formal requirements applicable to pleadings in electronic form, the procedure for effective service, and the conditions a party is required to fulfil for service to be possible.

**Potential implications**

- Parties can access case files online, and obtain excerpts and copies of the files in the same way.
- A two-phase procedure is laid down for electronic service of pleadings, based upon the existing procedure provided for in the Administrative Procedure Code.
- If the other party does not wish to use the electronic service system, a party submitting a pleading through the system will also be charged an administrative fee for printing and service of a copy of the pleading it is submitting to the other party.

## 2

**Register of Levies Owed to the State to be introduced**

Status: this act came into force on 1 January 2018  
(an amendment postponing enactment until 1 July 2018 is awaiting the President's signature)

A Register of Levies Owed to the State will be created. The aim is to determine and then register information about entities which do not meet their financial obligations towards the state, which are subject to administrative enforcement proceedings. It will be possible to enter information about the obligated entity if the total amount owed by the entity is PLN 5 000 or more, and the obligated entity has been served notice of the possibility of being placed in the register. It will only be possible to access the register upon the consent of the authority which maintains the register and only at the request, among others, of a creditor, court, public prosecutor's office, or the commercial records office. A procedure will also be introduced for contesting entry in the register.

## Potential implications

- The scope of information available on the subject of debtors will be expanded to include information about outstanding levies owed to the state.
- This will help in checks on credibility and solvency of business counterparties.
- The procedure for launching enforcement by public authorities will be modified: it will be possible to place a debtor in the Register of Levies Owed to the State 30 days from the day of service to the debtor of notice of the risk of entry in the register. There is also a procedure for contesting the ruling.
- Stakeholders and obligated entities will be able to access the information in the register using the Ministry of Finance tax portal.
- There will be no charge for retrieval of information from the Register of Levies Owed to the State.

In order to protect the rights of an obligated entity listed in the register, breach of data storage provisions and unauthorised actions are to be subject to criminal liability.

## 3

**Amendment to the Civil Procedure Code; bank's privileges to be curtailed**

persons affected  
 • the banking sector

Status: work on the bill is ongoing

This government proposal is a comprehensive amendment to the Civil Procedure Code. Among the envisaged changes is abolition of a bank's right to obtain enforcement title in the form of a writ of payment based on an excerpt from banking records. The proposal follows a Constitutional Tribunal ruling finding that as a bank's private document, bank enforcement title is unconstitutional. Thus at the same time the amendment will abolish the privilege hitherto enjoyed by banks to obtain enforcement title based on their own private document.

**Potential implications**

If this proposal for a change to writ-of-payment proceedings is pushed through, this will directly lengthen the duration of enforcement of receivables by banks and will also result in higher costs of review of a case in ordinary court proceedings, which will ultimately be borne by the debtor. Banks will also be able to begin to demand other forms of security which can be enforced more effectively, such as bills of exchange, which can also serve as grounds for issuance of enforcement title in fast-track writ-of-payment proceedings.

## 4

**Amendment to the Act on the Borrower Support Fund**

persons affected  
 • the banking sector

Status: bill submitted to the Sejm

This is a proposal drawn up by the President in response to the recent foreign currency loan crisis, i.e. mortgages which are denominated or indexed in a currency other than PLN. The proposal changes the way in which the Borrower Support Fund operates, forming a separate Restructuring Fund, which will be used for voluntary restructuring of loans in foreign currency. The Restructuring Fund will be supplied using lenders' funds in proportion to the foreign currency loan portfolio. Each lender can apply for a borrower of theirs to be granted funds, which will be paid into the Fund up to the level of the payment they have contributed. If the lender does not use its funds in full, the Fund Board can allocate them to other lenders.

## Potential implications

This system is designed to encourage lenders to restructure loans in foreign currency. In practice, each lender of this kind will have an obligation to deposit funds in the Restructuring Fund. If the contributed funds are not used for restructuring for its customers, they are pooled for use by customers of other banks.

Under the proposal, it will not be possible to serve notice of termination of a loan agreement while a customer's application to a bank is under review.

## 5

### Additional abusive clauses

persons affected

- the banking sector
- the market for trading in receivables

Status: bill submitted to the Sejm

This is an act put forward by opposition MPs to expand the list of abusive clauses in consumer contracts to include two provisions found in agreements for loans indexed or denominated in a currency other than PLN.

## Potential implications

Inclusion of these clauses on the list would mean that a borrower would be able to challenge them in court and effectively have them invalidated. The act would take effect retrospectively – consumers would also receive protection in the case of agreements concluded before the act came into force. Enactment of this act could conflict with the President's Mortgage Act (which is in force since 22 July 2017).

## 6

### Act On Predatory Lending

persons affected

- the banking sector
- the lending sector
- the market for trading in receivables

Status: work on the bill is ongoing

The proposal significantly lowers the maximum costs of loans other than interest (such as the lender's fees and commissions) specified in the Consumer Lending Act, thus affecting the cost effectiveness of loans of this kind.

The act:

- lowers the limit on loan costs other than interest from 100% to 75% of the overall amount of the loan,
- limits the maximum value of security up to which repayment of a pecuniary performance can be sought (this does not only apply to consumer contracts).

There will be new criminal sanctions for breach of the proposed act.

### Potential implications

The opinions of various government committees are being sought with regard to the bill. Once the bill is enacted it will be prohibited to establish sureties for debts (for example registered pledges, mortgages) of which the maximum values of sureties combined exceed the statutory limit. The proposed changes are important and especially relevant to businesses operating on the short-term consumer credit and lending market.

## 7

### Limits on pursuing claims which have expired under the statute of limitations

persons affected

- the banking sector
- the lending sector
- the market for trading in receivables

Status: bill submitted to the Sejm

The proposal aims to reduce certain time periods after which claims become time-barred and to protect consumers against recovery of debts which have expired. Under the proposal, claims will expire after 6, and not 10 years, except claims for periodical services and services provided in connection with business activity.

Also, in the case of consumers, the proposal abolishes the requirement to make a submission alleging expiry under the statute of limitations – a court will determine automatically whether the time limit for the debt being sought has expired.

### Potential implications

The bill makes major changes to the rules under which claims are pursued, and is an effective means of limiting the time period in which they can be pursued. If the bill is passed, it will have a considerable effect on trade in receivables, and in particular might lead to a decline in interest in securitisation of certain kinds of portfolios of debts owed by consumers, as it provides that the new provisions apply to claims which have not expired on the day on which the act comes into force. This means that if for example six years have passed since a claim matured which was subject to a 10-year expiry period, the claim expires automatically on that day. The bill has been referred for further review in the Sejm.

## Forfeiture of assets to be introduced

persons affected

- any entities which receive material gain due to commission of an offence by another person – the perpetrator

Status: act came into force on 27 April 2017

The amendment provides greater scope for applying forfeiture by way of:

- a ruling ordering forfeiture of a business enterprise of a natural person which is not the property of the perpetrator if that business enterprise was used to commit an offence or conceal the proceeds of the offence,
- a ruling ordering forfeiture of material proceeds of an offence punishable by no less than 5 years' imprisonment, transferred to another entity in practice or on the basis of legal title of any kind, acquired by the perpetrator within a period of 5 years prior to commission of the offence.

It has also now become possible to establish injunctive relief in material form through the ordering during criminal proceedings of compulsory administration of the business enterprise, and appointment of an administrator.

Moreover, in order for property that may be subject to forfeiture to be revealed, procedural authorities can order examination and recording of telephone calls, e-mails, and of information on messaging services, etc.

### Potential implications

- If criminal proceedings are launched and conducted, the implemented solutions could significantly limit ownership title and freedom of commercial activity.
- Honest businesses will be required to prove that assets acquired over a period of five years leading up to an offence are legitimate if it is suspected that they are proceeds of crime.
- Placing a company under compulsory administration at a preliminary stage of the proceedings could have serious consequences – the entity will be run by an administrator whose task is not to develop the business, but to maintain the status quo and provide the authorities in the proceedings with information relevant to the proceedings.
- If a ruling is issued granting material injunctive relief in the form of compulsory administration and appointment of an administrator, a complaint can be filed against that ruling.
- Greater monitoring of businesses is possible in order to detect and combat white-collar crime.

## 9

**Bill on matters of public life being public record**

persons affected

- persons performing public functions, employers, businesses, public institutions

Status: work on the bill is ongoing  
scheduled to come into force on 1 March 2018

The proposals made include:

- the introduction of the term 'whistle-blower', which would be a person afforded protection under the law,
- requiring an business with 50 or more employees to introduce and apply anti-corruption procedures,
- introducing criminal and administrative liability of a business for failing to apply or applying feigned or ineffective anti-corruption procedures; the possibility of that business being fined,
- further limits on employment of persons performing public functions,
- expanding the definition of a company required to disclose public information,
- regulation of professional lobbying,
- extending the list of persons required to declare their financial standing in declarations subject to checks,
- introducing more precise rules for liability for making false declarations.

