The Acquisition and Leveraged Finance Review

Fourth Edition

Editor
Christopher Kandel

The Law Reviews

THE ACQUISITION AND LEVERAGED FINANCE REVIEW

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POLAND

Tomasz Kański and Borys Sawicki[1]

I OVERVIEW

Poland is the largest Central and Eastern Europe economy to have maintained growth over the past 25 years, even during the recent world financial crisis – in fact it was the only EU country that avoided a recession during the post-2007 global economic and financial crisis.[2] A positive macroeconomic environment and a well-developed, cost-effective labour market combined with a stable banking sector, leading stock exchange in the region (the Warsaw Stock Exchange), and a legal framework adjusted to European standards support the strengthening of Polish businesses and creates opportunities for investors.

In the final quarter of 2016, the number of M&A transactions reached 56. The highest value of M&A transaction on the Polish market in 2016 was €2,850 million[3] (the acquisition of a 100 per cent stake in Allegro Group, the leading online market platform and the largest non-food online retailer in Poland, by a group of private equity funds). The number of deals remained at a stable level – in the first quarter of 2017 there were 53 (compared to 46 in the first quarter of 2016).[4,5] Experts indicate that the market has stabilised at a sound level.

It is also noteworthy that Polish companies in general are under-leveraged, and the overall corporate debt to GDP is quite low – on average twice as low than in other developed countries in Europe. This means that local banks have a lot of space to offer their capital for syndicated loans on the domestic market.[6] For example, in 2011 when Zygmunt Solorz-Żak decided to acquire the Polish telecom provider Polkomtel SA for 18 billion zlotys, he had to search for external funding of over 75 per cent of the total amount. The interest on the lender's side was so vast that reduction of the subscriptions for Mr Solorz-Żak's debt was more than 30 per cent.[7]

II REGULATORY AND TAX MATTERS

i Regulatory matters

The issue of regulated or non-regulated character of lending activity is disputable in Poland where law distinguishes 'credits' from 'loans'.

1 Tomasz Kański is a partner and Borys Sawicki is a senior counsel at Sołtysiński Kawecki & Szlęzak.
2 Country Report Poland 2016, The European Commission Brussels, 26 February 2016.
3 M&A Index Poland, 4Q 2016 by Navigator Capital & Fordata, January 2017.
4 M&A Index Poland, 1Q 2016 by Navigator Capital & Fordata, April 2016.
5 M&A Index Poland, 1Q 2017 by Navigator Capital & Fordata, April 2017.
6 Global Capital, Poland in the Global Marketplace, May 2014.
7 www.forbes.pl/artykuly/sekcje/Strategie/lewarowanie-po-polsku,20128,1#.

Granting 'loans' is not an activity restricted to banks and may be extended commercially also by non-bank entities;[8] however, should loans be provided by an EU credit institution, such institution should, in principle follow the EU passporting procedure ('lending' being one of the activities subject to mutual recognition under CRD IV and previous directives).

On the other hand, a commercial activity consisting in the granting of credits always requires a banking licence. A banking licence may be also passported from another EEA Member State.

The distinction between 'loan' and 'credit' is a technical one, and is based on certain specific features of these agreements. The prevailing view is that in the case of non-bank lenders, in order to avoid the qualification of conducting a banking business without the requisite licence, such entities' lending activities should, in principle, be financed out of their own funds.

ii Sanctions, anti-corruption and money laundering

Anti-corruption and money laundering are typically covered by the standard KYC (know your customer) procedures of the lenders. On the documentation side, these are addressed chiefly through representations and warranties (for the past and present time) as well as through covenants or undertakings (for the future), albeit the relevant provisions are usually not extensively drafted. This is at least in part because both issues are covered by applicable provisions of law, including, in particular, criminal regulations, which are perceived as complete and not requiring additional contractual support.

iii Tax matters

Acquisition financing used by a Polish resident triggers several tax issues in Poland, including, in particular, the following.

