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Legal update

Changes in law in Poland
affecting the business environment

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1

Amendment to the Administrative Procedure Code

Status: this act came into force on 30 April 2018

The Act:

- expands the options with respect to handling of matters by telephone, via means of electronic communication, or other forms of communication,
- enables the parties to evaluate the activities of administrative offices managed by administrative authorities.

Potential implications

- Reduction of over-formalisation of certain types of administrative procedures, possible fast-track handling of some categories of cases, and less burdens for the public.
- Better relations between the public and public authorities due to efforts by authorities for their operations to continue to be viewed positively by the parties.

2

Inclusion of the Ombudsman for Small and Medium-sized Businesses in court and administrative proceedings

Status: this act came into force on 30 April 2018

The Ombudsman for Small and Medium-sized Businesses will be given powers in administrative and court proceedings. The Ombudsman for Small and Medium-sized Businesses will be able to refer a matter to the Supreme Administrative Court according to the resolution procedure.

Potential implications

Giving the new authority the power to instigate proceedings before administrative courts, including contesting rulings, might make protection of rights of businesses operating in Poland more effective.

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: act comes into force on 9 July 2018
(except art. 4, which comes into force on 9 September 2018)

The act aims to reduce the 10-year period after which claims become time-barred and to protect consumers against recovery of debts which have expired. Claims will expire after 6, and not 10 years, except claims for periodical services and services provided in connection with business activity. The period of limitation of claims for these services will continue to be 3 years, as up to now. The procedure for calculating periods of limitation for claims will also change. In principle limitation periods will end on the last day of the calendar year.

Also, in the case of consumers, the act 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. In special cases however, where justice requires, a court will be able to disregard limitation periods.

Potential implications

The act 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. The passing of the act 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, in particular because in principle once a limitation period has expired a creditor cannot demand satisfaction of a claim that it has against a consumer.

8

Changes to enforcement proceedings

persons affected

- the market for trading in receivables

Status: acts come into force on 1 January 2019

A new Court Bailiffs Act of 22 March 2018 and Bailiffs Cost Act of 28 February 2018 introduces numerous changes to enforcement proceedings. From creditors' point of view, the most important is additional fees for bailiff activities (for example for a search for a debtor's assets, which is PLN 100, or a fee for discontinuing enforcement proceedings when enforcement proves ineffective, of PLN 150) and restricts the options for choice of the bailiff conducting enforcement proceedings with regard to movables. Once the act comes into force, enforcement with regard to movables will fall to the bailiff with general jurisdiction over the debtor, and choice of a different bailiff will be restricted to the area of jurisdiction of the appeal court in which the office of the bailiff of general jurisdiction is located.

Potential implications

Increase in costs of conducting enforcement proceedings for creditors, in particular for entities acquiring receivables.

9

Abolition of the "Belka Tax"

persons affected

- all businesses

Status: bill submitted to the Sejm

The bill was proposed by a group of opposition MPs to completely abolish the revenue capital tax, the "Belka Tax". Under the bill, taxation of both capital income such as interest on savings and on funds on bank accounts, and capital income, investments, including sale of securities, will be abolished.

Potential implications

Legislators say that the proposed changes will be an incentive for citizens to save and invest on the Polish capital market and lead to building of long-term capital for Poles. As a result of increased long-term savings in Poland, Polish economy will be financed from Polish financial resources to a greater extent.

10 Creating a framework for simple, transparent, and standardised securitisation (securitisation STS)

persons affected

- the market for trading in receivables

Status: regulation to apply as of 1 January 2019

Regulation (EU) 2017/2404 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent, and standardised securitisation enables to create securitisation with less strict capital requirements towards banks. At the moment the European Banking Authority is working on guidelines and recommendations on harmonised interpretation and application of requirements on STS securitisation introduced in the regulation.

Potential implications

An increase in interest in securitisation in Europe and standardisation of legal requirements with regard to specific securitisation transactions, thus contributing to increased capital flow between EU countries.

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 

The proposals made include:

- the introduction of the institution of “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 feigning application or ineffective application of 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.

Work on the bill was slower than at the beginning of 2018. Nevertheless the bill provides for the institution of whistle-blower, which is related to the institution of a person reporting improprieties, which is also protected under the bill on liability of corporate entities for offences. Therefore we may expect work on the bill has probably not been abandoned and will intensify in the near future.

