Changes in law

What’s new in the Polish law?
An overview of selected changes in regulations and their impact on business
Introduction

We are pleased to present to you our brochure reviewing the changes in law that may soon have a significant impact on your business. The publication contains commentaries and analyses gathered from the perspective of what in our view may be important in 2016. The materials also reflect the issues our law firm encounters every day.

We present issues from various fields of law and involving a range of sectors of the economy. We have focused on key changes in law and related obligations, as well as business and market trends that may be particularly noticeable this year.

The brochure was prepared by a team of experts from many fields of law and reflects our subjective choices. We hope you find the information in the brochure useful.

If you have any additional questions, please feel free to contact our lawyers. The heads of all of our practice groups are presented at the end of the brochure.
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The General Data Protection Regulation introduces fines that can be imposed by data protection supervisory authorities as high as EUR 20 million or 4% of the firm’s annual global turnover.
Big changes in data protection

The General Data Protection Regulation will force businesses to make numerous changes in their data protection policies. Failure to comply with the new rules may draw fines of up to 4% of an undertaking’s annual global revenue.

After more than three years of informal negotiations among European Union bodies in the form of “trialogue” (European Commission—European Parliament—Council), the final version of the General Data Protection Regulation was ironed out. It is to be voted on in early 2016 and will ultimately enter into force in the spring of 2018, replacing the Data Protection Directive (95/46/EC) of 24 October 1995.

The regulation will significantly modify the manner in which data controllers gather and process information about individuals. Any entity that offers services in EU territory or processes data of EU residents will be required to comply with the regulation. It will apply throughout the European Union.

Key changes

- Introduction of a duty to notify a data security breach. The data controller will be required to notify the data protection supervisory authority within 72 hours after learning of the incident. In some cases it will also be necessary to notify data subjects of the breach.

- Introduction of fines which may be imposed by data protection supervisory authorities—even as high as EUR 20 million or 4% of annual worldwide turnover.

- Raising the requirements for ensuring adequate level of security for processing of personal data. Businesses will have to maintain detailed documentation concerning processing activities, including documents confirming legal compliance of the performed operations. In some instances, it will be necessary to conduct privacy impact assessments analyzing the effects that services or products have on the privacy of individuals. Additional requirements will depend on the number of persons employed by the business, among other factors.

- Introduction of a requirement to design products and services so that their operation requires processing of as little personal data as possible, the data processing is transparent, and data subjects can monitor processing of data concerning him—a principle known as “data protection by design and by default.”

- Maintaining the general ban on transfer of personal data to third countries. The European Commission will still be authorized to issue a decision confirming that a given country ensures an adequate level of protection of personal data. However, the conditions for issuance of these decisions will be more stringent. Moreover, a transfer will be possible if the data controller implements appropriate safeguards in its data protection policy or the transfer is made on the basis of binding corporate rules.

- Expansion of the catalogue of rights of data subjects and reinforcement of the existing rights. There will be a right of data subjects to minimize processing of their personal data (“data minimization”), for example to the time required for verification whether personal data are up-to-date or to the time required to verify whether data controller interest justifies processing of the personal data despite an objection raised by the data subject.
Another right of the data subject is the right of portability, meaning the possibility of transferring data between enterprises at the request of the data subject. Meanwhile, the “right to be forgotten” will be added to reinforce the existing right of data subjects to intervene in the processing of data relating to them. In the case of processing of employees’ data, the final shape of the rules may change, because the regulation permits the adoption of more stringent protection of this category of data.

- Mandatory appointment of a data protection officer when the data controller is a public authority, data processing is the core activity of the controller or processor, or large quantities of sensitive data are processed.

- Introduction of the “one-stop shop” rule, centralizing data protection enforcement. Generally, administrative proceedings concerning the controller will be conducted by a single data protection supervisory authority in the EU. This authority will cooperate with its counterparts in other member states if the company conducts operations in other member states.

Data protection—challenges for business

Without a doubt, the General Data Protection Regulation will force businesses to make numerous changes in their data protection policy. Considering the high penalties, it is worth taking appropriate steps now to adjust internal corporate rules to comply with the regulation. Such measures should focus on data audits, an analysis of potential threats, and implementation of new models for processing of personal data.
Further improvements in alternative dispute resolution

The Act of 10 September 2015 amending certain acts to support amicable methods of dispute resolution entered into force on 1 January 2016. The changes are designed to popularize mediation and arbitration in civil cases by introducing a set of procedural and organizational improvements that should cut the time and cost of proceedings. The position of permanent mediators has also been established at the regional courts.

Key changes in mediation regulations

- Reinforcing the position of the mediator by enabling the mediator to assist the parties in formulating settlement proposals, or even, at the mutual request of the parties, to indicate how the dispute should be resolved, although this recommendation will not be binding to the parties.

- A duty to maintain the confidentiality of facts disclosed during mediation, not only on the part of the mediator but also the parties and any other persons taking part in the mediation, unless the parties release the mediator or other persons from this obligation.

- An obligation to indicate in the statement of claim whether the parties attempted mediation or other form of alternative dispute resolution before filing the case in court, and if no such attempts were made, to explain why not. Failure to provide this information will constitute a formal defect in the statement of claim.

- The ability for the court to summon the parties to participate in an informational meeting concerning methods of alternative dispute resolution or to summon the parties to appear in person at a closed session of the court for assessment of whether the case should be directed to mediation.

- The ability for the court to direct the parties to mediation at any stage of the case, and more than once during the same proceeding.

- The priority of the parties in selection of a mediator, as well as inclusion of additional information about qualifications in the list of permanent mediators maintained by the president of the regional court to help the parties choose a mediator.

- The mediator’s right to review the case file immediately after the parties enter mediation, unless a party objects within one week, as well as a duty for the court to promptly provide the mediator with the contact details of the parties and their counsel.

- Maintaining the positive consequences for plaintiffs interrupting the running of the limitations period on a claim covered by a request for mediation, if the plaintiff files a statement of claim within a further three months.

- Including in court costs the costs of mediation directed by the court. This enables releasing indigent parties from mediation costs, as well as other financial relief concerning court costs, such as (i) release from the court fee on an application to confirm an out-of-court settlement reached before a mediator and (ii) refund of the entire court fee to the parties if a settlement is reached before the hearing in the case at the first instance is commenced.

- The ability to charge trial costs to a party which refused, without obvious justification, to submit to mediation, regardless of the result in the case.
Key changes in arbitration regulations

- Introduction of proceedings at a single instance before the state court on applications for recognition or enforcement of a domestic arbitration award and petitions to set aside an arbitration award (post-arbitration proceedings).

- Cutting the period for filing a petition to set aside an arbitration award from three months to two months.

- Unifying the rules for judicial and arbitration proceedings in the case of the bankruptcy of a business, so that now an arbitration agreement will remain in force despite a declaration of bankruptcy, and proceedings pending before an arbitration court will not be automatically discontinued (Art. 428(84) of the Restructuring Law of 15 May 2015).