Withholding tax

Interest paid by the Polish borrower to a foreign lender being a Polish tax non-resident is subject to 20 per cent income tax to be withheld by the borrower. Where the foreign lender is a tax resident of the state that has concluded a double tax treaty (DTT) with Poland, the respective provisions of the DTT may apply, reducing the rate of withholding tax down to 15, 10 or even 5 per cent (depending on the applicable DTT). Several DTTs even provide a withholding tax exemption against interest (e.g., the DTT between Poland and France). Furthermore, under some DTTs the withholding tax exemption may apply towards financing granted by qualified lenders (e.g., banks). The favourable tax provisions of the DTT may be applied if (1) the foreign lender's pertinent certificate of tax residency is provided to the Polish borrower; and (2) the lender is the beneficial owner of interest. The beneficiary ownership test is currently applied in exact detail by the tax authorities.

If interest is paid to a foreign lender that is a tax resident of an EU Member State (or EEA), the withholding tax exemption under the domestic provisions implementing the 'interest royalties directive' may apply. The tax exemption requires the fulfilment of certain conditions (in particular, it applies to related 'mother' or 'sister' entities where at least a 25 per

8 Some limited public supervision over non-banking consumer lending institutions results from a bill of legislative amendments adopted by the Polish Parliament in mid-2015. As of 11 September 2016, non-banking consumer lending institutions will be subject to, *inter alia*, minimum capital requirements.

cent shareholding relationship has existed for at least two years). The application of the tax exemption may be applied if the Polish borrower is provided with (1) the relevant certificate of tax residence of the foreign lender and (2) a written statement confirming that the foreign lender is a beneficial owner of interest and it does not enjoy an exemption from income tax on its worldwide income, wherever derived.

Interest deductibility

As a general rule, interest payable by the Polish borrower constitutes its tax-deductible costs. The cost is not deductible until such time as the interest has been paid or capitalised (accrued interest does not constitute a tax-deductible cost). Under general rules, a Polish tax borrower needs to demonstrate that the financing is related to its business activity (and therefore, the financing cost may be deducted as it is related to the source of revenue).

Thin-capitalisation rules

Under Polish tax law, the interest paid by a Polish borrower to its related lender may not constitute tax-deductible costs for the Polish borrower when thin-capitalisation rules (TC rules) apply. The TC rules apply only to the financing granted by qualified shareholders (i.e., a shareholder that directly or indirectly holds at least 25 per cent shares of the Polish debtor).

The interest paid is not tax deductible for the Polish borrower in the part that refers to the amount of financing granted by the qualified shareholders exceeding the total value of the Polish borrower's own capital (1:1 ratio). The definition of the financing for TC rules is very broad and also includes, for example, the issuance of bonds. The own capital of the Polish debtor to be calculated for TC rules purposes should include not only share capital but also other types of capital (e.g., supplementary or reserve capital). It is possible that, beginning from 2018, the rules concerning the deductibility of interest will change. Namely, it will be possible to deduct interest only in an amount not exceeding 30 per cent of EBIDTA, irrespective of the source and method of debt financing. These restrictions should not apply to banks or other financial institutions.

Transfer pricing

Any kind of financing provided between related parties is subject to a transfer pricing regime on a general basis. The definition of the related parties for transfer pricing purposes is broad. In particular, it includes any 25 per cent direct or indirect shareholding relationships, as well as family or management relationships.

Such financing needs to follow arm's-length conditions (i.e., all conditions of the financing should be agreed on the fair market basis), otherwise, the Polish tax authorities may estimate tax burdens (for the lender or borrower or both) according to the conditions that they assess as falling under the arm's-length principle.

The financing granted between the related parties may also trigger an obligation to prepare specific transfer pricing documentation when the taxpayer's turnover and amount of the transaction exceeds the statutory thresholds. The purpose of the documentation is to describe the details of the transaction and confirm that the financing represents market conditions. Failure to provide such documentation at the request of the Polish tax authorities may trigger additional tax burdens if the Polish tax authorities assess the financing as being inconsistent with the arm's-length principle.

VAT

As a general rule, financing should be classified as a financial service that benefits from VAT exemption under Polish VAT law.

