

DOING BUSINESS IN PORTUGAL AND POLAND

PLMJ 

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DOING BUSINESS IN PORTUGAL



DOING BUSINESS IN PORTUGAL



Portugal is the western most country of mainland Europe and is bordered by the Atlantic Ocean to the west and south and by Spain to the north and east and also encompasses two autonomous Atlantic regions, notably the Azores and Madeira archipelagos. Portugal has an area of 92,090 km² and 10,676,910 inhabitants (2008 estimate). It is a founding member of the OECD and NATO and is member of the European Union since 1986.

The Portuguese service sector has increased substantially in recent decades. The same can be said about the industry sector, such as the software and automotive sector. In 2007, agriculture, forestry and fishing generated 2,5% of gross-value added (GVA), in comparison with 24% in 1960, and created 11,6% of jobs, whereas industry, construction, energy and water generated 28,3% of GVA. The service sector accounts for two thirds of the working population and generates almost 70% of the GVA.

In addition, the manufacturing sector, too, has undergone significant changes: The traditional manufacturing has changed dramatically moving from high dependence on textiles, footwear, among other industries, to new sectors which are growing dynamically and involve a larger incorporation of technology, such as motor vehicles and components, electronics, pharmaceuticals and new technologies. Portugal's model has been changing from one based on public consumption and public investment to one focused on exports, private investment, and development of the sector.

In 2007, Foreign Direct Investment inflows to Portugal corresponded to a gross value of 30 billion Euro, which was the third best figure since 1996. In that year, the main recipients of Foreign Direct Investment (FDI) were manufacturing, real estate and trade, which combined corresponded to 80% of total FDI for 2007.

The major foreign investors (87% in 2007) belong to EU. The Euro area countries accounted for 70% of total FDI in 2006 and 2007. The Top 5 foreign investor in 2007 were all Member States of the EU, namely Germany, the United Kingdom, the Netherlands, Spain and France.

Despite the marginal growth in 2008, which is essentially due to the current worldwide economic /financial crisis, in 2007, the National GDP grew 1,9%. This increase in national GDP was mainly due to an increase of the companies' investments and of the export of goods and services – which nowadays is represented on more than one third to non EU countries, namely emerging economies' countries with which Portugal has been establishing and deepening privileged economical relationships, such as Angola



and Brasil. Furthermore, the decrease of the public deficit, from 6% of the GDP in 2005 to 2,5% in 2007 and 2,2% (OECD estimate) for 2008, also gave reasons for optimistic economic forecasts, notwithstanding the current global crisis scenario, which affects all countries worldwide.

Basic Legal Aspects

Portugal is a member of the European Union since 1986, being integrated in the Euro-Zone since its implementation. Hence, its national law, notably its business law, is in line with the European applicable common norms, namely those deriving of the freedom of establishment of undertakings' rights. Therefore, in general, according to Portuguese law, there are no restrictions on foreign investment and businesses.

Conducting Business – Legal Forms

1. Commercial Companies

Doing business in Portugal is mainly carried out by means of two different legal types of commercial entities, which are the (i) private limited liability company – Sociedade por Quotas - , and the (ii) public limited liability company/joint stock company - Sociedade Anónima.

Portuguese Commercial Companies are governed by the Commercial Companies Code (Código das Sociedades Comerciais), hereinafter CSC.

Subsequent to the CSC, there are five types of commercial companies:

- Limited Liability Company/ Quota Company;
- Public limited liability company;
- General Partnership ;
- Limited Partnership;
- Limited Partnership with Share Capital/ Partnership Limited by Shares

These types of companies differ in their economic significance for Portuguese business life. General Partnerships and both types of Limited Partnerships are not usual in the Portuguese business life, whereas limited liability companies and joint-stock companies are by far the two most common commercial companies in Portugal.

The articles of association of all companies have to be drawn up in written form and the signatures of the partners require to be certified. The incorporation of a company



is not mandatory performed before a public notary. All companies are subject to commercial registration (registo comercial) at the commercial registry (*Conservatória do Registo Comercial*), the moment of final registration being the moment of the incorporation of the company as a legal entity (Article 5 CSC).

a) Limited Liability Company / Quota Company (*sociedade por quotas*)

This is the type adopted by the majority of small and medium sized Portuguese companies. The minimum share capital required is € 5,000,00, being divided into so-called “quotas” and contributions being made in cash or in kind. The minimum par value of one share (*quota*) is € 100, 00. The liability of the shareholders for company’s debts is limited. Portuguese private limited liability companies are, as a rule, incorporated by two or more shareholders.

The corporate structure of a private limited liability company is quite simplified, and besides the general assembly, the majority of these type of companies has, as further mandatory body, one or more directors, who have the power to manage and represent the company.

A supervisory board (*conselho fiscal*) may be appointed if provided for in the company’s articles of association and is mandatory if the company meets two of the following goals:

- Total amount of balance of €1.500.000,00;
- Total amount of net sales and other profits of €3.000.000,00;
- An annual average of 50 employees.

Portuguese law also enables the existence of single-shareholder limited liability companies.

The name of a limited liability company needs to contain the word “Limitada” or the abbreviation “Lda” and the words “sociedade unipessoal” - or the word “unipessoal” in front of the word “Limitada” or the abbreviation “Lda” - , in case of single-shareholder limited liability companies.

b) Public limited liability Company (*Sociedade Anónima*)

Public limited liability’s capital is divided in shares. As in private limited liability companies (and except which concerns the special regime applicable to sole-shareholder public limited companies), the shareholders’ liability is limited – Shareholders’ private assets are not liable towards company’s debts.



The minimum number of shareholders for incorporation is five. However, as stated, under some circumstances, a joint-stock company may be incorporated with a sole shareholder as long as this shareholder is a company.

The minimum capital required is € 50,000 and the minimum nominal value of one share is 0,01 €. Contributions may be made either in cash or in kind.

Unlike private limited liability companies, the corporate structure of public limited liability companies foresees a mandatory audit board, besides the board of directors and general assembly. There are three models of management and supervision foreseen by the law:

- General assembly, board of directors and board of auditors (*conselho fiscal*);
- General assembly and board of directors encompassing an auditing committee and a chartered accountant;
- General assembly, executive board of directors, supervisory board (*conselho geral e de supervisão*) and a chartered accountant.

Instead of a board of directors, a single director might be appointed in companies which capital that does not exceed € 200.000,00.

