

LONGMAN 

---

SPECIAL REPORTS

---

LEGAL ASPECTS OF  
DOING BUSINESS  
IN POLAND

A specially commissioned Report



NABARRO NATHANSON

---

WEIL, GOTSHAL & MANGES

---

# Legal Aspects of Doing Business in Poland

---

Nabarro Nathanson *and* Weil, Gotshal & Manges

LONGMAN 

© Longman Group UK Ltd 1993

Reprinted 1993

0851 219489

*Published by*  
Longman Law, Tax and Finance  
Longman Group UK Ltd  
21–27 Lamb's Conduit Street, London WC1N 3NJ

*Associated offices*  
Australia, Hong Kong, Malaysia, Singapore, USA

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without either the prior written permission of the publishers or a licence permitting restricted copying issued by the Copyright Licensing Agency Ltd, 90 Tottenham Court Road, London W1P 9HE.

No responsibility for loss occasioned to any person acting or refraining from action as a result of the material in this publication can be accepted by the authors or publishers.

A CIP catalogue record for this book is available from the British Library.

Printed in Great Britain by Hobbs the Printers of Southampton

---

# The authors

---

The authors of this book are the two firms of Nabarro Nathanson (UK) and Weil, Gotshal & Manges (USA) who have a joint office in Warsaw. Those who have worked on this book are members of the joint Warsaw office and members of the London office of Nabarro Nathanson and the New York and Washington offices of Weil, Gotshal & Manges.

## **General Editors**

Michael H Davies  
Nabarro Nathanson

William K Sievers  
Weil, Gotshal & Manges

Tomasz Dobrowolski  
Nabarro Nathanson and Weil, Gotshal & Manges

## **Authors**

Michael H Davies  
William K Sievers  
Tomasz Dobrowolski  
Steven Shone  
Sanford Hausner  
Roman Rewald  
Paweł Dębowski  
Agnieszka Deeg-Dąbrowska  
Marzena Ćwiek-Crowe  
Derek Sendrove  
Beata Gessel  
Andre Spark  
Ulrike Radtke-Fischer  
Michael Epstein  
David Rosenblatt  
Jeffrey Bialos  
Tadeusz Piątek



---

# Glossary

---

This report contains a number of terms and abbreviations along with references to legislation all of which are listed in the following glossary.

|                              |   |
|------------------------------|---|
| BES                          | British Executive Service Overseas—UK government assistance scheme              |
| COCOM                        | Co-ordinating Committee on Multilateral Export Controls                         |
| COMECON                      | The Council for Mutual Economic Assistance                                      |
| <i>Dziennik Ustaw</i>        | <i>Journal of Laws</i> —journal of new laws published by the <i>Sejm</i>        |
| <i>Dzierżawa</i>             | Form of lease   |
| EBRD                         | European Bank for Reconstruction and Development                                |
| EC                           | European Community  |
| ECGD                         | Export Credit Guarantee Department  |
| Economic Transformation Plan | ‘The Balcerowicz Plan’  |
| ECU                          | European Currency Unit  |
| EFTA                         | The European Free Trade Association   |
| EIB                          | The European Investment Bank  |
| ESOPs                        | Employees Stock Ownership Plans   |
| GAAP                         | General Accepted Accounting Principles  |
| GATT                         | General Agreement on Tariffs and Trade  |
| GIOŚ                         | ( <i>Główny Inspektor Ochrony Środowiska</i> )—Head inspector of PIOŚ           |
| <i>Gmina</i>                 | Self-governing community  |
| GSP                          | Generalised System of References—US Act   |
| IAS                          | International Accounting Standards  |
| IMF                          | International Monetary Fund   |
| JICAP                        | UK Joint Industrial and Commercial Awards Programme                             |
| KHF                          | ‘Know How Fund’ UK government assistance programme                              |
| Land and Mortgage Registers  | <i>Księgi Wieczyste</i>   |
| Land Register                | <i>Ewidencja Gruntow</i> maintained by local authority                          |
| MFN                          | Most Favoured Nation  |
| MIGA                         | Multilateral Investment Guarantee Agency of the World Bank                      |
| <i>Najem</i>                 | Hire or occupational tenancy  |
| National Bank of Poland      | Supervisory status over all banks in Poland                                     |
| NCM                          | <i>Nederlandsche Credietverzekering Maatschappij</i>                            |
| OECD                         | The Organisation for Economic Co-operation and Development                      |
| OPIC                         | Overseas Private Investment Corporation—US government agency                    |
| Paris Club                   | Western creditor nations group  |
| Perpetual usufruct           | <i>Użytkowanie wieczyste</i> —form of long-term lease                           |
| PHARE                        | Poland-Hungary Assistance for Restructuring the Economy—EC assistance programme |