Significantly, favourable solutions have also been introduced in tax law to encourage the parties, particularly businesses, to resolve disputes amicably. The act introduces the possibility of settling a correcting invoice and other documents adjusting revenue and revenue-earning costs (adjusting the basis for personal income tax and corporate income tax) during the current settlement period.

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Damroka Kościelak | Maciej Jóźwiak
The amended Public Procurement Law will introduce new tools for selection of the most advantageous offer economically. One of them is a cost criterion based on the total life-cycle costs not only of products, but also of services and construction works.
Revolution in public procurement regulations

The deadline for transposing the EU’s three new public procurement directives—the new Classic Directive (2014/24/EU) and Utilities Directive (2014/25/EU) and the Concessions Directive (2014/23/EU)—into Polish law is 18 April 2016. This means that extensive amendments to Poland’s Public Procurement Law and executive regulations under the act should be expected soon.

It is not yet clear whether the changes will be based on an entirely new Public Procurement Law, which was drafted by the Public Procurement Office in mid-2015, or an amending act implementing only the essential changes. Thus, the future of public procurement law in Poland should be determined in the early weeks of 2016. As we write, there is less than 100 days left for transposition of the directives, and the anticipated changes—in whichever form—will require careful implementation. This will not be an easy task, and the grace period between adoption of the changes and their entry into force will probably be short.

What will the amendment deliver?

- Introduction of a “procurement passport” in the form of the European Single Procurement Document confirming fulfilment of the conditions for participating in procurement procedures, which can be used in multiples procedures without having to file new documents each time, e.g. involving taxes and social security payments. And if it is necessary to obtain such documents, the task of obtaining them is shifted to the contracting authority if they are available without charge in a national database.

- New tools for selecting the most economically advantageous offer. One of them is the new cost criterion based on the total life-cycle costs not only of products, but also of services and construction works. The new directives also provide for the possibility of establishing a common methodology for life-cycle costing, which would then be used by all contracting authorities in the EU. The qualifications of the contractor’s personnel will also be added as an express criterion for evaluation of offers.

- The possibility of contractors’ relying on the capacities of other entities will be limited.

- New procedures will be added, including the “innovation partnership” and a procedure for purchasing goods and services that are not yet available on the market.

- Simplified procedures in awarding social contracts and contracts for certain other services, such as legal, hotel, catering, cultural and healthcare services.

- New and much more flexible rules for amending existing contracts. The new provisions will greatly expand the catalogue of instances in which it is permissible to amend a contract. These provisions are based on the conception that contract modifications are generally permissible so long as they do not materially change the nature of the initial contact and do not upset competition. If the value of the modification is less than the EU thresholds and 10% of the original value of the contract in the case of goods and services (15% in the case of construction works), the change can be introduced through an annex to the existing contract, as long as the original character of the contract is maintained.

The new procurement directives are much more detailed than the previous ones. Consequently, their implementation will in many instances repeat the wording of the directives. In practice, this will lead to a much more pronounced pro-EU interpretation of the Polish Public Procurement Law and the case law from the Court of Justice of the European Union. However, if the deadline for transposition of the directives by 18 April 2016 is not met, or the transposition is not conducted properly, the principle of direct application of the directives will take on much more importance.

Tomasz Zalewski | Dr Aleksandra Kunkiel-Kryńska | Dr Aneta Wala
Changes in criminal procedure

2015 brought huge changes in criminal procedure in Poland, as witnessed first and foremost by the increased adversarial aspect of criminal trials. Unlike under the previous system, now the evidentiary initiative rests with the parties to the proceeding, i.e. the accuser and the accused.

The role of the court in this respect has been significantly reduced. Now the court acts solely as an arbiter. The court may admit evidence at its own initiative only in exceptional instances, justified by special circumstances. This means that the trial parties shape the evidence on the basis of which the court will decide the case.

Expanded access to court-appointed counsel

The increased role of the adversary principle in criminal proceedings also required changes in the form of broader access to court-appointed counsel. Now the rules enable the use of court-appointed counsel as early as the stage of the preparatory proceedings if the suspect properly demonstrates that he is unable to cover defence costs without prejudice to the necessary support of the suspect and the suspect’s family. During the court proceeding defence counsel will be appointed at the request of the defendant, who is not required to show that his financial situation prevents him from covering the costs of a defence. Another important change is awarding legal advisers the right to represent the accused in a criminal trial.

Fruit of the poisonous tree

It is now impermissible to admit evidence in a criminal trial which was obtained through a prohibited act. Before, the principle of the “fruit of the poisonous tree,” preventing the use of illegally obtained evidence in a criminal trial, was not recognized in the Polish legal system, and the court considered all evidence relevant to resolving the case. Now the method by which evidence is obtained has become highly relevant. If the court finds that evidence was obtained illegally, the court will disregard that evidence.

Appellate procedure

There are major changes as well in appellate procedure, designed to limit the tendency to set aside judgments from the lower courts and remand cases for reconsideration. Now it is possible for the court to admit evidence also at the appeal stage. This expands the ability of the court of second instance to rule on the merits of the case. The increased number of cases where the appellate court enters a new judgment rather than remanding the case to the lower court helps reduce the length of the proceedings.

The amendment also introduced changes in the grounds for temporary arrest and other preventive measures, and limitations on overuse of such measures.

The amendment is designed first and foremost to combat overly long proceedings, and thus allow citizens to obtain a resolution in a shorter time. The changes are also supposed to encourage more efficient use of the working time of judges by expanding the competencies of judicial referees and permitting them to decide not only technical matters, but also minor substantive issues.

Although these changes entered into force in mid-2015, while evaluating their effectiveness and influence on the court of preliminary and judicial proceedings, lawmakers are already considering a return to the rules in force before the amendment. It is therefore vital to track further changes in criminal procedure which will no doubt also be introduced in 2016.

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Elżbieta Solska  |  Anna Kasnowska
New rules for charging statutory interest

An amendment to the Civil Code concerning the method of calculation and the level of statutory interest entered into force on 1 January 2016. Provisions of the Act on Payment Terms in Commercial Transactions were also amended.

The amendment transposes the Late Payment Directive (2011/7/EU) into Polish law. As indicated in the justification for the Act Amending the Civil Code, the Act on Payment Terms in Commercial Transactions and Certain Other Acts, the purpose of the changes is to introduce a uniform and simplified mechanism for calculating interest, reduce payment gridlock, and improve the financial liquidity of creditors.

Another key change is introduction of a mechanism for calculating interest for late payment in commercial transactions and a revision of the method for calculating maximum interest rates.

How was it before?

Previously, statutory interest, representing payment for use of another person’s capital or damages for delay in performance, was calculated according to the following mechanism: under Civil Code Art. 359 §2 in its previous wording, if the amount of interest was not determined otherwise, the creditor was entitled to interest at the statutory rate set through a regulation by the Council of Ministers—as of 31 December 2015 it was 8%.