**Potential implications**

- An increase in the number of criminal cases concerning as a result of whistle-blowers helping law enforcement agencies.
- Further limits on conducting business activity and holding of particular positions by persons formerly performing public functions.
- An increase in the number of entities under an obligation to disclose public information, obligation for them to maintain the relevant registers.
- Extension of the list of types of persons required to declare their assets.

## 10

**Proposal for amendment to the Fiscal Penal Code**

persons affected

- includes for instance all entities required to pay levies to the state

Status: work on bill ongoing  
the bill is not available at the moment

The main objectives of the proposal include for instance:

- limiting the situations in which active repentance can be exercised and corrections to tax returns can be filed,
- extending the period under the statute of limitations for fiscal offences and misdemeanours,
- more severe criminal liability in cases of fiscal crime which depletes large amounts of tax due,
- raising the minimum multiple of the daily reference rates applicable when imposing fines,
- introducing new types of offences, for example possession of counterfeit or altered excise stamps, receiving goods produced illegally, obstruction of official duties of persons with authority to examine devices and to monitor how games of chance are organised,
- expanding the possibility of voluntary acceptance of liability in fiscal crime cases.

### Potential implications

- An increase in the number of fiscal criminal cases and an increase in the financial sanctions imposed in those cases.
- Greater emphasis on recovery of depleted amounts payable to the state in fiscal offence and misdemeanour cases.
- Possibility of voluntary acceptance of liability (resulting among other things in the requirement to return depleted amounts payable to the state and avoidance of placement in the National Criminal Register) in a larger number of fiscal penal cases.
- Presumably a tighter tax system and a reduction of the Polish shadow economy.

## 11

### Proposal for amendment of the Corporate Crimes Act

persons affected

- any entities which have gained or could have gained, even in non-material form, in connection with a crime of a person acting on their behalf or for their benefit

Status: work on the bill is ongoing  
the bill is not available at the moment

The main objectives of the proposal include for instance:

- abolishing the requirement for a natural person to be convicted in order to be able to conduct proceedings against a corporate entity,
- enabling cases to be conducted contemporaneously against a natural person – the suspected perpetrator –and a corporate entity,
- raising the threshold and ceiling for the statutory levels of fines and departure from the link between the amount of a fine and revenue earned by the corporate entity.

## Potential implications

- an increase in the number of cases against corporate entities.
- an increase in fines and the inconveniences of other sanctions imposed on corporate entities (including those which have assets but do not show revenue).

Due to the assumption that corporate liability proceedings are intended for 'serious matters', the proceedings can be discontinued if even the lowest penalty possible is excessive.



## 12

### Markets in Financial Instruments Directive (MiFID) II with respect to activities of investment firms

persons affected

- financial institutions

Status: legislative work to implement in Poland ongoing  
(EU countries have obligation to implement MiFID II from January 2018)

MiFID II will be implemented in Poland by amending the Act on Trade in Financial Instruments.

The proposal for the amendment has been submitted to the Sejm. Like MiFID II, the bill provides for further protection of investors, more regulatory requirements for trading in financial instruments, and additional requirements for investment firms based outside of the EU, and also gives the regulator further supervisory powers.

#### Potential implications

Failure to comply with the new requirements in MiFID II could mean a fine being imposed by the Polish Financial Supervision Authority on investment firms.



## Bill on Principles of Providing Funding for New Investments

persons affected

- all sectors with regard to new investments (opening new facilities, reinvestment). more beneficial rules for funding for micro, small, and medium-sized businesses

Status: interdepartmental consultations, public consultations

Changes to the rules for allocation of regional investment aid.

The new instrument for funding for businesses up until 2026 is to be parallel to Special Economic Zones and later replace that regulation.

Complete abolition of geographical limits with regard to obtaining funding in the form of income tax relief. Enjoyment of tax relief on the basis of a decision granting funding to a business for a specified period (10-15 years).

### Potential implications

Funding can be obtained anywhere in Poland, not only in Special Economic Zones.



## Obligation to appoint a company auditor for a minimum of two years

persons affected

- any entities whose financial statements are audited

Status: act came into force on 21 June 2017

An agreement with an auditing firm for audit of the financial statement must be concluded for a minimum of two years, with the option of renewal for subsequent periods of a minimum of two years. This change applies to audits of financial statements drawn up for financial years which commence after 16 June 2016.

### Potential implications

- Agreements with auditors cannot be concluded freely for a period determined at the parties' discretion.
- No transition period is provided for in the act, and this means that it also applies to agreements already concluded.
- If the new requirements are not complied with the auditor will not have been duly appointed, and that auditor's audit of the financial statements will not be an audit for subsequent approval by the meeting of shareholders. There is therefore a risk that shareholder resolutions distributing profits / covering losses could be found to be invalid, which might mean that dividends received by shareholders would have to be returned.

## Clarification of areas not regulated in the Commercial Companies Code

persons affected

- commercial companies

Status: work on the bill is ongoing  
(scheduled to come into force on 1 March 2018)

Amendments to the Commercial Companies Code are intended to clarify provisions in areas previously not regulated and which are interpreted in various ways in practice. Some changes make business activity easier, for example the option of allocating the surplus for contribution for shares in a limited liability company above the nominal value of shares to the supplementary capital or reserve capital, combined with the option of granting the management board or supervisory board authority to make decisions regarding coverage of losses from the reserve capital or the option of adopting resolutions which are reserved for the ordinary meeting of shareholders in writing.

**Potential implications**

- Possibility of confirmation of actions of a ,false authority' in the same way as a ,false representative'.
- Possibility of surplus of the contribution made for shares in the company above their nominal value being allocated to the supplementary or reserve capital.
- Amendment of the statute of a company in organisation only with the consent of all of the shareholders.
- Regulation of the status of communal estate with regard to shares.
- Introduction of an absolute time limit for payment of dividends.
- A company's right to return advance payments on expected dividends.
- The procedure for resignation from the position of management board/supervisory board member.
- Adoption of resolutions reserved for the ordinary meeting of shareholders in writing.
- The possibility of cancellation of a meeting of shareholders which has been convened.
- Accession by a company taking over divided assets to litigation proceedings.
- Obligation to pay dividends in limited liability companies by the end of the financial year in which the resolution was adopted.
- Right of a company to demand return of an advance payment made towards an expected dividend.

In many cases, the changes will apply to legal business transacted prior to the act coming into force.

**16**

**Definition of micro and small businesses and obligation to store financial statements**

persons affected

- small and micro businesses and any entities which draw up financial statements

Status: work on the bill is ongoing  
(scheduled to come into force on 1 March 2018) ▶

The proposal raises the statutory limits defining micro and small businesses, and this means it will be possible for a larger group of firms to be classed as firms of these kinds.

The proposal also provides for a maximum period for which the approved annual financial statements have to be stored. This will be a minimum of five years counted from the beginning of the year following the financial year in which they were approved (previously there were no time stipulations).

## Potential implications

- A larger group of firms will be exempt from certain specified accounting obligations which apply to other firms.
- Formerly there were no provisions stipulating a compulsory period for storage of financial statements, and this was interpreted as 'subject to no time limitations'.

## 17

### A new act on business entities intended to replace the current Act of Freedom of Commercial Activity

persons affected

- all entities conducting business activity

Status: act submitted to the President and Senate Speaker  
(scheduled to come into force on 1 March 2018)

The new act is intended to be the main act within the 'Business Constitution' – a legislative package which will take the place of the current Act on Freedom of Commercial Activity.

The legislative package also includes:

- an act simplifying tax law,
- an act on a Joint Government, Business, And Business Ombudsmen Committee,
- a pro-entrepreneurship act,
- an act deregulating business activity,
- repeal of the Act of 6 July 1982 on the Rules for Small-Scale Production Business Activity in the Polish People's Republic by Foreign Legal and Natural Persons.

The package also includes:

- a resolution adopted by the Council of Ministers requiring a business to use a business stamp,
- a Guide to Calculating Regulatory Costs,
- an act simplifying EU fund expenditure procedures,
- an Act on Central Registration and Information on Business and on Information Points for Businesses,
- an act on the rules for participation in trade by foreign business entities and other foreign persons.

### Potential implications

- A principle will be introduced of „anything that is not prohibited by law is permitted“.
- ‚Relief when starting up‘ – exemption from the obligation to pay social security contributions for people starting businesses for a period of 6 months.
- Introduction of unregistered business activity for monthly revenue of up to 50% of the minimum wage – activity of this kind will not be classed as business activity.
- Abolition of the official business registration number (REGON) (firms will use the tax identification number (NIP) and a registration number).
- A Business Ombudsman will be appointed and a Joint Government and Business Committee will be set up.
- Taxes will be simplified.

