KW KRUK AND PARTNERS
LAW FIRM

DOING BUSINESS IN POLAND 2019

KW KRUK AND PARTNERS LAW FIRM

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NTRODUCTION

This guide was created to provide foreign investors with basic information on the possibilities of doing business in Poland. In addition to general information about the Polish economy, the guide also includes information on legal bases, regulatory issues and forms of conducting business in Poland, as well as information on taxes, accounting and labor law relevant to the company's establishment in Poland.

All information contained in this guide has been prepared in accordance with the best knowledge of the authors and is valid as of the date of its publication, March 1, 2019. Nevertheless, due to the possibility of changes in legal regulations, including in the laws governing business activity, this guide should be considered for information purposes only.

POLAND IN NUMBERS

Population: 38,4 mln

Time zone: GMT +1

Poland's Surface area: 312.679 km^2

Administrative division: 16 voivodeships, 380 districts, 2.478 municipalities

Capital: Warsaw

Currency: Złoty (PLN) = 100 groszy

Average monthly remuneration: 5.274,95 PLN

Unemployment rate: 5,8%

Budget revenue in 2018 r: 343.394,9 PLN

Budget expenditure in 2018 r: 332.334,8 PLN

POLISH ATTRACTIVENESS FOR FOREIGN INVESTORS

According to the latest research, reports and international rankings, Poland is an increasingly attractive place for foreign investors in terms of running a business. This assessment is mainly influenced by such factors as: economic stability, dynamics of economic growth, increase in the level of innovation, strategic location, well-organized business environment and qualified workforce. The development of communication, energy and ICT infrastructure is also having a positive impact on the image of Poland. Poland is attractive not only because of its geographical and political features, but also because of the positive attitude towards new potential investors, constantly offering changes in tax and legal regulations, so that foreign investors can better and more easily appear on the Polish market.

Polish membership in international organizations (EU, NATO, UN, OECD) gives foreign investors wide opportunities for cooperation and affects the security and stability of investments. It also makes Poland a reliable business partner for foreign investors.

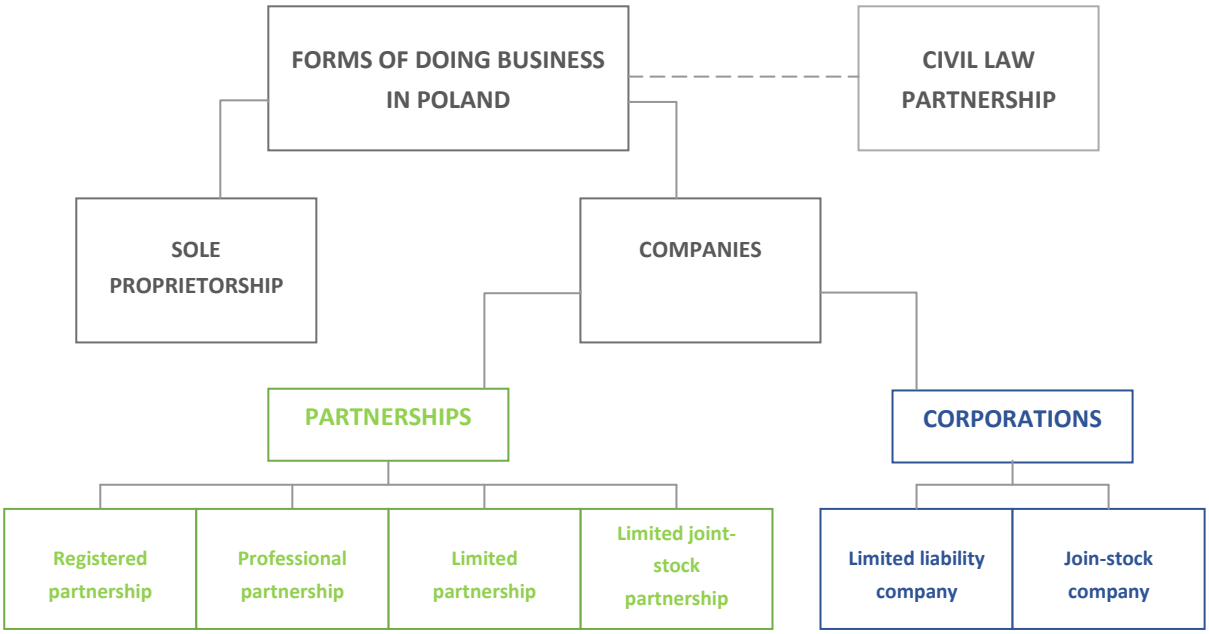
From a logistical point of view, Poland's great asset is its **location in the center of Europe**, at the intersection of the main communication routes. This allows investors easy access to the markets of the European Union and Eastern European countries.

