

Yesterday. Today. Tomorrow.

Linklaters

# Year in review, Year to come

## Polish Law

January 2019



# Year in review

## Polish Law in 2018

2018 saw a large number of legal and regulatory changes impacting our clients' businesses. Our review aims to give you an overview of the key ones you may have missed, with links to further information where available.



### Capital Markets

#### MiFID II implemented:

The MiFID II Directive came into force in April 2018. It is meant to harmonise financial services rules and regulations in Poland with MiFID II. This should increase investor protection and transparency; unify financial instruments legislation across the EU and grant additional supervisory powers to the Polish regulator – the Financial Supervision Commission.

### Banking and Finance

#### Stricter Anti-Money Laundering rules:

On 13 July, the new Act on the prevention of money laundering and terrorist financing came into force. The new law is, in many respects, more specific than the previous regulation. It has been introduced to fulfil the requirements of the MLD IV directive. The most important changes include: expanding of obliged entities; changes to the definitions of beneficial owner and PEP; strengthening the customer due diligence process; introduction of the Central Register of Beneficial Owners; and increasing fines for non-compliance with AML regulations.

#### Payment Services Directive II (PSD2):

On 19 June, the amendment to the Act on payment services came into force. This fulfils the requirements of the Payment Services Directive II (PSD2). The amendment introduced new payment services - payment initiations services (PIS) and account information services (AIS). These aim to increase competition in the payment services market by making entrance of the new entities into the market and modifying rules regarding the liabilities of payment services providers.

### National Register of Debtors:

Poland is obliged to establish the National Register of Debtors under Regulation (EU) 2015/848 of the European Parliament. In 2017, the Council of Ministers adopted the draft of the National Register of Debtors Act and Establishing National Register of Debtors. This regulation is also required under the Polish Restructuring Law. The register shall be publicly available and shall contain information on the entities which are subject to restructuring or insolvency proceedings. The draft regulation anticipates provisions for the allowance of restructuring and insolvency provisions in electronic form. All motions and documents shall be filed in electronic form (subject to minor exceptions for workers or alimony creditors). According to EU regulation, the obligation to establish registers in which information on insolvency proceedings is available, should have been in force in June 2018. Currently, the draft is still subject to debate in the Senate.

### 2018 highlights

2018 in Poland was, in line with all European jurisdictions, a year that tightened regulations related to conducting business activity in the financial sectors.

## TMP/IP

### GDPR and local implementing regulations:

As of 25 May the General Data Protection Regulation applies in Poland. On the same day, a new Data Protection Act came into force. The act introduced reformed rules for the administrative proceedings concerning personal data; significantly broadened the scope of control powers of the supervisory authority enabling it, e.g. to perform audits at data controllers without prior notice; and imposed stricter rules on cooperation during audits.

### Implementation of the NIS Directive:

On 5 July, the Act on National System of Cybersecurity was enacted, implementing the Directive on security of network and information systems (EU) 2016/1148, into the Polish legal system. Following the directive, the act introduced a comprehensive regulation aimed at preventing and minimising risks arising out of attacks on the country's high risk IT infrastructure. It also imposes certain information obligations on entities qualified as key services providers, and electronic services providers.

### Implementation of the Directive on Trade Secrets Protection:

The Directive on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure (EU) 2016/943 introduced significant changes to the protection of trade secrets and know-how. The directive has been implemented into the Polish legal system in the form of an amendment to the Polish Act on Combating Unfair Competition and certain other statutes, applicable as of 4 September 2018. The definition of a "trade secret" has been redefined. The amended provisions specify the act of unfair competition in reference to trade secrets and indicate new means available to a trade secret holder in the event of a violation.

## Corporate

### New rules on filing financial statements:

Amendment of the Act on National Court Register and the Act on Accountancy, binding from 15 March 2018, provided that company financial statements can only be filed in electronic version, via a computerised system maintained by the Ministry of Justice, with the repository of financial documents. In practice at least one person authorised to represent a company, whose PESEL number is disclosed in the register of entrepreneurs of the NCR files required documents using a qualified electronic signature or a trusted ePUAP profile. From 1 October 2018 financial statements were forwarded from the repository to the Central Register of Tax Information.

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### Additional disclosure obligations in the National Court Register:

According to new provisions of the National Court Register, binding from 15 March 2018, statements on consent to appointment and information on the delivery addresses of persons representing entities, liquidators and commercial proxies must be attached to the application for entry to the register. If a delivery address is outside the European Union the application should include information on proxy to delivery in Poland. The regulation also provides for further disclosure of information related to members of corporate authorities or persons entitled to appoint the management board in the companies and for this information to be disclosed in the NCR.

