



# Legal update

Changes in law in Poland  
affecting the business environment

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## **Amendment to the Administrative Procedure Code, the Law on Proceedings before Administrative Courts, and the Act on Enforcement Proceedings in Administrative Authorities, related to the Act on Management by Succession of a business owned by a natural person**

persons affected

- all businesses

Status: the act came into force on 25 November 2018

The amendment gives the succeeding manager, and subsequently the heirs of the deceased, the possibility of acceding to administrative and judicial/administrative proceedings. It specifies additional prerequisites for appointment of a receiver for the inheritance and suspension and taking on of proceedings when a party to proceedings dies. The changes to enforcement proceedings in administrative authorities mean that enforcement can be conducted against an inherited business in the course management due to succession.

### **Potential implications**

The changes are intended to guarantee that a business enterprise is operated efficiently when a party to proceedings dies and at the same time to ensure protection of both the rights of heirs and the public interest. The possibility of instituting and continuing enforcement proceedings when a person owning a business dies with respect to the assets of the business enterprise which is under management due to succession may make the enforcement procedure in administrative authorities more effective.

## 2

## 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.

## 3

## 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.

## 4

### 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).

## 5

### 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.

## 6 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: the act came into force on 9 July 2018  
(except art. 4, which came 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 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 has also changed. 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 determines 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 new 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.

## 7

## 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.

## 8

## 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.



## 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.

## Limitations on enforcement from assets of shareholders in partnerships

persons affected

- all businesses

Status: the act has been passed by the Sejm

The act brings the legal system into line with a judgment issued by the Constitutional Tribunal stating that laws in effect to date on enforcement from assets of a shareholder in a partnership in cases where enforcement against the partnership has proven ineffective or would evidently be ineffective are unconstitutional. Appending an enforcement clause to the enforcement title issued against the partnership will only be possible in relation to persons who remained shareholders in the partnership at the moment a proceeding was instituted in the case in which enforcement title was issued against the partnership.

### Potential implications

There are now less possibilities for enforcement from the assets of shareholders in partnerships. It will be important to verify the individuals being shareholders in the partnership as at the day a lawsuit is filed against the partnership. This is to identify the shareholders against whom claims against the partnership can be enforced where enforcement against the partnership has proven ineffective or would evidently be ineffective.

## Laws prohibiting banks from charging interest on overdue interest

### persons affected

- the banking sector
- lending institutions

Status: a legislative proposal has been submitted to the Sejm

The proposal, formulated by the President, for changes to the Civil Code, would abolish the current privileges enjoyed by lending institutions with respect to charging default interest on overdue interest. Under the Civil Code, it is prohibited to agree upfront on payment of interest on overdue interest. At the moment, the Civil Code provides for three exceptions to this rule. The first is that interest capitalisation is possible once a lawsuit has been filed for interest on interest. The second applies where the parties agree, after some amounts became overdue, that interest will be added to the debt. The third, which is to be abolished, applies to interest on overdue interest on long-term loans granted by lending institutions.

### Potential implications

Banks' revenue will decrease. In case a long-term loan and capital interest on that loan are overdue, , to be able to charge default interest on unpaid interest, a bank will have to bring an action against the debtor to the court. This will mean that enforcement of debts by banks will entail higher costs, and long-term loans will be less profitable.

## Proposal for a Corporate Crimes Act

persons affected

- commercial companies • sole proprietorships
- cooperatives • political parties
- churches and faiths

Status: work on the bill is ongoing

Some of the issues covered by the proposal are:

- Broader grounds of liability of corporate entities (they can be found liable in cases of mergers, demergers, or transformations, changes in the composition of the managing body, firms that have gone into liquidation, as well as in cases in which a perpetrator of an offence cannot be determined),
- Abolition of the requirement for a natural person to have already been convicted for proceedings to be conducted against a corporate entity (the requirement for a prior ruling on this issue has been abolished),
- Proceedings against a natural person being the presumed perpetrator and a corporate entity can be combined,
- A new obligation for a corporate entity to conduct an inquiry and remedy any wrongdoing or breaches ascertained in that inquiry in cases in which they are reported by an employee or member of the management board of the corporate entity, or others,
- A broader list of preventative measures and the option of exercising compulsory administration with respect to corporate entities,
- The option for a corporate entity to admit liability voluntarily, which means leniency is possible in the penalties imposed and it can avoid being placed in the National Criminal Register,
- The threshold and ceiling provided for by law for financial penalties is to be raised to as much as PLN 360 million, and the procedure for calculation of the financial penalty would change (amount of the penalty no longer linked to revenue generated by the corporate entity),
- A broader list of penalties and criminal case measures – for example a penalty of dissolution of a corporate entity, introduction of measures such as forfeiture of material gains obtained even indirectly due to an offence for which the entity is not liable, and a rule that it is prohibited to promote or advertise activities, services, or products, etc., an obligation to remedy damage, and permanent or temporary closure of a branch of the corporate entity),
- Listing in the National Court Register of information on the measures and penalties imposed on entities placed in that register,
- Placing in the National Court Register of data of corporate entities on which penalties or other measures provided for in the bill have been imposed,
- Prevention of exercise by the corporate entity of the rights and obligations of an aggrieved party.