Poland has a **stable economy with an established macroeconomic position**. Polish economy is developing at a fast, short-term economic prospects are optimistic, the fiscal policy framework is strong, measures taken to increase tax revenues are effective and the situation on the labor market is the best in recent Polish history.

Poland has a **large and absorbent internal market** with over 38 million consumers, which is seen not only as a place of production but also as a target market.

The asset of Poland is also **highly qualified employees**. Every year, the number of well-educated university graduates grows in Poland. Due to their knowledge and skills, they are valued employees, mainly in the high-tech sector.

FORMS OF DOING BUSINESS IN POLAND



RULES FOR CONDUCTING ACTIVITIES BY FOREIGNERS

A foreigner who fulfills the following conditions may register and run a business under the same conditions as a Polish citizen.

- Citizen of a Member State of the European Union or of the European Economic Area;
- Citizen od other state holding one of following:
  - ✓ permanent residence permit;
  - ✓ residence permit for a long-term resident of the European Union;
  - ✓ temporary residence permit granted in connection with a family with legally residing in Poland, studying at university;
  - ✓ refugee status;
  - ✓ subsidiary protection;
  - ✓ a consent to stay for humanitarian reasons or a tolerated stay permit;
  - ✓ a temporary residence permit and is married to a Polish citizen residing on the territory of Poland;
  - ✓ a temporary residence permit for the purpose of carrying out a business activity, granted due to the continuation of an already established business activity on the basis of an entry in the Central Register and Information on Economic Activity;
  - ✓ temporary protection in Poland;
  - ✓ a valid Polish Card.

A foreigner who does not meet the above conditions may conduct a business activity in Poland only in the form of:

- limited partnership;
- limited joint-stock partnership;
- limited liability
- joint stock,
- as well as to join such companies and take or acquire their shares.

Below would be presented only selected and the most popular forms of conducting business in Poland.

SOLE PROPRIETORSHIP

JEDOOSOBOWA DZIAŁALNOŚĆ GOSPODARCZA

OVERVIEW

- A sole proprietorship is an individual who conducts business activity in his/her own name and on his/her own behalf (in short: an individual act as an entrepreneur);
- Sole proprietorship is usually a small business and there are no legal requirements regarding the amount of initial capital;
- It is worth noting that the sole proprietorship may be transformed into sole limited liability company or a joint-stock company;
- low costs for opening and running the business and the easiness of its establishing and dissolving.

REGISTRATION

- A sole entrepreneur may take up economic activity on the date of filing an application for an entry in the Central Economic Activity Register and Information (the CEIDG);
- The CEIDG is kept in an IT system by the competent minister in charge of economy;
- Person taking up the business activity is not subject to compulsory social insurance for a period of 6 months from the date of starting a business.

LIABILITY

- The sole proprietor is liable for the debts of his/her sole proprietorship with all his/her assets including personal assets non-intended to be used for pursuing business activity;

LIMITED LIABILITY COMPANY

SPÓŁKA Z OGRANICZONA ODPOWIEDZIALNOŚCIĄ

OVERVIEW

- A limited liability company is the most popular form of conducting business activity in Poland and may be established for any purpose allowed by law, including non-profit.
- It may be established by one or more natural or legal persons (as long as it is not incorporated solely by another sole shareholder limited liability company).
- The minimum share capital amounts to PLN 5,000.
- The nominal value of one share may not be less than PLN 50.

LIABILITY

- The company is liable for its debts and obligations with its whole property without any limitations.
- Members of the management board may be as well liable for the company's obligations when the enforcement proceeding against the company has proved ineffective.