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.

Proposal for amendment of the Corporate Crimes Act

persons affected

- any corporate 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 provides among other things for:

- broader grounds for corporate liability (possibility of rulings on corporate liability in cases of mergers, demergers or transformations and of entities in liquidation, and where the perpetrator of an offence cannot be ascertained),
- abolishing the requirement for a natural person to be convicted in order to be able to conduct proceedings against a corporate entity (abolishing the predicate ruling requirement),
- enabling cases against a natural person – the suspected perpetrator – and a corporate entity to be combined,
- introducing an obligation for a corporate entity to conduct an inquiry and remedy wrongdoing or breaches found during the inquiry if reported for instance by an employee of the corporate entity or a management board member of the entity
- broader catalogue of preventative measures and option of employing compulsory administration against corporate entities,
- giving a corporate entity to submit to liability voluntarily, allowing reduction of penalties and avoidance of registration in the National Criminal Register,
- raising the threshold and ceiling for the statutory levels of fines to PLN 30 million and departure from the link between the amount of a fine and revenue earned by the corporate entity.
- broader catalogue of penalties and criminal law measures; introduction of a penalty of dissolution or liquidation of a corporate entity,
- registration in the National Court Register of measures and penalties imposed in rulings against entities listed in that register,
- registration in the National Criminal Register of data of corporate entities against which penalties or other measures provided for in the act have been imposed.

Potential implications

- An increase in the number of cases against corporate entities.
- Significantly stricter rules on liability of corporate entities; higher fines and the option of a ruling dissolving or liquidating the corporate entity, as well as an increase in fines and the inconveniences of other sanctions imposed on corporate entities (including those which have assets but do not show revenue).
- A large part played by negotiations with law enforcement authorities with regard to the possibility of reducing a penalty due to voluntary submission to liability by a corporate entity
- The need for corporate entities to introduce internal procedures to prevent offences being committed
- The necessity for corporate entities to conduct inquiries when improprieties is reported and to remedy the improprieties or breaches found.

14

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

persons affected
• financial institutions

Status: the act came into force on 21 April 2018

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

The changes mean additional regulatory requirements for institutions trading in financial instruments, including investment firms. In addition, the law introduces new rules for communicating with a customer, broadens disclosure requirements, ensures greater transparency of costs, and introduces a range of new powers for regulators.

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.



Amendment to the Competition and Consumer Protection Act

persons affected
• all businesses

Status: press release, no bill

The President of the Office of Competition and Consumer Protection announced plans for amendment of the Competition and Consumer Protection Act with regard to:

- adaptation to comply with the ECN+ Directive (such as changes regarding inspections and searches, penalties, standardisation of leniency, periods for limitation of antitrust claims),
- thresholds for notification of transactions, (possible thresholds according to value of transaction),
- insertion of provisions on whistle-blowers into the act.

Potential implications

New notification thresholds will apply and have to be accounted for in analysis and execution of transactions,

Other possible changes which have to be incorporated into business activity (for example in relation to competition-restricting agreements, risks of penalties, risks of inspection and search, etc.)

Clarification of areas not regulated in the Commercial Companies Code

persons affected

- commercial companies

Status: work on the bill is ongoing 

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.

17

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

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".

18

A new Business Law replacing the current Business Freedom Act

persons affected

- all entities conducting business activity

Status: act came into force on 30 April 2018

The new act is the main act within the "Business Constitution" – a legislative package which took the place of the current Business Freedom Act.

The legislative package also includes:

- 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 Ombudsman for Small and Medium-sized Businesses
- an act on the rules for participation in trade by foreign business entities and other foreign persons in Poland,
- an act implementing the Business Law and other business-related acts,

The following acts have been repealed:

- The Business Freedom Act,
- The Act on Provision of Services in the Republic of Poland,

The Act on the Rules for Small-Scale Production Business Activity in the Polish People’s Republic by Foreign Legal and Natural Persons.