The parties could also set another level of interest, but no higher than the maximum interest, which could not exceed four times the Lombard rate of the National Bank of Poland. Just before the amendment entered into force, the maximum interest rate was 10%. However, in the case of late payment, the creditor could demand interest calculated as set forth in Civil Code Art. 481, which in its previous wording provided that if the parties did not set the interest rate in advance, statutory interest is due, but if a higher value was established, the creditor could demand interest at the higher rate.

Under Art. 7(1) of the Act on Payment Terms in Commercial Transactions in its previous wording, a creditor that was not a public entity was entitled to interest on delay in performance of an obligation in the amount determined on the basis of Art. 56 §1 of the Tax Ordinance as 200% of the base Lombard rate plus 2 pp, but no less than 8%, unless the parties agreed to higher interest. The level of interest on delay in professional dealings was thus 8% per annum as of 31 December 2015. It follows that the previous mechanisms for determining the level of statutory interest under the Civil Code and interest for delay in commercial transactions were totally different.
New, uniform mechanism for determining statutory interest rates

The amending act introduced a new uniform mechanism for determining statutory interest rates, also including interest for late payment in commercial transactions, based on the reference rate of the National Bank of Poland, which is the rate of return on money bills issued by NBP and sold to commercial banks. The changes also permit differentiation in the rate of interest on capital and interest on delay by setting a higher rate for interest on delay, which highlights that this type of interest is in the nature of damages. The new regulations also focus on reinforcing desirable payment attitudes in commerce by establishment of higher interest for late payment in commercial transactions than in consumer transactions.

Under the new wording of Civil Code Art. 359 §2, the basis for determining statutory interest rates is the NBP reference rate plus 3.5 pp; as of today the reference rate is 1.5%, and thus the statutory rate calculated in this manner is 5%. The amended Art. 359 §3 provides, however, that the maximum interest rate cannot exceed twice the statutory interest rate—and thus, as of today, it is 10%. The level of interest on delay after the amendment is the NBP reference rate plus 5.5 pp, and thus currently is 7%. The maximum rate of interest on delay cannot exceed twice the basic level of interest on delay.

Statutory interest for late payment in commercial transactions is equal to the NBP reference rate plus 8 pp—so as of today it is 9.5% per annum. The new regulations have been in force since 1 January 2016, but in the case of commercial transactions entered into earlier, the previous regulations apply, while interest due for periods through 31 December 2015 should be calculated under the previous rules.

Pursuant to the amended regulations, the level of interest on capital and interest on delay will be announced in the official journal Monitor Polski by the Minister of Justice, and the rate of interest for late payment in commercial transactions will be announced by the Minister of Economy.

Marta Matejak-Szulc
Breaking new ground in bankruptcy and restructuring

As of 1 January 2016, the existing Bankruptcy & Recovery Law of 2003 was replaced by two separate acts: the Restructuring Law and the Bankruptcy Law. The goal of the changes was to separate restructuring from the stigma of bankruptcy and create better possibilities for enterprises to return quickly and efficiently to good financial condition.

The Restructuring Law regulates:

- Conclusion by a debtor that is insolvent or threatened with insolvency of the arrangement with its creditors, as well as the effects of the arrangement
- The conduct of reorganizing measures.

A debtor threatened with insolvency means a debtor whose economic situation indicates that it may become insolvent within a short time. In turn, the basic concept of an insolvent debtor has been modified and regulated in the Bankruptcy Law, to which the Restructuring Law makes a cross-reference in this respect.

Under Art. 11 of the Bankruptcy Law, a debtor is insolvent if it has lost the ability to perform its due and payable monetary obligations. It is presumed that the debtor has lost this ability if its delay in performance of monetary obligations exceeds three months. In addition, a debtor which is a legal person (or an organizational unit without legal personality but vested with legal capacity under a separate act) is also insolvent if its monetary obligations exceed the value of its assets and this state is maintained for a period exceeding 24 months.

The Restructuring Law introduced four types of restructuring proceedings:

- Proceedings for approval of an arrangement (postępowanie o zatwierdzenie układu)
- Expedited arrangement proceedings (przyspieszone postępowanie układowe)
- Arrangement proceedings (postępowanie układowe)
- Reorganization proceedings (postępowanie sanacyjne).

Proceedings for approval of an arrangement are the least formalized method for conducting restructuring, intended for entities anticipating that they will be able to exit their financial problems in the near future. The characteristic feature of this procedure is the requirement for the debtor to gather votes from creditors supporting the arrangement prior to filing the application for approval of the arrangement. Approval of the arrangement will depend on the amount of disputed claims. If this value exceeds 15%, an arrangement cannot be concluded through this procedure. An order approving the arrangement should be issued by the restructuring court within two weeks after filing of the application for approval of the arrangement.

Under the other three procedures, it will be necessary to file an application to open the particular type of restructuring proceeding. But in line with the call for speed and efficiency in these proceedings, very short periods are provided for ruling on these applications. In expedited arrangement proceedings, the court should generally rule within one week, and in arrangement proceedings and reorganization proceedings two weeks, with the possibility of extending this period to six weeks if it is necessary to schedule a hearing on the matter.

The most far-reaching restructuring procedure is reorganization proceedings, which cover not only changes in relation to the debtor’s existing obligations and assets, but also cover persons employed in the restructured enterprise. This procedure is intended mainly for debtors that are insolvent, but where maintaining the entity as a going concern will for various reasons be more advantageous than bankruptcy, and thus it is worthwhile to restructure the enterprise.

In the amended Bankruptcy Law, apart from the new definition of an insolvent debtor, there is notably an extension of the period for filing a bankruptcy petition. The previous period of two weeks has been extended to 30 days. Meanwhile, release from liability for injury caused by failure to file a bankruptcy petition is available if
the debtor shows that during that period restructuring proceedings were opened or an arrangement was approved in a proceeding for approval of an arrangement.

The categories of claims determining the order of satisfaction have also changed:

- Previous categories I and II have become category I
- Previous categories III and IV have become category II
- Previous category V has become category III.

The Central Register of Restructuring and Bankruptcy is to be established from 1 February 2018, and will serve as a location for placement and publication of resolutions, orders, documents and notices concerning restructuring and bankruptcy proceedings, access to information, filing of pleadings and other documents and service of papers, organization of the work of the restructuring courts and bankruptcy courts, and access to forms for pleadings and other documents.

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Damroka Kościelak
New rules in employment and social insurance law

Significant changes in employment law and social insurance enter into effect in 2016. The new regulations contain ambiguities which foretell difficulties in applying them. Further changes will be required so that they can be interpreted properly. But all signs are that there will be many more revolutionary changes this year.