Stamp duty

The financing granted under a loan agreement may be subject to 2 per cent stamp duty payable by the borrower; however, loans granted to a corporate borrower by its direct shareholders are stamp duty-exempt. A loan classified as a VAT financial service is also exempt from stamp duty. Classification of a loan as a VAT service requires that the loan is granted within the VAT-able business activity of the lender (i.e., it is not merely an incidental one-off non-business activity).

Stamp duty applies only to loans. Other forms of financing, for example, bonds issuance, are not caught by stamp duty.

III SECURITY AND GUARANTEES

i Composition of a standard security package and types of collateral given

A standard security package in a leveraged buyout acquisition most often consists of a combination of security interests, depending on the available collateral and commercial arrangements between the parties. Typically, registered pledges over shares or assets are backed by civil or financial pledges and coupled with assignments of receivables (account, insurance) and mortgages (if real properties are available). The package is usually strengthened by voluntary submissions to enforcement. We describe those typical interests further below.

ii Most common types of security given by borrowers

Pledge

A pledge is a right *in rem* and, as such, is effective as regards third parties. Polish law provides for three types of pledge: registered, financial and civil pledges.

Registered pledge

The registered pledge may be established over: (1) moveables (such as cars, machines); (2) transferable rights (e.g., shares, receivables); and (3) aggregate of moveables and rights (pledges over business). Real properties may only be encumbered with mortgages.

Such pledge is created by an agreement followed by mandatory entry into the publicly accessible, centralised Pledge Register. Upon entry into the Register, it enjoys priority over any registered pledges or other rights *in rem* subsequently created.

Usually, the registered pledge agreement contains negative pledge provisions, prohibiting the pledgor from further encumbering or disposing of the object of the pledge.

Civil pledge

A civil pledge is established by an agreement between the pledgee and the pledger.

The pledge agreement may not include negative pledge clauses, is not subject to registration and may be enforced only through standard court enforcement proceedings. Those features, combined with peculiar priority rules (a pledge established later enjoys, by operation of law, a higher priority than a pledge established earlier unless the pledgee of the later pledge acted in bad faith), result in the instrument being typically used as an interim security until registration of the pledge over the same asset.

Financial pledge

The financial pledge was introduced to the Polish legal system by the Act on Collateral Arrangements in Implementation of the EU Directive 2002/47/EC of 6 June 2002 on financial collateral arrangements.

The main differences compared with the civil pledge are the limited number of entities that may act as a pledgee or pledgor under a financial pledge and the availability of out-of-court enforcement methods in addition to the standard court enforcement.

Similarly to the civil pledge, the financial pledge usually is used as an interim security until registration of the pledge.

Assignment of receivables as collateral security agreement

The assignment of claims is made by virtue of an agreement between the debtor and the creditor. Pursuant to the agreement, the debtor, as the assignor, assigns its receivables stemming from an underlying relationship to the creditor, as the assignee.

The assignment may concern a single receivable or pool of receivables, both existing and future. In some situations, an assignment may be prohibited by the law or contractual arrangements. Assignment of receivables from insurance agreements and commercial contracts (account receivables) are the most common types of the agreements discussed.

Mortgage

A mortgage is a right *in rem* effective as regards third parties. It is established over real properties and its registration in the publicly accessible Land and Mortgage Register is requisite for the instrument to come into force.

A mortgage entered into the Land and Mortgage Register enjoys priority over any mortgages or other rights *in rem* subsequently created over the subject real estate.

Declaration on voluntary submission to enforcement

A declaration on voluntary submission to enforcement is not strictly a security instrument, but it is very often included in the security package as it allows enforcement of claims by creditors to be accelerated as it replaces a court judgment awarding the claim.

By way of the declaration, made in a notarial deed, the debtor acknowledges its obligation to the creditor and undertakes to pay up to a specified amount (together with interest and other costs, as applicable) and submits to enforcement in respect of that payment obligation. Following the lapse of a deadline set out in the declaration or upon occurrence of the triggering events described therein (usually, payment default) the creditor becomes entitled to commence enforcement proceedings.

Promissory note

A promissory note is also not strictly a security instrument, but similarly to the declaration on voluntary submission to enforcement, it allows the acceleration of the enforcement of claims. The Polish regulation on promissory notes originates from the Geneva Convention on promissory notes from 1930 – thus, it is similar to the legal frameworks of most western European legal systems.

