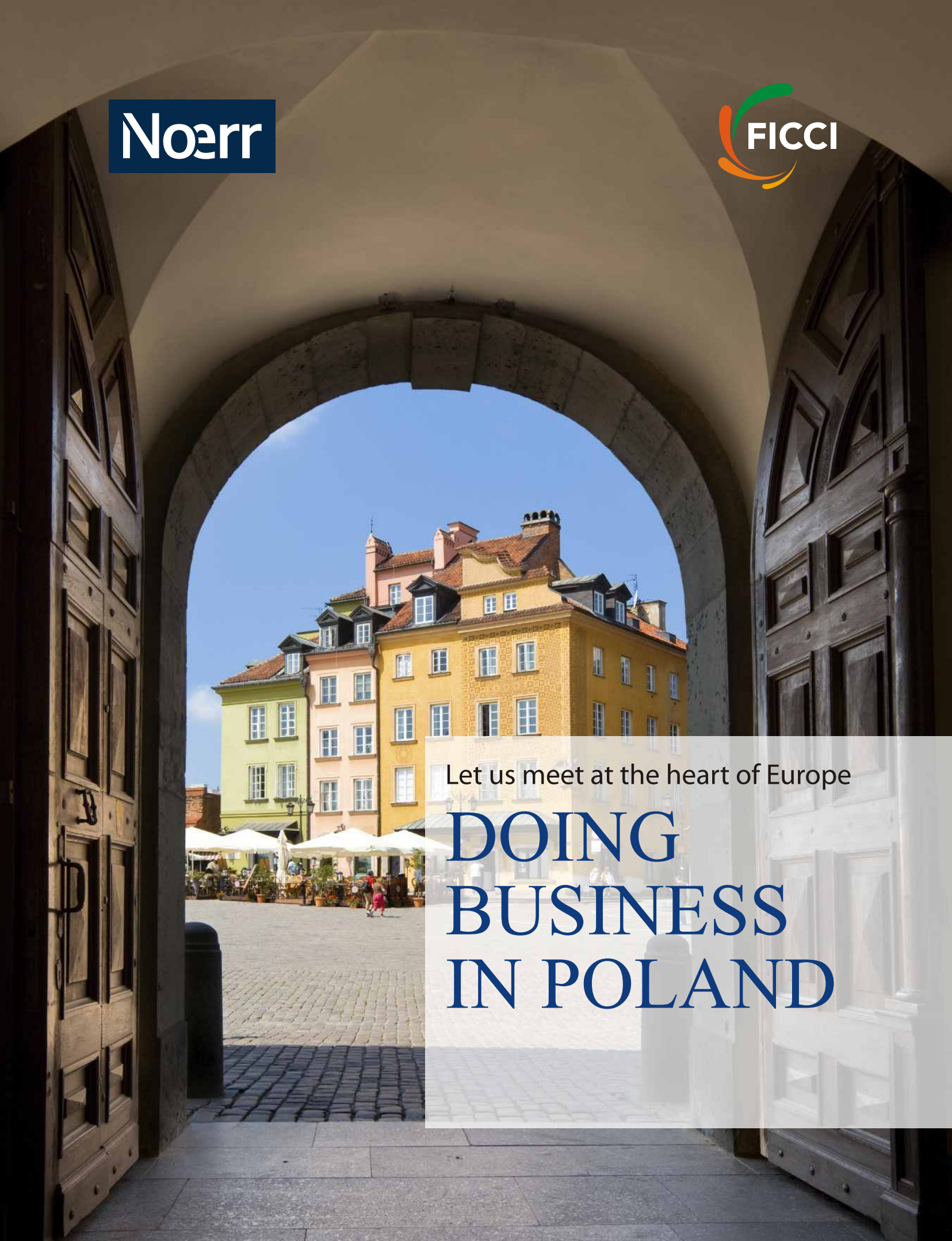


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Let us meet at the heart of Europe

DOING BUSINESS IN POLAND

Title: Doing Business in Poland

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Welcome to Poland!