Changes in parental leave

New rules have been in force since 2 January 2016 concerning employees’ rights to take maternity leave, paternity leave and childrearing leave. One of the new solutions is the possibility of parents’ taking as much as 16 weeks of parental leave through the end of the calendar year in which the child reaches age 6. In turn, parents who decide to combine parental leave with work for their employer—on no greater than a half-time basis—will enjoy an extended period of such leave pro-rated to the time basis they work, but no longer than 65 weeks (68 weeks in the case of a multiple birth). In both instances, the employees are protected against termination of their employment. The employer may refuse to consent to combining parental leave with part-time work only if it is not possible because of the organization or type of work performed by the employee. The employer must inform the employee in writing of the reason for the refusal.

New rules for employment contracts

New rules for entering into and terminating employment contracts for a definite period enter into force on 22 February 2016. The period of employment on the basis of a fixed-term employment contract, as well as the combined period of employment on the basis of multiple fixed-term contracts between the same parties, cannot exceed 33 months, and the maximum number of such contracts is three. If the permissible period of employment or maximum number of such contracts is exceeded, the employee will be deemed to be employed under an employment contract for an indefinite period.

This rule does not apply to contracts concluded:

- To replace another employee during the period of his or her justified absence
- For performance of occasional or seasonal work
- For performance of work for the duration of a term of appointment
- When objective grounds on the part of the employer justify conclusion of a given fixed-term contract in order to satisfy legitimate needs of a periodic nature and it is necessary in light of all of the circumstances surrounding conclusion of the contract.

In the last instance, the employer is required to notify the competent labour inspector, in writing or electronically, of conclusion of such employment contract, together with an indication of the reasons for concluding it, within five business days after it is concluded. Contracts of the types listed above must specify the purpose or circumstances of their conclusion by including information about the objective reasons justifying conclusion of such a contract.

Contracts in force on the effective date of the new regulations must be supplemented within three months after that date, i.e. by 22 May 2016, to include information specifying the purpose or circumstances of conclusion of the contract if they were concluded under the circumstances listed above.

The prior period of work for the same employer will be calculated one way for purposes of classification of the contract—in accordance with the “3/33 rule”—and another way for purposes of determining the termination notice period. The regulations introducing the amendment explain how to calculate the employee’s tenure.
What about termination notice periods?

Under the new regulations, the termination notice period for a fixed-term employment contract will be the same as for an employment contract for an indefinite period:

- Two weeks if the employee has been employed less than six months
- One month if the employee has been employed for at least six months but less than three years
- Three months if the employee has been employed for three years or more.

Rehiring of employee for trial period

From 22 February 2016 it will be possible to rehire an employee for a trial period if the person is hired:

- To perform different work
  
or
- To perform the same work at least three years after termination or expiration of the previous employment contract.

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Ewa Łachowska-Brol
In late 2015 the Ministry of Finance published proposed changes to the Tax Ordinance which would introduce a general anti-avoidance rule into the Polish tax system to prevent creation and exploitation of artificial legal structures to avoid taxation in Poland.
A shake-up in tax law

A general anti-avoidance rule will most likely return to the Polish tax system in 2016.

At the end of 2015 the Ministry of Finance published a draft of changes to the Tax Ordinance which would introduce a general anti-avoidance rule (GAAR) into the Polish tax system, to prevent creation and exploitation of artificial legal structures to avoid taxation in Poland.

The draft defines tax avoidance as an action or set of actions taken primarily in order to achieve a tax advantage inconsistent under the circumstances with the subject and purpose of a tax act, if the taxpayer’s arrangement was artificial. Such “artificial” action or actions would not result in achievement of the intended tax advantage. The tax consequences would be determined on the basis of the state of affairs that would have existed if such “artificial” actions had not been taken or on the basis of the “appropriate” action—defined by the drafters as the action which the entity could have taken if it had acted reasonably, guided by lawful purposes other than achievement of a tax advantage inconsistent with the subject and purpose of the tax act.

When will GAAR be enacted and what period will it cover?

The proposed amending act has not yet been submitted to the Parliament. Currently the planned changes in the Tax Ordinance are at the stage of consultations. But it can be expected that the GAAR provisions will enter into force as early as the first quarter of 2016. Under the current wording of the proposal, the new regulations would enter into force 14 days after publication in the Journal of Laws.

The proposal does not specify which acts the new regulations will apply to. Thus it cannot be ruled out that the tax authorities will attempt to apply the GAAR to actions taken by taxpayers prior to entry into force of the new GAAR.

How has it been?

There was a GAAR in force in the Polish tax system in the years 2003–2005. However, the Constitutional Tribunal held that it was unconstitutional. The unconstitutionality of the previous GAAR was based in particular on interpretational doubts and uncertainties with respect to the wording of the provision. So for the past decade no GAAR has functioned in the Polish tax system.

What actions by taxpayers could be found to be artificial?

Under the proposal, an arrangement would be regarded as artificial if under the existing circumstances it would not have been applied by a rationally acting entity guided by lawful purposes other than obtaining a tax advantage inconsistent with the subject and purpose of a tax act. In evaluating whether the taxpayer’s arrangement is artificial, factors such as the following should be considered:

- Unjustified division of operations
- Involvement of intermediate entities without economic justification
- Elements leading to obtaining a state the same as or similar to the initial state
- Elements offsetting or cancelling each other out
- Economic risk exceeding the anticipated non-tax benefits to such a degree that it should be found that a rationally acting entity would not have chosen to act in that manner.

Under the proposal, an action is regarded as taken primarily to achieve a tax advantage if the other purposes of the action indicated by the taxpayer are found to be of little importance.

In the justification for the proposal, the Minister of Finance provided examples of schemes that could be aimed at impermissible avoidance of taxation, such as:

- Schemes using hybrid instruments resulting in double non-taxation of certain categories of income
Schemes using tax-transparent entities, trusts, or foreign foundations operating solely for a single beneficiary

Schemes using holding entities to reduce the taxation of dividends obtained by individuals in Poland.

**Who will decide on application of GAAR and under what procedure?**

- The GAAR could be applied only by the Minister of Finance through issuance of an administrative decision following a proceeding to determine whether the GAAR should be applied. In that proceeding, the Minister of Finance could seek an opinion from a body called the Tax Avoidance Council on the justification for applying the GAAR in the given case.

- It would also be possible to obtain an advance ruling against issuance of a decision applying the GAAR against the taxpayer. The application for issuance of an advance ruling would have to contain an exhaustive description of the actions covered by the application and would bear a fee of PLN 20,000.

- Application of the GAAR would also be excluded if the tax advantage from the use of artificial actions does not exceed PLN 100,000 during the taxpayer’s settlement period.

Karolina Stawowska | Małgorzata Sajkiewicz
The “consumer” amendment of the Competition and Consumer Protection Act authorizes the president of UOKiK to publish free announcements and warnings on public radio and television about behaviours by businesses that could seriously threaten the interests of consumers.
Significant changes in law and policy of consumer protection

2015 was the first year when the Consumer Rights Act of 30 May 2014 was in force. The president of the Office of Competition and Consumer Protection (UOKiK) has announced that in 2016 UOKiK will conduct a series of inspections to determine whether the act is being properly applied. And on 17 April 2016 the “consumer” amendment to the Competition and Consumer Protection Act enters into force, vesting the president of UOKiK with a number of new tools for monitoring compliance with consumer law.