## Potential implications

- The number of cases conducted against corporate entities will increase,
- Evidently more stringent rules on liability of corporate entities: higher financial penalties and the possibility of a corporate entity being ordered dissolved, and more troublesome consequences of other sanctions imposed on corporate entities,
- A large part to be played by negotiations with law enforcement agencies in view of the possibility of significant leniency of penalties where a corporate entity admits liability voluntarily,
- Requirement for corporate entities to introduce internal procedures to prevent offences being committed,
- Requirement for corporate entities to conduct inquiries in cases where wrongdoing is reported and an obligation to remedy detected wrongdoing and breaches.

Work on the bill is now at an advanced stage and the bill awaits approval by the government. It will then go to the Sejm. A brief vacatio legis is envisaged.

## 13

### Proposal for amendment of the Criminal Procedure Code

Status: work on the bill is ongoing →

Under the bill

- Statements of reasons for judgments will be drawn up on forms,
- Judgments and rulings will no longer be announced in the absence of the parties to proceedings,
- All records and documents constituting evidence in a case will be considered to have been disclosed,
- It will be possible to examine witnesses and introduce evidence in the absence of the parties to the proceedings (regardless of the reasons for failing to attend),
- It will be possible for an evidentiary motion to be dismissed when the time limit specified by the procedural authority expires (at the moment there is no time limit for the participant in the proceedings to file evidentiary motions),
- The obligation to examine all aggrieved parties will cease to apply,
- It will be possible for an appeal court to impose more severe penalties (for instance conviction with no conditional discontinuance of proceedings, a sentence of life imprisonment),
- It will be possible for court correspondence to be collected at a post office upon receipt of notice of a parcel awaiting collection, from a post office box – option of request for correspondence not to be delivered in person,

- Limits will be introduced for aggrieved parties – they will be able to file indictments jointly and separately with a court when launching of an investigation or discontinuance of proceedings is denied three times (and not two times as currently).

### Potential implications

- Proceedings will be shorter in duration,
- An appeal court will play a greater role in sentencing, while at the same time there will be a limit on conduct by the appeal court of evidentiary proceedings,
- Preparatory proceedings will be extended for an aggrieved party – it will be more difficult for an aggrieved party to file an indictment with a court,
- There will be less possibilities for aggrieved parties to have a say.

## 14

### Proposal for amendment of the Criminal Code

Status: work on the bill is ongoing  
(the bill is not available yet)

Some of the information provided in public statements: possibility of sentence of 20 years' imprisonment (currently 12 years).

### Potential implications

More stringent provisions on receipt of material gains.

## 15

### Proposal for amendment of the Pharmaceutical Law

persons affected

- persons that make use of medical services (patients)
- businesses operating on the pharmaceutical market; including pharmacies, pharmacy service points, pharmaceutical wholesalers

Status: work on the bill is ongoing

The bill provides among other things for:

- Broader criminal liability for any act aimed at placing illegal medicinal products on the market,
- Broader criminal liability for all participants in the process of illegal trading in medicinal products,

- Introduction of criminal liability for trading in medicines by mail order without a permit or registration,
- Introduction of criminal liability for transportation of medicinal products outside of Poland of which there is a risk of a shortage in Poland,
- Introduction of liability for unlawful breach, use, or removal of medicinal products seized during an inspection.

### Potential implications

- A broad list of crimes on the pharmaceutical market will be introduced,
- Administrative liability will be replaced by criminal liability, making liability in this sector of the economy more stringent,
- There will be more types of criminal proceedings in which a person operating on the pharmaceutical market is a party.

## 16

### 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.

## 17

### 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.



## Introduction of laws on employee capital plans

persons affected

- business that have employees

Status: the act will come into force  
(in stages - according to the following schedule) →

The act will come into force:

- from 1 July 2019 for entities employing 250 or more persons;
- from 1 January 2020 for entities employing 50 or more persons,
- from 1 July 2020 for entities employing 20 or more persons,
- from 1 January 2021 for other entities and persons employed in entities in the public finances sector.