Potential implications

- Introduction of the institution of non-recorded business activity, which can be conducted without registering the business,
- Allowing businesses that are natural persons to appoint commercial proxies and place information about the proxy in the Central Registration and Information on Business (CE-IDG) ICT system,
- Forms of regulation of business activity have been organised and modified. Concessions, permits and entries in regulated business registers will remain and approvals and licences have been abolished.
- The rules for foreigners starting and conducting business activity in Poland, cross-border services, and opening by foreign businesses of branches and representative offices have been changed,
- A catalogue of main rules has been introduced for businesses and public authorities,
- Business have been allowed to cite established interpretational practice (a business cannot be fined or given administrative penalties or penalties or levies higher than those applied in that established interpretational practice),
- The institution of Ombudsman for Small and Medium-sized Businesses has been created, charged above all with defending the rights of microbusinesses and small and medium-sized businesses.

19

Business activity of foreign businesses in the Republic of Poland

persons affected

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

Status: the act came into force on 30 April 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 have been simplified.
- In particular, it is now 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 contains provisions on temporary cross-border service activity in line with the TFEU.

20

New rules regarding preparation and filing of financial statements and data in the National Court Register

persons affected

- any entities registered in the National Court Register

Status: the act came into force on 15 March 2018

(some provisions in the act 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 documents filed with the National Court Register approving financial statements must be filed in electronic form (starting from 15 March 2018) and those filings to be performed (or as a minimum the filed documents must be signed in electronic form) by management board members (shareholders of partnerships representing those partnerships, liquidators, receivers) whose PESEL numbers are entered in the register 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 (the act requires complete excerpts from the National Court Register to be available for downloading electronically, but this option is not available for technical reasons).
- 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).

21

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.

22

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).

23

Appointment of an Ombudsman for Small and Medium-sized Businesses

persons affected

- microbusinesses, small- and medium-sized businesses

Status: the Act came into force on 30 April 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 is 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 issues opinions on legislative proposals concerning business activity, approaches the competent authorities with requests for legislative initiatives, submits requests to the Supreme Court for adjudication of inconsistencies in interpretation of law or explanatory notes regarding the law, and informs the competent authorities of any irregularities and barriers to commercial activity which are found.

The ombudsman also has 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 is 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 also assists 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: the act came into force on 30 April 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 means that a business can change the data providing information about the business at any time.
- A business registered in the CEIDG (a natural person) is now 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.

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 reproduction (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.

Monitoring of employees and processing of employees' personal data

persons affected

- any firms which have employees

Status: the act came into force on 25 May 2018

As a result of harmonisation of Polish legislation with Regulation (EU) 2016/679 (General Data Protection Regulation) the Polish Labour Code has been amended, for instance

- 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.
- an employer may monitor employees when this is justified for the purposes specified in the Labour

Code, including in order to ensure safety of employees, protection of property, or keep information confidential. An employer is required to inform employees that monitoring is employed a minimum of 14 days in advance, and introduce provisions on monitoring into its by-laws, and identify rooms in which monitoring is conducted.

Potential implications

- The need to examine employee personal data processing practices and adapt employers' by-laws in this regard accordingly.
- Every employer is required to maintain records of personal data processing.
- There are more disclosure obligations towards job applicants and employees.

27

Employee Capital Plans (ECP)

persons affected

- employers and other firms that employ natural persons

Status: government currently working on the bill

The act provides for introduction of ECPs, 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 an ECP and pay contributions to those institutions. The funds accrued in the ECP (for a fee specified in the act) are invested in investment funds.

Contributions paid into an ECP would be financed by the employing firm (minimum 1.5% of the basic reference amount for social security contributions) and the employed person (as a rule 2% of remuneration). If additional criteria are fulfilled, an annual additional payment from public funds can be expected..

The funds accrued under an ECP are intended to be private, and among other things can be inherited.

A worker would be able to withdraw from an ECP. The employing entity would be required to inform an employee of the option of joining the plan every four years.

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 and in which a minimum of 50% of staff have joined the plan are to be exempt from the obligation to operate an ECP.

Potential implications

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

Protection of trade secrets

persons affected

- any entities which have employees

Status: proposal submitted to the Sejm

Under the proposal, the current wording of Art. 11 of the Unfair Competition Act of 16 April 1993 will be amended to harmonise the law with Directive 2016/943 on the Protection of Undisclosed Know-how and Business Information (Trade Secrets) against Unlawful Acquisition, Use and Disclosure. The definition and rules for protection of trade secrets are to be changed.