|  |  |
|--|--|
| PIFS   | Pre-investment Feasibility Studies—UK government assistance scheme                               |
| PIOŚ   | <i>Panstwowa Inspekcja Ochrony Środowiska</i> —State Inspectorate of Environmental Protection    |
| Polish Forest Organisation                     | <i>Polskie Gospodarstwo Leśne</i> —Forest management unit acting for Minister of the Environment |
| <i>Popiwek</i>                                 | Wage control penalty tax   |
| SEED   | Support for Eastern European Democracy Act 1989 (US)   |
| <i>Sejm</i>                                    | Lower house of Polish parliament   |
| <i>Senat</i>                                   | Upper house of Polish parliament   |
| <i>Siedziba</i>                                | 'Seat' of a company—where it 'resides'   |
| <i>Spółka Akcyjna</i>                          | Public limited company   |
| <i>Spółka z ograniczoną odpowiedzialnością</i> | <i>Spółka z oo</i> —private limited company  |
| 'State legal entity'                           | state organisation having a legal personality  |
| TIPS   | Training for Investment Personnel Scheme—UK government assistance scheme                         |
| US—AID   | Agency for International Development—United States   |
| WIOŚ   | <i>Wojewódzki Inspektor Ochrony Środowiska</i> —voivodship inspector of PIOŚ                     |
| <i>Własność</i>                                | Land tenure (freehold)   |
| <i>Województwo</i>                             | Voivodship—regional organ of state administration  |
| <i>Złoty</i>                                   | Legal tender in Poland   |
| ZUS  | <i>Zakład Ubezpieczeń Społecznych</i> —State Social Security Fund                                |

## References to Legislation

|  |   |
|--|---|
| Act on Nationalisation of Main Branches of Economy                                       | <i>Journal of Laws</i> , No 3 of 1946, item 17, as amended  |
| Agricultural and Forest Land Protection  | <i>Journal of Laws</i> , No 11 of 1982, item 79, as amended   |
| Anti-monopoly Law  | <i>Journal of Laws</i> , No 12 of 1990, item 92, as amended   |
| Banking Law  | <i>Journal of Laws</i> , No 4 of 1989, item 21 (unified text, <i>Journal of Laws</i> No 72 of 1992, item 359, as amended) |
| Bankruptcy Act   | <i>Journal of Laws</i> , No 93 of 1934, item 834 (unified text, <i>Journal of Laws</i> No 118 of 1991, item 512)          |
| Business Activities Act  | <i>Journal of Laws</i> , No 41 of 1988, item 324 as amended   |
| Civil Code   | <i>Journal of Laws</i> , No 16 of 1964, item 93, as amended   |
| Commercial Code  | <i>Journal of Laws</i> , No 57 of 1934, item 502, as amended  |
| Companies with Foreign Participation (Foreign Investment Law)                            | <i>Journal of Laws</i> , No 60 of 1991, item 253  |
| Construction of Law  | <i>Journal of Laws</i> , No 38 of 1974, item 229, as amended  |
| Copyright Law  | <i>Journal of Laws</i> , No 34 of 1952, item 234, as amended  |
| Creation of Post of Minister of Environmental Protection, Natural Resources and Forestry | <i>Journal of Laws</i> , No 73 of 1989, item 433  |
| Dismissal for Reasons on the Employer's Side   | <i>Journal of Laws</i> , No 4 of 1990, item 19, as amended  |
| Examination and Publication of Financial Reports   | <i>Journal of Laws</i> , No 111 of 1991, item 480   |
| Foreign Exchange Law   | <i>Journal of Laws</i> , No 6 of 1989, item 33, as amended  |