Under the new provisions, every business and every institution employing at least one person for whom it pays social security contributions will have an obligation to create an employee capital plan. The funds accumulated by the participant in the employee capital plan will be paid when they reach 60 years of age. Under the act the employer will be required to sign an employee capital plan management agreement with a selected financial institution and agreements for operating employee capital plans on behalf of and for each participant. Participation in the plan is voluntary – an employee can decide not to participate in the plan by serving the employer the relevant notice. The base payment is 2% of the salary from the participant and 1.5% of the salary from the employer.

### Potential implications

- Higher employee costs for employers,
- More obligations for employers in connection with operating the plan,
- Stimulation of investments on the Polish capital market, especially on the Warsaw Stock Exchange.

## Amendments to the Act on the Public Offer and certain other acts

persons affected

- financial institutions
- publicly owned companies

Status: proposal announced 15 November 2018 →

The aim of the proposal is to:

- Create legislation to make publicly-owned companies more transparent, especially with regard to costs of remuneration and transactions with affiliates,

- Strengthen the position of minority shareholders, for instance by helping companies to identify shareholders and communicate with them better,
- Force institutional investors and asset management firms to draw up and make public their policy regarding participation in a company and provide information about the ways in which that policy is implemented.

The act only allows one offer directed towards 149 persons per calendar year without a prospectus or information memorandum.

### Potential implications

- Minority shareholders will be in a stronger position,
- Greater long-term participation due to shareholders having access to more precise information,
- Investment policy with respect to publicly-owned companies, institutional investors, and asset management firms will be more transparent.

## 20

### Amendments aimed at giving investors better protection

persons affected

- investors
- firms on the capital market

Status: the president has signed the bill  
(the bill will come into force on 1 January 2019, with minor exceptions) ➔

Under the amendment, the Financial Supervision Authority will be composed of an additional four members: a representative of the prime minister, the Bank Guarantee Fund and the Office of Competition and Consumer Protection, and a representative of the minister responsible for monitoring the secret services.

The act makes it compulsory to dematerialise and register with the National Securities Depository corporate bonds, investment certificates issued by closed-end investment funds, and letters of pledge.

A Financial Education Fund will be created as a body within the National Securities Depository.

The act also provides for an obligation to appoint an issue agent where bonds and letters of pledge are issued that are not issued in a public offer and with respect to which the issuer does not intend to apply to trade on the regulated market, as well as investment certificates issued by a closed-end investment fund that is not a public closed-end investment fund.

## Potential implications

- Greater transparency and security on the capital market,
- Greater protection for investors,
- Making funding of the Financial Supervision Authority independent of the state budget,
- More obligations for issuers of debt securities or investment certificates.

## Amendment to the Competition and Consumer Protection Act

persons affected

- all businesses

Status: work on bill ongoing

The amendments are intended to:

- Harmonise laws with Regulation 302/2018 of the European Parliament and of the Council on Geoblocking,
- Allow the President of the Office of Competition and Consumer Protection and the president of the Financial Supervision Authority to share information concerning cases and which is subject to fiscal and banking confidentiality,
- Change the procedure for appointing and recalling the President of the Office of Competition and Consumer Protection (including a return to fixed terms of office) and also change the way in which the structure of the Office of Competition and Consumer Protection is formed.

In addition, the proposal for the amendment provides for technical updating of the Act on Prevention of Abuse of Contractual Advantage.

### Potential implications

- The President of the Office of Competition and Consumer Protection will be the authority responsible for enforcing the Geoblocking Regulation in B2B relationships; in B2B relationships only in cases in which geoblocking restricts competition.
- The President of the Office of Competition and Consumer Protection will have access to information held by the Financial Supervision Authority, as well as to data subject to fiscal and banking confidentiality for the purpose of proceedings conducted under the Competition and Consumer Protection Act, and, in the latter case, the Act on Prevention of Abuse of Contractual Advantage. Among the reasons given by the Office of Competition and Consumer Protection for the need for access to information subject to fiscal confidentiality is the need to calculate penalties under the Competition and Consumer Protection Act (data on turnover, being the basis for calculation).
- Other amendments that need to be taken into account when conducting business activity are also possible (for example regarding competition restricting arrangements, risk of penalties, risks related to inspection and searches, etc.).

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

persons affected

- commercial companies

Status: the bill is awaiting the president's signature  
(it will probably come into force with respect to the issues described in March 2019)

- Possibility of confirmation of the activities of a "false authority" in the same way as a "false representative".
- The possibility of specifying the way surplus payment for shares in a company beyond the nominal value is to be allocated (to supplementary capital or reserve capital).
- Amendment of the articles of association of a company in organisation only with the consent of all of the shareholders.
- Legislation regulating the status of communal estate with regard to shares.
- Introduction of an absolute time limit for payment of dividends.
- A company's right to have advance payments on expected dividends returned.
- Changes to the procedure for resignation from the position of management board/supervisory board member, including introducing a specific procedure for tendering notice (including a requirement to convene the meeting of shareholders and effective as of the day following the day on which it is held) in cases where the entire management board or the last member of the management board resign.
- Adoption of resolutions in matters 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.