Under the proposal, among other things, the current Art. 11(2) of the act will be deleted. This provision says that an act of unfair competition in the form of breach of trade secrets is also committed by a person being breach of a trade secret also applies to a person on an employment contract or working under a different legal relationship, for a period of 3 years from the end of the relationship, unless the contract states otherwise or the information is no longer confidential. This could mean less protection of trade secrets as regards former employees.

Potential implications

As the current wording of Art. 11(2) of the Unfair Competition Act has been repealed, contracts with employees should state explicitly that confidentiality must be observed once employment ends.

Obtaining information about criminal records of employees and job applicants in the financial sector

persons affected

- employers in the financial sector and entities providing services for the financial sector

Status: the act came into force on 27 June 2018

The act defines the rules for obtaining information about criminal records of job applicants and persons employed in certain positions in entities in the financial sector and entities that provide services specified in the act for those entities.

Potential implications

Employers in the financial sector and employers providing services for entities of that kind will be able to check whether employees and job applicants have a criminal record.

30

Amendment of the Trade Union Act

persons affected

- any entities that have employees and persons providing services on a civil law basis

Status: the act has been passed
(it is due to come into force 6 months from publication, with some exceptions)

The act introduces a series of changes concerning creation and functioning of trade unions, for instance:

- the right to create trade unions and join trade unions has been extended to include persons performing work for remuneration on a basis other than an employment relationship (provided they do not employ other persons for work of that kind and have professional interests connected with performance of work which can be subject to group protection),
- new rules on the scope of representation of trade unions,
- it replaces the current obligation for in-company organisations to file a quarterly report on the number of members with an obligation to file semi-annual reports and introduce a procedure for verification of this information in court proceedings.

Potential implications

- The number of trade union members will increase,
- Union activists employed on a civil law basis will be protected,
- It will be easier for employers to review the true powers of trade unions active in their company.

31

Abolition of the upper limit for calculation of retirement and disability pension contributions

persons affected

- any entities that have employees

Status: the act has been passed
(the President has referred it to the Constitutional Tribunal, a hearing is scheduled for 10 July 2018s)

The act abolishes the upper limit for calculation of retirement and disability pension contributions. The limit is currently 30 times the forecast average monthly remuneration in the national economy for the calendar year in question (in 2018 this was PLN 133 290). Contributions are not withheld when this amount is exceeded.

Potential implications

Increased labour costs and less net remuneration for higher earners.

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.

Capacity market

persons affected
 ● the energy sector ● energy users

Status: act came into force on 18 January 2018
 (approved by the European Commission) ➔

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.

The proposed solutions have been approved by the European Commission in a decision of 7 February 2018. In view of the statement of reasons for the decision, the act will need to be amended to comply with agreements reached in consultations between Poland the Commission, It can expected among

other things that the current capacity funding mechanisms in place will be repealed and that from 2021 producers from neighbouring countries will be allowed to enter the capacity market, and 1160 MW will be reserved for them.

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.
- Foreign producers allowed to enter the capacity market from 2021.

34

Amendment to the RES Act

persons affected

- the renewable energy sector

Status: the Sejm has passed the bill

On 7 June 2018 the Sejm passed a bill amending the RES Act.

The changes mean among other things that 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.

In addition, there has been a slight liberalisation of restrictive provisions on wind farms, such as a decrease in real estate tax on structures of this kind.

The proposal has been approved by the European Commission, which has agreed to the proposed funding mechanism. 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.

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.
- Barriers to modernisation of existing wind farms will be lifted,
- Real estate tax for wind farms will be lowered.

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.

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.



37

Amendments concerning classification of objects or substances as by-products

persons affected

- any firms which produce or acquire by-products in connection with their business activity

Status: the Act has been passed by the Sejm

The act introduces among other things:

- changes to the procedure for classification of objects or substances as by-products
- the Province Environmental Protection Inspector will issue, on a case-by-case basis, opinions on whether an object or substance can be classified as a by-product.
- the Province Environmental Protection Inspector will be able to conduct an inspection of an applicant before issuing an opinion,
- the Province Marshal will rule on classification as a by-product by issuing an administrative decision (until now lack of response constituted consent).