|  |                                 |   |
|--|---------------------------------|---|
| Geological Law   | <i>Journal of Laws</i> , No 52  | of 1960, item 303, as amended   |
| Hunting Law  | <i>Journal of Laws</i> , No 33  | of 1973, item 29, as amended  |
| Labour Code  | <i>Journal of Laws</i> , No 24  | of 1974, item 142, as amended   |
| Land Management Law  | <i>Journal of Laws</i> ,        | of 1990   |
| Land Use Planning Law                                      | <i>Journal of Laws</i> , No 17  | of 1989, item 99, as amended  |
| Law on Inventive Activity                                  | <i>Journal of Laws</i> , No 33  | of 1984, item 177 (unified text, as amended)  |
| Law on Land Management and Expropriation of Real Property  | <i>Journal of Laws</i> , No 30  | of 1985, item 127   |
| Law on Forests   | <i>Journal of Laws</i> , No 101 | of 1991, item 444, as amended   |
| Law on Local Government                                    | <i>Journal of Laws</i> , No 16  | of 1990, item 95, as amended  |
| Law on Prices  | <i>Journal of Laws</i> , No 27  | of 1988, item 195, as amended   |
| Law on Territorial Water and Administration                | <i>Journal of Laws</i> , No 32  | of 1991, item 131   |
| Law on Trademarks  | <i>Journal of Laws</i> , No 5   | of 1985, item 77, as amended  |
| Law on the National bank of Poland                         | <i>Journal of Laws</i> , No 4   | of 1989, item 22, as amended (unified text in <i>Journal of Laws</i> , No 72 of 1991, item 360) |
| Law on the Privatisation of State Owned Enterprises        | <i>Journal of Laws</i> , No 51  | of 1990, item 298, as amended   |
| Law on the Protection and Development of the Environment   | <i>Journal of Laws</i> , No 3   | of 1980, item 6, as amended   |
| Law on the State Inspectorate for Environmental Protection | <i>Journal of Laws</i> , No 77  | of 1991, item 335   |
| Law on Combating Unfair Competition                        | <i>Journal of Laws</i> , No 56  | of 1930, item 56 (unified text)   |
| Mining Law   | <i>Journal of Laws</i> , No 4   | of 1978, item 12 (unified text, as amended)   |
| Nature Protection law                                      | <i>Journal of Laws</i> , No 114 | of 1991, item 492   |
| Nuclear Law  | <i>Journal of Laws</i> , No 12  | of 1986, item 70, as amended  |
| Penal Code   | <i>Journal of Laws</i> , No 13  | of 1969, item 13, as amended  |
| Petty Offences Code  | <i>Journal of Laws</i> , No 12  | of 1971, item 114, as amended   |
| Public Trading in Securities and Managed Funds             | <i>Journal of Laws</i> , No 35  | of 1991, item 155, as amended   |
| Securities Law   | <i>Journal of Laws</i> , No 35  | of 1991, item 55, as amended  |
| State Enterprises Act                                      | <i>Journal of Laws</i> , No 24  | of 1981, item 122, as amended   |
| State and Official Secrets Act                             | <i>Journal of Laws</i> , No 40  | of 1982, item 271, as amended   |
| Water Law  | <i>Journal of Laws</i> , No 38  | of 1974, item 230, as amended   |
| Workers' Councils in State Enterprises                     | <i>Journal of Laws</i> , No 24  | of 1981, item 123, as amended   |

# Contents

|  |     |
|--|-----|
| <i>The authors</i>   | vii |
| <i>Glossary</i>  | ix  |
| <b>1 Introduction</b>  | 1   |
| 1.1 Geographical and historical background                         | 1   |
| 1.2 Recent political events  | 1   |
| 1.3 The economy  | 2   |
| 1.4 Industrial base  | 3   |
| 1.5 Agricultural base  | 4   |
| 1.6 External trade relations                                       | 4   |
| 1.7 Legal restructuring  | 5   |
| 1.8 Conclusion   | 7   |
| <b>2 Foreign investment law</b>                                    | 9   |
| 2.1 Introduction   | 9   |
| 2.2 Types of investments regulated                                 | 9   |
| 2.3 The approval process   | 10  |
| 2.4 Protection of foreign investors                                | 11  |
| 2.5 Tax holidays   | 12  |
| 2.6 Source of the capital invested in a foreign investment company | 12  |
| 2.7 Repatriation of profits  | 13  |
| 2.8 Who is the foreign investor?                                   | 14  |
| 2.9 International agreements on taxation in Poland                 | 14  |
| <b>3 Company Law</b>   | 17  |
| 3.1 Types of company   | 17  |
| 3.2 Incorporation procedures                                       | 17  |
| 3.3 Capital requirements   | 19  |
| 3.4 Raising capital by public subscription                         | 20  |
| 3.5 The founding documents   | 22  |
| 3.6 Registration requirements                                      | 25  |
| 3.7 Shareholders rights and duties                                 | 25  |
| 3.8 Management structures  | 28  |
| 3.9 The Shareholders' meeting                                      | 31  |
| 3.10 Reporting requirements  | 34  |
| 3.11 Dealing in shares: mergers and acquisitions                   | 36  |
| 3.12 Winding up and dissolution                                    | 37  |
| 3.13 Conclusion  | 39  |
| <b>4 Foreign exchange regulations</b>                              | 41  |
| 4.1 Introduction   | 41  |
| 4.2 The Exchange Act   | 41  |
| 4.3 The initial investment   | 42  |
| 4.4 Restrictions on foreign exchange transactions                  | 44  |
| 4.5 Repatriation of profits and capital                            | 45  |