### Potential implications

- Resolution of some debates in literature and case law regarding for instance the possibility of confirmation of actions of a "false authority", composition of the management board of a professional partnership, etc.
- Restriction of the freedom of members of a management board to resign and resulting increased risk of their liability.

## 23

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

persons affected

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

Status: the act is awaiting the president's signature  
(it will probably come into force with respect to the issues described in March 2019)

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".

## 24

### New rules on drawing up financial statements

persons affected

- any entities registered in the national court register

Status: kolejne przepisy ustawy weszły w życie 1 października 2018 r.  
(the remaining 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 financial statements and reports on business activity must be drawn up and signed in electronic form (with a logical structure and format published in the Public Information Bulletin on the Ministry of Finance website) using qualified electronic signatures by management board members (shareholders of partnerships representing those partnerships, liquidators, receivers) whose PESEL numbers are entered in the register.

## 25

## Updating of rules on filing financial statements with the National Court Register

### persons affected

- all entities registered in the national court register

Status: the bill has been passed by the Sejm  
(the bill could come into force in December 2018 / January 2019)

The rules on filing financial documentation with the National Court Register will be more specific. The rules came into force under the act described in the preceding point.

### Potential implications

An option will be introduced for an entity's representatives in legal proceedings to sign copies of financial documents filed electronically with the National Court Register.

## 26

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

### persons affected

- joint-stock companies • european companies
- limited joint-stock partnerships

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.

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

persons affected

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

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).



## 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.

## Keeping of employee documentation

persons affected

- any firms which have employees

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

The proposal for the new regulation would mean changes to the way personal files are kept – including a new section D of those files, and a new obligation to keep employment relationship document separately for each employee, and this includes information on working hours.

As of 1 January 2019, all documentation of employees starting work must be kept in accordance with the new rules. In the case of persons hired up until that time, documents inserted into documentation from 1 January 2019 onwards will have to be stored as required under the new regulation.

## Potential implications

The archiving system will change, and employers' IT systems will have to be adapted to the new requirements under the regulation.

## 30

### Employee Capital Plans (ECP)

persons affected

- employers and other firms that employ natural persons

Status: the act will come into force on 1 January 2019  
(subject to certain exceptions: gradually, from 1 July 2019 onwards, it will apply to further employee groups)

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 will be able to withdraw from an ECP. The employing entity is required to inform an employee of the option of re-joining the plan every four years.

Entities which run 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 25% 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.

## Minimum wage and hourly rate in 2019

persons affected

- all entities that have employees and people on contracts under civil law

Status: comes into force on 1 January 2019

Specifies the minimum wage and hourly rate of pay in Poland in 2019.

### Potential implications

- From 1 January 2019 the minimum gross salary will be PLN 2250.
- From 1 January 2019 the minimum gross hourly rate will be PLN 14.70

## Protection of trade secrets

persons affected

- any entities which have employees

Status: the act came into force on 4 September 2018

Art. 11(2) of the Unfair Competition Act will be completely reworded. Under this provision, an act of unfair competition could be committed by a former employee who breaches the former employer's trade secrets. This could decrease the level of protection of trade secrets with respect to former employees, as there is currently no provision stating explicitly that all employees are subject to a non-disclosure obligation once the employment relationship comes to an end.

### Potential implications

Contracts with employees should state explicitly that confidentiality must be observed once employment ends.

## 33

**Amendment of the Trade Union Act**

persons affected

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

Status: the act will come into force on 1 January 2019  
(with some minor 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.

## 34

**Electronic sick leave notes**

persons affected

- any institutions that have employees

Status: the act is now in force ➡

From 1 December 2018 doctors can only issue electronic sick notes. Sick notes in paper form can only be used in exceptional circumstances, for example when there is a system breakdown.

**Potential implications**

As a rule an employer will receive information about an employee's absence more quickly than at the moment.

## 35

**Amendment of the Energy Law**

## persons affected

- energy firms
- users of power and gas

Status: the act has been passed and is awaiting the president's signature  
(the act will come into force in part on the day after it is published, or 14 days after it is published)

Comprehensive regulation of reserve sale institutions, i.e. sale of gaseous fuels or electricity to an end user by a reserve supplier in cases in which the current supplier stops supplying gaseous fuels or electricity.

The obligation to sell produced electricity on the Energy Exchange has been changed, from 30% to 100%.

Changes have been adopted to allow application of the Grid Codes – measures to build a common, single electricity market in the EU.