Enjoy the benefits of a stable political-economic situation



The credit of sustainable development in Poland has always gone to its solid economic foundation. The Polish economy offers a valuable low-risk and high-profit location in the heart of Europe to all foreign investors. It is the only European country which recorded economic growth in 2009 when other economies declined as a result of the financial crisis. Constant growth in industrial production, high level of demand, stable inflation, a strong currency and a secure state of public finance have all strengthened the Polish economy. In addition, the size of population **(circa 39 million)** and constant development of infrastructure (including road and rail systems and 3 seaports) attracts foreign investors.

Poland offers a wide range of investment incentives, mostly regulated by the Financial Support for Investments Act of 2002. For the years 2007-2013, over EUR 80 billion has been allocated to Poland from the EU budget. The Industrial Development Agency may also offer subsidies, loans and other financing facilities.

Special Economic Zones (SEZ) and Technological Parks continue to attract foreign investors. State aid in the form of tax exemptions available in these areas, depending on the location, may cover 30%, 40% or even 50% of the investment, including both tangible and intangible assets. The borders of SEZs are flexible, such that new investments can be located in an already existing SEZ or the land acquired by the investor can be incorporated into an SEZ, extending its territory. There are however, certain threshold requirements which need to be reached in order to maintain the exemption. Most importantly, declared levels of investment and employment must be achieved. Incentives in the form of SEZs are set to expire in 2020.

Regional aid provisions independently allow local municipalities to grant tax exemptions from real estate tax to new investors. The exemption coverage varies from 30% to 50% depending on the size and location of the investment.

> "You'll be always warmly welcomed in Poland, regardless of the sector or area you represent. Frankly speaking, you are good business partners, because you are reliable."

– said Donald Tusk [Polish PM] during a meeting with Indian entrepreneurs.

Tusk: Polska to otwarta brama dla Indii do Europy [Tusk: Poland is an open gate to Europe for India]
by Anna Popiołek, Gazeta Wyborcza

Why invest in Poland?

The Indian perspective



Since 2009, Indian investments in Poland have doubled. The reasons therefore are the following advantages:

- solid economic foundations, a valuable low-risk and high-profit location in the heart of Europe
- close to the founding states of the European Union
- bridge between the Western European and Indian culture marked by Poles' high language skills
- well developed sectors which are of particular interest for Indian investors (BPO, IT, mining and metallurgy); in 2012 most foreign investments represented the BPO sector
- large receptive internal market and the regional leader in FDI inflow – an unquestionable advantage in times of crisis
- high qualified labour force (Polish universities are the hotbeds of engineering talents) combined with competitive low labour costs
- existence of special economic zones and free economic zones offering subsidies, loans and other financing facilities
- 2013 Index of Economic Freedom comparable to those of Western European countries like Germany, United Kingdom, Austria or Finland
- simple and competitive taxation regime, also demonstrated by the fact that Poland was a top performer in improving business in 2012
- as one of very few countries, Poland went smoothly through the crisis showing that the investment risk is lower here than in other EU states

> "This year we opened two new production facilities in Wrocław. In fact, in the near future 70% of our production for export to countries in Central and Eastern Europe will come from Poland. Poland's highly-qualified people and stable economic situation attract concerns like 3M which want to grow here to expand internationally."

Xavier Douellou,
Managing Director, 3M Poland

Indian firms currently investing in Poland:

- Arcelor Mittal Steel Poland SA (holds 70% share of the steel market in Poland)
- Escorts Ltd
- Essel Propack (the world's largest manufacturer of laminated tubes has located one of its manufacturing units in Poland)
- Genpact (Genpact Operations Centre in Lublin since 2008 and another centre in Cracow)
- HCL Technologies (announced by the press as "a perfect setup that has Indian origin, Polish setup & global reach")
- Infosys Technologies (Infosys BPO Poland certified as a 'Top Employer Poland 2012' and awarded the 'Most Dynamically Developing BPO Centre in Poland')
- Reliance Industries (active in the petrochemical sector and running a textile business)
- Sharda Group (present in Lodz since 2005)
- Tata Consultancy Services
- UFLEX Group
- Videocon
- Wipro
- Zensar

Additionally, joint ventures with Polish companies were formed in Dindigul (Bella India), Hyderabad (with Polmor), Bangalore, Aurangabad, Pune and Vadodara.