---

|          |  |    |
|----------|--|----|
| <b>5</b> | <b>Taxation</b>  | 47 |
| 5.1      | Introduction   | 47 |
| 5.2      | Income taxation of companies   | 47 |
| 5.3      | Income taxation of individuals   | 52 |
| <br>     |  |    |
| <b>6</b> | <b>Real estate</b>   | 53 |
| 6.1      | Introduction   | 53 |
| 6.2      | Ownership  | 53 |
| 6.3      | Perpetual usufruct   | 53 |
| 6.4      | The Law of Land Management of 1985   | 54 |
| 6.5      | The Law of Land Management of 1990   | 55 |
| 6.6      | <i>Najem</i>   | 55 |
| 6.7      | <i>Dzierżawa</i>   | 57 |
| 6.8      | Rent reviews   | 58 |
| 6.9      | The Land Registry  | 58 |
| 6.10     | Acquisition of real estate   | 59 |
| 6.11     | Local government   | 59 |
| 6.12     | Restitution  | 60 |
| <br>     |  |    |
| <b>7</b> | <b>Banking Law</b>   | 61 |
| 7.1      | Introduction   | 61 |
| 7.2      | Establishing a bank in Poland  | 61 |
| 7.3      | Banking activities   | 62 |
| 7.4      | Disclosure   | 63 |
| 7.5      | Lending limits   | 63 |
| 7.6      | Other banking standards  | 63 |
| 7.7      | Council of Banks and Workers' Councils   | 64 |
| 7.8      | Supervision of banks   | 64 |
| 7.9      | Share acquisition and notification   | 64 |
| 7.10     | Banking secrecy  | 65 |
| 7.11     | The National Bank of Poland  | 65 |
| 7.12     | New legislation  | 65 |
| <br>     |  |    |
| <b>8</b> | <b>Labour Law</b>  | 67 |
| 8.1      | Introduction   | 67 |
| 8.2      | Contract of employment   | 67 |
| 8.3      | Termination of contracts of employment   | 68 |
| 8.4      | Restrictions on termination of contract  | 69 |
| 8.5      | Consequences of unjustified and unlawful termination upon notice               | 69 |
| 8.6      | Termination without notice   | 70 |
| 8.7      | Consequences of unlawful termination of contracts of employment without notice | 71 |
| 8.8      | Redundancy   | 71 |
| 8.9      | Expiry of contract of employment   | 72 |
| 8.10     | The individual's rights at the workplace                                       | 72 |
| 8.11     | Transfer of contracts of employment on the transfer of a business              | 73 |
| 8.12     | Trade unions and workers' self government                                      | 73 |
| 8.13     | Equal treatment of employees   | 74 |
| 8.14     | Employment law relating to directors   | 74 |
| 8.15     | Senior personnel   | 74 |
| 8.16     | Working hours and time off   | 75 |
| 8.17     | Foreign employees  | 76 |
| 8.18     | Social security  | 76 |



---

|  |     |
|--|-----|
| <b>9 Intellectual property law</b>   | 79  |
| 9.1 Introduction   | 79  |
| 9.2 Copyright  | 79  |
| 9.3 Patents  | 83  |
| 9.4 Trademarks   | 86  |
| 9.5 Industrial designs, utility models and semiconductors  | 89  |
| 9.6 Unfair competition and trade secrets   | 89  |
| <b>10 Antitrust law</b>  | 91  |
| 10.1 Introduction  | 91  |
| 10.2 Jurisdiction  | 91  |
| 10.3 The Antimonopoly Office   | 91  |
| 10.4 Anti-competitive practices  | 91  |
| 10.5 Per se offences   | 93  |
| 10.6 Notification requirements   | 94  |
| 10.7 Enforcement mechanisms  | 95  |
| 10.8 Proposed statutory and procedural changes   | 96  |
| 10.9 Recent cases  | 97  |
| <b>11 Environmental law</b>  | 99  |
| 11.1 Introduction  | 99  |
| 11.2 Principal areas of protection   | 105 |
| 11.3 International treaties  | 115 |
| 11.4 Liability for breach of environmental laws  | 115 |
| 11.5 Conclusion  | 119 |
| <b>12 Privatisation</b>  | 121 |
| 12.1 Privatisation of State Enterprise Act   | 123 |
| 12.2 Privatisation by restructuring  | 123 |
| 12.3 Reprivatisation and other privatisation issues  | 124 |
| 12.4 Conclusion  | 124 |
| <b>13 Bankruptcy and arrangement proceedings</b>   | 127 |
| 13.1 Introduction  | 127 |
| 13.2 Bankruptcy Act  | 127 |
| 13.3 Arrangement Proceedings Act   | 130 |
| <b>14 US policies and programmes for economic reform</b>   | 133 |
| 14.1 Introduction  | 133 |
| 14.2 US programmes and policies to promote investment in Poland  | 134 |
| 14.3 Promotion of US exports and trade with Poland   | 137 |
| 14.4 US programmes and policies involving multilateral institutions and other governments              | 139 |
| 14.5 Other possible actions to assist Poland's economic reforms  | 140 |
| 14.6 Conclusion  | 140 |
| <b>15 Incentives for foreign investment in Poland—European perspective</b>                             |     |
| 15.1 Bilateral treaties for promotion and mutual protection of investment                              | 143 |
| 15.2 Investment agreements between Poland and European states whose investors are pro-active in Poland | 145 |
| 15.3 Bilateral agreements for the avoidance of double taxation   | 146 |
| 15.4 British government assistance programme The Know-How Fund (KHF)                                   | 147 |
| 15.5 Other European governments' assistance in Poland  | 149 |
| 15.6 European Community's PHARE programme  | 150 |