The Consumer Rights Act introduced new rules for conclusion of off-premises and distance contracts with consumers. It significantly expanded the informational obligations of businesses with respect to consumers and changed the rules for the right to withdraw from a contract. And in re-implementing the Consumer Sales Directive, the act also amended the Civil Code provisions on sales contracts, particularly the provisions governing the warranty for defects and guarantees, and introduced a section to the Civil Code concerning sellers’ claims for redress in connection with defects in items sold.

During the first year the Consumer Rights Act was in force, various practical issues and questions concerning its application arose. This primarily concerned issues of defining a “durable medium,” the procedure for concluding contracts “by telephone,” and changes in the terms and conditions used by online shops. The act also required introduction of major changes in complaint procedures in sales processes, at regular shops and online shops. These changes involve in particular ensuring the consumer the possibility of asserting immediately any of the four entitlements in the case of complaints, i.e. repair, replacement, price reduction or withdrawal from the contract.

These issues are certain to be the subject of interest on the part of UOKiK during the comprehensive inspections announced for 2016 to check whether businesses have properly implemented the Consumer Rights Act.
Consumers under protection

2016 will also be a time for introduction of significant legal changes in the area of protection of consumers’ rights. The “consumer” amendment to the Competition and Consumer Protection Act, which goes into effect on 17 April 2016, introduces changes including:

- Authority for the president of UOKiK to publish free announcements and warnings on public radio and television about the behaviour of businesses that could seriously threaten the interests of consumers (including information about the behaviour of a specific business and the probable consequences)

- Reform of the register of prohibited clauses and a new model for review of abusive provisions of form contracts, which will be conducted by the president of UOKiK by way of administrative decisions

- Entitling the president of UOKiK to impose fines for use of abusive clauses in form contracts, in an amount of up to 10% of the turnover generated by the enterprise in the prior year

- Introduction of the institution of the "secret shopper" to gather evidence of violations of law at the pre-contractual stage

- A ban on “mis-selling”—offering financial services to consumers which do not correspond to their needs or offering financial services in a manner inappropriate to the nature of the services.
Protection of competition: Unleashing a new force?

Some very interesting developments in both Polish and EU competition law can be expected in 2016. Some of them will be continued in later years.

In 2015 the activities of the president of the Office of Competition and Consumer Protection (UOKiK) main emphasis was on the protection of consumers, and in the educational sphere on promotion of a culture of compliance among Polish businesses. But classic antitrust issues will not be overlooked in the near future.

Greater activity of the competition authority

As announced by the president of UOKiK, this year the office should take increased initiative in enforcing competition law and in creation of “soft law.” The following issues are notable in this context:

■ First decisions will be issued by the authority applying the solutions introduced into Polish competition law in 2015—in particular presentation of detailed justification for allegations and the revised clarifications concerning issuance of compulsory decisions and the clarifications concerning imposition of fines.

■ This year may also witness instances where antitrust proceedings are completed using the procedure for voluntary submission to punishment as well as the first decisions concluding proceedings initiated by applications filed under the “leniency plus” program.

■ In 2016 it is anticipated that the president of UOKiK will present a draft of the authority’s guidelines for evaluation of vertical arrangements for social consultations. This will be an excellent opportunity for public debate of many issues of vital importance to businesses in the area of vertical relations which raise serious difficulties in assessment from the perspective of competition law, such as “most favoured nation” clauses privileging one customer or supplier, or concrete examples of applying an economic approach to resale price maintenance practices.

Easier to seek damages for violation of competition law

The Damages Directive (2014/104/EU) must be transposed into Polish law by 27 December 2016. The outline of the bill that would achieve this identifies the need to introduce changes into Polish law concerning the limitations period on claims, the ability to disclose evidence gathered by UOKiK during antitrust proceedings, and, finally, a presumption that “cartel infringements cause harm.”

European Commission examines e-commerce

In the area of EU competition law, the European Commission’s investigation of the e-commerce sector should be mentioned. Many Polish companies have received long and detailed questionnaires from Brussels. In mid-2016, the Commission plans to publish a preliminary report, which will then undergo social consultations. The final report is to be published in the 1st quarter of 2017. In the past, such sector studies have led to specific legislative initiatives, including promulgation of “soft law,” and also resulted in instigation of proceedings to verify suspicions of competition law violations revealed during the study. This issue can be examined more extensively in another year.

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Piotr Skurzyński
A review of current EU regulations may lead to a prohibition of territorial restrictions on access to digital content—geoblocking.
Interesting changes in intellectual property law

There will be no revolution, but national and European initiatives may have a noticeable impact on practice.

Reprographic fees

Attempts to update the rates and catalogue of devices subject to reprographic fees are expected to be renewed in 2016. In 2015 there was a heated debate over the planned amendment of the regulation of the Minister of Culture and National Heritage specifying the devices and media used for storing and playing works and covered by fees payable to collective rights management organizations. Currently these fees are set at 0.19% to 3% of the sale price for these items and are paid by their manufacturers and importers. The current regulation was amended for the last time in 2011, and with the progress in technology it has largely fallen out of date. The debate in 2015 involved primarily the plans to extend these fees to smartphones and tablets, which currently are not mentioned in the regulation.

Liability in damages

The current year may be crucial when it comes to liability for damages under copyright law. In 2015 the Constitutional Tribunal held that the possibility of pursuing simplified damages in the amount of three times the equivalent licence fee (Art. 79(1)(3)(b) of the Act on Copyright and Related Rights) is unconstitutional. A similar issue is being considered by the Court of Justice of the European Union. In the case of Stowarzyszenie Oławsko Telewizja Kablowa (C-367), it will decide on the consistency with EU law of Art. 79 insofar as it provides for the possibility of pursuing claims for twice or three times the fee that at the time of the suit would have been payable for a licence to use the work for which the copyright was infringed, without the need to prove the actual amount of the damages and a causal connection.

Electronic services and copyright on the Internet

A regulatory review is currently underway in the EU which may lead among other things to introduction of a ban on use of territorial restrictions on access to digital content (geoblocking), expansion of the range of exceptions and limitations to copyright with respect to data mining processes and for educational purposes, and stepping up the mechanisms for combating piracy.