Subsequent to Council Regulation on the Statute for a European Company (Council Regulation (EC) n°2157/2001) and Decree-Law n° 2/2005, of 4th January, there is the possibility to incorporate in Portugal as a European Public Company (SE).

c) Partnership (*sociedade em nome colectivo*)

Like all other types of Commercial Companies in Portugal, the General Partnership is a legal entity and can therefore act in its own name, acquiring rights and incurring liabilities on its own behalf. However, besides the company's assets, the partner's assets too may be challenged to respond subsidiary before creditors to pay for the company's debts.

Contributions to this type of commercial company may be made either in cash or in kind (e.g. labour). The name of a General Partnership must include the name of all, some or one of the partners. In the second and third case, the General Partnership's name must end with a reference that points to the existence of other members (*e Companhia* or *& C.ia*).



d) Limited Partnership (*Sociedade em Comandita Simples*)

The Limited Partnership is a legal entity in which at least one member is subject to unlimited personal liability for the partnership's obligations (general partner/ *sócio comanditado*), unlike the other partners (limited partners/ *sócios comanditários*), whose liability is limited to the amount of capital subscribed by each of them.

The managing function is exercised by the general partners. There is no minimum capital requirement. The Partnership's name must include at least the name of one general partner and the words *em Comandita* or *& Comandita*.

e) Limited Partnership with Share Capital/ Partnership Limited by Shares (*Sociedade em Comandita por Ações*)

In the second type of limited partnership there is also a distinction between one or more general partners - with unlimited personal liability and exclusive managing powers - and limited partners, with one important specific characteristic: the capital contributed by the limited partners must be divided in shares, i.e., the limited partners shall be shareholders. The minimum share capital is € 50,000 and Partnership's name shall include at least the name of one general partner and the words *em Comandita por ações* or *& Comandita por ações*.

2. Alternative investment vehicles

a) Branch office/ Representative office

Foreign companies that intend to conduct business in the Portuguese market and do not intend to incorporate a fixed corporate structure may do so by means of establishing a branch (*sucursal*). Since branches have no autonomous legal entity, as they are considered an extension of the Foreign Company, this one remains liable for the obligations arising from the agreements executed by its branch office.

The branch requires to be registered at the Commercial Register (registo comercial) and its name has to be registered at the National Registry for Legal Entities (Registo Nacional de Pessoas Colectivas (RNPC)).

b) A.C.E. (*Agrupamento Complementar de Empresas*) Enterprise Group

The A.C.E. Enterprise Group (Law nº 4/73, of 4th de Junho, as amended by Decree-Law no. 36/2000, of 14th March) is a legal entity, which creation was influenced by the business type "groupement d' intérêt économique", foreseen and governed by French law.



The A.C.E. Enterprise Group is an entity established by way of a contract entered into between natural persons or pre-existing legal entities, which collaborate - without prejudice to its legal personality – in order to improve their activity and/or their results or achieve a common goal.

As an alternative, business can be carried out in the form of a European Economic Interest Grouping (EEIG). This business form is regulated by Council Regulation CEE no. 2137/85, of 25th July, Decree-Law no. 148/90, of 9th May and, subsidiary, by the A.C.E. Enterprise Group legal regime (Law no. 4/73, of 4th of June).

3. Non commercial juridical structures

a) Civil Company (sociedade civil)

A civil partnership, by the adoption of a Civil Company, may be established under the regulations of the Civil Code by at least two members for the development of an economic activity without a commercial purpose³. The civil company is governed by Articles 980-996 of the Portuguese Civil Code. Even though civil companies cannot have a commercial purpose, Portuguese law enables them to adopt a commercial form (Article 1 no. 4 CSC). In this case, the rules governing commercial companies are also applicable to such companies. For instance, civil companies that adopt a commercial form shall file for commercial registration (registo comercial) at the local trade registry (Conservatória do Registo Comercial).

b) Professional Partnership

There are professional partnerships in Portugal that are subject to specific regimes, notably law firms (*sociedades de advogados*; Decree-Law n° 224/04 of 10th December), and companies of chartered accountants - *sociedades de revisores oficiais de contas*, regulated by Articles 94-122 of Decree-Law n° 487/99 of 16th November 1999 - which are both special types of civil companies.

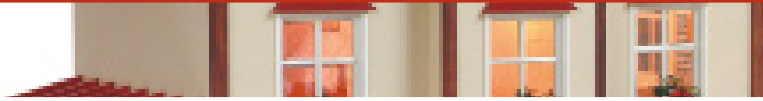
c) Associations

Foreign entities are finally also freely entitled to participate and become members of Portuguese associations, being these civil law and non-profit envisaged entities ruled at Portuguese Civil Code, which are destined to uphold the best interests of its partner's best interests.

³Portuguese Law has a broad definition of commercial purpose (including commercial and industrial activities), which leads to the consequence of the Civil Company not being an adequate type of business entity for almost all business activities, as these fall under the category of commercial activity. Examples of civil companies are agricultural companies, handicraft companies and professional partnerships. Companies that have simultaneously a non-commercial and a commercial purpose are considered.

REAL ESTATE IN PORTUGAL





The basis of real estate rights in Portugal is of Roman law origin and the system is, consequently, that of civil law. Property ownership as well as other rights “in rem” are governed by the Civil Code and the right to own property constitutes a fundamental right of the citizens foreseen in the Portuguese Constitution.

1. Rights “in rem” (“direitos reais”)

Rights “in rem” (“direitos reais”) are absolute rights attached to real estate property, which are opposable “erga omnes”, that is, they are enforceable against third parties (and not only to the counterparty) and are subject to a “numerus clausus”, i.e. only the following categories pre-established in the law are allowed and the parties cannot create additional ones:

- a) Absolute Ownership (“Direito de Propriedade”) - The amplest of these rights as it grants the owner the universality of powers that can be attached to the property.
- b) Joint ownership (“Compropriedade”) - Two or more persons can hold property in common, with an undivided interest. In case one of the co owners wishes to sell his share, the others have the pre-emption right to buy it. Except for this, each co owner may freely encumber and dispose of his share (but not of a specific part of the property).
- c) Condominium (“Propriedade Horizontal”) - Condominium or horizontal property is a system of absolute ownership of individual units (e.g. apartment / unit) in a multiunit structure combined with common ownership of common elements (such as soil, structure, roof, stairs and hallways, etc.)
- d) Usufruct (“Usufruto”) - right of using, enjoying and managing the property which ownership is vested in another person. Unless otherwise stipulated, it is transferable and may be encumbered.
- e) Use and Habitation (“Uso e Habitação”) - right limited to the personal use by the holder and his family of the property pertaining to another, being this use limited by his personal needs. When the real estate is a dwelling place, this right is called right of habitation. This right is not transferable.
- f) Surface Right (“Direito de Superfície”) - right to build or maintain (for a number of years or forever) an improvement on or under a soil belonging to another person. This right is transmissible “inter vivos” and “mortis causa”.



g) Servitude/Easement (“Servidão”) - encumbrance imposed on real estate for the exclusive benefit of another property, pertaining to a different owner (e.g. right of way and the rights concerning flowing waters).