Surety

In a surety contract, a third party undertakes to repay the debtor's debt if the latter fails to do so. The liability of the person granting surety is joint and several with the debtor's unless otherwise provided in the contract. An important deficiency of the surety is that when the suretyship is granted in reference to a future liability, it may be established only up to a specified maximum amount and must be limited in time.

Guarantee

A guarantee is a granted by way of an agreement between the debtor and the creditor (the beneficiary of the guarantee). Since, unlike all security interests so far outlined, a guarantee arrangement is not expressly regulated under Polish law, the parties are free to structure it at their discretion, but within the limits of the freedom of contracting principle.

In a typical guarantee, the guarantor undertakes to unconditionally and irrevocably pay the creditor (as the beneficiary) the guaranteed amount upon the latter's first demand. The guarantee agreement will usually define the terms upon which the beneficiary may demand payment of the guaranteed amount.

Polish entities often provide guarantees (both under Polish and foreign law) to secure the obligations of their parent or sister companies). While providing the guarantee, Polish guarantors must, however, abide by some restrictions that limit the maximum number of liabilities they may guarantee. Also, their managers must duly analyse whether the granting of the relevant guarantee is in the interests of the grantor – Polish law does not recognise group interest as such.

Corporate benefit

Management board members of any Polish company are obliged to act in the best interests of that entity. They may be held liable (including criminally) for acting to the detriment of the relevant entity's interests, which could be the case when entering into transactions without proper consideration or that may have a material adverse effect on the existence or financial position of the entity, or both. The latter applies, in particular, to transactions that may result in the 'technical insolvency' (as outlined below) of the relevant company.

To mitigate the risk, the transaction documentation should provide evidence that the managers have diligently analysed the risk of insolvency of the parent company and, if applicable, of other entities whose obligations are to be secured, and that the guarantor received or will receive proper (arm's-length) consideration for providing the guarantee. Such 'proper consideration' does not necessarily mean that the company should receive consideration in cash – it is assumed that the term 'proper consideration' may be understood in a wider context and represent anything that represents real value to the company – such as access to intragroup financing provided on more beneficial terms than available on the market, or access to technology or know-how.

Technical insolvency – guarantee limitation language

Under Polish bankruptcy law, a company whose total value of liabilities exceeds the total value of its assets is deemed insolvent, even if it satisfies its debt in a timely manner (technical insolvency).

Recent amendments to the Polish bankruptcy law have, however, significantly lessened the relevance of the foregoing principle to transactions in which Polish entities provide guarantees. The period during which the value of liabilities must exceed the value of assets has now been extended to 24 months, and contingent liabilities (e.g., guarantees) have expressly been excluded from the definition of liabilities. As a result, under the current wording of the bankruptcy law, guarantees in finance transactions – which by nature are contingent liabilities – are unlikely to result in the technical insolvency of a guarantee provider (at least until they become due and payable, and remain so for a period exceeding 24 months). Following these changes, the relevant limitation clauses, which have been developed on the market to tackle the risk of technical insolvency, are likely to disappear from the transaction documentation or will be significantly restructured.

These changes to the Polish bankruptcy law are particularly beneficial for the creditors, who will no longer need to worry about the impact a limitation clause could have on the actual value of guarantees provided by Polish guarantors. In extreme cases, with a guarantee provider significantly indebted, the limitation clause (in its typical wording existing on the market since the introduction of the bankruptcy law in 2003) could render the protection under the relevant guarantee illusory.

Security agent issues

Polish law permits intercreditor agreements, in which the creditors indicate one of them as the security agent holding the security interests on behalf of the remaining creditors. Contrary to the Anglo-Saxon concept of a security agent, however, the Polish regulation is not universal and may be employed only in respect of specific types of security instruments, namely the registered pledge and mortgage. Moreover, even in those two situations, the concepts differ in details – under a registered pledge, the security agent must always be a creditor whereas there is no such requirement in the case of a mortgage.