## 18

### Business activity of foreign businesses in the Republic of Poland

persons affected

- all foreign entities conducting business activity in the Republic of Poland

Status: act passed by the Sejm and Senate, submitted to the President  
(scheduled to come into force on 1 March 2018) ➔

Provisions on foreign businesses and other foreign persons participating in trade in the Republic of Poland will be removed to a separate Act on the Rules for Participation in Trade in the Republic of Poland by Foreign Business Entities and other Foreign Persons.

### Potential implications

- The formal provisions for setting up and liquidating branches of foreign businesses will be simplified.
- In particular, it will be possible to liquidate a branch of a foreign business in the same way as a Polish branch, and not as at the moment – using the liquidation process for a limited liability company.
- The act will contain provisions on temporary cross-border service activity in line with the TFEU.

## New rules regarding preparation and disclosure of financial statements and certain other information

persons affected

- any entities registered in the National Court Register

Status: this act will come into force on 15 March 2018  
 some of its provisions will come into force subsequently successively up until 1 March 2020

The proposal partly implements Directive 201/17/EU of the European Parliament and of the Council amending directives as regards the interconnection of central, commercial and companies registers.

### Potential implications

- Introduction of a rule that all applications to the National Court Register must be filed in electronic form (starting from 15 March 2018) and that all financial statements must be prepared in that form (starting from 1 October 2018).
- Obligation to submit to the registry court address data of management board members, liquidators and commercial proxies, as well as shareholders and (in case if a shareholder is a legal person) members of shareholders' governing bodies (starting from 15 March 2018).
- Creation of a website on which court documents which are public record are universally accessible.
- The downloading in electronic form of full excerpts from the National Court Register, and not just current excerpts, as at the moment.
- Expansion of the powers of probation officers and guardians, and increased court supervision of the activities of probation officers and guardians.
- Automatic deletion of certain types of entries (for example information about debtors – after a period of 7 years).

## Dematerialisation of shares in companies which are not listed companies

persons affected

- joint-stock companies, limited joint-stock partnerships, European companies

Status: work on the bill is ongoing

The act is intended to dematerialise shares (stop shares being issued in document form), introduce an electronic register of shareholders, make access to a shareholder register open to the company and all shareholders, regulate issues relating to the status of spouse shareholders in relation to bearer and inscribed shares, lift restrictions in trade in contributed shares and imposing inscribed status on these shares, regulation of specification of the dividend day, and the possibility of convening the general meeting by e-mail.

**Potential implications**

Introduction of the possibility of sharing of tax information about holders of bearer shares, identification of holders of shares.

**21**

**Changes to the rules regulating management of state-owned property**

persons affected

- entities in which the Treasury has a stake, state-owned legal persons

Status: work on the bill is ongoing ▶

Introduction of new regulations and modification of certain solutions in the Act of 16 December 2016 on the Rules for Management of State-owned Property.

The new act is intended to amend 9 acts related to this subject area.

**Potential implications**

- The President of the Council of Ministers will have greater powers.
- Regulations on actions of representatives of the Treasury and obtaining voting instructions will be reworded to make them more precise.
- There will be better organisation of regulations on disposal of shares owned by the Treasury.
- The list of companies in which Treasury-held shares cannot be sold will be expanded.
- Regulations on the wording of resolutions and statutes of companies in which the Treasury holds a stake will be expanded.
- Requirements as regards persons who take up seats on supervisory boards of companies in which the Treasury holds a stake will be made more specific (an MBA has been added to the list of courses, qualifications and academic titles required to hold a seat on a supervisory board).
- A foundation funded solely by the Treasury or other state-owned legal persons will be classed as a state-owned legal person.
- It will be determined definitively that VAT is added to remuneration of members of bodies which manage companies (Act on the Rules for Formulating Remuneration of Persons Managing Certain Kinds of Companies).

## Appointment of an Ombudsman for Small and Medium-sized Businesses

persons affected

- microbusinesses, small- and medium-sized businesses

Status: act submitted to the President and Senate Speaker  
(scheduled to come into force on 1 March 2018)

Regulation of a new institution, an Ombudsman for Small and Medium-sized Businesses and Microbusinesses, responsible for protecting their rights.

### Potential implications

This ombudsman will be appointed by the President of the Council of Ministers at the request of the minister responsible for commerce, for a six-year term.

Among other things the ombudsman will issue opinions on legislative proposals concerning business activity, approach the competent authorities with requests for legislative initiatives, submit requests to the Supreme Court for adjudication of inconsistencies in interpretation of law or explanatory notes regarding the law, and inform the competent authorities of any irregularities and barriers to commercial activity which are found.

The ombudsman will also have powers of intervention such as the possibility to demand that public administration authorities, organisations, or institutions provide explanations or information, or make available files and documents.

The ombudsman will be able to request that administrative proceedings be instigated, file a complaint with an administrative court, and participate in proceedings – with the same powers as a public prosecutor.

The ombudsman will also assist in organising mediation between a micro-, small, or medium-sized business and a public administration authority.

## Business register and information point for businesses

persons affected

- persons conducting business activity

Status: act submitted to the President and Senate Speaker  
(scheduled to come into force on 1 March 2018)

Organising and making more modern the register of persons conducting business activity.

### Potential implications

- Allowing businesses to grant power of attorney and appoint commercial proxies, and make available information in this respect online via the Central Registration and Information on Business (CEIDG).
- A new system of division of data registered in the CEIDG into a business' registration details and data providing information about the business will mean that a business can change the data providing information about the business at any time.
- A business registered in the CEIDG (a natural person) will be entitled to suspend business activity for an indefinite period of time and automatically resume business activity at the end of a time period of their choice.

## 24

### Update of list of strategically important companies

persons affected

- buyers and sellers of shareholder rights in strategically important companies

Status: new regulation issued by the Council of Ministers of 6 December 2017 came into force on 1 January 2018

The regulation gives a list of firms which are protected with regard to purchase or attaining a material level of participation or dominance over the specified companies.

### Potential implications

The following have been declared strategically important companies for 2018:

- Grupa Azoty S.A. with its registered office in Tarnów (National Court Register number: 0000075450),
- KGHM Polska Miedź S.A. with its registered office in Lubin (National Court Register number: 0000023302),
- EmiTel Sp. z o.o. with its registered office in Warsaw (National Court Register number: 0000482636),
- TK Telekom Sp. z o.o. with its registered office in Warsaw (National Court Register number: 0000024788),
- Polski Koncern Naftowy ORLEN S.A. with its registered office in Płock (National Court Register number: 0000028860),
- PKP Energetyka S.A. with its registered office in Warsaw (National Court Register number: 0000322634),
- TAURON Polska Energia S.A. with its registered office in Katowice (National Court Register number: 0000271562).

## 25

### Increase of the minimum wage

persons affected  
• all businesses

Status: in effect as of 1 January 2018

As of 1 January 2018 the gross minimum wage is PLN 2 100 (in 2017 it was PLN 2 000), and the gross minimum hourly wage for work under agreements governed by civil law is PLN 13.70.

#### Potential implications

An increase in remuneration. The increase in the minimum wage will also cause among other things an increase in the additional pay for work at night and the maximum severance pay for termination of an employment contract for reasons not attributable to employees, which will be PLN 31 500 gross in 2018.

## 26

### Restrictions on retail on Sundays

persons affected  
• retail, logistics

Status: act will come into force on 1 March 2018

The act places restrictions on retail and retail-related activities such as warehousing or stock-taking. Retail will be permitted:

- from 1 March 2018 on the first and last Sunday of the month and the two Sundays preceding Christmas,
- in 2019 on the last Sunday of every month and the Sunday before Easter, and the two Sundays preceding Christmas,
- from 2020 on specified pre-holiday shopping Sundays and the last Sunday in January, April, June, and August.

On Christmas Eve and the last Saturday preceding Easter Sunday, retail will be permitted until 14.00.

The act contains a series of exceptions and does not apply to internet shopping.

The penalty for conducting retail on a Sunday in breach of the act will be a fine of between PLN 1000 and PLN 100 000, and imprisonment for persistent breach.

**Potential implications**

The bill will mean that firms which deal in retail will have to reorganise their operations, and this may also entail reorganisation of the workforce.

**27****Employment of foreigners, intra-corporate transfers**

persons affected

- businesses which employ foreigners, corporate groups

Status: act came into force on 12 February 2018

The amendment to the Act on Foreigners harmonises Polish law with EU law, and provides that third-country nationals can be granted temporary residence in Poland in connection with intra-corporate transfer from a third country. In order to be eligible for intra-corporate transfer, an employee will have to have been employed within that business or within the same corporate group previously. Transferred employees will be entitled, within the same business or the same corporate group, to move around within the EU.

Family members of intra-corporate transferees will be able to join those transferees at once and will have access to the Polish labour market.

**Potential implications**

Easier options with regard to intra-corporate transfers.