According to Polish economists potential areas of cooperation are:

- aviation
- energy
- environmental protection (transfer of technology and installations)
- mining (exploration for oil and natural gas "on-shore")
- pharmaceuticals and medical devices and equipment (due to the constantly developing health care market in India)
- production technology
- scientific research and collaboration of research institutes

The Polish Academy of Sciences (PAN) runs exchange programmes with both the Council of Scientific and Industrial Research (CSIR) and the Indian National Science Academy (INSA).

> "Workers in the rest of Europe are simply lazier," he [a sales director at Tomex - brakes part manufacturer] says. "Poles work harder than almost anyone else in the Union and they cost less too. That's why we're based here and that's why our sales are going up every year."

Doing Business in Poland

Poland's growth defies eurozone crisis

by Jan Cienski, Financial Times

A brief overview of the legal system in Poland



Business vehicles

Foreign persons, who neither have permit to settle in Poland nor enjoy any protection or consent, have the right to undertake business activity (unless international agreements state otherwise) using the following business vehicles only:

- **limited partnership** (spółka komandytowa)
- **limited joint-stock partnership** (spółka komandytowa akcyjna)
- **limited liability company** (spółka z ograniczona odpowiedzialnością)
- **joint-stock company** (spółka akcyjna)

Furthermore, all foreign investors may generally run business branch offices and set up representative offices in Poland, unless the undersigned international treaties state otherwise. However, the most popular forms of business entities are the limited liability company and the joint stock company. Both of these provide limited liability to their shareholders and are treated as distinct legal personalities.

Foreign investors can incorporate a branch office on the basis of reciprocity (article 85 of the 2002 Act). The reciprocity rule states that a foreign person (entity) can initiate and run business activities in Poland under the same rules that a Polish entity would have in the country of that foreign investor's nationality or incorporation. However, the activity can only be carried on within the scope of foreign investor's activity. One of the requirements is that information is entered into the National Court Register, e.g. indicating a person representing the foreign investor at the branch office.

> “Thanks to good relations with authorities, we were able to build [the] new factory in only six months. We employed over 400 people in 18 months.”
>
> Kye Soo Park,
> President of Pearl Stream
> about extending production in
> Upper Silesia



In contrast with branch offices, the scope of a representative office's activity is limited to the advertisement and promotion of the foreign investor. It must also be registered with the Foreign Representative Offices Register held by the Minister of Economy.

Exchange controls

Since the revision of exchange control regulations, parties to contracts concluded in Poland or under Polish law can provide for payments in foreign currency pursuant to the amended Article 358 of the Civil Code and as a result of the deletion of Paragraph 9 Section 15 of the Foreign Exchange Acts. This is an important improvement over the old regulations which allowed for payments in a currency other than Polish złoty (PLN) only with the approval of the National Bank of Poland.

Poland is still in the middle of a debate over further modifications to its foreign exchange law. Further modifications could be introduced in the course of harmonisation with the EU law and as a result of joining the Eurozone.

Incentives

Besides SEZs and financial grants from EU funds discussed above, the new procurement law allows for the creation and registration of a special purpose vehicles (SPVs) with the sole purpose of completing complex infrastructure projects if it wins the tender bid. SPVs protect participating investors from joint and several liabilities, which they would encounter had they created a simple unregistered consortium (i.e. an association by agreement, in order to submit a joint bid).

Also, regional aid provisions allow local municipalities independently to grant tax exemptions from real estate tax to new investors. The exemption coverage varies from 30% to 50% depending on the size and location of the investment.