2. Urban Lease Law

The lease of real estate properties has suffered an important change through Law nr. 6/2006, published on 27 February 2006 which has entered into force on 27 June 2006. This Law approved the New Urban Lease Regime (“NRAU”), applicable to all lease agreements executed after its date of entry into force and also, albeit with some limitations, to pre-existing leases and introduces a clear intention to assure a greater contractual freedom as concerns the definition of the contents of lease contracts.

3. Foreign Investment

Finally, there are no restrictions for the foreign investment in Portugal. Thus being, foreigners are allowed to purchase real estate without any specific prior approval provided that a Portuguese taxpayer number is obtained.

ACCOUNTING IN PORTUGAL



All accounting (documentation, records and reports) must be prepared in Portuguese and in EU currency (Euros). All source documents, records and reports must be kept for the last ten years of activity (including tax returns) in the company. Approved annual financial statements must be registered on the register of companies.

Companies must apply the accounting principles stated in the Plano Oficial de Contabilidade (POC). However, there is a legislative procedure going on to replace POC by Sistema de Normalização Contabilística (SNC) in order to match the international standards, namely, International Accounting Standards (IAS) and the International Financial Reporting Standards (IFRS), thus taking part on the process of accounting harmonization. The accounting year comprises 12 consecutive months and must overlap the tax year, which match the civil year. The companies that intend to adopt a different tax period should submit an application to the Minister of Finance and maintain such period for at least 5 years. Portuguese permanent establishments and companies which have to present consolidated accounts can automatically adopt a different tax period and maintain for at least 5 years.

The liability for accounting obligations concerns the board of directors or singular managers.

Financial Statements

The management body must prepare the annual report, the accounts and the remaining financial statements. The annual accounts comprise several documents, including, the annual report, balance sheet, profit and loss accounts and the respective annexes.

The annual report should contain, at least, a fair and clear review of the development of the business and of the performance and position of the company as well as a description of the main risks and uncertainties it faces. This review should consist of a balanced and global analysis of the development of the business and the results and position of the company, in accordance with the dimension and complexity of its activity, indicating whenever adequate the respective amounts entered in the accounts of the financial year.

The Annual Report should include the management development in the various sectors the company carried on its activity, any relevant facts occurred after the end of the financial year, foreseeable evolution of the company; the number and nominal value of own shares acquired or sold/transferred during the financial year, authorizations granted to any businesses entered into by and between the company and its directors, a proposal

of application of the results of the relevant financial year; the existence of branches of the company; and the company's policies and objectives.

The annual report, the accounts and the remaining financial statements must be filed on the register of companies, after being approved by a shareholders' resolution.

Audit

Annual consolidated financial statements of capital groups and annual financial statements of all types of companies must be audited, except those from private limited companies which do not meet two of the following three conditions during two consecutive years:

- Total balance sheet: € 1 500 000
- Total net sales and other financial income: € 3 000 000
- Average annual employment: 50 people

Audits must be conducted by an independent entity with a license to carry out audits, before the financial statements are approved by shareholders.

Annual consolidated financial statements of capital groups and annual financial statements of all types of companies must be published on the official website.

PORTUGAL TAX SYSTEM



PORTUGAL TAX SYSTEM



In the Portuguese tax system there are mainly 10 types of taxes:

- 4 direct taxes: Corporate Income Tax (IRC), Personal Income Tax (IRS), Municipal Property Tax (IMI), Municipal Tax on Property Charged Transmissions (IMT)

- 5 indirect taxes: Value Added Tax (IVA), Excise Taxes on Goods and Services, Gaming tax, Stamp Duty, Municipal Tax on Vehicles (IMV- Imposto Municipal sobre Veículos); Vehicle Excise Duty (IUC- Imposto Único de Circulação).

TAX	RATE/FEATURES
Corporate income tax (IRC - <i>Imposto sobre o Rendimento de Pessoas Colectivas</i>)	<p>Payable by companies.</p> <p>Standard rate – by €12 500 12,5 %, from € 12 500 25%.</p> <p>Withholding tax on dividends – 20%. (dividends received from Portuguese resident companies by either Portuguese resident shareholders or shareholders resident in EU are exempt from withholding tax provided that the shareholder has held 10% of the subsidiary share capital or share capital whose acquisition value is equal or superior to € 20 000 000 for at least one year; tax can also be reduced under a double taxation treaty).</p> <p>Withholding tax on interest and royalties: to Portuguese residents and non residents 20% and 15%, respectively, to EU residents 10% on interest and royalties paid up to June 30 2009 and 5% from July 1 2009 to June 30 2013.</p>
Personal income tax (IRS - <i>Imposto sobre o Rendimento das Pessoas Singulares</i>)	<p>Payable by private individuals.</p> <p>There are 7 categories of taxable income and the rates vary from 10,5% to 42%.</p>
VAT (IVA - <i>Imposto sobre o Valor Acrescentado</i>)	<p>Standard Rate – 20%.</p> <p>Intermediate Rate: 12%.</p> <p>Reduced Rates – 5%.</p> <p>Madeira and Azores have different rates of 4%, 8% and 14%, respectively.</p> <p>Export and Intra-community supply rate - 0%.</p>
Excise Taxes on Goods and Services (<i>Impostos Especiais sobre o Consumo</i>)	<p>Levied on the supply, import and export of alcohol, fuels, energy and tobacco.</p> <p>Calculated either as a percentage of the value of goods or on quantity basis (fixed rate per unit).</p>

TAX

RATE/FEATURES

Municipal Tax on Immovable Property/ Real Estate Tax (*IMI- Imposto Municipal sobre Imóveis*)

Rates established by municipal councils within the limits specified by national law: from 0,2% to 2%.

The IMI applies from December 1st 2003. The taxable value is calculated according to specific parameters in order to up-date the taxable value, once according to the previous tax some type of real estate benefited from a too low taxable value. The new criteria are applied each time a property is transacted. While all urban property isn't valued for the purposes of IMI, those which are registered in the cadastre by November 30th 2003 and are not alienated thereafter, the taxable value is calculated according to a transitional scheme of valuation, under which the registered value is increased.

The IMI rates are 0,8% for rural property; 0,4% to 0,7% for urban property subject to the transitional scheme of valuation; 0,2% to 0,4% for urban property owned from December 1st 2003; and 1% for urban or rural property held by any resident of a listed low-tax jurisdiction (*the black list*).

These rates are increased to double or triple for unoccupied properties.