**28****Payment of remuneration in cashless form and conversion of employees' personal files into electronic form**

persons affected

- any firms which have employees

Status: comes into force as of 1 January 2019  
(with minor exceptions with regard to businesses which provide storage for employers' HR and payroll documentation)

The act introduces long-awaited changes regarding employee documentation:

- it reduces the duration for which employee files have to be retained from the current 50 years to 10 years (except as provided for in specific regulations),
- it allows personal files of employees to be maintained electronically – this requires digital reproduc-

tion (for example a scan) of documentation and the reproduction to be furnished with a qualified electronic signature.

The act also provides that as a rule remuneration is paid to employees by wire transfer and in other forms only at an employee's request.

### Potential implications

- There will no longer be a requirement to obtain an employee's consent in writing to payment of remuneration by bank transfer.
- The reduced time period for which personal files have to be kept stored and the possibility of conversion into electronic form could be grounds for changes to the file archiving system, including amendments to contracts with firms which store files.

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## 29

### Employment at sea

persons affected  
• maritime sector

Status: act came into force on 28 December 2017

The act is intended to harmonise Polish and EU law.

An obligation has been introduced to take out insurance or some other form of financial security in case a sailor ceases to be employed by the ship-owner (bodily injury, illness, or death) and hold a certificate (confirming the financial security), issued by the entity that provides the security.

Rules are also specified for inspection of ships which are not subject to the MLC certificate obligation. The penalty for breach of the act is specified as a fine of between PLN 5 000 and PLN 10 000.

### Potential implications

- Further obligations for employers in the maritime sector.
- The need for review of current practices of ship-owners with regard to the issues affected by the changes.

## 30

**Monitoring of employees and processing of employees' personal data**

persons affected

- any firms which have employees

Status: work on the bill is ongoing  
scheduled to come into force before 25 May 2018

The proposal, put forward by the Polish Ministry of Digital Affairs, concerns harmonisation of Polish legislation with Regulation (EU) 2016/679 (General Data Protection Regulation).

With regard to changes in the Labour Code, the proposal provides among other things that apart from the categories of employee personal data listed in the act, with an employee's consent an employee is able to process other types of data as well, including biometric data. On the other hand, it is prohibited to process data about an employee's addictions, health status and sex life or sexual orientation, even with the employee's consent.

The proposal also regulates the issue of monitoring employees. This can be done to ensure safety of employees, protection of property, or keep information confidential, while it should not be used to monitor an employee's performance of work. Under the proposal, an employer is required to inform employees that visual monitoring is employed a minimum of 14 days in advance.

**Potential implications**

The need to examine employee personal data processing practices and adapt employers' by-laws in this regard accordingly.

## 31

**Universal Employee Capital Schemes (PPK)**

persons affected

- employers and other firms that employ natural persons

Status: government currently working on the bill

The act provides for introduction of PPK, which are intended to be systemic savings schemes with disbursement once the employed person reaches sixty years of age. As a rule, the employing firms will be required to conclude agreements with particular financial institutions for management of PPK and pay contributions to those institutions. The funds accrued in the PPK (for a fee specified in the act) are invested in investment funds.

Contributions paid to PPK would be financed by the employing firm (minimum 1.5% of the basic reference amount for social security contributions) and the employed person (2% – 4% of remuneration). If

additional criteria are fulfilled, an annual additional payment from public funds can be expected. The employed person is to be given the option of withdrawal from PPK.

The funds accrued on PPK are intended to be private, and among other things can be inherited.

Entities which have introduced Employee Pension Schemes in the meaning of currently applicable provisions of law and transfer to those schemes basic contributions of a minimum of 3.5% of remuneration are to be exempt from the obligation to operate a PPK.

### **Potential implications**

Higher labour costs and lower remuneration received by employees in real terms due to funds being allocated to long-term saving schemes.



## 32

## Liberalisation of the gas market

persons affected  
 ● energy sector

Status: in progress (until 2024) ►

The obligation to present gaseous fuel price tariffs to the President of the Energy Regulatory Office for approval is gradually being lifted over time.

As of 1 January 2017 supervision by the President of the Energy Regulatory Office of price tariffs for sale of gas to wholesale users, sale of LNG and CNG, and sale of gas to end users purchasing fuel of that kind at a virtual outlet or by tender, at auction, or by public procurement, was abolished.

As of 1 October 2017 the obligation to present price tariffs for sale of high-methane and nitrified natural gas to end users who are not households was lifted.

Supervision by the President of the Energy Regulatory Office over price tariffs (i.e. maximum prices) for network gas sold to households will continue until the end of 2023.

### Potential implications

The successively introduced changes are a result of implementation of Community law. They affect all users of the market, whether on the power companies' side or users. The aim of the changes being made is to improve competition on the gas market.

## 33

## Capacity market

persons affected  
 ● the energy sector and energy users

Status: act came into force on 18 January 2018 ►

As an incentive for power companies to invest more in production capacity, an additional funding system has been introduced. The act is intended to prevent a capacity shortage occurring by guaranteeing access to resources producing electricity adequate for users' needs and by introducing a dual-track electricity market.

The mechanism has been introduced in the form of auctions in which the interested energy producers will apply for 'capacity agreements'. The first auction for delivery periods for the years 2021–2023 will be held in December 2018.

According to information from the Energy Ministry, the process of notification of the act is due to end in Q I 2018. Work on the secondary legislation for the act is ongoing.

### Potential implications

- More funds for investment in new production plants and modernisation of the existing plants.
- Introducing funding for users in the DSR system.
- An increase in energy prices for consumers.

## 34

### Amendment to the RES Act

persons affected

- the renewable energy sector

Status: work on the bill is ongoing

In June 2017 a proposal was put forward for an amendment to the RES Act, which the Energy Ministry intended to dispel concerns as to compliance of the funding system with Community regulations.

Among other things, rules about combining operational aid and investment aid will be made more specific, a new, separate mechanism for small biogas installations and hydropower installations will be introduced, and rules will be laid down for sale of projects for which funding was provided in an auction system.

The proposal has been approved by the European Commission, which has agreed to the proposed funding mechanism, including the guaranteed price tariff system for installations of a capacity of up to 500 kW, as well as a system of coverage of a negative balance for larger installations. The Commission agreed that the budget for the approved funding scheme could be PLN 40 bn. The funds are to be distributed among the winners of auctions which are to be organised up until 2021. Projects selected in two procedures which have already been conducted are also going to be included in the funding system.

### Potential implications

- Doubts will be dispelled with regard to compliance of the RES funding system with Community law.
- New forms of funding for selected installations.

## 35

## Changes to rules for granting mining concessions

persons affected  
 • the mining sector

Status: work on the bill is ongoing

A proposal to amend the Geological and Mining Act presented in September 2017 concerns a range of issues relating to obtaining concessions for mining ore. As a result of the changes, procedures to extend current concessions will in particular be simplified and thus take less time.

The rules for granting hydrocarbon concessions are also to be changed. In addition to the currently applicable tender procedure, an alternative method for granting concessions has been proposed in an open door procedure, in which tenders can also be organised at the request of an interested firm.

### Potential implications

- Greater investment certainty for concessionaires.
- Concession procedures will take less time.

## 36

## Act on Electromobility and alternative fuels

persons affected  
 • the energy sector, automotive sector

Status: act has been passed  
 its provisions will come into force successively from 22 February 2018 up until 1 January 2028

The act on electromobility and alternative fuels was passed on 1 January 2018 and submitted for signature by the President.

The proposed provisions are intended to lead to easier and increased investment in the electric vehicles market, and promote use of electricity and alternative fuels in transport. Energy legislation concerning trade and distribution of electricity for electric vehicles (such as exemption from the concession requirement) will be simplified.

The new regulations will also cover construction of electric vehicle charging points.

## Potential implications

- Measures will be introduced facilitating investments on the vehicle charging market.
- More investment in the electric vehicle sector.



## New water law

persons affected

- any firms which use water or generate sewage in connection with their business activity

Status: act came into force on 1 January 2018

The water law introduced among other things:

- new rules for payment of fees for abstraction of water and discharging sewage in water or in the ground,
- new sanctions for not complying with requirements under the act,
- changes to the list of activities for which water permits are required,
- right of first refusal enjoyed by the State Treasury for land on which there are inland bodies of standing water.

The changes are partly due to the need to fully implement the Water Framework Directive.

### Potential implications

- Increased costs of conducting business activity due to the new rules for paying a water abstraction fee and discharging sewage in water or the ground.
- Barriers hindering trade in real estate due to the broad meaning of the term inland bodies of standing water, for which the State Treasury has right of first refusal.
- Authorities will be able to prohibit businesses which do not obtain the required water permit from using water, and this could hinder or prevent further business activity.
- Due to the comprehensive and complex nature of the new regulations, businesses will have to evaluate their business in terms of water and sewage management to identify and comply with new legal requirements provided for in the act.