In addition, in 2016 the Court of Justice will issue important judgments for interpretation of the existing regulations. Among the topics the court will rule on in 2016 are:

- The scope of liability of the provider of an open WiFi network for copyright infringement by users of the network (McFadden, Case C-484/14)

- The possibility of imposing liability on the user of a service for streaming a work uploaded to the Internet without the permission of the copyright holder, and more precisely the scope of copyright exception in the form of a transient copy made by the user during streaming (Filmspeler, C-527/15)

- The ability to block sites aggregating links to protected works (Pirate Bay, Case C-610/15)

- The scope of liability for linking to a work uploaded to the Internet without the permission of the copyright holder (GS Media, Case C-160/15, as well as Filmspeler and Pirate Bay mentioned above).
EU trademark

Regulation 2015/2424 will enter into force on 23 March 2016. From then on, the Community trademark will be replaced by a new term—European Union trademark. The new regulation is also designed to facilitate registration of new marks, including sounds, and to improve trademark protection. The permissible use of signs covered by a trademark by third parties will be limited. The fee system will also change, resulting in lower fees, particularly in the case of fees for renewal of trademark registration.

Protection of trade secrets and confidential information

There are plans to enact a Trade Secrets Directive harmonizing the scope of protection of confidential information and trade secrets, which now varies across the EU member states. The proposed directive will primarily introduce a definition of trade secrets and specify in detail the actions regarded as violations of trade secrets.

Tomasz Zalewski  |  Paweł Lipski  |  Katarzyna Lejman  |  Konrad Basaj
Lawmakers’ interest in revitalization and attempts to create coherent policies in this area may lead to interesting construction projects.
What will happen in real estate law?

An important amendment to the Construction Law was made in mid-2015. Considering the speed of changes in the past, it might seem that 2016 will not deliver any more major changes in real estate law. Nothing could be further from the truth.

**Urban Planning and Construction Code**

In 2016 work will continue in the Construction Law Codification Committee on the Urban Planning and Construction Code. It is intended to deal comprehensively with local zoning policy and the real estate development and construction process. The committee is now working on the urban planning part of the code. The construction section was launched on the legislative path in May 2015 and is now the subject of public consultations. After the draft of the urban planning section is finalized, the next step will be to merge the two parts (construction and urban planning) into one consistently worded act.

**Revitalization**

The Revitalization Act entered into force at the end of 2015. Under the act, revitalization is the comprehensive process of rescuing degraded areas from crisis through integrated actions for the benefit of the local community, space and economy. A degraded area is terrain in which there is a concentration of negative social phenomena as well as, for example, degradation of the technical condition of buildings, a low level of transit service, and poorly adapted urban planning solutions. Lawmakers’ interest in revitalization and attempts to create coherent policies in this area may lead to interesting construction projects. In 2015 the Ministry of Infrastructure and Development estimated that revitalization in Poland could cover land inhabited by about 2.4 million people.

**Real estate finance**

The long-awaited amendment to the Act on Covered Bonds and Mortgage Banks and certain other acts entered into force on 1 January 2016. The changes should result in an increase in issues of covered bonds and greater reliability of the bonds. The statistics from neighbouring countries demonstrate that the room for growth in this instrument is great. It may be assumed that more mortgage banks will appear on the market, and the existing ones will be more visible in financing transactions. We may also observe shifting of portfolios of mortgages from universal banks to mortgage banks.

**Acquisition of agricultural real estate**

The middle of 2016 will be a time of trial for new regulations governing the acquisition of agricultural land. The new Agricultural System Act enters into force on 1 May 2016, replacing the current act of the same name. It will be of vital importance for anyone planning to invest in agricultural land anywhere in Poland. The new act primarily expands the regulations governing pre-emptive rights.

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Patryk Galicki  |  Kamil Lewandowski
No joint proxy with management board member

On 30 January 2015, a seven-judge panel of the Supreme Court of Poland adopted a resolution (III CZP 34/14) prohibiting entry in the commercial register of the National Court Register (KRS) of a single commercial proxy who can only act jointly with a member of the management board. Although the resolution came into force last year, companies will continue to feel its effects this year.

The previous practices followed by the registry courts in this respect varied. Some courts permitted entry in the commercial register of a “joint commercial proxy with a management board member,” also known as an “improper joint commercial proxy.” Other courts did not accept this type of entry. For this reason, the Supreme Court resolved to unify the rules for entry of a joint commercial proxy.

Polish law expressly recognizes the following types of commercial proxy:

- Independent commercial proxy (prokura samoistna)—each proxy may act on his or her own
- Joint commercial proxy (prokura łączna)—all joint proxies must act together
- Branch proxy (prokura oddziałowa)—the proxy’s authority is restricted to matters disclosed in the register for a specific branch of an enterprise.

The Supreme Court held that there were no legal grounds for an enterprise to issue any other types of commercial proxies, including the “improper” joint proxy. However, the court also held that the effectiveness of actions previously taken by such improper proxies will not be contested. Additionally, the resolution required registry courts to delete these defective entries at their own initiative and required companies to correct the defective description in the commercial register of how the company is represented.

Róża Warszawik
The court deletes dead companies

On 1 January 2015, an amendment to the National Court Register (KRS) Act came into force authorizing registry courts to strike companies off the commercial register at the court’s own initiative, with the aim of increasing the certainty and security of commerce, improving the efficiency of the registry courts, and reducing court costs. The first instances of companies being stricken off the register under the new regulations are likely to be observed this year.

Previously, the regulations permitted only opening of compulsory proceedings in a situation where a company entered in the National Court Register failed to file the required documents, e.g. financial statements. The court would summon the company to make the required filing within seven days under the threat of a fine. Unfortunately, compulsory proceedings proved to be an insufficient measure. The new regulations provide for the registry court to open proceedings at the court’s own initiative for dissolution of a registered entity, with no liquidation proceedings, in situations where:

- In denying a bankruptcy petition or discontinuing bankruptcy proceedings, the bankruptcy court found that the evidence in the case justified dissolution without liquidation
- A bankruptcy petition was denied or bankruptcy proceedings were discontinued because the assets of the insolvent debtor were insufficient to cover the costs of the proceedings
- A decision has been issued waiving or discontinuing compulsory proceedings
- No annual financial statements have been filed for two successive financial years, despite requests from the registry court
- Other duties to update the company’s particulars in the register have not been performed despite the registry court twice requesting the entity to do so.

Additionally, in the course of the proceeding for dissolution of a registered entity without liquidation, the registry court will examine whether the entity has any disposable assets and actually conducts any business. If a company has no disposable assets and conducts no actual business, the registry court will order that it be dissolved with no liquidation proceedings and that the entity be deleted from the register. The entity’s assets are then taken over by the State Treasury, which is liable for the obligations of the entity out of the acquired assets.

Companies that had failed to abide by all of their obligations under the National Court Register Act were given until the end of June 2015 to put their house in order. The first proceedings for dissolution of registered entities without liquidation began on 1 July 2015.

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Róża Warszawik
Second phase of changes in KRS

In January 2015 the first set of regulations amending the Commercial Companies Code went into force, primarily expanding the group of entities that can enter a registered partnership or limited partnership in the National Court Register (KRS) online. The second phase enters into force on 1 April 2016.

