Poland:

Business opportunities by legislative developments in infrastructure, environment, water and waste management
1.1 Motorways
National roads and motorways are owned by the State Treasury and administered by the General Director of Roads and Motorways (GDDKiA) which is responsible for national roads and motorways. The rules concerning building and operating motorways are set out in the Toll Motorways and National Road Fund Act. The construction of motorways is financed from the concessionaire’s own resources if the construction of such motorway is executed by granting a concession for the construction and operation of the motorway, or from public sources (national budget funds or National Road Fund funds) if GDDKiA is not willing to grant any concession for the operation of the motorway. GDDKiA chooses the concessionaire during three-phase tender proceedings. The first phase is a preliminary qualification open to joint stock companies and limited liability companies from Poland or another EU member country, whose sole business is building or operating roads. The second phase is a limited tender where bidders are evaluated according to economic and financial balance, credibility, technical and organisational preparation, financial plan and programme of building and operating motorways. The third phase is negotiating the agreement. When all the proceedings are finished, the minister in charge of transport matters concludes an agreement with the selected company. Any motorway operating fees are collected by the concessionaire that concludes a building and operating, or just an operating agreement, on the conditions set out in that agreement. Once selected, motorway operators can apply for financial aid from the National Road Fund, and receive warranties and guarantees from the State Treasury.

1.2 Railways
The regulations concerning the use, administration and maintenance of railway infrastructure are set out in the Railway Transport Act. The administration of infrastructure and the performance of transport services are separated. Currently, a large part of the Polish railway infrastructure is being repaired or modernised. At the same time, international and European standards are being introduced, due to the harmonisation of Polish and European railway infrastructure.

Poland is implementing the European Railway Traffic Management System (ERTMS). This system consists of a unified European radio communication GSM-R (Global System for Mobile Communications-Railway) and a unified European safety control system ETCS (European Train Control System). Public procurement rules will apply in this case.

From 1 January 2010, due to the liberalisation of railway transport law, carriers throughout the EU will be able to operate on the Polish passenger railway transport market. It opens up a great opportunity for carriers to set up business in Poland and compete with national railway companies.

1.3 Airports
Rules for building and operating airports are set out in the Aviation Law and the Act on Specific Rules for Preparing and Performing the Investment Concerning Public Airports. An airport can be built with a permit from the President of the Office of Civil Aviation. This permit can be granted to: state and local government bodies, companies in the meaning of Polish Commercial Companies Code, and cooperatives registered in Poland, associations and individuals residing in Poland. To build an airport and perform the investment in a given area, the relevant regional governor has to grant permission. In this decision, the local governor will set out the location of the airport, divide the real property and grant a building permit. Currently there are various plans to build regional and local airports with the participation of foreign capital, for example in Modlin, Lublin, Białystok, Opole or Koszalin. These investments are part of preparations for EURO 2012 in Poland and could be performed with aid from EU funds. In addition, there are plans for a central airport hub, which will be a key element for Eastern-European multimodal transport system. Possible locations are: Radom, Sochaczew and Mszzczonów. This investment will be one of the largest in recent years.
1.4 Water management infrastructure
The Act on Collective Water Supply and Collective Disposal of Sewage sets out rules and conditions about collective water supplies intended for use by people and the collective disposal of sewage. It also regulates the activities of water-sewage enterprises. Collective water supply and collective disposal of sewage is the responsibility of the local authorities. However, it can be commissioned to a private entity in a tender organised under the public procurement law or by granting a licence. Currently the licensing system is becoming more and more popular, as it is an easier way to repair and modernise the water management infrastructure. Tariffs of the services are fixed by water-sewage enterprises and approved by the local council.

1.5 Telecommunications infrastructure
Regulations concerning telecommunications infrastructure and services are set out in the Telecommunication Law.
In the case of ground telephony, the company TP S.A., owned by France Telecom, has a dominant position on the Polish market. There have been recent attempts to open the system up to competitors by letting them use TP S.A. infrastructure. It is achieved by imposing on TP S.A. certain duties and obligations in specific of sharing network facilities.
Such duties are imposed by the President of the Electronic Communications Office. In the case of mobile telephony there are four competing operators acting on the Polish market, of which one of them, Polkomtel, is state-owned.
The telecommunications market in Poland is a regulated market. It means that, due to its special importance for state and society, the regulations are stricter and further reaching than in other business areas.
The President of the Electronic Communications Office is the administrative organ responsible for the regulation and development of telecommunications market in Poland. One of the most important goals currently is to introduce a project of high-speed Internet, which will be one of the largest infrastructure investments in incoming years.