Rates differ according construction price, area and type of construction and quality standard, age and location of the building.

Municipal Tax on Charged Transmissions of Immovable Property /Municipal Transfer tax (*IMT- Imposto Municipal sobre as Transmissões Onerosas de Imóveis*)

IMT is levied on charged transmissions on immovable property. The tax is payable by the person to whom the property is transferred to.

Rates differ according to the type, value and purpose (dwelling or not) of the real estate, as well as the tax jurisdiction of the owner.

Acquisitions of urban property exclusively for personal permanent dwelling benefit from lower rates.

Rates go from 0% to 6,5%.

Stamp Duty (*Imposto de Selo*)

Is levied on documents (e.g. bills of exchange), books, papers, deeds, products, acts (e.g. those practiced through a financial institutions, corporate acts such as share capital additions, shareholder's loans...).

The rates differ depending on the type of document.



PORTUGAL LABOUR LAW





Basic legal framework

The most important statute governing employment law in Portugal is the new Labour Code (Law no. 7/2009, of 12th February)¹.

Labour law provisions which are not mandatory may be superseded by a collective agreement or by an employment contract, if the latter sets out more favourable terms and conditions for the employee. Notwithstanding, there are some nuclear matters - for instance personality rights, equal treatment, non-discrimination, paternity rights and employment of minors – in which collective agreements may only supersede statutory provisions if they set out more favourable terms and conditions for the employee.

Employment contracts

Under Portuguese law, the two main types of employment contract are as follows:

- . Open-ended employment contract, which is a permanent employment contract.
- . Fixed-term and unfixe-term employment contract.

Employment contracts are not subject to any particular form, unless otherwise provided for by law. Generally, terms and conditions of employment need not be expressly agreed upon, as they are set forth by statutory provisions, collective agreements, work regulations or established practices.

During the trial period, the length of which depends on the type of employment contract executed by the parties and the type of work performed by the employee, either employer and employee may terminate the employment contract without prior notice (save if the trial period has lasted more than 60 or 120 days, in which case the employer must give a prior notice of 7 or 15 days) or just cause.

Remuneration

Salary is deemed to be that which employees are entitled to in consideration for their work, under the terms of their contract, of the rules applicable thereto or of established

¹ However, some rules of the preceding Labour Code (Law no. 99/2003, of 27th August), which was in force between December 2003 and February 2009, and the Law no. 35/2004, of 22th July, which regulated the Labour Code, are still in force concerning specific matters, which shall, in a nearer future, be regulated by new statutes.

practices. The base salary and all other regular and periodic payments, directly or indirectly made, in money or otherwise, qualify as remuneration.

Until proven otherwise, it qualifies as remuneration any and all payment made by the employer to the employee. The employee cannot receive less than the applicable minimum salary in each month of contract, the latter being determined by law, amounting to € 450,00 for the 2009 calendar year.

Salary is usually paid fourteen times a year (12 months plus Christmas and vacation subsidies).

Termination

a) Termination by employer (dismissal)

The employer may only terminate the employment contract by dismissal:

- . with just cause, in accordance with Article 351 of the Labour Code;
- . on grounds of redundancy; or
- . on grounds of failure to adapt.

b) Termination by employee

An employee may terminate his contract regardless of just cause, by way of written notice to the employer of no less than 30 or 60 days, depending on whether he has been employed for up to two years, in the first case, or for more than two years, in the second.

Article 394 no. 2 of the Labour Code foresees situations that lead to the possibility of termination with just cause by employees, which entitle the latter to seek compensation for property and personal damage.

c) Termination of term contracts

Fixed-term contracts lapse at the end of their term, provided that the employer or the employee notifies the other party in writing of the intention to terminate the contract, 15 or 8 days, respectively, prior to the end of the term. Unfixed-term contracts lapse, when, the occurrence of the term being foreseeable, the employer notifies the employee of the termination, 7, 30 or 60 days prior to the completion of the specific task, if the contract was performed for less than six months, between six months and two years or more than two years, respectively.



Working time

Regular working hours may not exceed more than 8 hours per day or 40 hours per week.

However, several exceptions to this rule are laid down in the Labour Code, such as individual adaptability, group adaptability, bank of hours and concentrated work schedules.

Overtime should only be rendered when the undertaking has to meet eventual and transitory increase of work and which do not justify the admittance of another worker. Overtime can also be rendered in cases of force majeure or when it is indispensable to prevent or repair severe damages suffered by the company or for its viability.

There is a limit of overtime work, per year, for each employee, which varies according to the number of employees of the company.

Overtime work entitles employees to receive compensation, the amount of which varies upon the length and the day on which it is rendered. Additionally, employees are entitled to compensatory rest, whose length depends on whether overtime work was rendered on a business or on a rest day.

Annual leave

The annual holiday leave is of no less than 22 business days. Employees in their first year of employment are, after six months of performance of the employment contract, entitled to two days of holiday leave per month up to the maximum amount of 20 days.

Where employees have not been absent from work, or their only have duly justified absences during the civil year, the holiday leave may be increased up to three days.

Employees may waive part of their holiday leave entitlement and receive the corresponding pay and bonus, without losing their entitlement to take an actual holiday leave of 20 business days or the corresponding proportion in case of employees in their first year of employment.

PORTUGAL SOCIAL SECURITY SYSTEM



PORTUGAL SOCIAL SECURITY SYSTEM

Social protection encompasses the following contingencies: sickness; maternity, paternity and adoption; unemployment; accidents at work and occupational diseases; invalidity; old age and death.

The general contributory rate for employees is 34,75%, of which 23,75% shall be supported by the employer and the remaining 11% by the employee.

The granting of the majority of benefits depends upon the fulfillment of a waiting period.

PORTUGAL PUBLIC PRIVATE PARTNERSHIPS



PORTUGAL PUBLIC PRIVATE PARTNERSHIPS



1. While modern Public Private Partnerships (“PPPs”) in Portugal started in the early 1990s, the related legal concept of a “concession” has been used for a long time (at least since 1882 when a public services concession agreement was entered into between the Portuguese State and the company Edison Gower Bell for the exploration of the telephone public service).

Despite modern Portuguese PPPs usually use the general concept of “concession”, they have different economic properties. For example, they rely on a pre-balanced base-case financial model and involve significant risk-transfer. There are several reasons for this PPP policy: (i) less expenditure of state funds, particularly because of governmental budgetary constraints; (ii) often, better efficiency in the performance of the relevant public service; (iii) transfer of a significant part of project risks to the private sector; and (iv) the general perception, both by the government and by the public, that PPPs are an effective way to achieve the rapid delivery of infrastructures and the improvement of services to end-users.