As for other security interests (such as civil and financial pledges), it is not possible to appoint a security agent at all. The same applies to the voluntary submissions to enforcement as it is not possible to submit to enforcement in favour of a person that is not one's creditor.

Preference periods

Pursuant to Polish bankruptcy law, certain transactions effected by a debtor within a particular statutory period prior to the filing for bankruptcy are, or may be deemed, ineffective as regards the bankruptcy estate.

Legal actions pursuant to which the debtor has disposed of its assets (properties), performed within the year before the filing for declaration on bankruptcy are ineffective towards the bankruptcy estate (i.e., the assets or their equivalent should be returned to the estate) if performed gratuitously or for consideration with the value of the debtor's performance being blatantly in excess of that received by the latter.

Transactions towards the bankruptcy estate (even for consideration) between the debtor and its shareholders (direct or indirect) made in the six months before a motion for the declaration of bankruptcy of the debtor is filed (whichever motion is later granted) are also ineffective.

Payments by the debtor, made in the six months before any party files a motion to declare the debtor bankrupt (which motion is later granted) that at the time of their making had not been due and payable, will be ineffective towards the bankrupt's estate by operation of law. The same applies *mutatis mutandis* to the establishment of any security interest (including a pledge or a mortgage) by the debtor. Nevertheless, the recipient of the payment or security interest may file to declare the payment or establishment of the security effective, if at the date thereof it was not aware of the existence of the grounds for the declaration of the bankruptcy of the debtor.

The judge commissioner (a judge appointed to supervise the bankruptcy proceeding) may, at the request of a court receiver, court supervisor, administrator or *ex officio*, consider any encumbrance of the bankrupt's property ineffective towards the bankruptcy estate if the bankrupt was not the principal (direct) debtor on account of the secured claim. This is also the case if a security interest was established within the year before a motion for the declaration of bankruptcy was filed and in connection therewith, and the bankrupt received no consideration or virtually no consideration. In the case of a security interest established to secure a debt of the bankrupt's related party (e.g., parent company), the value of consideration is irrelevant.

IV PRIORITY OF CLAIMS

i Division of the bankruptcy estate

Receivables subject to satisfaction from bankruptcy estate funds are divided into the following categories:

a category one: employees' remuneration that became due before the announcement of bankruptcy (except for the remuneration of the representatives of the bankrupt), receivables personally connected with the bankrupt (as it may be applicable), including alimony due for three years prior to the announcement of bankruptcy, disability pensions, and receivables that arose from the bankrupt's (or the bankruptcy administrator's) actions taken after the announcement of bankruptcy;

b category two: taxes and public dues, as well as receivables not falling into any other category;

c category three: interest on receivables classified under higher categories, as well as court fines, donations and testament endows; and

d category four: receivables of shareholders under loans and other similar agreements, in particular, deliveries with postponed payment made within the five years before the announcement of the bankruptcy, together with interest.

Before the receivables from any category are satisfied, the bankruptcy estate must first settle the cost of the bankruptcy proceeding and alimony (if applicable) due for the period after the announcement of the bankruptcy. If the funds of the bankruptcy estate are sufficient to cover these sums, other receivables are satisfied category by category. This means that, for example, a receivable from category two may be satisfied only if all submitted receivables from the category one have been already satisfied. The same applies to further categories (three and four). If the assets do not suffice to satisfy all the receivables of the same category, those remaining receivables are satisfied in proportion to the amount of each of them.

ii Secured claims

Receivables secured by a mortgage, pledge, registered pledge are subject to satisfaction from the amount gained from the liquidation of the encumbered object, less the costs of the object's liquidation and other costs of bankruptcy proceedings in an amount not exceeding one-tenth of the amount gained from liquidation. This must not be more, however, than that portion of the costs of bankruptcy proceedings following from the proportion of the encumbered object against the value of the entire bankruptcy estate. The costs of proceedings are taken into account last. Amounts gained from liquidation of things, receivables and rights encumbered by a mortgage, pledge, registered pledge, treasury pledge and marine mortgage are allocated for satisfaction of creditors whose receivables were secured on these things or rights, in compliance with the provisions of the Polish Bankruptcy Law. Amounts remaining after satisfaction of these receivables become part of the funds of the bankruptcy estate and are subject to division in accordance with the general rules described above.