## Higher EU thresholds for public tender contracts and for concessions for construction works or for services

persons affected

- state contracting authorities, contractors in public tenders

Status: act came into force on 1 January 2018

The new EU thresholds are:

- construction works and concessions for construction works or for services – EUR 5 548 000 (formerly EUR 5 225 000),
- for supplies and services, depending on the category of the contracting authority, up to EUR 144 000, EUR 221 000, EUR 443 000 (formerly EUR 135 000, EUR 209 000, EUR 418 000 respectively).

### Potential implications

The EU thresholds have only changed slightly in relative terms. The change is important however due to the fact that when a contract value exceeds the thresholds, this means that contracting authorities are required to announce the contract in the EU Official Journal. It also has implications for time limits for submitting bids or applications to participate in proceedings, the European Single Procurement Document obligation, and the periods for which a contractor's bid is binding, as well as the scope of actions with regard to which an appeal can be filed with the National Appeals Chamber.

## Change in the rate of the euro

persons affected

- state contracting authorities, contractors in public tenders

Status: act came into force on 1 January 2018

Following the amendment, the average PLN to EUR exchange rate which is the basis for calculating the value of public tenders given in EUR will be 4.3117 (previously 4.1749).

### Potential implications

The change in the average exchange rate of the zloty will be used to convert the value of contracts. These amounts will increase due to an increase in the average exchange rate of the zloty.

The change in the exchange rate of the zloty is due to the threshold being raised for applicability of the Act of 29 January 2004 on Public Procurement – this threshold will now be PLN 129 351.00 (formerly PLN 125 247.00).

## Streamlining proceedings before the Polish Patent Office and expanding its powers

persons affected

- any entities which hold industrial property rights or will be applying for industrial property rights

Status: work on the bill is ongoing

The amendment introduces provisions to streamline proceedings before the Polish Patent Office and to harmonise the Act of 30 June 2000 on Industrial Property with Directive (EU) 2015/2436 of the European Parliament and of the Council and the European Patent Convention.

The most important changes are:

- a change in the definition of a trademark by lifting the requirement for a trademark to be presented in graphic form,
- the protection period for trademarks will be extended by way of payment of a fee for a subsequent period, and there will no requirement for a written application and issue by the Polish Patent Office of a decision, which was the case up to now,
- the possibility of transfer of protection in the case of certain goods,
- a licensee will be entitled to file a claim for infringement of a trademark,
- a detailed description of an invention and a requirement for the application to be consistent,
- the possibility of correcting patent reservations of an invention without changing the essence of the invention up until the moment the patent is granted,
- the possibility of raising claims not only against a person trading in goods bearing a trademark which do not originate from the holder, but also against an intermediary whose services are used when a trademark is infringed.

### Potential implications

The proposal is intended to expedite procedures before the Polish Patent Office and at the same time give it new powers. The wider range of powers will also increase the burden on the office, and consequently certain cases will take longer to review.

## Creating a compensation fund for vaccines

persons affected

- medicine

Status: work on the bill is ongoing

The Ministry of Health is to create a fund from which compensation will be paid in cases of adverse effects of vaccines. Patients who suffer a serious reaction to vaccines and are hospitalised for this reason for 14 days or more will be entitled to compensation from the fund of up to PLN 70 000. There are also plans to extend the list of compulsory vaccines, to include for instance pneumococcal vaccines.

### Potential implications

- An obligation for producers of vaccines purchased by the Ministry of Health to pay annual contributions towards the compensation fund (probably of between 1 and 2 per cent of the price of the vaccines sold).
- It will be easier for patients to obtain compensation and the number of claims for compensation for adverse effects of vaccines will increase.
- Increased demand for vaccines.

## Monitoring transportation of medicine

persons affected

- medicine

Status: bill submitted to the Sejm

The system for monitoring road transportation of certain goods, which has been in place since last year, is to be expanded to include supervision of transportation of medicine, foodstuffs for special dietary purposes, and medical products of which there could be a shortage on the market.

### Potential implications

- The medicine trading system will be tightened up to make medicine more available in pharmacies and mitigate the problem of transportation of medicines abroad, where they fetch a higher price.
- Combating the problem of counterfeit medicine or medicine of unknown origin appearing on the market.

## 43

**Ban on advertising solariums**

persons affected  
 • cosmetics sector

Status: act came into force on 15 February 2018

It will be prohibited to allow minors to use solariums and advertise and promote services of this kind. Firms operating solariums, including for example hotels which have solariums, will be required to display, clearly and legibly, information about age restrictions for users of solariums and the dangers of using a solarium.

**Potential implications**

Risk of health inspection authorities monitoring compliance with the new regulations and imposing a fine of up to PLN 50 000 in cases in which irregularities are found.

## 44

**Changes on the alcohol market**

persons affected  
 • foodstuff sector (alcohol)

Status: work on the bill is ongoing

Producers, distributors, and importers of alcoholic beverages of more than 1.2% and beer will be required to state ingredients and give information about nutritional value on the product label.

In addition:

- it will be prohibited to place alcohol on the market in the form of powder, gel, or paste,
- advertising of beer will be restricted to night-time, which is between the hours of 2300 and 0600,
- people selling alcohol will not be allowed to sell alcohol to persons who do not produce proof that they are of adult age when asked to do so.

**Potential implications**

More stringent regulations for the alcohol sector, modelled to some extent on regulations in the tobacco industry.

## Amendment to the Civil Procedure Code and certain other acts, including the Act on Court Costs

persons affected

- all firms as parties to civil proceedings

Status: bill of 27 November 2017 (pre-Sejm submission) 

The new solutions are intended to expedite review of cases. The proposal provides for separate proceedings in commercial cases (with the option of a person who does not run a business or has a micro-business deciding not to use this procedure). A court should aim to adjudicate on a case within six months of the day the response to the statement of claim is filed.

The changes also apply to writ-of-payment and payment order proceedings, simplified proceedings, electronic payment order proceedings, and the system of submission of appeal instruments.

Under the proposal, actions in cross-instance proceedings (including review of admissibility and formal and fiscal shortcomings of the appeal instrument) will be conducted by a court of second instance and not a court of first instance, as has been the case up to now. A rule has been introduced of re-examination of the case (once the ruling has been overturned by the court of second instance) by the same panel of judges as that which issued the contested ruling.

Under the proposal, some complaints will be reviewed by a different panel to that which issued the contested ruling (in particular in incidental matters and matters which do not conclude proceedings).

The system of court costs in civil cases is also to be modified, for example in the form of an increase in the court fee for a statement of claim.

The proposal aims to expand the powers of judicial clerks and enable them to act also in appeal courts and other categories of cases.

### Potential implications

- The changes in proceedings in commercial cases are intended to make evidentiary requirements more stringent for the parties.
- Under the proposal, a party will have an obligation to cite all of its assertions and evidence in the first pleading, or forfeit the right to cite them at a later stage in the proceedings, and declare that it has cited all assertions and evidence. If the first pleading submitted by the party does not contain that declaration, the party will be called upon to cite, in a pleading submitted within one week of that call, upon pain of forfeiture of the right to cite them at a later stage, all assertions and evidence.
- It will be easier for consumers to pursue rights in court due to it not being possible to apply alternative jurisdiction with regard to consumers (for example filing a case with the court with geographical jurisdiction over the business entity).

## 46

**Introduction of option of filing a motion in civil proceedings for disclosure of evidence**

persons affected

- N/A

Status: act came into effect on 27 June 2017 

The institution of a motion for disclosure of evidence applies in cases concerning compensation for damage inflicted due to acts which are a violation of competition law.

A motion for disclosure of evidence unfavourable to a counterparty in litigation can only be filed in compensation proceedings for harm inflicted due to breach of competition law.

**Potential implications**

The right to demand that a counterparty disclose evidence unfavourable to it in a Polish civil procedure.

It will be easier for parties bringing claims on the basis of acts which are a violation of competition law to pursue compensation claims.



## New rules for provision of payment services (implementation of PSD2)

persons affected

- payment services sector and e-commerce

Status: bill submitted to the Sejm

The proposal will change payment services provisions in order to implement PSD2. The most important changes are:

- two new kinds of payment services: payment initiation service and account information service,
- a new type of permit: a permit for small payment institutions which operate on a limited scale,
- narrowing of the scope of applicability of certain provisions which exclude applicability of the act,
- broadening of the scope of protection of users of payment services,
- new payment security obligations.

According to the Polish Financial Supervision Authority the bill is to come into force in Q II 2018. The deadline for implementation of PSD2 expired in January 2018.

### Potential implications

- Making it easier for new firms, in particular those which are not banks, to enter the payment service market.
- Payment service providers operating on the market will have to adapt to comply with the new rules.
- Entities which to date were reliant on provisions amended by implementation which excluded applicability of the act (for example the limited network exception) have to consider whether a permit might have to be obtained.