---

|                   |   |            |
|-------------------|---|------------|
| 15.7              | European Investment Bank  | 151        |
| 15.8              | European Bank for Reconstruction and Development                      | 151        |
| 15.9              | Export credit guarantees  | 153        |
| 15.10             | Conclusion  | 153        |
| <b>Appendix 1</b> | <b>Law of 14th June, 1991 on Companies with Foreign Participation</b> | <b>155</b> |
| <i>Index</i>      |   | 163        |

---

# 1 Introduction

---

## 1.1 Geographical and historical background

Poland is a country with an area of 312,680 square metres of which 143,600 comprises arable land. The population is 38,300,000.

The boundaries of the present Polish state were established at the end of the Second World War. The Republic of Poland had regained its independence in 1918 as part of the arrangements entered into between the European powers after the First World War; prior to this the country had been partitioned a number of times by the neighbouring countries of Austria, Russia and Prussia. However, this independence was again lost at the beginning of the Second World War.

In 1945 the superpower summits at Yalta and Potsdam resulted in Poland being part of the Soviet sphere of influence; this meant the imposition of communist governments for the next 49 years. However, those years were characterised by regular political protest usually involving riots and strikes which led to the replacement of leaders and various attempts at economic reform. None of these changes were sufficient to stem the tide of opposition to a political and economic system considered by most people in Poland to be a system imposed by the Soviet Union. The Catholic Church played an increasingly prominent role in the opposition movement; this movement culminated in the activities of Solidarity in 1980.

## 1.2 Recent political events

In the autumn of 1980 an event took place in Poland which in retrospect can be seen as the herald of the dramatic political changes that were about to take place in Poland and throughout the whole of Central and Eastern Europe, including the then Soviet Union. That event was the recognition of Solidarity as an independent trade union. The decade that followed saw the declaration of Martial Law in December 1981 and the outlawing of Solidarity, the spirit of resistance that the union inspired by refusing to submit to oppression, and the subsequent restoration of the union's legality in 1989.

The decade ended with the Round Table talks in early 1989 and the introduction in 1990 of an economic transformation programme by the Solidarity backed government. The Round Table talks were held between the leaders of the communist party and of Solidarity and resulted in free elections in June 1989 for two thirds of the seats of the lower house of the Polish parliament (*Sejm*). The remaining third were reserved for the communist party. The upper house, the *Senat*, was created in the same year and the elections were also held for the members of this chamber. All the seats went to supporters of Solidarity.

Immediately following the elections, a new government took power led by Tadeusz Mazowiecki. President Jaruzelski, the architect of martial law, remained President until his replacement by Lech Walesa, the leader of Solidarity, following Presidential elections held in November 1990. Mazowiecki remained Prime Minister until January 1991 when a no confidence vote led to his resignation and his replacement by Jan Krzysztof Bielecki.

The minority communist block retained its position in the *Sejm* until elections were held in October 1991 for all 461 seats of the *Sejm* and the 100 seats of the *Senat*. The constitutional system produced a representation in the *Sejm* of over 20 parties and the need for coalition government involving a number of different parties. Since that date three governments have been formed, led by Jan Olszewski, Waldemar Pawlak, and the current holder, Hanna Suchocka.

Poland was, therefore, the first country to rid itself of communism; the demise of the system

in Poland led directly to the collapse of communism throughout the region and indeed the discrediting of the ideology over much of the world.

## 1.3 The economy

### 1.3.1 The economic transformation process

The Economic Transformation Programme, often dubbed the *Balcerowicz* plan after the Minister of Finance and author of the plan, was introduced in January 1990. It involved shock tactics designed to turn Poland into a free market economy as soon as possible. Certain steps had to be taken immediately to protect the zloty and to bring inflation under control. At this time approximately 65 per cent of the country's export earnings were needed to service the external debt.

The elements of the programme were dictated by the state of the economy, suffering from over 40 years of central planning and the ambitious expansion attempts of the 1970s. During this decade Poland had sought to improve its productive capability by the importation of Western plant and machinery, goods and materials, all of which were financed by borrowing heavily in the international money markets. This period will, of course, be remembered for aggressive lending by banks funded by petrodollars to sovereign borrowers with insufficient concern with credit risk. Poland's external debt had reached US\$40 billion by the end of the 1970s at which point Poland defaulted on its foreign indebtedness. This was the first of a series of international debt crises.