During the last decade, Portuguese public bodies wanting to finance toll roads, shadow toll roads, bridges, power plants and sport facilities have often adopted PPP alongside with project finance schemes. PPPs schemes seem to continue on the Portuguese agenda as the pipeline of PPP projects for the next years comprise impressive investment numbers: (i) 3.450 millions of euros in the roads sector; (ii) 8.350 millions of euros in the railway sector; (iii) 1.437 millions of euros in the health Sector; and (iv) 5.000 millions of euros in the new Lisbon Airport.

2. The specific statute where one can find the public procurement rules concerning PPP is the new Portuguese Public Contracts Code (the “Code”), approved by Decree-law nr. 18/2008, of January 29, that implements the European Union Directives 2004/17/CE and 2004/18/CE. Nevertheless, one should always have in mind that there is a specific statute covering PPPs (Decree-law nr. 86/2003, of 26 April, 2003), which has to be balanced with the new public procurement rules.

Despite the existence of different types of procedures (all in line with the referred European Union Directives), such as the restricted tender or the competitive dialogue, the paradigm of the public procurement procedures is the (open) international public tender which comprises the following main stages:

- (1) The “contracting authority” must advertise the contract to be awarded in the Official Journal of the European Union and also in the Portuguese Official Gazette (“*Diário da República*”). At this stage, both the tender programme and the technical



specifications (ledger book) must be in place referring, *inter alia*, to the award criteria which is usually the most economically advantageous bid (in certain situations the lowest price of the bids is the chosen award criteria).

(2) After the bids have been received (note that there are minimum time limits for bidders to present their proposals, which avoids disadvantageous deadlines for bidders located in foreign countries), the bids are electronically opened and in the course of which the bids are accepted or rejected by the appointed jury.

(3) Once bids are accepted the jury initiates the analysis of the admitted bids so as to prepare a “Preliminary Evaluation Report” in which the evaluation of the bids is included.

(4) The bidders are then notified to present their considerations towards the evaluation of bids entailed in the report (“*Audiência Prévia*”). The jury is obliged to take a position over those observations when drafting the “Final Evaluation Report”.

(5) Based on the “Final Evaluation Report”, the public authority decides to award the contract in question to the bidder who has presented the best bid, considering the chosen award criteria.

Considering that most of the PPP schemes usually use the general concept of “concession” (works concession or services concession agreements, as the case may be), the contracting authority may recourse to an additional stage of negotiation. Actually, this has been quite common. In this case the contracting authority will certainly choose the two better bids and will further negotiate directly with its promoters. At the end of these negotiations the selected bidders will be invited to submit their best and final offers (“BAFO”). These BAFO will then be evaluated so that the Jury is able to deliver a new evaluation Report to the final bidders indicating the best bid. This last evaluation Report will be submitted to the bidder’s appreciation and, after their comments, a final decision is taken in respect to the award of the PPP.

3. Portugal is the European country that, in percentage of the GDP, most invests in PPP projects and will probably continue to be, having all the necessary tools in order to successfully deliver PPP projects: political engagement, experience and a Public Contracts Code in line with the relevant European Directives.

DOING BUSINESS IN POLAND



DOING BUSINESS IN POLAND



Poland has an area of 322,575 km² and 38 million inhabitants. It is a member of the OECD and NATO and since 2004 has been a member of the European Union. The 20th anniversary of the 1989 political transformation and the adoption of a market economy is approaching.

During these 20 years and especially since its accession to the European Union, Poland has seen dynamic development economically, socially and politically, confirming it as one of the most important economies in Central Europe.

One of the factors that has contributed to the rapid growth of the Polish economy is the rise in foreign investment. In 2007 alone, foreign investment in Poland was worth around EUR 12 billion. The largest foreign investors in Poland are currently France, USA, Germany, Netherlands, Italy and the United Kingdom. Last year Portugal was the 16th largest investor in Poland.

The first Portuguese companies started to invest in Poland in 1995 (Millennium BCP, Mota-Engil and Jeronimo Martins). Poland is at the moment the fourth most popular location for Portuguese FDI (foreign direct investment), which hit a peak in 2006 at EUR 400 million. The number of Portuguese companies here has tripled since Poland's accession to the European Union. These companies have invested in many different areas, such as banking, industry, civil construction, real estate, services, retail, recycling and more recently IT and renewable energies. The majority of these companies have achieved excellent results in Poland and many are now considering expanding their businesses to neighbouring countries, such as Ukraine, Bulgaria, Romania and Czech Republic.

In the current financial crisis, however, many people are now asking themselves if Poland will be able to maintain its dynamic market development and whether it will continue to be attractive to foreign investors. Fears remain despite the good results achieved in 2008.

According to estimates, economic growth stood at 5.3% and the unemployment rate was 6.4%.

It is obvious that the current global financial crisis is affecting the Polish economy, as with other countries in the world. Therefore, it is almost certain that in 2009 Poland



will see a slow-down in growth, though it will not move into negative figures and will be above the European average.

The current economic situation has forced governments to adopt special measures, such as increasing public procurement. Thus over the next few years EUR 43 billion will be invested in infrastructure, e.g. roads, highways, railways and airports. One of the underlying factors here is the need for improved infrastructure ahead of the EURO 2012 European Football Championships to be hosted by Poland and Ukraine. All these investments will create opportunities in many other sectors.

There are many other factors that make Poland an attractive location for investment, such as European funds. Poland will receive approx. EUR 85 billion from Brussels, including its own contribution derived from public and private funds. The Polish government is currently making a big effort to obtain maximum aid from the European Union through several operating programmes.

Due to the global economic situation Poland is currently ranked as one of the most attractive countries in the world in which to invest, particularly for Portuguese companies. Poland may provide a great opportunity for the expansion and internationalisation of Portuguese businesses and may offer a gateway to other markets in Central Eastern Europe.



Basic Legal Aspects

The legal system in Poland has become more friendly for both domestic and foreign businesses. Since Poland's accession to the European Union on 1 May 2004, all its laws have been checked for compliance with *acquis communautaire* and all laws currently applicable here fully comply with European standards.

The principal legal act governing business activity in Poland is the Act on the Freedom of Business Activity of 2 July 2004¹. This Act regulates how business in Poland is started, pursued and closed, and specifies the tasks of public administration in this area. Foreign entrepreneurs from the European Union (EU) and the European Free Trade Association (EFTA) zones belonging to the European Economic Area (EEA) may establish and conduct business on the same rules as those that apply to Polish entrepreneurs.

Conducting Business – Legal Forms

Under Polish law business can be carried out by both domestic investors and investors from EU and EFTA countries in the following forms:

Sole trade (*indywidualna działalność gospodarcza*)

This form is used for the purpose of a small business being operated by a private individual. It is registered in the Business Activity Register kept by the head of a municipality or the mayor of a city.