## New AML provisions (AMLD4)

persons affected

- commercial companies (with regard to the register of true beneficiaries), financial sector

Status: bill submitted to the Sejm

The proposal is a new AML act which will replace the current provisions due to implementation of AMLD4. The most important changes are:

- new rules for performance of some of the current obligations, and new kinds of obligations,

- higher maximum amounts of fines,
- introduction of a definition of virtual currency and the new category of obligated institution linked to it,
- creation of a Central Register of Beneficial Owners.

The deadline for implementation of AMLD4 was in June 2017.

### Potential implications

- Entities which are subject to AML provisions at the moment will have to review the solutions in place and adapt them to comply with the new provisions.
- Certain entities which have not been subject to AML provisions up to now (for example virtual currency exchanges) will become obligated institutions and will have to adapt their business activity accordingly.
- Partnerships and capital companies will have an obligation to register with the central register and update data of beneficial owners of the company, even if the company does not conduct activity that results in it being classed as an obligated entity.

## 49

### New powers for the Polish Financial Supervision Authority

persons affected

- financial sector, telecommunications sector (blocking of access to domains)

Status: work on the bill is ongoing

Among the changes provided for in the proposal are the following, concerning the policy for the activities of the Polish Financial Supervision Authority:

- it will be a statutory duty of the Polish Financial Supervision Authority to provide support for development of innovation on the financial market,
- the Polish Financial Supervision Authority will issue individual opinions at the request of businesses,
- the Polish Financial Supervision Authority will operate a register of internet domains via which financial services are offered in breach of statutory provisions.

### Potential implications

- Entities operating on the financial market or intending to launch activities on the financial market will be entitled to receive an opinion from the Polish Financial Supervision Authority. This will be especially important to entities whose activities frequently cannot be given a definitive legal classification (such as fintech companies).
- Telecommunications firms which provide internet access will have an obligation to block access to domains listed in the register operated by the Polish Financial Supervision Authority.
- Firms which provide financial services via websites, directed towards Poland, without the requisite permits, can expect their domains to be placed in the register and provision of the services blocked.

## 50

### Development of e-payments

persons affected

- certain business entities

Status: work on the bill is ongoing →

Under the proposal, certain businesses are required to enable payment at any location in which business activity is conducted in practice, using as a minimum a credit transfer or other payment instrument.

This obligation will apply to businesses which are required to keep records of turnover and output tax using cash registers.

### Potential implications

Businesses which only accept payment in cash will have to make an additional payment option available, for example credit transfer or payment cards.

## 51

### Act on the National Cybersecurity System

persons affected

- IT sector, e-commerce, financial, transport, energy, and medicine sectors

Status: work on the bill is ongoing →

The bill implements the NIS directive and introduces cybersecurity obligations for certain types of businesses. The proposal lists two types of entities:

- operators of essential services – entities which provide one of the types of services specified under

the act and are classed as operators of essential services in an administrative decision,

- providers of digital services in the form of online marketplaces, online search engines or cloud computing services (does not apply to micro- and small businesses).

Operators of essential services will have a broader range of obligations than digital service providers.

### Potential implications

It will be possible for certain businesses in the energy, transportation, financial, and medical sectors, and providers of certain types of digital infrastructure, to be classed, by way of administrative decisions, as operators of essential services, and these businesses will be required, among other things, to:

- introduce a security management system,
- identify and handle incidents,
- provide users with certain information,
- conduct IT security audits a minimum of every two years.

Providers of digital services will be required among other things to:

- implement safeguards suited to the level of risk,
- identify and handle incidents.

Businesses will be able to outsource certain new obligations to cybersecurity firms which meet requirements specified in the bill.



## General Data Protection Regulation – Change to personal data protection rules

persons affected

- N/A

Status: this act will come into force on 25 May 2018

Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation).

The regulation was adopted in April 2016 but has been enforceable since 25 May 2017.

The regulation lays down rules for personal data processing in all EU countries but also provides for a series of cases in which Member States can establish detailed solutions.

### Potential implications

A failure to comply with the general data protection regulation can lead to administrative fines of up to EUR 2 m, and with respect to businesses up to 4% of the total annual global turnover.

The necessary adaptation measures are described in more detail in a handbook available at: [http://www.wardynski.com.pl/en/w\\_publication/get-ready-for-gdpr-step-by-step/](http://www.wardynski.com.pl/en/w_publication/get-ready-for-gdpr-step-by-step/)

## Change to personal data protection rules – national provisions

persons affected

- N/A

Status: work on proposals ongoing  
the act is to come into force by 25 May 2018 at the latest

The government's proposal for an act on protection of personal data contains regulations on:

- granting certification and accreditation,
- proceedings concerning monitoring and breach of personal data protection provisions,
- the President of the Personal Data Protection Office, including organisation of the office and its powers,
- European administrative cooperation,
- civil and criminal liability,

- the obligation to appoint a data protection officer and the procedure for notifying the regulatory authority of the appointment.

The proposal contains approximately 130 legislative changes intended to adapt the national legal system to comply with the legal norms required under the general data protection regulation.

It cannot be ruled out that the implementing legislation will come into force subsequent to 25 May 2018.

### Potential implications

- Information society services may be offered to a child of up to thirteen years of age provided that consent is given by the holder of parental responsibility.
- Entries for information security officers currently registered with the Inspector General for Protection of Personal Data (GIODO) will expire by September 2018. Up until this time the appointed data protection officers have to be re-registered.
- The President of the Personal Data Protection Office will have broad powers with regard to monitoring, including for instance the right to enter premises, access to documents, the right to inspect devices and IT systems, and the right to demand explanations in verbal or written form, and interview witnesses.
- A person whose rights under the general data protection regulation are breached will be able to file a civil lawsuit demanding cessation of the breach and remedial measures. Regardless of this lawsuit, other statements of claim or complaints may be filed according to other legal grounds.
- An administrative fine imposed on state entities will be limited to PLN 100 000.
- Personal data processing without legal basis will be subject to criminal liability.
- The bases for processing personal data of employees, including biometric data, will be changed. Regulations on visual surveillance of employees will be introduced.
- The act will provide for appointment, by law, of data controllers and determining of grounds for personal data processing for institutions performing public tasks.
- It is envisaged that a series of restrictions on rights of data subjects will be introduced (based on the powers granted to Member States under art. 23 of the general data protection regulation).



## Committee on Warsaw property restitution

persons affected

- entities which invest in real property in Warsaw

Status: this act will come into force on 14 March 2018

In view of the controversy surrounding restitution of real property in Warsaw, the already extensive powers of the committee conducting the inquiry have been broadened.

Under the act, the committee will have the power to look not only at the process of return of real property in Warsaw, but also at compensation awarded in administrative proceedings for loss of properties in Warsaw. Instigation of proceedings by the committee will be grounds for obligatory suspension of any other civil proceedings relating to loss of title to, or use without contractual grounds of, real property in Warsaw.

### Potential implications

- If the committee contests the legitimacy of a restitution decision, previously recovered properties (or equivalent), or compensation, will have to be returned to state entities.
- Broad and vague grounds for defectiveness of restitution decisions and the committee's prosecutorial powers mean that there is a risk of every decision being contested.
- The committee's unrestricted access to state sources of data and the possibility of notification solely by way of announcement on a website could mean that proceedings and investigations are conducted without the knowledge of stakeholders.
- The obligation for the land and mortgage registry court to deregister all entities which have been granted rights to properties with regard to which restitution was defective could lead to claims for compensation being brought against property developers by customers who purchased residential units in properties with regard to which restitution was defective.

## Regulation of rights to properties located in Warsaw

persons affected

- entities which invest in real property in Warsaw

Status: bill submitted to the Sejm

In connection with the controversy surrounding the recovery of properties in Warsaw, an initiative has been put forward for regulation of restitution issues in Warsaw.

The proposal completely changes the rules for recovery of properties in Warsaw which were taken over

after the Second World War, making possible compensation where properties cannot be returned. The proposal excludes the possibility of buyers who are third parties with regard to the pre-war proprietors (or their heirs) pursuing restitution claims. The proposal prohibits pre-war proprietors (or their heirs) from disposing of claims to property taken over after the Second World War to parties other than other pre-war joint proprietors of the same property (or their heirs).

**Potential implications**

- The legal status of properties in Warsaw will be regulated and the rules for recovery or obtaining compensation for Warsaw properties taken over after the Second World War will be consolidated and simplified.
- It will not be possible for restitution claims to be pursued by investors (third parties). Investors interested in specific property in Warsaw and which acquired a claim to the property from pre-war proprietors (or their heirs) will not be able to pursue the transferred claims and as a result cannot realise their investment plans.
- It is prohibited for restitution claims to be transferred to investors (third parties). The pre-war proprietors of real properties in Warsaw (or their heirs) will no longer be able to transfer restitution claims to third parties interested in investing in a particular property.