**Potential implications**

The amendment is intended to protect users against the effects of a stoppage in supply of power or gas. Due to repeated cases of gas being cut off in 2018, a special amendment was made to the regulation on conditions for operation of the gas system, prior to the act being passed, urgently introducing emergency sales of gas. To date there has been no regulation of sale of reserve/emergency gas.

The exchange sale obligation of 100% is intended to improve liquidity and transparency in trade in energy and help to limit fluctuations and increases in energy prices.

## 36

**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.

## 37

### Capacity market

persons affected

- 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 was held in December 2018. Further auctions for coming years are expected in 2019.

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 and the Commission. It can be 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.

## 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.

## 40

### 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.



## 41

## 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 came into force on 29 August 2018

The act introduced among other things changes to the procedure for classification of objects or substances as by-products:

- the Province Environmental Protection Inspector issues, 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 is able to conduct an inspection of an applicant before issuing an opinion,
- the Province Marshal rules 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 on 28 February 2019.

### 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 is now much more time-consuming and complex.

## 42

## Amendments to regulations on waste storage and processing

persons affected

- any businesses that store and process waste

Status: the act came into force on 5 September 2018

Under the act, 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 (from 22 February 2019).

The rules for issuing permits for collection and processing of waste have been changed:

- A fire safety report and document confirming that security has been established for claims has to be attached to the application,
- A fire brigade inspection is required before a permit is issued,

- A series of declarations and certificates confirming no record of convictions for environment-related crimes have to be enclosed with the application.

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 is now 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.

## 43

### Province Environmental Protection Inspectorate inspectors will have greater powers

persons affected

- any businesses whose activity has an environmental impact

Status: the act will come into force on 1 January 2019  
(the most important provisions in the act came into force on 18 August 2018)

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

Inspectors 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 can also use drones to collect samples.

Inspectors also have greater powers with regard to issuing decisions stopping activities that breach environmental protection requirements. The act has also made 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.

## Changes to charges for use of water services

### persons affected

- all businesses that use water services (draw water from the intake station, discharge waste in water or the ground)

Status: the act came into force on 20 September 2018

The act amends interim provisions on charges for water services – businesses will have to submit to Wody Polskie (or, in the case of a charge for reducing the natural retention level – to the local mayor, town mayor, or city mayor with jurisdiction) quarterly statements containing information enabling the charge due to be reduced. The statements have to be filed within 30 days of the end of the quarter. The first statements of this kind will apply to Q 4 2018.

### Potential implications

Businesses that make use of water services will have to determine by themselves the parameters determining the amount of the charge (in view of doubts as the correct meaning of these regulations this may be quite difficult).

## 45

**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.

## 46

**Major digitalisation of procurement**

persons affected

- state contracting authorities
- contractors in public tenders

Status: the act came into force in part on 1 October 2018  
(the act will come into force in part on 1 January 2020).

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

**Potential implications**

From 18 October 2018, as a rule, all communication between contracting authorities and contractors, including placing bids and applications for admission to proceedings, is 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. Under the changes passed in July 2018, the date from which this obligation is binding for contracting authorities that are not central contracting authorities that place orders below the EU thresholds was postponed until 1 January 2020.

From 1 January 2020, the entire public procurement process and active monitoring of particular proceedings and the public procurement system will be possible under the E-Procurement Central Platform created by the Ministry for Digitalisation, integrated with e-Services portals.

## Amendment to the Public-Private Partnership Act

persons affected

- public contracting authorities
- contractors of public contracts

Status: now in force

The most important changes are:

- The element of issuance of opinions on PPPs in the following forms:
  - Project implementation assessment: An obligatory opinion issued by a public entity prior to PPP proceedings. It examines whether it would be more efficient to implement the project differently,
  - Certification: an optional and non-binding opinion issued by the minister responsible for regional development at the request of a public entity prior to PPP proceedings being instituted. This is support for the project implementation assessment.
  - PPP test: obligatory and non-binding opinion issued by the minister responsible for regional development in cases in which the PLN 300 million threshold is crossed. It examines whether the project would be more efficient if it was implemented as a PPP. It does not apply in the case of projects that are planned as PPPs from the beginning and with respect to projects co-financed using EU funds.
- The possibility of a project being operated in the form of a capital company. It is also possible to operate the partnership in the form of a new company (for example an SPV), or an existing company.
- The obligation to introduce criteria for allocation of tasks and risk and time limits, and the amount of the expected payments/benefits of the public entity has been abolished,
- The manner in which the agreement is secured is specified solely by the public entity, art. 150 and 151 of the Public Procurement Law do not apply in this situation,
- It is possible to exclude liability of the public entity for remuneration due to a subcontractor performing works, which is liability borne by the investor under 647<sup>1</sup> § 1 of the Civil Code.

### Potential implications

The amendment to the act allows much more flexibility in conducting PPP proceedings and entering into PPP contracts, and broadens the parties' powers with regard to how they structure their business relationship. The new procedures might also mean greater interest in PPPs on the part of private entities.