Export earnings and trade surpluses remained insufficient to service the country's debt and Paris Club reschedulings took place during the 1980s. Wage and price inflation continued apace and by the end of the decade inflation had reached 600 per cent per annum. The difference between the official exchange rate for the dollar and the free exchange rate reached almost 100 per cent.

The new government taking power in August 1989 was faced with a need to take action on two fronts: first to control the macroeconomic position of the country which was deteriorating fast, and secondly to start building the foundations for a free market. A stabilisation package was introduced which involved:

- (1) the immediate liberalisation of prices and trade;
- (2) the introduction of wage controls and a partially convertible zloty;
- (3) a further devaluation of the zloty (31.6 per cent in January 1990—it had already been devalued a number of times in 1989);
- (4) the provision of a US\$1 billion loan from the International Monetary Fund to support the exchange rate; and
- (5) the introduction of high interest rates to restrict credit demand.

The effect of the programme upon the Polish economy could not of course be foreseen as such policies were without precedent. In the words of the OECD Economic Survey published in 1992, Poland was moving forward 'in its transition along a still unblazed trail'. However one result which became evident very quickly indeed was inflation which went from a monthly rate of almost 80 per cent in January 1990 to 1.8 per cent in August 1990.

One relatively unexpected event of the period was the almost total collapse of trade with the other former Comecon countries. In 1990 and 1991 inflation did drop; but GDP also did. The decline in GDP has been estimated at 11.6 per cent in 1990 and 8 per cent in 1991. On the other hand private sector activity increased by 17 per cent during 1990 and continued to increase during 1991 and 1992. The private sector share of the economy has substantially increased, estimated at 35 per cent of GDP in 1990 and is undoubtedly still increasing. In some sectors it has become dominant, for example, the share of the private sector in retail is over 80 per cent; private sector transactions in foreign trade are already substantial although most official statistics most probably do not contain the full story of private sector activity.

Wage increases during 1991 continued in the public sector despite the penalty taxes (*popiwek*) imposed to control wage driven inflation. Many public sector enterprises now have difficulty in paying these taxes, due to declining profits during 1991. The state dividend (*dividenda*) is also

in arrears in many cases. Profitability in 1991 was affected by a number of factors including increases in energy prices and the loss of markets in the ex-USSR.

Unemployment has been an inevitable consequence of the policies of the last two years. It increased from 0.3 per cent at the beginning of 1990 to 6.1 per cent at the end of 1991 to 11.4 per cent at the end of 1992.

### **1.3.2 External indebtedness**

Poland's external debt remains a constraining factor. The current account moved into surplus in 1990 and then into deficit in 1991. In 1991 exports continued to grow (following a 43 per cent rise in US dollar receipts in 1990) but imports also increased, by 50 per cent. The affect of the trade liberalisation measures taken at the beginning of the Economic Transformation Programme on the flow of trade could now be seen.

In April 1991 an agreement was reached with the Paris Club, the group of 'official' creditors comprising the main 17 Western creditor countries, and as a consequence of this agreement 50 per cent of Poland's official debt (US\$33 billion) owed to such countries was cancelled. The greater proportion of Poland's debt falls into this category. Certain conditions attach to this arrangement which still need to be fulfilled; the cancellation of the debt is to take place over a period up to 1994. However, in the meantime Poland will have difficulty in obtaining access to the international financial markets except for short-term trade credits. Agreement is still awaited with the London Club for arrangements to be made for the rescheduling of the amounts owed to international banks.

Lending activities have not come to a complete standstill; for example, the World Bank, EBRD and certain export credit agencies are providing loans to Poland.

### **1.3.3 The zloty**

The major achievements of the macroeconomic policy of the last two years are the stabilisation of the zloty, its continuing convertibility and the bringing under control of inflation. The zloty has continued to devalue—15 per cent in May 1991, 12 per cent in October 1991 and a further 12 per cent in March 1992. The current policy is that the currency will devalue through the operation of a 'crawling peg' mechanism whereby the zloty devalues at the rate of 1.8 per cent per month against a basket of currencies.

### **1.3.4 Interest rates**

Interest rates were very high at the beginning of 1990, over 300 per cent, and have come down as inflation has dropped. The current basic bank rate is 38 per cent.

### **1.3.5 Wages**

The excess wage tax (*popiwek*) was originally introduced in the 1980s. It operates by taxing any salary increase above a norm established for each state enterprise; this norm is adjusted on a monthly basis using a fraction of inflation. An increasing number of enterprises became eligible for the payment of this tax from 1990 onwards. The method of calculation of the norm, and therefore the policy itself, was changed in 1991.

This tax only applies to the public sector. The privatisation process leads to state enterprises being transformed into commercial companies (see chapter 12 below), either joint stock or limited liability companies, and *popiwek* will continue to apply until such time as a company ceases to be 50 per cent owned by the state.