**56**

**Large restitution bill**

persons affected  
 • entities which invest in real property and works of art

Status: government working on the bill

A proposal for an act on compensation for certain kinds of harm inflicted on natural persons as a result of takeover of real property or movable monuments by communist authorities subsequent to 1944 is intended to regulate in full issues of property taken over following the Second World War. The proposal introduces a significant list of exemptions with regard to entity status and subject matter, limiting the range of harm for which recourse is available to exceptional situations. In these rare situations in which recourse for harm can be sought, the proposal provides for compensation of up to 20-25% of the value of the real properties taken over. Under the proposal it will not be possible to return real properties which were taken over. The proposal only allows the return of certain moveable monuments which were taken over. Restitution proceedings conducted to date will be discontinued, and any restitution claims will expire.

## Potential implications

- The legal status of a number of real properties in Poland will be regulated as a result of confirmation of legal consequences of post-war takeover of real properties, expiry of claims existing to date, and discontinuation of pending proceedings. There will be limited options for obtaining compensation and a time limit of one year will be set for filing all claims for recourse.
- The legal status of moveable monuments and works of art will be regulated.
- It will be prohibited to return real property in kind, restitution proceedings conducted to date will be discontinued, and all restitution claims will expire, which means that it will not be possible to invest in real property with regard to which restitution claims have been filed.



## 57

## Act amending certain acts relating to the property investment and development process

persons affected

- the property development sector

Status: work on the bill is ongoing

The proposed bill excludes the possibility of a construction permit being invalidated if the intended development has been completed and five years have passed since the decision allowing use was issued or notification of completion of the development was filed.

The bill introduces a three-year validity period for the planning permit.

The amendment divides the construction plans into investment plans and technical plans.

The bill introduces a new planning instrument, which is an 'organised investment zone'.

### Potential implications

- More effective construction permit proceedings.
- More effective cooperation between local government authorities and investors.
- Elimination of the risk of a permit allowing use being invalidated many years following completion of an investment.

## 58

## New rules for property development investments – the 'construction code'

persons affected

- the property development sector

Status: work on the bill is ongoing

Under the proposal, provisions on issues such as construction permits, zoning, and division of real property will be consolidated and standardised.

The basis for realisation of an investment on the basis of the proposed provisions will be 'investment approval', which will replace the planning permit, approval of division of real estate, and the construction permit.

### Potential implications

- The property development process will become more effective due to introduction of 'investment approval'.
- There will be greater predictability with regard to respect for the current spatial layout.

## 59

**Compulsory mortgage**

persons affected  
 • all businesses

Status: work on the bill is ongoing

Injunctive relief for a claim in the form of a compulsory mortgage will remain in effect for a period of two months from the moment a court ruling granting a creditor's claim becomes final (the time limit is one month at the moment).

**Potential implications**

Alignment of provisions with a Constitutional Tribunal judgement to provide better protection for a creditor's property rights, where a creditor has obtained, in litigation, injunctive relief for a claim in the form of a compulsory mortgage.

## 60

**Update of the technical requirements for buildings**

persons affected  
 • the property development sector

Status: regulation came into force on 1 January 2018

The secondary legislation implementing the Construction Law introduced among other things a definition of a construction plot and car park, and permits construction of a building immediately next to the boundary of a plot if a wall of the building will be adjacent to a wall of an existing building.

**Potential implications**

Greater interest in acquiring land which to date could not be developed or of which development was severely hampered.

## 61

## State aid for restructuring, rescue, and temporary funding for restructuring of businesses – an amendment to the Restructuring Act of 15 May 2015

persons affected  
 • businesses in crisis

Status: act came into force on 2 February 2018

Provisions on state aid have been aligned with European Commission requirements.

In the Restructuring Act, general legal grounds were introduced for granting state aid for restructuring (for businesses undergoing and not undergoing a court restructuring procedure) and 'rescue aid' or temporary restructuring funding (for businesses not undergoing a court restructuring procedure). This was done to rectify a loophole that was created when a regulation issued by the Minister of the Treasury of March 2015 on state aid for rescue or restructuring of businesses was repealed.

The procedure for businesses which are not subject to court restructuring proceedings will be regulated in a regulation issued by the minister responsible for the economy. The procedure for businesses subject to court proceedings is regulated in the Restructuring Act.

### Potential implications

The predicted effects of the amendment, according to lawmakers:

- it will ensure that the 'Aid Programme Providing Aid for Rescue and Restructuring of SMEs' is compliant with a communication from the European Commission – Guidelines on State Aid for Rescuing and Restructuring Non-Financial Undertakings in Difficulty,
- allowing state aid for restructuring without submitting individual notification to the European Commission,
- the procedure for granting state aid will be shortened and simplified, and this is intended to speed up the return to profitability of businesses in crisis and mitigate the risk of bankruptcy. The change to the regulations is intended to enable clear and transparent procedures to be created for businesses, for the purpose of obtaining lawful state aid.

## 62

## Access to court files in proceedings for a petition for bankruptcy of a debtor – amendment to the Bankruptcy Act of 28 February 2003

persons affected  
 • creditors to businesses in crisis

Status: bill submitted to the Sejm

The purpose of the changes is to make it easier for creditors to access court files in proceedings concerning a petition for bankruptcy of a debtor (if a debtor has been declared bankrupt in a final ruling

or a petition for declaration of bankruptcy has been denied on the basis of art. 13 section 1 or 2 of the Bankruptcy Act). On the basis of the current provisions, a bankruptcy court often denies access of that kind to creditors who have not petitioned for declaration of bankruptcy.

The proposal was put forward by the Minister of Justice.

### Potential implications

- Creditors will be given access, at the very beginning of bankruptcy proceedings, to data and information about a debtor which is gathered during review of the petition for declaration of bankruptcy (in particular concerning the debtor's financial standing and structure and level of the debtor's debts), and this will mean that a creditor can decide the strategy to be followed during the bankruptcy proceedings and the way in which it can exercise its rights.
- This consequence also applies in situations in which a court dismisses a petition for declaration of bankruptcy, in a final ruling, and information about the financial standing of the debtor may be important to the creditor in the debt recovery measures being undertaken.

## 63

### Profession of licenced restructuring advisor – amendment to the Act of 15 June 2007 on Licencing of a Restructuring Advisor

persons affected

- licenced restructuring advisors and business in crisis, and their creditors

Status: bill submitted to the Sejm

The aim of the changes is to improve supervision over the profession of licenced restructuring advisor by the Minister of Justice with regard to activities in court proceedings. This will be supervision which complements the supervision performed by courts and judge commissioners.

Also, the changes are intended to increase transparency and predictability of the system of appointment of restructuring advisors to functions in court proceedings.

There are also plans to introduce a restructuring advisor qualification. This qualification is to be conferred by the Minister of Justice and will mean the holder is qualified to hold this function in proceedings concerning large businesses and businesses which are important to the state economy or important from a commercial/defence point of view.

The proposal was put forward by the Minister of Justice.

**Potential implications**

In the view of the architects of the proposal, the changes will help to gradually improve the quality of services provided by restructuring advisors appointed to participate in restructuring and bankruptcy proceedings, and will render proceedings of those types more efficient.



## [Double-taxation treaties] Ratification of the MLI

persons affected

- all businesses

Status: legislative work completed in Poland

Poland has ratified the MLI (Multilateral Instrument) convention – a multilateral convention under the aegis of the OECD, leading to amendments to the current bilateral double-tax treaties.

The convention will come into force three months from the moment the fifth party-state to the convention ratifies it. As at 24 January 2018, four countries, among them Poland, had given notification of ratification.

With respect to a particular double-tax treaty, the Convention will apply once the double-tax treaty in question has been ratified by both parties.

### Potential implications

- Elimination of loopholes in the double-tax treaties currently in force.
- Amendment of the notified double-tax treaties.
- The need for evaluation of the tax efficiency of the existing international structures.

## [CIT] Capital gains as a separate source of income

persons affected

- corporate income tax payers

Status: the changes came into effect on 1 January 2018

Capital gains have become a separate source of income, which means that income from this source is separated and the options with regard to compensating for them with losses from another source are limited.

The new source includes among other things dividends and other revenue from corporate shareholdings, revenue from making of an in-kind contribution, revenue from sale of shares, the overall rights and obligations in a partnership, receivables (apart from one's own receivables), and revenue from securities and derivative instruments.

### Potential implications

The changes are intended to tighten up the tax system and eliminate identified areas of tax optimisation.

The planned changes could lead to a significant increase in the amount of levied income tax.

## 66

**[CIT] Limitation of inclusion of costs of debt financing in tax-deductible costs**

persons affected

- corporate income tax payers

Status: changes came into force on 1 January 2018

Abolition of thin capitalisation in its current form. The new limitation on inclusion of debt financing costs in tax-deductible costs covers all debt financing costs (including costs incurred for non-affiliates).

The limit applies to debt financing costs where the surplus of debt financing costs exceeds 30% of EBITDA (calculated as provided for in the Corporate Income Tax Act).

The limitation does not apply to the surplus of debt financing costs with respect to the portion not exceeding PLN 3 m per year.