BODIES OF THE COMPANIES

THE MANAGEMENT BOARD

- The management board represents the company and manages its affairs. It is composed of one or more members appointed from among the shareholders or from other persons.
- The management board consists of one or more members (natural persons with full capacity for legal actions).

THE SUPERVISORY BOARD (not obligatory)

- The supervisory board is composed of at least three members appointed and removed by a resolution of shareholders.
- The supervisory board exercises permanent supervision over the company's activities in all aspects of its business. However, the supervisory board does not have the right to issue any binding instructions to the management board in respect of managing the company's affairs.

SHAREHOLDERS' MEETING

- The shareholders' meeting is a superior authority of the company. Resolutions of shareholders are adopted at a shareholders' meeting. An annual shareholders' meeting should be held within six months of the end of each financial year.

JOINT-STOCK COMPANY

SPÓŁKA AKCYJNA

OVERVIEW

- A joint-stock company may be established for the purpose of operating business under its own business name on a large scale.
- The minimum nominal capital amounts to PLN 100,000.
- The nominal value of a share may not be less than PLN 0.01.

LIABILITY

- The company is liable for its debts and obligations with the whole property without any limitation.
- The shareholders and member of the management board are not liable for the company's obligations, they incur risk up to the value of shares taken up.

BODIES OF THE COMPANY

THE MANAGEMENT BOARD

- The management board manages the company's affairs and represents the company. It is composed of one or more members which are appointed from among the shareholders or other persons.
- A member of the management board should not hold his office for more than five years. Reappointment as a member of the management board is permitted for terms of office each time not exceeding five years.

THE SUPERVISORY BOARD

- A supervisory board is obligatory at a joint-stock company. The supervisory board exercises permanent supervision over the company's activities in all aspects of its business.
- The supervisory board is composed of at least three members, and in public companies of at least five members, elected and removed by the general meeting. The term of office of a member of the supervisory board should be no longer than five years.

GENERAL MEETING

- The shareholders' meeting is a superior authority of the company. Resolutions of shareholders are adopted at a shareholders' meeting. An annual shareholders' meeting should be held within six months of the end of each financial year.

LIMITED PARTNERSHIP

SPÓŁKA KOMANDYTOWA

OVERVIEW

- This partnership may be established by at least two natural or legal persons or organizational units without legal personality to which legal capacity based on a separate act was granted.
- The Limited Partnership has no legal personality. Nevertheless, it has a legal capacity and may in its own name acquire rights, incur liabilities, sue or be sued.
- There is no requirement as to the minimum amount of the nominal capital.

LIABILITY

- In a limited partnership, at least one partner (general partner) should bear unlimited liability towards the creditors for obligations of the partnership, and at least one partner (limited partner) shall bear limited liability.
- A limited partner is liable for the obligations of the partnership towards its creditors only up to the limited liability amount.
- Any person who joins the partnership as a limited partner is liable for the partnership's obligations existing at the time when he was entered in the register.

REPRESENTATION

- The limited partnership is represented by the general partners who were not deprived of the right to represent the partnership under a memorandum of association or by a valid court decision.
- A limited partner may represent the partnership only as a plenipotentiary.
- The limited partnership may be also represented by a holder of commercial power of attorney.

LIMITED JOIN-STOCK PARTNERSHIP

SPÓŁKA KOMANDYTOWO-AKCYJNA

OVERVIEW

- In a limited joint-stock partnership, at least one partner (general partner) should bear unlimited liability towards the creditors for obligations of the partnership and at least one partner should be a shareholder.
- It must be founded by at least two natural or legal persons or organizational units without legal personality which were granted legal capacity on the basis of a separate legal act.
- The limited joint-stock partnership has no legal personality, but it has been granted legal capacity by law, therefore, it may acquire rights in its own name, incur liabilities, sue or be sued.
- The minimum nominal capital amounts to PLN 50,000.

LIABILITY

- The general partners of the limited joint-stock partnerships bear unlimited liability for the limited joint-stock partnership's obligations.
- The enforcement against the general partner may be carried out only if enforcement from the limited joint-stock partnership assets is ineffective.
- As a rule, shareholders are not liable for obligations of the partnership. However, if a business name of the limited stock-joint partnership includes a name or a business name of a shareholder, this shareholder is liable for the obligations of the partnership without limitation.