Civil partnership (*spółka cywilna*)

A civil partnership may be established under the regulations of the Civil Code by at least two private individuals or legal entities. An important feature is the lack of legal personality and the inability to act in its own name in the economic exchange of goods and services, therefore a civil partnership itself is not registered in any register, but each partner in a civil partnership is entered in the Business Activity Register individually.

¹Journal of Laws of 2007, No. 155, Item 1095, as amended.



Registered partnership (*spółka jawna*)

A registered partnership is a personal partnership established under the regulations of the Code of Commercial Partnerships and Companies² to conduct business on a larger scale than a civil partnership. Despite the lack of legal personality, a registered partnership has the right to act in its own name in the economic exchange of goods and services. Each partner has unlimited liability for the partnership's liabilities.

Limited partnership (*spółka komandytowa*)

The main feature of a limited partnership is that at least one partner has unlimited liability for the partnership's liabilities, while the others are only liable up to the amount specified in the partnership deed.

A limited partnership has the right to act in its own name in the economic exchange of goods and services, despite the lack of legal personality. The partnership deed has to be drawn up in the form of a notarial deed.

Limited joint-stock partnership (*spółka komandytowo-akcyjna*)

A limited joint-stock partnership is a partnership established by partners that acts in its own name in the economic exchange of goods and services. Its main feature is that at least one partner has unlimited liability for the partnership's liabilities and at least one partner is a shareholder. Minimum share capital is PLN 50,000. To be valid, the partnership deed must be drawn up in the form of a notarial deed.

Professional partnership (*spółka partnerska*)

A professional partnership is a partnership established by partners for the purpose of carrying out a profession. Partners may be attorneys, pharmacists, architects, building engineers, chartered accountants, insurance brokers, tax advisers, auditors, doctors, dentists, veterinary surgeons, notaries, nurses, midwives, legal advisers, patent agents, property valuers, sworn translators or psychologists. The main feature of this form of business is that one partner is not liable for liabilities incurred by the other partners in the course of professional activities.

A professional partnership has the right to act in its own name in the economic exchange of goods and services, despite the lack of legal personality.

Limited liability company (*spółka z ograniczoną odpowiedzialnością – sp. z o.o.*)

A limited liability company is the most common type of company in Poland. It has separate legal personality, which means that it can acquire rights and incur liabilities on its own behalf. It can be formed by both individuals and legal entities. A limited liability company can also be formed by a single shareholder, but it may not be established solely by another single-member limited liability company.



The articles of association of the company are drawn up in a notarial deed and must give:

- business name of the company and its registered office;
- description of the nature of the business;
- amount of share capital;
- quantity of shares that one shareholder can hold;
- quantity and nominal value of the shares acquired by each of the shareholders;
- duration of the company (if limited).

The minimum initial capital of this type of company is PLN 5,000.

The minimum nominal value of one share is PLN 50. Contributions to a limited liability company can be made either in cash or in kind. The corporate bodies of a limited liability company are the shareholders' meeting and the management board. A supervisory board can be appointed if required by law or if provided for in the company's articles of association. The shareholders of a limited liability company are not liable for the company's liabilities.

Joint-stock company (*spółka akcyjna* – S.A.)

A joint-stock company differs from a limited liability company in its ability to issue shares which can be publicly trading. Management of a joint-stock company is more formal than that of a limited liability company. The company must be founded by at least one individual or one legal entity. A joint-stock company can also be established by a single stockholder. However, a joint-stock company cannot be established by a limited liability company that is founded by a single shareholder. The founders are obliged to draw up articles of association and by-laws, both in notarial form.

The minimum initial capital is PLN 100,000 and the minimum value of one share is PLN 0,1. Contributions may be made either in cash or in kind. The joint-stock company's corporate bodies are the general meeting, the management board and the supervisory board (obligatory).

All companies and partnerships (except civil partnerships) must be entered in the commercial register of the Polish Court Register (*Krajowy Rejestr Sadowy* – KRS) kept by selected district courts.

² Act of 15 September 2000 (Journal of Laws of 2000, No. 94, Item 1037, as amended).



Since Poland's accession to the EU, business can be carried on the form of a European Company and a European Economic Interest Grouping (EEIG).

Foreign businesses can also operate in Poland through a branch office or a representative office.

Branch Office (*oddział*)

Foreign businesses can operate here by setting up a branch in Poland. A branch office is a part of a foreign company that does not have its own legal personality. The branch office's business can only be conducted within the scope of the parent company's activities. Branch offices need to be entered in the commercial register of the Polish Court Register.

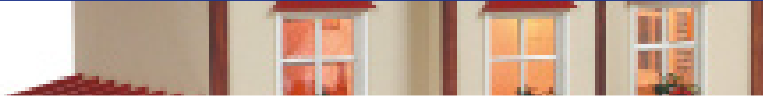
Representative Office (*przedstawicielstwo*)

The representative office of a foreign business is legally dependent and its can only promote and advertise the foreign company. It must be entered in the Register of Representative Offices of Foreign Businesses kept by the Minister of the Economy.

REAL ESTATE IN POLAND



REAL ESTATE IN POLAND



Real estate is defined in Polish law as land, buildings on plots of land and premises (apartments, office space, etc.). Real estate can be used in the following legal forms:

- ownership;
- perpetual usufruct, where the land is owned by the Treasury or a municipality; the usufructuary gains ownership rights to the buildings on a given plot of land and the right to use the land for a period of 40-99 years in return for an annual charge; he/she may also sell the right or use it to secure loans;
- usufruct;
- lease or rental.

A perpetual usufruct is a right specific to Polish civil law relating to land. It involves land owned by either the Treasury or a local government authority being given over for use for a maximum period of 99 years. The perpetual usufructuary gains ownership rights to the buildings on a given plot of land and has to pay an annual charge of 1% (land under residential buildings, utility infrastructure) or 3% (other land) of the value of the land.

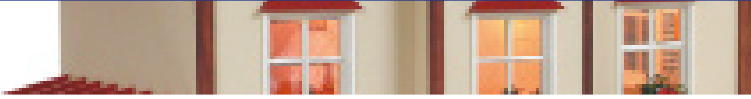
Real estate (perpetual usufruct) purchase contracts must be made in the form of a notarial deed drawn up by a Polish notary, otherwise they will be deemed null and void.

The legal status of real estate is disclosed in records called land and mortgage registers which are held by district courts.

A proprietary right (or rights) to land owned by the State or a municipality can only be sold by way of an auction.