Taxation

Poland generally has well developed, EU harmonised and, in many areas, relatively competitive taxation system.

Businesses, including companies, partnerships and sole traders are generally liable for 19% flat rate income tax (either corporate income tax (CIT) or personal income tax) on their business profits in Poland. Withholding taxes are collected on outbound dividends, interest and royalties, as well as certain intangible services, subject to double tax treaties and applicable European Union law provisions. Polish tax residents are subject to CIT on their worldwide income. A company is considered to be a Polish resident for CIT purposes if its registered office or management is located in Poland. A non-resident business is subject to CIT only on income



generated in Poland. If a non-resident's home country has concluded a double tax treaty with Poland, the specific rules pertaining to so called 'permanent establishments' may be applied.

The general rule is that transactions which are subject to VAT generally fall outside the scope of tax on civil law transactions (TCT) (which excludes many transactions performed in a business to business environment from TCT scope), although TCT is also imposed on business entities in certain circumstances.

Value Added Tax (VAT), which is a consumption tax, is levied on the supply of goods and services at the standard rate of 23% (since 1 January 2011), save where exemptions and reduced rates (e.g. 8%, 5%, 0%) apply. Certain business transactions are subject to a tax on civil law transactions, which is generally an equivalent of transfer tax.

In addition, businesses that have title to property are subject to a local real estate tax, imposed by municipalities. Poland is also subject to the Community Customs Code and other EU customs provisions including the customs duty tariff. Polish law also provides for regulations relating to excise duty.

Competition and anti-trust

The Act on Competition and the Protection of Consumers' Interests of 16 February 2007 (the Competition Law) is the principal law on the control of anti-competitive agreements between firms, the abuse of dominant positions and mergers which affect competition. Other aspects of Polish competition law include the supervision of aid granted by the State (or through State resources in whatever form) if it threatens to distort competition by favouring certain firms or the production of certain goods.

In the Polish context, both the rules governing anti-competitive agreements and practices (cartels and other forms of collusion) and the rules prohibiting abuses of dominant positions are referred to as anti-trust rules. The most familiar example of an anti-competitive arrangement is an agreement on prices, where firms fix price levels jointly, as a result of which consumers are unable to take advantage of competition between suppliers to obtain competitive prices.

Polish merger control regulations impose on firms the obligation to seek clearance for certain large-scale mergers. This obligation applies to all mergers where the combined aggregate worldwide turnover of the parties is more than EUR 1.000.000.000 or in Poland more than EUR 50.000.000.

Penalties for non-compliance and offences committed under the Act are high and can be varied.



Intellectual property

The following industrial property rights are protected in Poland:

- **patents for inventions** (where they are of a technical nature which means that they are susceptible of industrial application, novel and comprise an inventive step)
- **protective rights to utility designs** (new and useful technical solutions affecting the shape, construction or durable assembly of an object)
- rights deriving from the **registration of industrial designs**
- protective rights for **trade marks** (verbal, verbal-graphic, graphic, 3-D, sounds / songs)
- **geographical designations**
- **topographies of integrated circuits**

Pursuant to the relevant provisions, community designs, community trade marks, protected geographical indications (PGI) and marks of origin are also protected in Poland. European Community provisions have direct application in this regard.

The Polish Copyright Act protects copyright of Polish citizens as well as citizens of the EU member states and members of the European Economic Area (EEA). Also, Poland is party to several bilateral and multilateral conventions and treaties e.g. TRIPS which protect international copyright.

Labour and employment

An employment contract should be signed no later than the day an employee starts working. It must specify the type of work to be performed, the place of performance, the length of the working week by hours, the date the employee started work and the remuneration. Remuneration may be negotiated between the parties, although it may not be lower than the minimum Polish national wage which is each year determined by the Polish government. In 2013 the minimum wage is set at PLN 1.600 (approx. EUR 340) per month. Remuneration rules, regulations which an employer employing more than 20 employees is required to issue, may be defined by wage. Furthermore, where trade unions operate in relation to the company, they should also be consulted.