REPRESENTATION

- Limited joint-stock partnership is represented by general partners who were not deprived of the right to represent the partnership under a memorandum of association (or articles of association) or a valid court decision.
- A shareholder may represent the partnership only as a plenipotentiary. The limited joint-stock partnership may be also represented by a holder of commercial power of attorney.
- A limited joint-stock partnership may appoint a supervisory board. Where the number of shareholders exceeds twenty-five persons, the appointment of a supervisory board is compulsory.
- Members of the supervisory board are appointed or removed by the general meeting. In addition, a general partner or his employee cannot be a member of the supervisory board.

BRANCH OFFICE

ODDZIAŁ

- A branch is a separate and organizationally independent part of the economic activity of the entrepreneur performing outside the entrepreneur's premises or outside the main place of performing the activity.
- Within a branch, a foreign entrepreneur may perform business activities only to the extent to which he conducts this activity abroad.
- A foreign entrepreneur who creates a branch is obliged to establish a person authorized to represent a foreign entrepreneur.
- A foreign entrepreneur may start operations within the branch after obtaining the branch's entry in the Register of Entrepreneurs of the National Court Register.
- Depending on the type of business, a foreign entrepreneur is obliged to submit appropriate copies (founding act / contract / registration or entry in the register) to the branch's registration files together with their certified translation into Polish.
- The foreign entrepreneur is obliged to keep the separate accountancy in the Polish language in accordance with the accounting regulations.
- The branch name must consist of: the original name of the foreign enterprise + the legal form of the entrepreneur + the word "branch in Poland" translated into Polish.

REPRESENTATIVE OFFICE

PRZEDSTAWICIELSTWO

- The representative office is a subordinated organizational entity functioning for the purpose of advertising and promoting business activity of a foreign entrepreneur.
- Name of the representative office should consist of the name of the foreign entrepreneur, together with the Polish translation of the entrepreneur’s legal form of operation and with the phrase “przedstawicielstwo w Polsce” [trans. representative office in Poland].
- The representative office should be register in Register of Foreign Entrepreneurs’ Agencies kept by the minister in charge of economy.
- The representative office should keep separate accounting books in the Polish language in accordance with the provisions of Polish accountancy laws;

TAXATION

CIT – CORPORATE INCOME TAX

Limited liability companies and joint –stock companies are obligated to pay corporate income tax (CIT)

- General tax rate is 19%
- Lower tax rate of 9% is available for companies if:

  - ✓ from non-capital revenues;
  - ✓ revenues generated in the tax year did not exceed the amount expressed in PLN equivalent to the equivalent of EUR 1,200,000 converted according to the average euro exchange rate announced by the National Bank of Poland.

Note: in the case of a limited partnership, income tax is payable by its partners, not the company itself (see below).

VAT – VALUE ADDED TAX

The Polish VAT is harmonized with the common VAT system binding in the Member States of the European Community since May 1, 2004.

There are four tax rates:

- 23% rate is a basic rate; it applies to the majority of goods and services,
- 8% rate applies to specific goods and services (e.g. goods related to health protection, groceries and hotel services),
- 5% rate applies to the supply of some farm produce,
- 0% rate is a special rate; it applies mainly to export, intra-Community supply of goods and international transport services.

Exemption from Vat tax of so-called "small entrepreneur":

- when sales value did not exceed PLN 200,000 in total in the previous tax year. The amount of tax is not included in the sales value. If the value of the tax exempt sale exceeds the amount of PLN 200,000, the exemption loses its value starting from the activity that was exceeded.
- sales made by a taxpayer **starting business** activity during the tax year, if the value of sales he anticipates does not exceed, in proportion to the period of business activity in the tax year PLN 200,000.
- The exemption does not apply to sale of:
  - ✓ goods made of precious metals or with the participation of these metals,
  - ✓ goods subject to excise tax (except for electricity, tobacco products and passenger cars, other than new means of transport, counted by the taxpayer, based on income tax regulations, to fixed assets subject to depreciation),
  - ✓ construction sites,
  - ✓ new means of transport,
  - ✓ legal services,
  - ✓ consultancy services.