Any classification of objects or substances as by-products performed on the basis of the current provisions expire 6 months from the day on which the act comes into force.

Potential implications

- Businesses that produced by-products up to now will have to re-register the objects or substances.
- The procedure for review of an application will be much more time-consuming and complex.

38

Amendments to regulations on waste storage and processing

persons affected

- any businesses that store and process waste

Status: work on the bill is ongoing

Under the bill, entities storing waste or keeping waste at landfill sites are required to install video surveillance of the waste storage site and properly secure and retain the video recordings made using the system.

The rules for issuing permits for collection and processing of waste will be changed:

- a fire safety report and document confirming that security has been established for claims will have to be attached to the application,

- a fire brigade inspection will be required before a permit is issued.

There will be more severe penalties for breach of legal requirements.

Permits issued up to now will expire 12 or 24 months from the day on which the amendment comes into force.

Potential implications

- Significant costs will be incurred in order to install video surveillance at waste storage sites and landfill sites.
- It will be much harder to obtain permits for waste processing, and more expensive and time-consuming.
- Businesses will have to apply for new permits for collection or processing of waste due to the permits issued under the old provisions expiring.

39

Province Environmental Protection Inspectorate inspectors will have greater powers

persons affected

- any businesses whose activity has an environmental impact

Status: work on the bill is ongoing
(due to come into force on 1 January 2019)

Non-scheduled inspections will be conducted 24 hours a day. During such inspections, certain guarantees provided for in the Business Law will not apply (the maximum duration of an inspection during a year, prior notice of the inspection).

Inspectors will have the power to conduct operational and observation activities, among other things in the form of observation and use of video and audio recording devices and searches of premises. They will also be able to use drones to collect samples.

Inspectors will also have greater powers with regard to issuing decisions stopping activities that breach environmental protection requirements. The act will also make administrative penalties more severe in a dozen or more environmental protection acts (up to as much as PLN 1 m).

Potential implications

- Inspectors will be able to conduct inspections more frequently, and this will place a greater burden on businesses.
- Inspectors will impose penalties more frequently for breach of environmental protection requirements, and the fines they impose will be more severe.



40

Minor digitalisation of procurement

persons affected

- state contracting authorities
- contractors in public tenders

Status: now in force 

In proceedings instigated from 18 April onwards, contractors are required to submit, and contracting authorities to receive, a European Single Procurement Document (ESPD) in electronic form, bearing a qualified signature.

This law derives from art. 90(3) of Directive 2014/24/EU and art. 80(3) of Directive 2014/25/EU.

Potential implications

As of 18 April 2018 it will not be possible to submit the European Single Procurement Document in a form other than electronic form.

41

Major digitalisation of procurement

persons affected

- state contracting authorities
- contractors in public tenders

Status: act will come into force on 18 October 2018 

EU directives require member states to make compulsory communication in public procurement proceedings by electronic means by 18 October 2018 at the latest. This requirement has applied since 18 April 2017 for central contracting authorities.

Potential implications

From the specified date, all communication between contracting authorities and contractors, including placing bids and applications for admission to proceedings, will be in electronic form only. This should be understood to mean the measures under the Act on Services Provided Electronically of 18 July 2002 or fax.

Once this requirement is introduced, the entire public procurement process and active monitoring of particular proceedings and the public procurement system will be possible under the E-Procurement Platform created by the Ministry for Digitalisation.

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.

43

Deregulating production of optical carriers

Status: the act came into force on 30 April 2018

A change introduced by the act of 6 March 2018 implementing the Business Law and other business-related acts. Optical carrier production was deregulated when the Minister for Culture and National Heritage stated that the register of optical carrier producers was not fulfilling its function in practice. As a result, chapter 12² of the Act on Copyright and Related Rights will be repealed.

Potential implications

When the act comes into force this will also mean for instance that the minister for culture and national heritage no longer has to be informed of commencement of production and multiple copying of optical carriers.