2.1 Environmental permits
There are over 400 legislative acts and regulations governing environment protection in Poland. The most important are:
- the Act on Environmental Protection from 27 April 2001
These acts, along with the legal acts described below, were adopted in order to bring Polish law into line with community requirements.
Facilities posing a particular environment threat are required to hold an integrated permit. This permit covers all the issues concerning the facilities’ impact on the environment. Facilities requiring an integrated licence are submitted to more restrictive environmental requirements (the Best Available Techniques – B AT).
For facilities that do not require an integrated licence, a sector licence is usually required. This licence governs particular forms of environmental impact, such as:
- a licence for emitting gases or dust into the air
- a licence for the specific use of inland waters (for the intake of underground or surface waters, for the release of sewage into the water or the soil, for the release to sewage systems of substances that are particularly hazardous to the water environment, etc.)
- a licence to produce waste
- a licence for the emission of noise to the environment.
According to the applicable regulations, certain facilities posing an insignificant impact on environment do not require these licences. It is sufficient to submit the relevant notification to the administrative authorities.
2.2 Waste management
Waste is managed under “waste management plans” adopted at a national and regional level. Companies conducting specialised activity in the scope of waste management must have a separate administrative licence. All waste management and waste production licences must be consistent with the waste management plans.
The current Polish law is relatively liberal regarding corporate liability concerning waste management. The main obligation of companies is to transfer waste to entities holding required permits for waste management. By transferring waste to specialised and entitled entities, the company also transfers liability for waste management.
There are no taxes in Poland on the production of waste. Fees are only incurred by entities storing waste on landfills.
Companies producing waste incur only the costs of transferring it to another entity, or its own costs of waste management.
In the near future, the waste management regulations are expected to change, as the current system does not guarantee the full compliance of Polish obligations towards the EU. In particular, Poland has not yet implemented the new EU Directive from 2008 concerning waste.
The years 2012 and 2013 will be marked by the implementation of a deep reform of the municipal waste management sector. New provisions in this area impose the management of this type of waste on municipalities. The aim of the reform is to ensure Poland’s observance of the EU requirements for waste recovery and recycling and reducing the amount of biodegradable waste deposited in landfills.

2.3 Recovery and recycling of products and packaging
The applicable regulations impose an obligation on companies marking packaging, products in packaging and certain specified products to provide recovery and recycling of some of the products. In addition to packaging, the obligation covers tyres, batteries, lubrication oils, and electric and electronic devices. There are also special obligations on companies producing or importing vehicles. The obligations are limited to the need to provide a nation-wide recovery network for used vehicles (without the need to indicate particular recovery or recycling levels).
Required recovery and recycling levels are varied – and regarding packaging can be as much as 60% (this level should be achieved by 2014, with lower but steadily increasing levels in force before then).
Companies can transfer their recovery and recycling obligations to specialised “recovery organisations”, where the payment for such services is considered to meet the company’s obligations in that scope.
If a company fails to meet its obligations of recovery and recycling – independently, or by concluding an appropriate agreement with a recovery organisation – it will be charged a “product fee”.

2.4 Air protection
Air protection is mostly achieved through the requirement to obtain an integrated permit, a licence to emit gas or dust into the air, or by submitting the relevant notification. Applicable regulations set out precise emission standards for particular installations, which are the basis for issuing such licences. Any emission of gas or dust to the air leads to the payment of relevant fees. Regardless of this, there are particular regulations governing:
- the protection of the ozone layer
- the emission of greenhouse gases.
The greenhouse gases reduction system concerns companies operating medium and large installations in the energy, metallurgical and iron and steel, mineral and paper sector. In order to be covered by the system, an individual licence for participation in the emission trade system is necessary. The permitted greenhouse emission level is defined in a personal allocation on the basis of a regulation by the Council of Ministers. Exceeding this level leads to an additional fine. Entitlements for greenhouse gas emission can be freely traded and sold.
Legislative work is currently underway on new regulations for limiting emissions of greenhouse gases, so the current legal framework in this area will probably change.

2.5 Water protection
Water protection is ensured by the requirement to obtain an integrated permit or licence for the particular use of inland waters. Licences are not generally required if a company is connected to the public water supply and drains sewage to the public sewage system (with the exception of draining harmful substances to the water environment through the sewage system). Taking water from another source, or disposing of sewage to the water system or the ground, leads to separate fees. Entities using waterworks and sewage companies do not pay this tax, but incur only the costs of the company’s services.

2.6 Flora protection
An indication of flora protection can be seen by the requirement to obtain licences for cutting down trees. Tree removal also leads to additional taxes, though payment can be postponed and amortised if the company that wishes to cut down trees replants the appropriate trees elsewhere.

2.7 Soil pollution
Polish law concerning land reclamation and the need to protect acquired rights has been amended many times and is very complex. In general, there are some precise standards in force concerning soil and land, which, if exceeded, results in the soil being deemed polluted and where reclamation measures are necessary. It is crucial to know precisely when the soil became polluted. All land polluted before 30 April 2007 should be reclaimed by the current owners. For pollution made after that time the polluter bears liability. Reclamation consists in restoring the soil quality to within the quality standards. There are some exceptions for land polluted before 1980, for which the reclamation obligation is very limited.

More information?
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