The requirement for opinions to be issued regarding efficiency of projects also means that use of PPPs can become considerably more common and have a beneficial effect on decisions made by private entities regarding participation.

## 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.

## 49

### Adaptation of the Act on Copyright and Related Rights and the Database Protection Act with regard to access for the blind and visually impaired to artistic works

Status: the act was passed on 22 November 2018  
(comes into force on 28th December 2018)

The proposal harmonises Polish laws with Directive 2017/1564 of the European Parliament and of the Council on certain permitted uses of certain works and other subject matter protected by copyright and related rights for the benefit of persons who are blind, visually impaired or otherwise print-disabled.

#### Potential implications

The changes are intended to help, among other things, with creation of copies of artistic works in a format facilitating access to a work for persons who have problems with their sight (as far as use is permitted).

The change to the laws will mean that a group of entities is determined that are entitled to create copies and to rules being introduced for exchange of copies between EU countries. A comparable form of permitted use is also provided for in the Database Protection Act.

Entitled entities, i.e. both public and private organisations operating on a non-commercial basis for the benefit of the disabled will be able to make available to them literature and other types of artistic works expressed as written text, mathematical symbols, graphic symbols or a system of symbols, and the related art or photographic works in a form adapted for them. They will be allowed to copy books but also adapt them to suit the needs of people with reading difficulties. Also possible is printing in the Braille alphabet, creation of e-books with larger print, or audiobooks. Disabled persons will be entitled to use the database containing these copies free of charge.

The entities with this entitlement will include public or non-profit organisations that offer the same services to beneficiaries as their core activity, institutional obligations, or the tasks they perform for the public benefit. In practice, these will probably be public benefit organisations, foundations, and associations for the disabled, or, as applicable, book or online publishing houses.

## 50

## Harmonisation of the Industrial Property Law with international standards and elimination of errors in implementation of EU laws

Status: work on the act is ongoing

The most important changes are:

- Introduction of terms of office of the president of the Polish Patent Office,
- Proof of priority is issued on the basis of registration with the Polish Patent Office,
- The wording of the catalogue of works that are not inventions will be made more precise (Art. 28 of the Intellectual Property Law) for example change of the existing phrase "programmes for computers" to "computer software",
- Introduction of the option of restriction of a patent by changing patent claims,
- A new definition of a utility model (utility design) enabling protection to be obtained at a lower level than a patent. This will be achieved by simplifying the terms "usefulness", replaced with the phrase "scope for industrial application", which is now in use and interpreted on the basis of patent protection.
- Introduction of provisions on securing evidence of infringement,
- Introducing provisions on disclosure.

### Potential implications

The proposal harmonises Polish laws with the European Patent Convention and the Washington Patent Cooperation Treaty.

## 51

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

Status: the act came into force on 4 September 2018

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.



## 52

**Cosmetic Products Act**

persons affected  
 • the cosmetics sector

Status: the act was passed on 4 October 2018  
 (about to be published in the Journal of Laws)

The aim of the act is to ensure compliance with Regulation EC 1223/2009 of the European Parliament and of the Council of 30 November 2009 on Cosmetic Products. The act is intended to improve regulation of safety of cosmetics. In particular, the act creates a Cosmetic Product Severe Adverse Effects Information System.

**Potential implications**

- Producers of cosmetics will have an obligation to register production facilities with the local (poviat) health inspectors with jurisdiction over the location of the facility within 9 months of the act coming into force.
- Appointed persons responsible for placing a cosmetic on the market will have to adapt cosmetics documentation to greater regulatory safety requirements,
- Fines for failing to comply with manufacturing marketing, labelling and documentation-keeping and document storage obligations, regarding cosmetic safety, will be more stringent.

## 53

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

persons affected  
 • medical sector

Status: the amendment came into force on 8 August 2018

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.

## 54

### 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  
(about to be submitted to the Cabinet)

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 Procedure Code

persons affected

- any entities as parties to civil proceedings

Status: the act came into force on 9 July 2018

An additional requirement was introduced for a statement of claim, in Art. 187 of the Civil Procedure Code, § 1: “to specify the date on which a claim matures in claim adjudication cases”.

### Potential implications

A statement of claim is not valid if it does not state the date on which a claim matures.

## Amendments to the Civil Code

persons affected

- any entities as parties to civil proceedings

Status: the act came into force on 9 July 2018  
(except for art. 4, which came 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.

The amendment introduces new rules whereby claims are time-barred in relationships with consumers. Under the inserted art. 117 § 21 of the Civil Code, once the time limit expires a business cannot seek satisfaction of a claim against a consumer.