44

Protection of undisclosed know-how and undisclosed trade secrets against unlawful acquisition, use, and disclosure

Status: the bill has been presented to the Sejm

The most important changes being proposed are:

- The disclosure, use, or acquisition of another person's trade secrets will be an act of unfair competition (according to the current wording of this provision there is no penalty for acquiring that information)
- Section 2 is deleted from Art. 11 of the Unfair Competition Act, which states that an employee is required not to disclose, use, or pass on trade secrets for a period of three years from the day the employment relationship (or other legal basis for providing services to the business) comes to an end. The law in question is assumed to reduce protection of trade secrets – the period of protection of a secret in the case of an employee has been reduced to 3 years from the day on which the employment relationship comes to an end,
- Acquiring a trade secret will be an act of unfair competition whenever this is done without the consent of the holder of the right to make use of the information and is a result of unauthorised access, misappropriation, or copying of documents, objects, materials, substances, or electronic files,

- Introduction of legal remedies where trade secrets are breached (award of remuneration for use of a trade secret in the future, defining compensation as the equivalent of a licence fee due for use of the trade secret),
- Stating clearly in the act that production, offering, and marketing (as well as transportation to or from, and storage for that purpose) of goods of which the properties, including aesthetic and functional properties, and the process of production or launch on the market have been significantly formed as a result of acquisition of trade secret indicates breach of trade secrets,
- In injunction relief proceedings the obligated party will be entitled to demand that instead of seizure of goods, appropriate amount of money be deposited by the obligated party as security for the rightholder's claims for further use of a trade secret. It will only be possible for a decision of this kind to be made following a hearing.

Potential implications

The proposal transposes Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the Protection of Undisclosed Know-how and Business Information (trade secrets) Against Their Unlawful Acquisition, Use, and Disclosure. The changes will be made among other things to the Unfair Competition Act and the Code of Civil Procedure.

45

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.

46

Monitoring transportation of medicine

persons affected

- medicine

Status: the act comes into force on 15 June 2018

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 obligation to report in the monitoring system (SENT) transportation out of Poland of products of which there is a risk of shortage,
- Risk of invalidity of a legal transactions associated with transportation out of Poland in cases where no prior notification is given and transportation defies an objection on the part of the Chief Pharmaceutical Inspector or takes place prior to the end of the time limit for raising an objection.

47

Legislation on administering of advanced therapy medicinal products (ATMP) in hospitals

persons affected
 • medical sector

Status: amendment passed by the Sejm
 (to be passed by the Senate, signed into law by the President, and published in the Journal of Laws)

The introduction and regulation of the exception for hospitals for use of ATMP in the form of non-systemic administering of an ATMP drug prepared at the sole responsibility of a physician for an individual patient. The legal grounds are to be consent issued by the Chief Pharmaceutical Inspector for production of a product of that kind while complying with detailed requirements with regard to quality and safety of customised products of this kind, in particular with respect to observing Good Manufacturing Practices and hiring a Qualified Person, responsible for exemption of a product series.

Potential implications

Creation of a legal framework for administering innovative therapies in hospitals, in particular gene-based and stem cell therapy, without a requirement to register the ATMP with the European Medicines Agency but on the basis of a national procedure before the Chief Pharmaceutical Inspector.

48

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
(awaiting opinions, 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 6 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).

Amendments to the Civil Code

persons affected

- all firms as parties to civil proceedings

Status: the Act will come into force on 9 July 2018
(except for Art. 4, which will come into force on 9 September 2018)

The Act of 13 April 2018 Amending the Civil Code and Certain Other Acts reduces the basic time limits for expiry of claims (6 years instead of 10 years) but leaves in place laws under which the time limit for claims for periodical services and business-related claims is 3 years. A new procedure for counting statute of limitations periods has been introduced.

Art. 889 § 1(1) of the Civil Procedure Code will also be amended. This provision concerns enforcement of receivables on a bank account. A new provision has been added, art. 889Z, which states that when informed by an enforcement officer that a bank account has been seized, a bank will freeze the funds on the account, but does not have an obligation to promptly send funds to cover the receivables. It is required to send those funds to the court enforcement officer's bank account once 7 days have passed from the day of service of notice of the seizure of funds. In the case of enforcement concerning child maintenance payments or disability payments there is an exception. A bank is required to promptly send funds from the seized account to the court enforcement officer's bank account.

Potential implications

- The current periods during which a creditor can pursue claims against a debtor have been reduced. This is a hindrance for creditors.
- A debtor has more options for defence against enforcement, but the measures preventing a debtor evading enforcement will remain in place.