V JURISDICTION

i Submission of disputes to foreign jurisdiction

Generally, Polish law enables the submission of disputes arising out of, or in connection with, an agreement signed by a Polish company to the exclusive jurisdiction of courts of a foreign country. In this case, two regimes may be recognised – one applicable to the choice of jurisdiction made in favour of a court based in another EU country, and the other, applicable to courts of non-EU countries.

In the first case, the Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast)[9] indicates the terms upon which the choice of jurisdiction is applicable. Thus, the terms under which the submission of disputes to foreign jurisdiction apply does not differ between EU countries.

In the case of the choice of a non-EU forum, Polish law allows the exclusion of the jurisdiction of Polish courts in favour of courts of a foreign state provided that: (1) the selection is made in writing; (2) the choice of foreign jurisdiction is valid under the law of the chosen forum; and (3) the pertinent matter does not belong to the exclusive jurisdiction of Polish courts.

ii Enforceability of foreign judgments

A court judgment of an EU country shall be recognised or, as the case may be, declared enforceable by a Polish court without review of its merits pursuant to the applicable provisions of Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012.

Judgments of foreign courts other than courts of the EU countries are recognised and declared enforceable in Poland on the basis of reciprocity as long as the judgment does not fall under any exception indicated in the law.

9 Official Journal L351/1.

iii Submission and enforcement of arbitration awards

Agreements submitting disputes related to the financing transactions are common in Poland. Submission to arbitration should be made in writing and must specify the subject matter of the dispute or the legal relationship from which a dispute has arisen or may arise.

Poland is a party to the New York Convention to the extent that Article II of the foregoing convention requires contracting states to recognise arbitration agreements. Arbitral awards rendered pursuant to the arbitration clauses contained in the agreement executed with an entity from a country that has also signed by New York Convention will be enforceable in Poland in accordance with the terms of the New York Convention.

It is worth noting that, pursuant to Polish bankruptcy law, arbitration clauses expire upon declaration of bankruptcy of one of the parties thereto, and the arbitration proceedings conducted by such party will cease as of that moment.

VI ACQUISITIONS OF PUBLIC COMPANIES

i General overview of de-listing of a public company

In order to delist the company (i.e., exclude its shares from trading on the stock exchange), a relevant resolution of the Warsaw Stock Exchange management board must be adopted. Further, shares may be subject to delisting if, within the past three months, no exchange transactions have been effected with respect to them.

A shareholder intending to delist the company should first acquire all shares of a public company via a mandatory public tender bid. This obligation does not arise if all shareholders agree on delisting of the company.

The investor intending to delist a public company must possess enough funds for the tender price. These funds may be covered by a loan – leveraged financing of such transaction is not precluded.

Alternatively, the company may be delisted upon the Polish Financial Supervision Authority's decision on rematerialisation of shares, issued at the request of the company. However, such request may be effective only if the shareholders' meeting adopted a resolution on rematerialisation of shares by a majority of nine tenths, with a quorum of at least half of the issued capital. Moreover, such resolution may be voted upon only at the request of a shareholder who first announced a tender offer for all shares – unless the request for voting is made by all shareholders).

ii Mandatory tenders

In general, the direct acquisition of shares in a public company may only occur via a tender bid for an exchange or sale of shares if they result in exceeding the 33 per cent or 66 per cent voting thresholds.

However, a compulsory tender is precluded if creditors secured by either registered or financial pledges forecloses the ownership of the pledged shares.

iii Minority squeeze-outs

A shareholder of a public company holding at least 90 per cent of the total number of votes (individually or acting in concert with other entities) is entitled – during three months following the above voting rights threshold being reached – to demand that all other shareholders sell all their shares held in a public company. The minimum share price must be no lower than the three-month and six-month market average price for shares (which in some circumstances may be further increased in accordance with the provisions of the Polish Public Offer Act). Acquisition of the shares by way of a squeeze-out does not require the consent of the shareholder to whom that demand is addressed. A squeeze-out is announced after providing collateral not lower than 100 per cent of the value of the squeezed-out shares. Withdrawal from a squeeze-out that has already been announced is prohibited.