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. 889<sup>2</sup>, 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 general period after which a claim is time-barred has been reduced to 6 years. In addition to a change of periods after which claims of businesses against consumers become time-barred, and changes to rules in this regard, interim provisions in the act that regulate expiry of claims existing on 9 July 2018 that have not expired as of that date are also of practical importance.
- 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.



## 58

## Central Register of Beneficial Owners

persons affected

- commercial companies

Status: the act comes into force on 13 October 2019

A new AML act which implements AMLD4. It provides for creation of a Central Register of Beneficial Owners.

## Potential implications

- 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.

## 59

## Act on the National Cybersecurity System

persons affected

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

Status: the act came into force on 28 August 2018

The act implements the NIS directive and introduces cybersecurity obligations for certain types of businesses. The act 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 have a broader range of obligations than digital service providers.

## Potential implications

It is 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 are 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 are 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 act.

## 60

### National electronic identification scheme

persons affected

- all businesses

Status: came into force on 11 and 29 September 2018

The amendment to the Trust Services Act specifies the legal framework for use of electronic identification means, i.e. data that can be used to identify a customer when using services online. For this purpose the act specifies rules for operation of the national electronic identification scheme, which is made up of a national and cross-border nodes.

Systems within which means of electronic identification are issued, and systems in which online services requiring identification of the customer are made available, can be connected to the national node.

Meanwhile, the cross-border node can be used to make use of notified electronic identification means issued in other EU member states.



## Potential implications

- Private entities will be able to apply for their own electronic identification system to be connected to the national node, and issue, within it, electronic identification means.
- Private entities will be able to apply for their own IT system, in which online services are made available, to be connected to the national node, and rely on electronic identification means to identify customers.
- Private entities will be able to obtain electronic identification means within created electronic identification systems and use them in those online services (and this includes those offered by public entities), which will be connected to the national scheme.

## 61

**Special-purpose housing act**

persons affected

- property developers

Status: the act came into force on 22 August 2018

The act simplifies 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 (this requirement does not apply to railway, military, and manufacturing sites, and postal services).

The act simplifies 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

**Transformation of shares in perpetual usufruct into ownership title**

persons affected

- owners of residential properties

Status: the act came into force on 5 October 2018

As of 1 January 2019, 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, i.e. single-family buildings and buildings in which at least half of the units are residential premises.

**Potential implications**

This will regulate the legal status of many properties.

## Companies investing in letting of real estate

persons affected

- property developers
- private investors

Status: work on a legislative proposal is ongoing

The legislative proposal introduces REIT into the Polish legal system. These are real estate investment trusts. Under the proposal, REIT will operate as joint-stock companies (including via subsidiaries). An incentive to invest in real estate will be given in the form of tax relief. According to the current wording of the proposal, REIT will only be able to invest in the residential property market. The register of these companies will be operated by the Financial Supervision Authority.

### Potential implications

- There will be greater interest in investments in the rental residential property market,
- There will be greater participation of Polish investors in the residential property market.

## 64

[Tax Code]  
Additional tax liabilities

persons affected

- all businesses

Status: comes into force on 1 January 2019

A tax authority will calculate an additional tax liability in a decision based on a general or specific tax avoidance clause and transfer pricing laws.

The amount of the additional tax liability will be 10% (for PIT and CIT) and 40% (for other kinds of taxes) of the tax gain.

In special cases (specifically high-value gains, existence of a combination of prerequisites for an additional tax liability), the liability can be doubled or even tripled.

### Potential implications

The purpose is to tighten up income tax collection. With regard to the subject matter affected by the additional tax liability however, further doubts may arise on the part of taxpayers and remitters, in particular regarding restructuring activities and withholding tax.

## 65

[Tax Code]  
Mandatory Disclosure Rules

persons affected

- professions of public trust

Status: comes into force on 1 January 2019

Entities and persons that advise on implementation of tax schemes (scenarios aimed at obtaining tax gains) will be required to disclose them to tax authorities.

### Potential implications

The broad range of the provisions gives rise to doubts about compliance with EU law and provisions on privileged information in professions of public trust (such as attorneys and tax advisors).

## 66

### [Tax Code]

### Tax opinions

persons affected

- all taxpayers

Status: comes into force on 1 January 2019 →

The director of the National Tax Information Service will have the power to refuse to issue an opinion if the subject matter is provisions intended to prevent tax avoidance.

#### Potential implications

A decline in the importance of an individual tax opinion as a tool for tax risk management can be expected.

## 67

### [CIT]

### Rate of 9% for small-scale taxpayers

persons affected

- small-scale payers of CIT

Status: comes into force on 1 January 2019 →

The CIT preferential rate for small and new taxpayers will be decreased from 15% to 9%. The preferential rate does not apply to capital gains.