## **1.4 Industrial base**

Prior to the Second World War the economy of Poland was primarily agricultural. An industrialisation programme put in place in the three decades following the war resulted in a much higher share of GDP contributed by industry: approximately 58 per cent of GDP in 1988; as at that date the



service sector made up 28.9 per cent and the agricultural sector 13.1 per cent of GDP. Therefore on balance Poland can be categorised as an industrial based economy.

Industry is widely spread throughout Poland although large concentrations are contained in the Warsaw and Katowice regions. To give an idea of the industrial split the following are percentages of sales according to different categories of industrial activities: 24 per cent—engineering; 18 per cent—fuel and power; 18 per cent—food industry; 14 per cent—metallurgy; 10 per cent—chemicals; 7 per cent—light industry; 4 per cent—minerals; 4 per cent wood and pulp; 2 per cent—other.

Much industry is heavy and capital intensive and has been extensively subsidised during 40 years of central planning. Two particular problems exist in connection with Poland's heavy industry: one is the substantial excess capacity of most of the plants and the other is the environmental damage caused by heavy industry in many regions (*see* chapter 11 below).

The country is rich in certain raw materials, namely coal, sulphur, copper, zinc and silver. Poland is the sixth largest coal producer in the world and is the second largest exporter of sulphur; it is the seventh largest producer of copper and silver. There is very little oil although there are large quantities of natural gas as yet unexploited.

## 1.5 Agricultural base

The agricultural sector of the Polish economy accounts for 27 per cent of employment and an equal percentage of the national income. A significant amount of industrial activity is also associated with agriculture. Unlike most post-communist countries the agricultural sector in Poland comprises many small scale farms which exist alongside the state farms. One of the main reasons for this is that the farms were never fully collectivised. Comparative statistics demonstrate the following: 2.1 million private farms exist occupying 72 per cent of arable land and account for 86 per cent of production (in 1990); the average size is 7 hectares; there are 2,260 state farms which occupy 19 per cent of the arable land.

Prices in the agricultural sector were liberalised in 1989 and subsidies were removed, thereby starting the move to a market-based agriculture. However, the restructuring of the state farm sector has not really begun.

## 1.6 External trade relations

In 1990 the state monopoly of foreign trade was broken with the abolition of compulsory import and export licences. At the same time restrictions on quantity of imports and exports were removed.

Poland acceded to GATT in 1967 although at the time it was still very much linked to the Comecon trading block. The Protocol whereby Poland acceded is currently being revised. At the start of the transformation programme there were extensive restrictions on Polish exports to the West. Some of these were removed in 1990 following the signature of a co-operation agreement with the European Community in 1989. However, there still exist restrictions on the import of Polish goods into Western European countries although many of these affect all non-EC countries and are not directed at Polish goods in particular. Further trade liberalisation may well follow in the context of the Uruguay Round discussions.

Meanwhile Poland is pursuing its long-term goal of membership of the EC. As part of this an Association Agreement has been signed with the EC in December 1991 and is awaiting ratification by the EC members and the *Sejm* (lower house of the Polish Parliament). The Agreement deals with many matters in addition to trade issues and talks of the free movement of workers and capital and rights of establishment; a timetable is set for the creation of a free trade zone. In the short-term the Agreement is important for Polish exports for the following reasons:

- (1) some restrictions on Polish exports to the EC were lifted immediately;
- (2) other restrictions will be adjusted over a five-year period; and
- (3) Poland is not required to free up its markets in most cases until 1995.

Pursuant to this Agreement tariffs on 50 per cent of Poland's industrial exports were removed

in 1992 and Poland removed tariffs on approximately 27 per cent of EC industrial goods. The remaining tariffs will be removed from both sides over a period of time. There are however a number of 'sensitive' products listed in the Agreement which are not covered by the short or medium-term liberalisation theme of the document. Such products include iron and steel, coal, textiles and agriculture. Poland is permitted to introduce protective measures in the case of industries undergoing restructuring.

Poland is an associate member of EFTA and is currently negotiating an agreement for the elimination of tariffs. Some such abolitions will take place immediately and others will be gradual.

During the socialist era trade within the Comecon block took place through bilateral agreements and the use of transferable roubles. In 1992 this system had broken down and trading became more commercial. The position with Russia and the ex-members of the Soviet Union remains confused as it is not always clear whether and how trade bodies can enter into contracts and whether they are able to obtain foreign currency. Because of the loss of these markets Poland has entered into economic and co-operation agreements with some of the new Republics, namely Russia, Ukraine, Belorussia and Latvia.

## **1.7 Legal restructuring**

### **1.7.1 Introduction**

In a period of two years Poland has undoubtedly achieved a great deal in the area of legal reform. There have been substantial reforms in the areas of property, exchange control, foreign investment, tax, anti-monopoly, bankruptcy, banking and privatisation. In order to create the legal framework for a free market economy, such laws had to be enacted in some cases without any precedent and in other cases by way of amendment to existing laws. Poland has a legal tradition dating back to before the imposition of the socialist system and the concepts of the pre-socialist era were never completely suppressed. The Commercial Code is a prime example of this. The Code was enacted in 1934 and was never repealed; it contains the provisions on company law and although amended it remains essentially the 1934 Code. As such, it follows other European codified law systems. Other laws in the commercial field existed before socialism and remained in force, for example, laws on copyright, bills of exchange and inventions.