The new set of regulations enables businesses to make the following changes in KRS via the online system:

- Transfer of the entirety of the rights and obligations of a partner
- Change of address
- Approval of the financial statement
- Dissolution
- Increase of share capital following registration of the company, but only for cash contributions, using the standard form for the resolution amending the articles of association of a limited-liability company (but also for in-kind contributions if the articles of association are amended by a notarial deed)
- Sale of shares
- Establishing the list of shareholders
- Appointment of a commercial proxy in companies established prior to 15 January 2015.

It will also be possible to amend the partnership agreement of a registered partnership or limited partnership with respect to variable provisions, i.e. those which can be modified in the online system.

If it turns out that any of the changes planned by the entity cannot be conducted using the online system, it will be possible to register the changes in the traditional form, by amending the articles at a notary. Then the company will function further as a company registered under the general rules.

Róża Warszawik
The financial sector faces new challenges

2015 was a year of exceptional legislative activity in the area of financial services, both nationally and at the EU level. There are hardly any financial service providers who will not need to adapt their business in 2016 to comply with new laws.

In 2016 laws will change for banks, insurers, acquirers, non-bank issuers of payment cards, savings and loan associations and loan firms. Many changes also await the capital market.

Payment services

European lawmakers have made their mark in the field of payment services (the Payment Accounts Directive, Payment Services Directive 2, and the Interchange Fees Regulation). The new Anti-Money Laundering Directive should also be mentioned. In consequence, 2016 will be a time for implementation of these changes (or at least the first legislative steps toward implementation) into the national legal environment. For regulated entities, it will be a time for meetings of working groups, taking positions and reaching compromises, and lobbying for specific solutions, because as always the devil is in the details.

Apart from monitoring local implementation efforts, payment service providers should also pay attention to implementation work on PSD2 at the EU level, i.e. work conducted by the European Banking Authority on proposed technical regulatory standards aimed at payment service providers, setting forth the requirements for strong customer authentication. The solutions adopted by EBA will set minimum standards for regulated entities for systemic solutions ensuring security for the users of payment services. From their perspective, payment service providers will need to calculate the financial outlays necessary to implement new solutions or modify the existing ones.

Consumer credit

When it comes to changes in national law, regulated entities and their lawyers will wrestle with interpretation of new regulations in the amended Consumer Credit Act, the act on handling of consumer complaints, and unclear concepts used in the definition of “mis-selling.”

There are also many challenges ahead for loan firms, which will be affected by introduction of a limit on non-interest costs of credit and maximum rates of default interest, as well as the need to cover new financial burdens. This will force loan institutions to seek new business models. At the same time, they will continue to struggle with a lack of stability in the legal environment in connection with legislative work underway on such issues as licensing of operations, financing of loan intermediaries, advertising and marketing.

Public companies

The system for performing reporting obligations by public companies, including those listed on NewConnect, will change greatly. An amendment to the Public Offering Act awaits us in connection with the need to implement the Market Abuse Directive. The rules of the EU’s Market Abuse Regulation will also enter into force. Ultimately, the catalogue of events indicated in Poland’s regulation on current and periodic reports as the basis for issuing current reports will disappear. The concept of inside information will play a greater role. Meanwhile, the fines which the Polish Financial Supervision Authority may impose for violation of reporting obligations will increase considerably.
**Insurers**

The new Act on Insurance and Reinsurance Activity of 11 September 2015 enters into force in 2016. It transposes into Polish law the EU’s Solvency II Directive (2009/138/EC) and other EU rules. It also introduces into the legal system a portion of the recommendations included in the guidelines issued by the Financial Supervision Authority on such issues as distribution of insurance, funding of financial intermediaries, and more generally the transparency of insurance products and the related fees.

Dr Krzysztof Haładyj  |  Grzegorz Kott  |  Magdalena Chrzan
Challenges in regulatory risk and compliance

2016 will be marked by adjustments to comply with a huge number of new regulations affecting the financial sector. It appears that compliance departments will focus to a great degree on preparations for fulfilling obligations arising out of these new regulations. This year it will also be worth watching the trends on global financial markets, including those affecting the FinTech industry.

**MAD implementation**

One of the key tasks in 2016 will be implementation of Market Abuse Directive II (MAD II), i.e. Market Abuse Regulation II (MAR II) and the Directive on Criminal Sanctions for Market Abuse (CSMAD). MAR II will be implemented at institutions in Poland directly, without additional transposition. Significantly, knowledge of CSMAD and MAR II alone will not suffice, because the European Securities and Markets Authority has issued additional guidelines. They are highly “technical,” and thus preparations for fulfilling the obligations arising out of these regulations will require not only regulatory and business knowledge, but also experience in building compliance systems. This can ensure that the changes are properly reflected in the relevant provisions of contracts, internal rules, and policies affecting employees, suppliers, customers and counterparties. Inadequately prepared and implemented changes can have negative legal consequences such as litigation or regulatory proceedings.

The changes will affect the following categories:

- Policy for preventing market abuses and manipulations, including systems for reporting suspicious transactions
- Screening access to information through Chinese walls, procedures for access to information, processes for insiders and persons with access “over the walls”
- Procedures and processes for storing data for audits of abuses and manipulations
- Conflicts of interest
- Transaction policy for senior management
- Customer service division—monitoring and registration of activities
- Publication of investment recommendations and statistics
- Monitoring and supervision—testing, risk assessment, management information
- Training.

**Time to prepare for MIFID II**

2016 will also be a time of preparations for the second edition of the Markets in Financial Instruments Directive (MIFID II). It is huge, with thousands of pages of documentation. In December 2015 ESMA published a final report containing drafts of implementing Technical Standards concerning the process of implementation of MIFID II. ESMA points to the practical impact the new legislation will have on market participants, market infrastructure and national regulators. The rules set forth in ITS specify the standard forms, templates and procedures that will be used in the future in various important areas.
Listed market

Listed companies face the challenge of adapting their activity to new corporate governance rules. Even before the end of 2015 we observed growing interest in implementation of such rules, in particular creation of systems for assessing the condition of the company, including evaluation of systems of internal control, risk management, compliance, and internal audit functions.

Protection of competition and consumers in regulated markets

One of the key changes felt by financial institutions is their increased responsibility in dealings with customers. The main authorities in this area will be the Financial Ombudsman and the Office of Competition and Consumer Protection (UOKiK). At the time we were preparing this text, work was underway at the Ministry of Finance on a regulation on how fees would be calculated and paid to cover the operating costs of the Financial Ombudsman and his office, as well as a draft regulation on the procedure to be followed in cases before the Financial Ombudsman for resolution of disputes between customers and financial market entities.

An amendment to the Competition and Consumer Protection Act and the Civil Procedure Code enters into force on 16 April 2016, introducing major changes that will significantly impact the activity of financial institutions.

Heightened anti-money laundering/counter terrorist financing (AML/CTF) requirements

Both 2016 and 2017 will be important years for AML/CTF. This will mainly result from fiscal policy, but also from the need to adapt to international regulations. Further tightening of the interpretation of “due diligence” in AML regulations is anticipated, which will heighten the requirements for examination of beneficial owners, shareholders and controlling persons.