VII OUTLOOK

It appears that thanks to continuous growth of the Polish economy in recent years, there are still good opportunities for leveraged finance acquisitions in Poland. Even after adding about 20 per cent to its GDP over the past five or six years, Poland's projected annual growth of about 3.7 per cent this year makes it an attractive market for inflows of investment on a risk-adjusted basis.[10]

Although there are currently not many state-owned companies that may still be subject to privatisation, more Polish privately owned companies are expected to be available for acquisition. As Poland has spent 25 years as a free-market economy, many business founders are reaching retirement age. In cases where no succession is feasible, they will most likely decide to sell and cash in. Also, the Polish equity market remains modest by the standards of developed markets.

Lately, however, innovative and fast-growing start-ups have also become more common. Only recently, one of Poland's newest start-ups, offering shared office space, achieved a valuation of €7 million in only three months, becoming one of the most successful newcomers in Europe.[11] The new Polish government has decided to support Polish entrepreneurs by launching a 3 billion-zloty incentive plan aimed at helping high-tech start-up companies.[12] Simultaneously, there are additional smaller-scale programmes targeted at particular markets – for example, a special programme supporting Polish computer game developers.[13] Undoubtedly, this relatively new trend in the market should create solid grounds for many takeovers in coming years when the young investors commence seeking additional funding or decide to simply cash in their ideas.

10 http://ec.europa.eu/economy_finance/eu/countries/poland_pl.htm.

11 www.rp.pl/Biznes/303219910-Polski-start-up-wsrod-najdrozszych-w-Europie.html#ap-2.

12 http://businessinsider.com.pl/strategie/male-firmy/program-start-in-poland-to-dofinansowanie-dla-startupow/0xpbnwj.

13 http://wyborcza.biz/biznes/1,147881,19936301,arp-wchodzi-w-polskie-gry-wideo-rzad-bedzie-wspierac-tworcow.html.

Appendix 1

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Tomasz Kański graduated with a law degree from Poznań University Law School. He pursued studies on international business law at the Central European University in Budapest and the University of California in Berkeley as a Stefan Batory Foundation scholar. He also received a master of laws (LLM) degree from the Central European University in Budapest. He joined SK&S in 1995 and became partner in 2002. He has advised in numerous M&A, commercial and international business transactions, including restructuring, privatisation and bankruptcy projects, as well as corporate disputes. He has also advised numerous clients in their investments in Poland as well as their day-to-day operations, including direct greenfield project investments in special economic zones in Poland. A member of the supervisory boards of several companies, he also frequently publishes in the most recognised Polish professional daily, *Dziennik Gazeta Prawna*.

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Borys Sawicki has participated – advising both lenders and borrowers – in a large number of cross-border and domestic bilateral and syndicated, secured and unsecured financings where private banks (including GE Corporate Finance Bank SAS, Deutsche Bank AG, the Royal Bank of Scotland plc, Swedbank AB, Bank of America, Raiffeisen Zentralbank Österreich AG, ING Bank NV, BNP Paribas, Credit Suisse First Boston, Wells Fargo Bank, National Association and Citibank International plc) have extended loans to Polish and international borrowers. In all those transactions he actively participated in the structuring and negotiating of financing agreements and structured the respective security documents.

Mr Sawicki has also worked closely for several years with the European Bank for Reconstruction and Development, providing advice in the fields of project finance, local self-government regulations (including public finance regulations), public aid and public procurement laws. He has also advised the World Bank on matters related to the structuring and establishment of a security package to secure financing extended by the World Bank to a municipally owned district heating company. In 2009, he advised on the securitisation of commercial receivables (aggregate value of €300 million) of a group of food-producing companies, as well as in a number of aircraft acquisition finance transactions. In the field of corporate law, Mr Sawicki has successfully completed a number of mergers and acquisitions of entities in various sectors (recently, of one of the largest Polish courier services providers), and provides day-to-day corporate advice to numerous clients of the firm.

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