### Business Constitution - package of acts regulating business activity

On 30 April, a package of several acts and regulations on entrepreneurship called the Business Constitution came into force. The Business Constitution introduced significant changes for entrepreneurs, these included an option to set up unregistered businesses, rules on foreign entrepreneurs, temporary relief from social security contributions.

### Corporate criminal liability becoming a reality:

An implementation of effective corporate criminal liability, emphasising the role of internal controls, defining a comprehensive legal framework for whistleblowing schemes and imposing penalties of up to PLN 60m – these are the main points of new draft legislation on the criminal liability of collective entities enacted by the Polish government on 22 October 2018.

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## Competition

### Financial penalties for company's management for consumer law violations

From 15 December the President of the Office of Competition and Consumer Protection can impose financial penalties on members of a company's management who deliberately contribute to the violation of collective consumer interests by the company or to the use of abusive clauses in standard contracts. Such fines can be imposed as a part of a decision imposing a fine on the undertaking as a whole. The maximum fine is PLN 2 million (approx. EUR 0.5 million) or, in the case of a manager from the financial sector, PLN 5 million (approx. EUR 1.2 million).

### Changes to the Act on Superior Bargaining Power

An amendment to the Act on Superior Bargaining Power came into force in December. It refined the definition of superior bargaining power by stating it exists whenever there is significant disproportion between the economic potential of suppliers and buyers of food and agricultural products. It is no longer required to verify whether the supplier or the buyer has other, sufficient and real opportunities to sell or purchase agricultural or food products. It also enables everyone to report suspected cases of unfair use of superior bargaining power to the President of the Polish Competition Authority.

[Read more...](#)

## Employment law

### Electronic sick leave certificates:

Starting from 1 December employee sick leave certificates must be issued by physicians electronically. Written certificate, will, in principle, not be available. The electronic form facilitates tracking and control of employees' sickness absences.

[Read more...](#)

# Year to come

## Polish Law in 2019

We anticipate that 2019 will see a large number of legal and regulatory changes. Our review aims to give you an overview of the European and Polish legislative agenda and how these developments may affect our clients' businesses.



### Capital Markets

#### Bonds no longer in a form of document:

The new obligation increasing the transparency of the issuance of debt securities was introduced on 30 November 2018, by the Act related to strengthening financial market surveillance. The Act provides introduces two important changes relating to capital markets in Poland. It makes changes to the operation of the Polish regulator – the Financial Supervision Commission and requires that from 1 July 2019 corporate bonds, investment certificates issued by closed-end investment funds and lien mortgage bonds shall be dematerialised and registered in the Central Securities Depository. This second obligation does not yet concern corporate bonds, investment certificates issued by closed-end investment funds and lien mortgage bonds already issued in the form of a document. They will be subject to the optional dematerialisation in the depository.

#### Uncertain future of REIT's:

Whereas officials claim that the new legislation on real estate investment trusts will be introduced and come into force on 1 January 2019, this term is uncertain as the legislation is still before the Polish parliament. The act relates to 'companies investing in the real estate sector' and aims to introduce REIT's into the Polish market. It requires 80% of assets to be held in, and 90% of income to be gained from residential properties, which aligns with the intention of the authorities to stimulate the development of housing construction. However, it leaves the investment in commercial property unexploited. Although the new legislation is a big step forward, it would be of greater value if Polish REIT's were able to invest in all types of properties including commercial retail and offices, since it would allow them to use and unlock the potential of accumulated domestic capital.

### Banking and Finance

#### Changes to the rules on takeover of banks:

On 29 November 2018, the President signed the law resulting in changes to the rules on takeovers of banks. The most significant change is the possibility for one bank to take over another due to the reduction of its own funds below a certain level or even due to the existence of a risk in respect of such reduction. The takeover is dependent on a decision of the Financial Supervisory Authority, as well as on the consent of the transferee and may not result in the reduction of the transferee's funds or expose its deposits to any risk. The new rules will come into force on 1 January 2019.

#### Amendment to the Recommendation S for banks:

In August 2018, the Financial Supervisory Authority presented the draft of the amendment to Recommendation S. The proposal has two key aspects: introduction of fixed-rate loans; or temporary fixed rate-loans and provisions granting the possibility to release the debt secured by a mortgage in exchange for the transfer of ownership of the property constituting a collateral. It is proposed these solutions will apply equally to new and existing loan agreements. The proposal is subject to consultations with governmental and non-governmental bodies.

### Real Estate

#### Right of perpetual usufruct to transform into property ownership:

As of 1 January 2019, the right of perpetual usufruct will be transformed into full property ownership. Transformation will apply to all real estate developed for residential purposes. The owners are to cover a transformation fee equivalent to 20-year RPU fee, paid as a one-off or in yearly instalments which, unlike the RPU fee, cannot be increased by authorities due to property value changes. It will significantly lower the overall costs of property owners and mitigate the risk of unexpected cost increases. A massive transformation process may, however, significantly lengthen the time of proceedings before Land and Mortgage Register courts, since the transformation of RPU has to be processed and registered by the court for each separate property.