The general rule is that the foreigners can only purchase real estate after obtaining permission from the Ministry of Internal Affairs and Administration. Permission is also required for the acquisition of shares/stocks in a company which owns or holds the perpetual usufruct right to real estate. Since Poland's accession to the EU, foreigners who are citizens or entrepreneurs of EU (EEA) member states do not need permission to purchase real estate or to acquire shares in a company if this company owns or holds the perpetual usufruct right to real estate. Exceptions to the above are:

- farmland and woodland – permission is required during the first 12 years from the date of Poland's accession to the EU; and
- “second house” – permission is required during the first five years from the date of



Poland's accession to the EU (however, permission is not required if a foreigner has lived legally and continuously in Poland for four years, or if he purchases a "second house" in order to conduct tourism services).

ACCOUNTING IN POLAND



Basic requirements

All accounting (documentation, records and reports) must be prepared in Polish and in Polish currency (PLN). All source documents, records and reports must be kept for the last five years of activity (including tax returns) in the company. Approved annual financial statements must be retained permanently.

Entities must apply the accounting principles specified in the Accounting Act to ensure a true and fair presentation of their economic and financial position and their financial results. An entity may adopt certain simplifications in the application of accounting rules, provided that these do not significantly affect the attainment of the above objectives. The accounting year (which must overlap the tax year) comprises 12 consecutive months. If it does not coincide with the calendar year, the appropriate tax office should be informed.

The manager of an entity is responsible for accounting obligations being met.

Financial statements

The annual report consists of a balance sheet, profit and loss account, additional information (including an introduction to the financial statements), as well as supplementary information and explanations. Entities audited in a given year must also provide a cash flow statement and a statement of changes in equity. In addition to the financial statements, the managers of limited liability companies, joint-stock companies and insurance companies are obliged to draw up a report on the entity's activities, containing information on major events that are material to the entity's activities, the entity's expected development, major achievements in the area of research & development, and the entity's present financial situation and projections.

Financial statements must be filed with the Polish Court Register together with an auditor's opinion (if they were audited), a shareholders' resolution approving the financial statements and deciding how to distribute profit/cover losses, and a report on the company's activities.

Audit

Annual consolidated financial statements of capital groups and annual financial statements of joint-stock companies, banks, insurance companies and investment and pension funds must be audited. Other entities must be audited if two of the following

three conditions were met in the preceding financial year:

- average annual employment was at least 50 people;
- total balance sheet assets as at the end of the accounting year were at least EUR 5 million,
- total net turnover and financial income was at least EUR 5 million.

Audits must be conducted by an independent entity with a licence to carry out audits before the financial statements are approved by shareholders.

All entities that are obliged to conduct annual audits must publish (in Monitor Polski B – official journal) their balance sheet, profit and loss account, statement of changes in equity and cash flow statement, together with the auditor's opinion and the shareholders' meeting resolution approving the financial statements and deciding how to distribute profit/cover losses.

POLAND TAX SYSTEM



POLAND TAX SYSTEM



In the Polish tax system there are 12 types of tax:

- 9 direct taxes: corporate income tax (CIT), personal income tax (PIT), civil transactions tax, real estate tax, tax on means of transport, inheritance and donations tax, agricultural tax, forestry tax, dog ownership tax;
- 3 indirect taxes: tax on goods and services (VAT), excise duty, gaming tax.

TAX	RATE/FEATURES
Corporate income tax (<i>podatek dochodowy od osób prawnych - CIT</i>)	<p>Payable by companies and organisational units with the exception of partnerships.</p> <p>Standard rate (incl. capital gains) - 19%</p> <p>Withholding tax on dividends – 19% (dividends received from Polish resident companies by either Polish resident shareholders or shareholders resident in the EEA are exempt from withholding tax provided that the EEA shareholder has held 10% of the Polish subsidiary's share capital for at least 2 years; tax can also be reduced or eliminated under a double tax treaty).</p> <p>Withholding tax on interest, royalties and intangible services - 20%.</p>
Personal income tax (<i>podatek dochodowy od osób fizycznych - PIT</i>)	<p>Payable by private individuals.</p> <p>Progressive scale comprising 2 rates: 18% and 32%.</p>
VAT (<i>podatek od towarów i usług</i>)	<p>Standard rate - 22%.</p> <p>Reduced rates - 7% or 3%.</p> <p>Preferential export and Intra-Community Supply rate - 0%.</p>
Excise tax (<i>podatek akcyzowy</i>)	<p>Imposed on the supply, production, import and export of certain goods, such as alcohol, fuels, energy or tobacco products.</p> <p>Calculated either as a percentage of the value of goods or on quantity basis (fixed rate per unit).</p>
Real estate tax (<i>podatek od nieruchomości</i>)	<p>Rates established by municipal councils (<i>rada gminy</i>) within the limits specified by national law.</p> <p>Rates differ depending on type, location and designation of the real estate.</p>

TAX

RATE/FEATURES

Tax on means of transport (*podatek od rodków transportu*)

Rates established by municipal councils within the limits specified by national law.

Rates differ depending on the type of means of transport. Imposed only on trucks and buses.

Civil transactions tax (*podatek od czynno ci cywilnoprawnych*)

Payable on certain civil law transactions, e.g. purchase contracts, mortgage agreements, company deeds.

Rates differ depending on the type of transaction.

Stamp duty (*opłata skarbową*)

Payable on certificates, permits, official applications, certain documents (e.g. bills of exchange).

Rates differ depending on the type of document.

POLAND LABOUR LAW





The principal legal act governing labour relations in Poland is the Labour Code¹. All employment contracts should comply with the provisions of the Code. If the provisions of a contract are less favourable to the employee than those in the Code, they are deemed invalid and are automatically replaced by the relevant provisions of the Code.

Employment Contracts

The Labour Code provides for the following basic types of employment contract:

- . non-fixed term contract – a permanent employment contract,
- . fixed-term contract,
- . specific task contract.

These types of contract can be preceded by an employment contract for a trial period of no longer than three months.

An employment contract should be drawn up in writing and should contain all key employment conditions, such as type of contract, place and nature of the work to be performed, start date and remuneration.


Under Polish labour law, workers can be employed by temporary employment agencies under two types of contract: an employment contract between the agency and the employee, and a service contract between the agency and the employer for whom work is to be performed.

Remuneration

Basic salaries must be paid at least once a month in cash in accordance with the rules and procedures applicable at a given company. Foreigners can transfer their remuneration abroad once all the relevant taxes have been paid.