The Civil Code was enacted in 1964 and was the first codification of civil law in Poland. Prior to the Second World War there had been a Code of Obligations (1933) but not a Civil Code. Before Poland regained its independence in 1918 the legal position had been complicated due to the differing occupying powers. The laws of Austria, Prussia and Russia applied to the areas under their control and for a while the Napoleonic Code applied directly to the area known for a period as the Kingdom of Poland.

### **1.7.2 Property**

An important initial task was to remove the concepts of the socialist system from the Constitution of 1952. The Constitution contained provisions dealing with the socialist classifications of property dividing property into social property (state owned), personal property (such as one's house) and private property (some remaining individual ownership of economic activities, expected to wither away). These classifications were removed by the amendments of 29 December 1989.

The Constitution now contains provisions for the protection of private property; art 7 reads as follows: 'The Polish State protects and fully guarantees private property'. The concepts of socialist property having been removed from the Constitution, it was necessary to make amendments to the Civil Code and other legislation which contained further provisions dealing with property and in particular the rights of the State. Important amendments were made to the Civil Code in 1989 and to the Land Use and Management Act in 1990. State socialist property was considered the highest form of property and endowed with 'indivisibility'. The special status of state property and its indivisibility was abolished. One of the results of this was that the state and its agencies and enterprises became able to own, manage and dispose of their assets to private investors. In

the case of land they were also empowered to acquire long-term leases.

All property is now treated equally. However, property problems still remain with respect to questions of ownership between different state enterprises, clear title on transfer, and the claims of former owners. These issues are dealt with in more detail in chapter 6. The question of reprivatization is particularly complex and must be resolved in order to enable investors, domestic and foreign, to act without concern with respect to rights of ownership of land.

The process of 'communalisation' is an important factor in the changes taking place. This involves the transfer of state property to the local self-governing communities (the *gminas*).

### 1.7.3 Foreign investment

A number of laws have been enacted over the last decade with the aim of attracting foreign investment to Poland. The current law was passed on 14 June 1991 replacing the previous law of 23 December 1988. The previous Polish law had been criticised for being more restrictive than the laws of Hungary and Czechoslovakia. The new law is much more liberal than its predecessor.

Tax holidays have been removed, except at the discretion of the Minister of Finance where merited by the size and nature of the investment, and full remittance of profits abroad is now permitted. Under the previous law, approved investments benefited from a three-year tax holiday, which could be extended to six, but profits could only be remitted to the extent of the excess of foreign currency earnings over foreign currency expenditure plus 15 per cent of złoty profits.

The approval role of the Polish Foreign Investment Agency has been abolished and the Agency has been transformed into an organisation whose sole function is investment promotion. No permits are required unless the activities of the company in question are one of the following:

- (1) management of airports and seaports;
- (2) dealing in real estate and real estate brokerage;
- (3) activities in the military sector;
- (4) wholesale of imported consumer goods; or
- (5) provision of legal services.

In these cases the responsibility for approval is now with the Ministry of Privatisation.

In all other cases the foreigner may proceed directly to form a company under the Polish Commercial Code; the fact that a foreign company or individual may be a shareholder, even the majority or sole shareholder, is irrelevant as far as the establishment and operation of the company is concerned. The new law does contain one restriction in that foreign investors are required to form a joint stock company or limited liability company (roughly equivalent to the English public limited company or private company), but such a condition is not likely to be considered onerous by many investors. The minimum capital requirements for companies imposed by the 1988 law have been removed. The new rules under the Commercial Code will therefore apply: an issued share capital of 1 billion złotys (approximately US\$62,500) for a joint stock company and 40 million złotys (approximately US\$2,500) for a limited liability company. The minimum percentage investment of the foreigner (20 per cent) was also removed. Full details of the foreign investment law are given in chapter 2.

### 1.7.4 Privatisation

The Privatisation Law came into effect in August 1990. It has led to a number of stock exchange flotations, trade sales to domestic and foreign buyers, joint ventures, and 'liquidations' of small and medium size enterprises often resulting in the sale or lease of the assets of the enterprise to the employees and/or management.

The whole process of privatisation slowed down in the first half of 1992 but it is expected to become more active again under Janusz Lewandowski, the Minister of Privatisation, who was the Minister under the government of Bielecki in 1991. An important part of the process is the mass privatisation programme which has been under discussion for some time but requires legislation. A draft law has been drawn up and is currently being examined by Parliament. It involves a voucher