Specific provisions on collective redundancies apply where an employer employing 20 or more individual employees intends to terminate employment contracts for reasons other than those attributable to the employees themselves,



by serving a termination notice, or on the basis of mutual consent.

The most important employee taxes (in a broad sense) include personal income tax (PIT) and social security contributions. PIT is a progressive personal income tax. In 2012 there were two rates: 18% and 32%. Investors (przedsiębiorcy) may apply, however, for a commonly used 19% flat PIT rate. Employers and employees have to pay social security contributions which are calculated on the employee's gross income. Payments are made each month to the Social Security Institution (ZUS). Employees are also subject to health insurance where the payment is calculated on gross income reduced by social security contributions.

Dispute resolution

The Polish legal system is based on codified law (in contrast to the common law system), administered by common and administrative courts. Any judgment issued by a common court of first instance can be appealed. Appeals are heard by common courts of second instance where the judgments are final and not appealable, unless certain conditions are met and, as an extraordinary measure, the judgment might be reviewed by the Supreme Court.

Limitation periods vary depending on whether the claim is related to business or not. Usually, courts of first instance deliver their judgments within 12 months after the action was brought; however, the timing depends on the number of cases to be heard and their complexity.

Under Polish law, disputes may be submitted to mediation or arbitration. Polish national arbitration law is based on the most important international rules on that subject i.e. the New York Convention of 1958 and the UNCITRAL model law of 1985.

When dealing with parties from Poland, in most cases it is possible to choose the law to govern the contract. Certain limitations regarding the scope of choice of law provisions might apply if the transaction is concluded between parties both resident in Poland. Currently the conflict of laws rules are governed by the Rome I and Rome II EC Regulations and outside their scope of application Polish Private International Law applies. If applicable, foreign law is applied directly by the court and is treated as law and not as fact. Potential mistakes regarding its application are fully reversible by an appellate court.



The recognition of foreign judgments from states not part of the Brussels-Lugano Regime or not covered by a bilateral treaty has recently become significantly easier as amended rules were modelled after the Brussels-Lugano system. Enforcement of foreign arbitral awards is in most cases subject to the provisions of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (NYC), which is in force in 145 countries. Under this convention grounds for refusal of enforcement are rather limited.

Winding up

A commercial company can be wound up in the circumstances set out in its articles of association or statute, for any reason approved by the shareholders meeting, where the company's registered office is moved abroad or where the company is declared insolvent.

> “We have chosen Krakow out of 20 different cities in Europe. The reasons to choose Poland were the availability of well-trained university graduates and a developed transport and office infrastructure. Poland is a strategic location for advanced business services that we provide for our largest European clients.”

Scott Newman,
Vice President of the
Polish unit of State Street

India-Poland Trade and Investment Relations

Poland has pursued a policy of economic liberalization since 1990 and today stands out as a success story among transition economies. Both the European Commission (EC) and the IMF, rated Poland as the fastest-growing country in the European Union for 2010, and forecast high growth in 2011 and 2012. In its updated GDP growth forecasts for 2011 and 2012 — 3.9 and 4.2 percent, respectively — the EC emphasized Poland's stable banking system, relatively lower share of international trade in the country's GDP structure, positive changes in the labour market and the country's overall economic policies as factors contributing to Poland's ability to withstand the worst of the global economic downturn.

Poland is among the world leaders in the production of many industrial goods. It belongs to the world's top 10 producers of refined copper, nitrogenous and phosphate fertilizers, sulphur, hard coal and brown coal, and is one of the top 20 producers of: ships, power stations equipment, machinery for mines, food processing units, sulphuric acid, cement, crude steel, TV receivers, passenger cars and trucks and electric energy.