### 2019 highlights

Changes being introduced to Polish tax regulation in 2019 will influence not only the way businesses conduct their activity, but may also limit their financing of corporate activities.



## TMP/IP

### Amendment of additional regulations implementing GDPR:

In November 2018 a draft of the proposal of the Act regarding changes in certain acts in order to ensure application of regulation 2016/679, was forwarded to the Polish parliament for further work and enactment. The proposal, in its current version, modifies nearly 170 local Polish laws and statutes adjusting them to comply with the GDPR. It is estimated that the final project will be completed by the end of the first half of 2019.

### Changes to regulations on trademarks:

A proposal to amend the Industrial Property Law in order to implement the Directive to approximate the laws of the Member States relating to trade marks (EU) 2015/2436, is currently being processed by the Polish government. As the draft of the project is still at an early stage, various provisions are subject to change. However, due to the EU time frame for implementation of the directive, the final project should be prepared and enacted in the first half of 2019.

## Corporate

### New rules on resignation from a management board:

New provisions of the Commercial Companies Code, binding from 1 January 2019, provide for new conditions regarding the resignation of the last member of a management board or simultaneous resignation of all members of a management board. These apply to both types of capital companies: limited liability and joint stock companies. The resignations become effective on the day following the day of a convened shareholders meeting appointing members of a management board in relation to a limited liability company, and members of a supervisory board in relation to a joint stock company.

### Vote in writing on an ordinary shareholders meeting:

The Commercial Companies Code determines the catalogue of matters which cannot be subject to a vote in writing at the ordinary shareholders meeting of a limited liability company. This rule will change from 1 January 2019 and resolutions on the review and approval of financial statements and the report of the management board, the distribution of profits or absorption of losses or granting due performance of duties by members of the company's authorities may then be adopted in writing, without holding a shareholders meeting.

### Proposal for introducing a simple joint stock company:

On 16 May 2018, the bill of amendment of the Commercial Companies Code, providing implementation of a new type of company, was published. A simple joint stock company is a hybrid between a limited liability company and a joint stock company directed particularly at start-ups. A simple joint stock company enables resolutions to be adopted electronically, contributions to be made in the form of providing services or work, shares to be issued without nominal value or establishing a supervisory board, whereas a management board will be entitled to manage a company. Preliminary regulations may come into force from 1 June 2019, however this regulation is still at the consultation stage.

## TAX

### Planned amendments to the CIT, PIT and Tax Ordinance Acts:

On Friday, 24 August 2018, the Ministry of Finance ("MF") published extensive draft amendments to the Corporate Income Tax Act, the Personal Income Tax Act and the Tax Ordinance Act. New regulations are expected to come into force at the beginning of 2019. The proposed provisions may have a significant impact on conducting business activity in Poland.

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## Employment

### New rules on keeping employment documentation:

At the beginning of 2019, employers face changes regarding the rules on keeping employment documentation. It will be possible to keep personal files of employees either in hard copy (currently the only available option) or electronically. The employee documentation retention period will be reduced from 50 to, in principle, 10 years (mandatorily in relation to employment after 1 January 2019 and under certain conditions to employees employed between 1 January 1999 and 31 December 2018). There will be also some additional obligations, imposed on the employers with regard to the above. The new regulations are complex and not entirely unambiguous, which is likely to cause doubts regarding their application. [Read more...](#)

### Changes in trade union law:

Starting from 1 January 2019, certain amendments to the Act on trade unions will come into force. In particular, the eligibility criteria for trade union participation will be extended. Currently, only employees may be members of trade unions. Starting from 1 January 2019, it will be available also for other individuals performing work, e.g. under certain conditions also for contractors under civil law agreements, individual entrepreneurs, interns and volunteers. It means that trade unions may also represent the above-mentioned individuals. [Read more...](#)

### Private Capital Pension Plans - additional obligations for employers:

A new law on Employee Capital Pension Plans will apply from 1 January 2019. Employee Capital Pension Plans are designed as a private system for the long-term accumulation of pension savings under the third pillar, based on contributions from employed individuals, employing entities and the state. Participation in Employee Capital Pension Plans will be obligatory in principle for all employing entities. Exemptions from this obligation will apply to employers who have established a voluntary Employee Pension Plan under specified conditions and in the prescribed time. Consequently, an increased interest in the creation of voluntary Employee Pension Plans by employers is currently being observed as that seems to be the preferred solution.

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# What now?

## Your contacts

We hope that you have found this guide useful.  
Please contact your usual Linklaters contact, if you would like to discuss any of these matters further.



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