#### Potential implications

A decrease in the fiscal burdens on small businesses and startups.

## 68

### [CIT/PIT]

### Transfer pricing

persons affected

- all taxpayers

Status: comes into force on 1 January 2019 →

Fundamental changes to provisions on transfer pricing, in particular:

- A definition of transfer pricing,
- A broader definition of affiliates,

- A possibility of transfer pricing adjustment,
- A change to the limits for drawing up tax documentation,
- More detailed provisions on value of transactions,
- Exemption of certain transactions from the obligation to draw up transfer pricing documentation,
- Simpler documentation for services of low added value and certain kinds of loan.

### Potential implications

- The changes are expected to resolve some controversial elements of performance of obligations provided for in transfer pricing provisions.
- The new provisions should lead to less bureaucracy-related burdens in connection with transactions with affiliates in relation to transactions of low risk of abuse.

## 69

### [CIT/PIT]

#### IP Box

persons affected

- taxpayers in innovative sectors

Status: comes into force on 1 January 2019

IP Box relief means that a preferential tax rate of 5% can be applied to income from eligible intellectual property rights. These rights should be created, developed, or improved by a taxpayer in its research and development activity.

Eligible intellectual property rights will include in particular patents, computer software rights, and medicinal product protection rights.

### Potential implications

An incentive for growth in innovative sectors.

## 70

### [CIT/PIT]

#### Withholding tax

persons affected

- taxpayers who pay dividends, interest, and licence fees to foreign entities

Status: comes into force on 1 July 2019

The current withholding tax system based on exemption/application of a lower tax rate by the remitter will be replaced by a refund system.

From 1 January 2019, as a rule, a remitter will have an obligation to withhold tax at the base rate. The

remitter or recipient of the payment will then be able to apply for a refund of the difference between the amount paid and the preferential rate provided for in the act or double-tax treaty.

The new withholding system will not apply in cases where payments to a single recipient do not exceed PLN 2 million per year and where additional formal requirements are met (these include obtaining an opinion from a tax authority).

### Potential implications

- The new provisions can be expected to have serious consequences for remitters (in the case of contracts containing gross-up clauses) and their financial liquidity.
- Gross-up clauses in contracts can be expected to become more practically important.

## 71

### [CIT/PIT] Exit tax

persons affected

- entities that change their tax residency

Status: comes into force on 1 January 2019

The essence of exit tax is that it is taxation of gains not attained due to a taxpayer moving an asset or tax residency to another country. Exit tax applies where Poland loses the right to charge tax on an increase in value of certain assets that were in effect generated prior to the move.

The tax rates are 19% (PIT) provided that the tax value of the asset is determined, and CIT) and 3% (PIT in cases in which the tax value is not determined).

### Potential implications

Limitation of the possibility for tax optimisation in the form of transfer of assets outside of Poland.

## 72

### [CIT/PIT] Cryptocurrencies

persons affected

- persons and companies that invest in cryptocurrencies

Status: comes into force on 1 January 2019

The amendment introduces a new definition of a cryptocurrency and provides for more precise rules on determining revenue and expenses connected with trading and extraction of cryptocurrencies.

Income from cryptocurrencies will be treated as income from cash capital.

## Potential implications

Legislation resolving the current inconsistency of rulings given by tax authorities might stem the departure of investors and cryptocurrency exchanges from Poland.

## 73

### [CIT/PIT]

#### Controlled foreign corporations

persons affected

- taxpayers that have subsidiaries in tax havens

Status: comes into force on 1 January 2019

The scope of the definition of a controlled foreign corporation will be expanded to include family foundations and trusts.

## Potential implications

The amendment might have the adverse effect of limiting Polish taxpayers' access to succession planning instruments that are not available in Poland and not necessarily suited for aggressive tax optimisation.

## 74

### [VAT]

#### Tax treatment of vouchers

persons affected

- distributors of pre-paid products

Status: awaiting the President's signature (scheduled to come into force on 1 January 2019)

In line with EU laws, the VAT Act will make a distinction between two types of prepaid products such as topping up telephones.

Each time a voucher of a single designated use (can be exchanged for a specific service) is cashed in it will as a rule be subject to VAT. Vouchers of various designated purposes (can be exchanged for various goods or services) will not be taxed until the goods are delivered or the service performed.

## Potential implications

This change should resolve a debate that has been going on for many years as to the nature of prepaid products from the point of view of VAT.



## 75

### [Tax Code]

### 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.

## 76

### [CIT/PIT]

### Commercial real estate tax

persons affected  
• all businesses

Status: comes into force on 1 January 2019 ➡

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.

#### 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.

## 77 [PIT/CIT] 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.



# About Wardyński & Partners

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We also advise private clients, startups, clients from the construction industry, energy and energy-intensive industry, retail

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