The minimum wage for full-time work is specified by law and in 2009 is PLN 1,276.00. Salaries should also be paid during periods when the employee is unable to work for reasons beyond his control and for periods of sick leave of up to 33 days in any calendar

¹ Act of 26 June 1974 (Journal of Laws of 1998, No. 21, Item 94, as amended).



year (the amount paid is then 80% of the salary amount). If incapacity to work due to sickness exceeds 33 days in any calendar year, the employee receives sickness benefit from the Social Security Office (ZUS).

Dismissal

Fixed-term employment contracts and specific task contracts expire automatically at the end of the term for which the contract was concluded or when the specified task is completed.

In general, the minimum notice period for permanent employment contract depends on how long the employee has worked for the employer. Notice periods are:

- . 2 weeks – for employment of up to 6 months;
- . 1 month – for employment of between 6 months and 3 years;
- . 3 months – for employment of over 3 years.

Notice should be given in writing and, in the case of a permanent employment contract, it should also give the reasons for dismissal. Employees can be dismissed without notice in cases specified in the Labour Code. Some groups of employees, e.g. pregnant women, women on maternity leave, people on annual leave or sick leave, are legally protected against dismissal.

Irrespective of how an employment contract is terminated, the employer has to provide the employee with a work certificate (containing information to be used as a reference by his next employer, e.g. on holidays, sick leave).

Work Time

In general, working hours should not exceed 40 hours per week and 8 hours per day. However, the Labour Code contains several exceptions to this rule.

Overtime (i.e. work performed outside the hours specified in the contract) is permissible only on the following conditions:

- . rescue operations to save the lives of people or to protect property, or
- . extraordinary requirements of the company.

Overtime cannot exceed four hours per day and 150 hours in any calendar year. Employees, except for employees in managerial positions, are entitled to extra remuneration for overtime work. Work is permissible on Sundays and holidays in rescue operations, in industries that have a continuous production cycle, in work performed in four shifts, and in public utility sectors.



Paid Leave

The number of days allowed as paid leave depends on the total period of employment and is as follows:

- . 20 days – up to 10 years' employment;
- . 26 days – after 10 years' employment.

Time spent on education is also included when calculating the period of employment, depending on the level of education completed. Detailed rules for these calculations are set out in the Labour Code. Employees in their first job, after each subsequent month of employment are entitled to 1/12 of the leave to which they are entitled after one year of work. In each subsequent year of employment, the employee is entitled to the full amount of annual leave. Paid leave cannot be renounced or financially compensated.

POLAND SOCIAL SECURITY SYSTEM



POLAND SOCIAL SECURITY SYSTEM

Social security in Poland comprises pension, disability, accident, and sickness insurance. Social security contributions are obligatory and are payable monthly. The amounts of contributions payable by the employer and the employee to each kind of insurance are given in the table below.

Type of Insurance	Contribution	Employer	Employee
Retirement	19.52%	9.76%	9.76%
Disability	6%	4.5%	1.5%
Accidents	0.67% to 3.60%	0.67% to 3.60%	-
Sickness	2.45%	-	2.45%

The health insurance contribution is 9% of the assessment basis. Contributions to health insurance are deducted from the individual's personal income tax liability.

POLAND NEW PROSPECTS FOR CO-OPERATION WITH THE PUBLIC SECTOR



POLAND NEW PROSPECTS FOR CO-OPERATION WITH THE PUBLIC SECTOR



In the context of the public sector's extensive investment plans for upcoming years and even more extensive needs in almost every field, it is of great importance to look at the procedures for and forms of public procurement and public-private partnerships, especially in view of past, rather discouraging experience.

The political will to create and improve legal instruments and facilitate such projects is visible. Firstly, the Public Procurement Act of 29 January 2004 was recently amended (the amendments entered into force on 24 October 2008). The main aim of these changes was to harmonise Polish legislation with EU standards by amending certain provisions that the European Commission indicated as doubtful or contrary to EU law. As regards these amendments, the Polish legislator's intention was also to make procedures more flexible and to amend those provisions that had caused problems for both contracting authorities and businesses. In fact, some public authorities had been awaiting these changes before announcing tenders, which could be the reason for the significant number of public tenders announced at the end of 2008 and at the beginning of 2009.

The Polish parliament was also working on a draft of the Public Works and Services Concessions Act. To date, Polish law has only recognised works concessions regulated under the current Public Procurement Act. Thanks to the new Public Works and Services Concessions Act there will be a new instrument in Poland – already well known in other European countries, i.e. services concessions. The new law will also regulate works concessions in Poland more precisely. In our view, the new act will play an extremely important role in the development of infrastructure in Poland and generally in the execution of projects that have not yet been carried out due to a shortage of funds or experience on the part of the administration.

The Public Works and Services Concessions Act was finally approved on 9 January 2009 by parliament and should enter into force very soon.

Finally, in autumn 2008 legislative works started on a draft of a new Act on Public Private Partnerships, generally called PPP. The new PPP Act was approved on 19 December 2008 and is pending publication. This was long overdue, as the previous 2005 PPP Act had proven highly ineffective. The uncertainty created by the 2005 Act and the general suspicion of the public administration of any form of co-operation between authorities and private entrepreneurs resulted in very few PPP projects being implemented. The few projects that have been carried out were based on other legislative acts. In fact we are not aware of any successful project carried out under the previous act.

POLAND NEW PROSPECTS FOR CO-OPERATION WITH THE PUBLIC SECTOR



The legislator seems to have learned from past mistakes and is clearly trying to create a flexible, adaptable regulation that can be applied to all kind of projects, regardless of their volume. Unlike the previous act, the new law does not create an additional regime for co-operation between authorities and investors but rather attempts to bridge the gap between existing laws, such as the Public Procurement Act and the Concessions Act, i.e. to provide a general framework for projects of this type. Furthermore, the act has removed certain unnecessary formalities, such as the obligation for contracting authorities to carry out extensive and costly analyses before engaging in any PPP project. The result is a law that allows every situation to be shaped according to both parties' intentions within the legal framework and for risks and obligations to be evenly distributed.

These legislative changes are, without doubt, good news for all investors and contractors interested in projects related to Polish infrastructure, such as roads, highways, sewage treatment plants or incinerators, that will have to be carried out in the years to come.

Both the Polish government and private investors with PPP experience in other EU countries will have an important educational role to play. The Polish authorities need to be shown examples of successful public private co-operation based on a sensible division of risks. To date, many attempts at PPP projects have beached, given the authorities' assumption that all commercial risk can be shifted to the investor. However, as a result of the current financial crisis, banks, if they start financing again, will be very cautious and will be looking for a well balanced risk allocation.

CONTACTS

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This Guide was prepared by PLMJ in association with Dománski Zakrzewski Palinka all part of the Central and Eastern Plataform Project, and is intended for general distribution to Clients and Colleagues.

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