The level of the debt financing should correspond to the taxpayer's market credit score (the financing the taxpayer could receive on an arm's length basis).

## 67

**[CIT] Limitation of inclusion of expenditure on intangible services in tax-deductible costs**

persons affected

- corporate income tax payers

Status: changes came into force on 1 January 2018

Limitation of inclusion of expenditure for amounts payable under licences and intangible services incurred for affiliates of up to 5% of EBITDA per year (calculated as provided for in the Corporate Income Tax Act) in tax-deductible costs.

The limitation does not apply to:

- expenditure of up to PLN 3 m per year,
- expenditure covered by an advance pricing arrangement (APA) – at the same time there are plans for a simplified APA procedure (it is not known in what form at the moment),
- costs included in tax-deductible costs which are directly linked to production or acquisition of goods or provision of services.

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## 68

### [CIT] Tax capital groups

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persons affected

- corporate income tax payers

Status: changes came into force on 1 January 2018 

Less stringent formal requirements for the establishing and functioning of tax capital groups (lowering the average share capital to PLN 500 000, lowering the direct shareholding of the parent company to 75%, lowering profitability to 2%).

Liquidating a portion of the privileges enjoyed by tax capital groups to date. Among other things, gifts between companies within the tax capital group cannot be included in tax-deductible costs.

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## 69

### [CIT/PIT] Controlled foreign corporations (CFC)

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persons affected

- all taxpayers

Status: changes came into force on 1 January 2018 

The status of controlled foreign corporations has been made contingent among other things on the tax that is actually paid abroad (instead of the nominal tax rate). The threshold for passive revenue which is grounds for a company to be classed as a controlled foreign corporation has been lowered from 50% to 33%. The definition of a subsidiary has also been changed (increase of the required controlling stake of a taxpayer from 25% to 50%).

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## 70

### [CIT] Debt push down

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persons affected

- corporate income tax payers

Status: changes came into force on 1 January 2018 

Exclusion from tax-deductible costs of interest on credit facilities and loans contracted for acquisition of shares to the extent that it reduces revenue connected with continuation of the company's operations due to a merger, making of an in-kind contribution, transformation of legal form, or creation of a tax capital group.

### Potential implications

The aim of this regulation is to counter the creation of debt push down structures whereby interest on loans and credit facilities contracted for the acquisition of shares can be deducted from revenue from the business activities of the acquired company.

## 71

### [CIT/PIT] Commercial real estate tax

persons affected

- owners of office space and business and commercial space

Status: changes came into force on 1 January 2018.

Introduction of tax on revenue from ownership title to real estate. The tax is payable by owners of commercial real estate (buildings with office, and business and commercial space) on a monthly basis of 0.035% of the initial value of the real property.

The tax applies to real estate of an initial value exceeding PLN 10 m.

The tax can be deducted from income tax charged according to generally applicable rules.

### Potential implications

The change could result in an increase in the effective rate of taxation.

## 72

### [CIT/PIT] Changes with regard to the relief available for research and development

persons affected

- all taxpayers

Status: changes came into force on 1 January 2018.

Extension of the list of types of expenditure classed as qualifying costs and the limit up to which those types of expenditure can re-deducted in the form of qualifying costs. To date, the limit for deduction of qualifying costs was 50% of those values. As of 1 January 2018 this limit went up to 100% of the value, and 150% in the case of taxpayers which hold research and development facility status.

### Potential implications

Increasing innovation in the Polish economy and encouraging businesses to take up innovative activity for which relief is available.

## 73

### [PIT] Increase of the 50% limit on tax-deductible costs for artists, while limiting at the same time the types of people entitled to apply tax-deductible costs

persons affected

- employers/ employees

Status: changes came into force on 1 January 2018

As of 1 January 2018 the limit on tax-deductible costs for artists due to transfer of copyright was increased to PLN 85 528 (to date it was half of that amount, at PLN 42 764). At the same time, the list of persons entitled to exercise this privilege was shortened.

The Ministry of Finance published a proposal for an amendment expanding the list of professions in which higher tax-deductible costs apply (among these will be translators, programmers in the field of gaming, construction engineering professions) and introduces regulations which clarify doubts that arose due to the amendment.

#### Potential implications

In practice this could mean that an employer's current procedures and by-laws regulating issues relating to 50% of tax-deductible costs for artists need to be reviewed in terms of effectiveness.

## 74

### [PIT] Tax treatment of incentive schemes

persons affected

- employers/ employees

Status: changes came into force on 1 January 2018

Taxpayers who are given shares in a company based in a country with which Poland has ratified a double-tax treaty, under an incentive scheme which fulfils certain statutory requirements, are allowed to pay tax on earned income at the moment of sale of shares, and not at the moment the shares are taken up) at a rate of 19%.

Income earned by a taxpayer under certain incentive schemes will be classed as a source of revenue in connection with which the taxpayer obtained that performance (i.e. revenue from an employment relationship or activity conducted in person), which means that the tax scale will apply (18% or 32%), and not as revenue from cash capital taxable at the linear rate of 19%, as up to now.

#### Potential implications

A large number of doubts will be dispelled regarding tax treatment of incentive schemes.

## 75

**[VAT] Split payment**

persons affected  
 • payers of VAT

Status: comes into force on 1 July 2018

It will be possible to split payment for a purchased product or service in the form of payment of the portion corresponding to the net sale value by the buyer to the supplier's clearing account or regulate it in some other way, while the portion of the payment corresponding to VAT will go to a specially designated account of the supplier.

The buyer's option of making use of the split payment mechanism will only apply to business transacted with other taxpayers (B2B) and will be optional. For taxpayers who choose this method of settling payments with business counterparties, VAT refunds will be given within a fast, 25-day period counting from the day the settlement details are filed.

**Potential implications**

This will mean mitigation of the risk on the side of a taxpayer who splits payment due to joint and several liability being excluded of the taxpayer for VAT liabilities which arise due to splitting of the payment.

## 76

**[CIT/PIT] Relief for bad debts**

persons affected  
 • all taxpayers

Status: legislative work is ongoing Planned to come into force – 2019

There are plans to give a creditor the option of deducting a receivable from the taxable base if that receivable is not paid or transferred in any whatever form within 120 days of the day on which payment becomes due as specified in the agreement or on the invoice (known as 'bad debts').

An obligation will be introduced for the debtor to add this to the taxable base.

The new type of relief will only apply in B2B transactions.

**Potential implications**

The changes are expected to reduce the payment gridlock in business to business relations.

## Tax Code

persons affected

- all taxpayers

Status: work on the bill is ongoing

Work is underway on a proposal for a new Tax Code to replace and supplement the current regulations. The authors expect that the new Tax Code will not come into force before the latter half of 2019, but nonetheless this will certainly be a major change for all taxpayers.

### Potential implications

Tax regulations are to be updated to meet current economic conditions.

## Abolition of the limit on social security contributions

persons affected

- employers/ employees

Status: the bill has been passed by the Senate and referred to the Constitutional Tribunal by the President

As of the end of 2019, the ceiling on the calculation base for retirement and disability pension contributions is to be abolished. The current limit per year for the calculation base for contributions for these types of social security is 30 times the forecast average remuneration in the economy for the year in question, and once an employee exceeds this amount, contributions do not increase. In 2018 this limit is PLN 133 290.

### Potential implications

The so-called limit on social security contributions will be felt by employees who attain the highest earnings on employment contracts. In order to lower the cost of employing employees of this kind, employers and employees can be expected to take measures to change the form of the existing relationship.

## New rules for distribution of insurance – implementation of the Insurance Distribution Directive

persons affected  
 • the insurance sector

Status: comes into force on 23 February 2018

The Act of 15 December 2017 on Insurance Distribution makes major changes to the rules for activities of insurance intermediaries (brokers and agents), as well as general rules for insurance distribution.

The most important changes are:

- A requirement to examine a customer's individual needs and personalise the product offered to them,
- it is prohibited to structure remuneration of intermediaries or employees serving customers in a way which encourages them to recommend products which are not suitable for the customer's needs (mis-selling),
- new information obligations, including the requirement to inform a customer of the nature of the remuneration that intermediaries or employees in the sale department of an insurance company receive,
- insurance companies must introduce organisational arrangements which prevent a conflict of interest arising when recommending insurance products,
- activities of insurance intermediaries will be subject to monitoring by the Polish Financial Supervision Authority.

### Potential implications

- Insurance companies are required to conduct a regulatory audit concerning the rules for remuneration of employees and intermediaries in the sales department, organisational policies which prevent conflicts of interest arising in the distribution of products – and, as applicable, the need to modify those policies to comply with the new provisions.
- The need to examine and as necessary modify the existing procedures or create new procedures for insurance companies and intermediaries to assess a customer's needs.
- A review is needed of the practices in place and templates used for documents presented to customers when selling, in terms of the new information obligations – and to modify them to comply to the new provisions, as the case may be.





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