The main focus of interest of compliance departments will include the 4th AML Directive, sanctions provisions, and CTF regulations.

FinTech sector growing in strength

Notably, in 2015 venture-capital funds invested heavily in two sectors: spaceflight and the space economy, and Bitcoin/Blockchain. In our view, the latter category will prove particularly important and interesting because it is closely tied to FinTech—technologies used for delivering financial services.

Pawel Kuskowski
EU Regulation 609/2013 on food for infants and small children, food for special medical purposes, and total diet replacement for weight control enters into force in 2016.
What’s new in life sciences?

This year new regulations will come into force for food intended for infants and young children, food for special medical purposes, and total diet replacement for weight control. An amendment to the Healthcare System Act to enable the growth of telemedicine should also be mentioned.

**Food for specific groups**

The EU’s Regulation on Food for Specific Groups (609/2013) enters into force in 2016. Introduction of a uniform regulation directly applicable in all EU member states requires familiarity with the regulation on the part of businesses, as it will replace the relevant provisions of national law in all EU countries governing foodstuffs for particular nutritional uses. Businesses operating on the Polish market will need to compare the new rules with the existing rules under the Food Safety and Nutrition Act and the executive regulations issued under that act.

Wierzbowski Eversheds is assisting companies active on the market of foods for particular nutritional uses (FPNU) and foods for special medical purposes (FSMP) to prepare for entry into force of the new regulations governing trading in such products, in particular labelling and advertising.

**Telemedicine**

From the end of 2015 to the middle of 2017, changes in the Healthcare System Act will enter into force, introducing a legal framework enabling the growth of telemedicine in Poland, i.e. use of available IT and communications tools for providing a wide range of medical services. The new regulations permit medical services to be provided “at a distance,” via teleinformatic or communications systems, including mobile devices.

This opening up of medical activity to modern communications technologies may be the first step toward improving access to treatment at lower cost to patients (and the public single payer) and reducing the limitations imposed on doctors by traditional methods of delivering medical services. On the other hand, launching of telemedicine presents opportunities for companies operating on the markets for IT, communications systems, medical equipment and medical devices to grow their business on a new market of healthcare providers.

Wierzbowski Eversheds is a member of the Polish Chamber of Healthcare IT, whose goal is to support the development and implementation of fundamental changes in IT systems functioning in the Polish healthcare system.
Businesses operating in the renewables sector and wishing to take advantage of the old support system in the form of certificates of origin have gained additional time to complete their projects. Quick completion of construction procedures and technical startup should be regarded as a priority.
What awaits the energy sector?

A new Energy Efficiency Act is being drafted. We also have ahead of us new support rules for generation of electricity from renewables and agricultural biogas and heat at renewable installations. The coal market will be affected by pursuit of political announcements on restructuring of the mines. Regulations to encourage and expedite projects for extraction of gas from unconventional deposits will probably also begin.

Energy efficiency

The Act of 29 December 2015 Amending the Energy Efficiency Act entered into force on 31 December 2015 and will remain in force through the end of 2016. Its purpose is to ensure the functioning of the support system for pro-efficiency and resource-conservation projects in 2016.

A new Energy Efficiency Act is being drafted which will present a new model for financing of energy efficiency initiatives, tailored to the requirements of the Energy Efficiency Directive (2012/27/EU).

Interested parties should closely track the legislative process, as the final shape of the new system has not been determined yet.

Renewables

The Act of 29 December 2015 Amending the Renewable Energy Sources (RES) Act and the Energy Law introduced changes in the RES Act, postponing the deadline for entry into force of the regulations on the auction support system. Consequently, the anticipated Chapter 4 of the RES Act will enter into force on 1 July 2016, introducing new rules for support of generation of electricity from renewables and agricultural biogas as well as generation of heat at RES installations. The rules will launch a new support system in the form of auctions for sale of electricity generated from renewables and modify the existing procedures and conditions for obtaining certificates of origin for the energy market.

In addition to that issue, the amendment introduces a subjective limitation on issuance of certificates of origin for electricity generated at hydro power stations and multifuel combustion installations.

Businesses operating in the renewables sector and wishing to take advantage of the old support system in the form of certificates of origin have gained additional time to complete their projects. Quick completion of construction procedures and technical startup should be regarded as a priority in this case. Others, counting on entry into force of Chapter 4 of the RES Act, should carefully observe the administrative preparations for the first auction. Will any lack of preparedness to conduct the auctions push back the effective date of Chapter 4 of the RES Act to the beginning of 2017? It cannot be ruled out. The possibility of further changes is also being discussed.

In 2016 investors in the RES sector may witness work on acts affecting the siting of RES projects, particularly the "distance" act.

Coal market

According to the announcements, the main aim of measures under the state’s energy policy in 2016 will be to increase the competitiveness of the coal mining sector. The amendment of 22 December 2015 to the Act on the Functioning of Coal Mining introduces among other changes an extension of the regulations governing the possibility of selling mines, mining establishments and designated portions thereof until 1 January 2019. Then, in 2016, executive regulations should be introduced pursuant to the Act on the System for Monitoring and Inspection of Fuel Quality on the quality standards for solid fuels and the methods for quality testing and taking samples of fuels as provided for in the act.

If political pronouncements on restructuring of coal mines are realized, it will have a big impact on the coal market. After preliminary changes in regulations of renewables and energy efficiency, the time will come for the coal sector. Businesses in the coal industry should monitor the legislative changes, which we will also keep them informed about.
Electricity market

Power shortages in the Polish electricity system are a hot topic—particularly in the context of limitations on the consumption of electricity imposed on businesses last summer. Calls for organization of the power market, widely debated for several years due to the planned shutdown of outdated generating units, should gain strength in 2016. To avoid the problem of power shortages, it may be necessary to develop and implement mechanisms ensuring the safe, uninterrupted supply of electricity and reducing the investment risk in construction of generating capacity in conventional sources.

For these reasons, it is worth joining in the discussion over this important issue for the Polish economy, and, if considering taking the initiative in this area, to take the first steps toward planning a strategy for this activity.

Unconventional gas

In connection with the interruption of work on the Act on Rules for Preparation and Realization of Investments in Exploring, Identifying, Extraction and Transport of Hydrocarbons, it is likely that work will begin on regulations to encourage and expedite implementation of these projects. It is also likely that work on regulations for the shale gas sector will be taken up in 2016 due to the growing decline in interest on the part of investors. Simplifying and speeding up the administrative procedure associated with realization of shale gas projects is one of the biggest factors discouraging interest in this industry.

Others

In line with the smart metering trend, we can expect legislative moves in this direction.

The State Energy Policy 2050 should also be adopted in 2016.

Łukasz Jankowski | Milena Kazanowska-Kędzierska | Jakub Kasnowski
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