51

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

persons affected

- payment services sector
- e-commerce

Status: the act comes into force on 20 June 2018
(with transitional periods applicable to certain obligations and addressees)

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.

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.

52

New AML provisions (AMLD4)

persons affected

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

Status: the act comes into force on 13 July 2018
(except provisions on the Central Register of Beneficial Owners)

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.

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.
- Provisions on the Central Register of Beneficial Owners come into force on 13 October 2019, while companies entered in the National Court Register prior to this date are required to file for registration within 6 months of the day on which the provisions come into force, i.e. by 14 April 2020.

53

Act on the National Cybersecurity System

persons affected

- IT sector
- e-commerce
- financial sector
- transport
- energy
- medicine sector

Status: the bill has been submitted to the Sejm

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

Status: this act came 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), replacing the national laws on personal data protection.

The regulation was adopted in April 2016 but has been enforceable since 25 May 2018.

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/

New act on personal data protection rules

Status: the act came into force on 25 May 2018

The 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.

Potential implications

- Entries for information security officers currently registered with the Inspector General for Protection of Personal Data (GIODO) will expire in September 2018. Up until this time the appointed data protection officers have to be re-registered.
- The President of the Personal Data Protection Office now has 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 has now been limited to PLN 100 000.

56**Change to personal data protection rules – national provisions in certain sectors in view of the GDPR**

persons affected

- personal data controllers

Status: work on proposals is ongoing

The proposal for amendment of certain acts due to compliance with the GDPR contains approximately 130 changes intended to harmonise the Polish legal system with GDPR rules.

Potential implications

- The basis for processing personal data or employees, including biometric data will be changed.
- It will be specified that under the act data controllers are appointed and the grounds for processing personal data are determined for institutions that perform public tasks.
- A series of restrictions are expected to be introduced on rights of data subjects (based on the derogations under art. 23 of the GDPR).

Committee on Warsaw property restitution

persons affected

- entities which invest in real property in Warsaw

Status: the act came 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.

59

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.

60

Property developer act

persons affected

- property developers

Status: work on the bill is ongoing

The proposed bill regulates “reservation agreements”, which are currently concluded as innominate agreements according to the principle of freedom of contract. The bill also prevents developers from using open escrow accounts without insurance or a bank guarantee. The bill provides for additional disclosure obligations for developers, regarding information that has to be included in the prospectus.

Potential implications

- Greater protection for buyers of properties.
- Greater certainty in trade in real estate.

61

Special-purpose housing act

persons affected

- property developers

Status: work on the bill is ongoing

The proposal is to simplify rules and procedures for preparations and work on housing projects. Among other things it will be possible to realise residential projects on sites which are not covered by a zoning plan or sites covered by a zoning plan provided they do not breach the findings of the municipal spatial development study.

The bill would also simplify the investment process for instance by providing for the option of consent to the cutting down of trees and bushes and installing of cables and devices in installations in a construction permit to the extent necessary to realise the project.

Potential implications

Increase in the number of residential property projects.

62

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.

63

Transformation of shares in perpetual usufruct into ownership title

Status: due to come into force as of 1 January 2019

When the act comes into force, shares held by owners of separate properties in joint perpetual usufruct of land on which properties stand will become joint ownership title by law.

In exchange for transformation, owners will have to pay a transformation fee for 20 years.

The change only applies to land on which there are residential buildings.

Potential implications

This will regulate the legal status of many properties.

64

Compulsory mortgage

persons affected
• all businesses

Status: the act came into force on 9 June 2018

Injunctive relief for a claim in the form of a compulsory mortgage will remain in effect for a period of 2 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.



65

New procedure for raising claims for debts in bankruptcy proceedings and greater flexibility in the pre-pack procedure

persons affected

- Creditors of distressed businesses
- investors • distressed debtors

Status: the bill has been published on the government's website

The bill simplifies the procedure for filing claims, enabling creditors to file claims with the receiver directly, without having to do so via the judge commissioner. Creditors who do not file claims within 30 days of the declaration of bankruptcy being announced in the Judicial and Commercial Gazette will have to pay a fixed fee for a late filing. The bill makes major changes to the pre-pack procedure, and this includes the possibility of a group of buyers jointly acquiring assets and a change of terms of sale at the request of the buyer, in cases in which material circumstances affecting the value of the asset being acquired change subsequent to approval of the sale by a court.