Trade and Investment Relations

Indo-Polish relations are longstanding and friendly. Poland and India seek to develop and upgrade their relationship. Thousands of Poles visit India every year for a first hand encounter with the world's largest democracy and its traditions, culture and civilization. Poland is already India's largest trading partner in Central Europe and India's private sector considers Poland a preferred investment destination.

As per official figures from the Ministry of Commerce and Industry, India, the total trade between India and Poland for the period April 2012 – September 2012 has already exceeded USD 801.33 mn, which is more than half of the annual figures for the last year.

Major items of India's exports to Poland have been motor cars, organic chemicals, iron & steel, footwear, rubber, coffee, tea and spices. Poland exports mineral fuels, electrical machinery, organic chemicals, plastics, copper, inorganic chemicals to India.

In terms of investments, with over USD 2.25 billion of investments that include major investments by Arcelor Mittal Steel Poland SA in Katowice, Videocon (acquired from Thomson –TV picture tube mfg facility in Piaseczno near Warsaw.), Escorts (Farmtrac Tractors Europe Sp.z o.o), Strides Arcolab in Pharmaceuticals, Reliance Industries (Trevira- manufacturing polyester fibres), Ranbaxy, VSNL Teleglobe, Essel Propack. (speciality packaging tubes), I Services companies like KPIT Cummins, Zensar Technologies Ltd, Tata Consultancy Services (TCS), HCL Technologies, Infosys and Wipro, Genpact – GE money, Jindal Stainless , Tata Tetley Lambda Therapeutics Research, Uflex Limited, Berger Paints India, Sylvania Havells India Ltd., Tata Motors, VVF Ltd., Mumbai, Glenmark Pharmaceuticals Ltd, Novo Tech Sp. z o.o, Indian investments in Poland are on the upswing.

In 2011, Indian company Uflex made the largest Greenfield investment in Poland and started construction of its manufacturing plant of polyester film (estimated value: 180 million USD). In 2011 Rishabh Instruments acquired 85% stake in Polish company Lumel S.A., a manufacturer of industrial automation equipment and aluminium pressure castings.

Poland remains 20th largest investor in India with a cumulative FDI of USD 568.53 million from April 2000 to December 2012. Polish firms are making inroads in India, as well. Infact, a vast majority of Indian households can boast of Polish technology in their 'cheese' as Amul's paneer in Gujarat rolls off the assembly line of a Polish company, Obram. Polish companies that operate in India include Toruńskie Zakłady Materiałów Opatrunkowych (TZMO) in Dindigul (manufacturing hygiene sanitary products), Can-Pack Poland in Aurangabad (manufacturing metal packaging) and Geofizyka TORUN (group PGNiG) doing oil extraction/exploration services.

About Noerr

Noerr is a leading European commercial law firm with 470 professionals in Germany, Europe and the USA. Our core business is providing excellent, partner-led and interdisciplinary legal and tax advice, which is academically based, innovative and result-oriented.

Together with the companies of the Noerr group, we also develop sustainable solutions for financing and management.

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About FICCI

Established in 1927, FICCI is the largest and oldest apex business organisation in India. Its history is closely interwoven with India's struggle for independence, its industrialization, and its emergence as one of the most rapidly growing global economies. FICCI has contributed to this historical process by encouraging debate, articulating the private sector's views and influencing policy.

A non-government, not-for-profit organisation, FICCI is the voice of India's business and industry.

FICCI draws its membership from the corporate sector, both private and public, including SMEs and MNCs; FICCI enjoys an indirect membership of over 2,50,000 companies from various regional chambers of commerce.

FICCI provides a platform for sector specific consensus building and networking and as the first port of call for Indian industry and the international business community.

Our Vision

To be the thought leader for industry, its voice for policy change and its guardian for effective implementation.

Our Mission

To carry forward our initiatives in support of rapid, inclusive and sustainable growth that encompass health, education, livelihood, governance and skill development.

To enhance efficiency and global competitiveness of Indian industry and to expand business opportunities both in domestic and foreign markets through a range of specialised services and global linkages.



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