TAX RELIEFS

From January 2019, entrepreneurs can take advantage of new tax solutions, including relief for research and development (R&D relief) and a tax relief called the Innovation Box.

Tax relief - **INNOVATION BOX** - provides application of a preferential tax rate of 5% (previously 19%) on income derived from qualified intellectual property rights, created, developed or improved as a result of a research and development activity conducted by the taxpayer.

Tax relief – **R&D RELIEFE** - allows additional deduction from the tax base so-called eligible costs obtained from revenues incurred, i.e. a part of tax deductible costs incurred for research and development activities.

PIT – PERSONAL INCOME TAX

Every **natural person** receiving income is obliged to pay PIT tax. The amount of income tax depends on your earnings and on what tax deductions you will apply. Under PIT, it is possible to choose the form of taxation:

- general rules - tax scale 18 and 32% (after exceeding PLN 85,528)
- flat rate tax- 19%
- a lump sum on registered income
- tax card

TAXATION OF DIVIDENDS

- rate of 19%

ABOUT US

KW KRUK AND PARTNERS LAW FIRM is an independent law firm which for several years now has been providing complex legal advisory services to Polish and foreign corporate clients, financial institutions and public administration bodies (state and local government). A team of our lawyers has knowledge of the specificity of operations, problems and legal aspects of individual sectors of economy, which enables our correct assessment of a business situation our Clients are in and allows us to adjust legal solutions to attain the intended objectives. The team of our lawyers possesses not only extensive legal knowledge but also the ability of proper assessment of our clients' business situation. When proposing solutions our lawyers take our clients' business goals into account. We operate in the whole Poland area, cooperating with lawyers and renowned law firms from other Polish cities. In order to achieve the best results, we also cooperate with:

- International law organizations,
- Notarial offices,
- Expert auditors and specialists in different fields,
- Tax advisors,
- Detective firms,
- Persons with recognized scientific expertise and big experience in particular business sector.

KW KRUK AND PARTNERS LAW FIRM cooperates also with foreign lawyers, law firms and international legal organizations: FRAUDNET ICC COMMERCIAL CRIME SERVICE, IR GLOBAL – INTERNATIONAL REFERRAL and ILF – INTERNATIONAL LAW FIRMS. Due to the continuous cooperation with foreign law firms, we have a lot of active contacts all over the world and we can provide Polish firms operating abroad and foreign businesses operating in Poland with complex legal services. Thanks to our membership in international organizations we have a rich and reliable database of international contacts and access to specialists in various fields. Thanks to cooperation with foreign experts and legal entities, we are able to ensure proper and comprehensive legal services to Polish entrepreneurs abroad, and we can render services to foreign entrepreneurs.

Our lawyers provide legal services in the Polish, English, French and Russian.

We have a big experience in rendering corporate services to business entities operating in Poland, including entities with foreign capital. We also help our clients with investments projects, carried out outside Poland. In the field of corporate law, the team of our lawyers renders the services as follows:

- Consultancy and legal services regarding:
  - ✓ business operations launch – especially when choosing the best form of operations – minimalizing operational risks,
  - ✓ building companies both with Polish and foreign capital,
  - ✓ creating domestic and foreign business entities,
  - ✓ forming Polish branches and agencies of the foreign companies.
  - ✓ Registrations of the companies;
  - ✓ Registrations of trademarks;
  - ✓ Assistance and consultancy in the field of recruitment of the employees;
  - ✓ Representing clients in front of the state administration 's offices;

- Complex counseling with transactions of sales and lease of the whole or parts of the firms;
- Counselling and legal servicing of the companies' liquidating, their conversions, merging and acquisitions;
- Legal counselling in bankruptcy, rectification and restructuring;
- Preparing the transactions' documentation;
- Advising as regards to current companies' operations, including creating documents regulating the companies' operations:
  - ✓ creating, assessing and negotiating commercial contracts proposals,
  - ✓ creating corporate documents.
- Legal audit executions, including due diligence;
- Preparing analyses and legal opinions regarding the sector, where the company is operating.

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