Potential implications

- The procedure for determining the list of claims in bankruptcy proceedings will proceed more quickly.
- The pre-pack procedure will be widely used in legal transactions and buyers will be assured greater flexibility when the sale terms are agreed.

66

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.

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

persons affected

- licenced restructuring advisors
- 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.

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.

The MLI will come into force on 1 July 2018, while amendments to the double-tax treaties with Austria and Slovenia (these countries signed the MLI and gave notification of ratification) will take effect as of 1 January 2019.

With respect to other double-tax treaties notified by Poland, when the MLI comes into effect will depend on the date on which the other party gives notification of the MLI.

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.

[Tax Ordinance] Group opinions

persons affected
 • all businesses

Status: public consultation

A new institution will be introduced in the Tax Ordinance of a group application for an opinion. This application will apply to transactions between affiliates.

Among other things, an applicant will be required to state the obtained and predicted profits (including tax gains) from transactions, and state the value of those profits.

The time limit for issuance of group opinions will be extended (from 3 months to 6 months).

Under the bill, taxpayers who obtained opinions applicable to transactions with affiliates will be required to submit to the Director of the National Fiscal Information Office supplementary information (under new group opinion requirements), otherwise individual opinions issued before the act comes into force will cease to be valid.

Potential implications

The new provisions will be effective retrospectively, which means that taxpayers will have to review opinions issued in the past in light of the new requirements.

70**[PIT/CIT] Commercial real estate tax**

persons affected

- all businesses

Status: awaiting the President's signature

The item subject to commercial real estate tax will change. Tax treatment will be limited to buildings made available for use for a fee under a lease or rental agreement, or leasing agreement.

The procedure for determining the tax threshold will also change. A threshold of PLN 10 000 000 will be attributed to all the taxpayer's properties, and not to each one individually.

In principle the act is due to come into force on 1 January 2019, while changes that benefit taxpayers will take effect retrospectively.

Potential implications

The aim of the changes is above all to tighten up the tax system and eliminate opportunities for tax optimisation in this regard.

71**[PIT] Expansion of the list of entities entitled to 50% tax costs for artists**

persons affected

- employers • employees

Status: legislative work is ongoing
(the changes are to take effect from 1 January 2018)

The act is intended to expand the list of professions in which higher tax costs apply, to include among other things activity relating to creating computer games, academic activity, and educational activity conducted at an institution of higher education.

The previous amendment to the PIT Act significantly narrowed the group of taxpayers entitled to 50% tax costs.

The act is due to take effect retrospectively, from 1 January 2018.

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.

72

[CIT/PIT] Funding for new investments

persons affected

- businesses

Status: to come into force on 30 June 2018
(secondary regulation undergoing the legislative process)

The new legislation provides for funding for new projects. This funding takes the form of income tax exemption, while this exemption will not depend on the new project being located in a special economic zone.

A decision granting funding will be issued for between 10 and 15 years provided that quantitative criteria (concerning incurred eligible costs) and qualitative criteria laid down in detail in the secondary regulation are fulfilled. The qualitative criteria are intended to promote generation of high-earning specialist jobs and R&D activity.

Anti-tax-optimisation clauses will also be included in the CIT and PIT acts. In the case of exemption which is artificially high or fictitious transactions and transactions aimed at tax avoidance, businesses will forfeit the right to the exemption as of the date of the first action identified of that kind, and this will trigger a requirement to pay tax of the amount of the used tax exemption.

Potential implications

- The new legislation abolishes the geographical limits on location of a project. This is due to the conviction that in the current form, special economic zones are no longer an effective mechanism for granting aid to investors and that instruments are needed that will increase investments in other areas of Poland. Introduction of qualitative criteria will mean that among others projects performed by businesses that offer modern services for business or B&R will have easier access to funding.
- In addition, the period for an investor to use the tax exemption limit has been extended from 10 to 15 years. The new funding instruments will operate parallel to the existing Special Economic Zones. The status of the existing Special Economic Zones will remain unchanged until 2026.

73

[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.

74

[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.



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