AmCham.Pl QUARTERLY

The official magazine of the American Chamber of Commerce in Poland

AMERICAN CHAMBER OF COMMERCE IN POLAND

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COVER STORY

DRIVING GROWTH

Despite pandemic-related hurdles to the global economy, Poland continues to attract foreign investors and those from the US rank among the topmost future growth-oriented that build sustainable value chains across the Polish economy. But an investor-friendly and indiscriminate legal framework that Poland has had so far is a must-have for American companies so they can meet the long-term strategic goals of their investments.

IT'S YOUR AMCHAM

IT'S YOUR DEBATE

I hope that the development of commercial drugs will follow the logarithmic progression, on the one hand, contributing to the development of the Polish economy, and on the other, offering innovative therapies and drugs that patients need.

DR RADOSŁAW SIERPINSKI, PRESIDENT OF THE MEDICAL RESEARCH AGENCY, p. 20

We are happy that American investment projects represent foremost high technologies and high-quality jobs. The Polish government welcomes such investments as it would like to see the Polish economy follow this direction.

KRZYSZTOF DRYNDA, PRESIDENT OF THE POLISH INVESTMENT AND TRADE AGENCY PAIH, p. 15

Nearly 3 out of 4 jobs created by foreign greenfield projects in Poland came from US investments. American giants, such as Arrow, Hyland, AT&T, Microsoft, and Intel, develop IT and shared service centers as well as data centers.

ELIZA PRZEŹDZIECKA, HEAD OF AMCHAM ECONOMIC RESEARCH, p. 13

Tourism is spectacular, and we are happy to see tourists come back to the city streets this year, but it is worth remembering that Kraków does not have a tourism-based economic monoculture.

JERZY MUZYK, DEPUTY MAYOR OF KRAKÓW, p. 27

The city is looking forward to collaborating with the private sector in any economic area that supports the realization of the city's long-term development plans.

ANDRZEJ KULIG, DEPUTY MAYOR OF KRAKÓW, p. 25

Transactions that were frozen last year now are going through because investment funds have significant resources to invest. It seems that this year we may see a global record, with the total value of acquisitions by funds exceeding USD 1 trillion.

JACEK POŚWIATA, MANAGING PARTNER, BAIN & COMPANY, p. 37

Although Poland is always strongly impacted in the very beginning of any economic turmoil, it recovers quicker than other economies. The Polish GDP is expected to grow and I notice that the investment sentiment among our stakeholders is high.

DARIUSZ JANCZEWSKI, CEO, CLEAR CHANNEL POLAND

AmCham.pl Quarterly is the official publication of the American Chamber of Commerce in Poland. It is a voice for foreign investors and the business community in Poland. The magazine strives to keep our members and other readers up to date by following chamber news and reporting on the leading trends in business and policy.

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ADVOCACY OF AMCHAM POLAND

Our top issues include:

AmCham Poland supports the collective interests of its members by working to affect changes that improve the business environment in Poland through:

• the close monitoring of Polish and EU regulations;
• position papers, policy statements, and advocacy letters;
• direct and frequent interaction with policymakers;
• active participation in the rule-making process.

All AmCham Poland's position papers are available at amcham.pl/advocacy.

THE POLISH DEAL—TAX CHANGES

On July 26th, the Ministry of Finance submitted for consultation a draft law introducing the most significant tax changes presented in the government economic reforms, the so-called "Polish Deal."

The most critical changes include:

• The tax-free amount increase to PLN 30 thousand gross per year for everyone on a regular work contract;
• Increase of the 32% PIT rate threshold to PLN 120 thousand per year;
• Personal health contributions of 9% will not be tax-deductible;
• The 9-percent health contribution is to be paid by entrepreneurs settling their accounts according to a flat rate;
• New tax reliefs for companies to increase innovativeness: allowances for prototyping, robotization, support for innovative employees, and regulations enabling a combination of R&D relief and the IP Box;
• New facilitations in raising capital (relief for IPOs and investments in IPOs) and simplifications in the Estonian CIT;
• New solutions to combat the shadow economy: encouragement for a person working illegally to report it to the tax office, where the outstanding tax obligations should fall on the employer, making non-cash transactions more common;
• Increase the effectiveness of the fight against the transfer of untaxed income from Poland and tightening up the residential lease system, clarification of provisions concerning the introduction of private entrepreneur's assets to the company's assets, and issues related to the sale of company assets, such as leased cars.

Considering the great importance of this strategy for the labor market and business development opportunities in Poland, AmCham will participate in the public consultations that last until the end of August 2021. If your company is interested in this joint action, don't hesitate to contact AmCham's legal team.

LEX TVN

AmCham is conducting an initiative to support its member company TVN in obtaining a decision to extend the license for the operation of the TVN24 television station and on an ongoing basis in the legislative process aimed at amending the Broadcasting Act.

Due to the upcoming expiration date of the current license (September 26th, 2021), the TVN24 television station applied for its extension in February 2020. However, the National Broadcasting Council did not issue any decision based on doubts about compliance with art. 35 of the Broadcasting Act, which regulates the extent of foreign ownership over a media entity (no more than 49% of shares). This article, however, does not apply to ownership entities registered within the European Economic Area, and TVN S.A. belongs to a company that is registered in the Netherlands.

On the other hand, the currently passed amendment by the Sejm to the Broadcasting Act is to introduce a requirement that the license may be granted to an entity from the European Economic Area, provided that this entity is not dependent on a foreign person from outside this area (third countries, also the U.S.). The amendment also introduces the obligation to adjust the capital structure of entities to the new regulations within six months from the Act's entry into force. Due to the fact that the owner of the TVN Group is the American company Discovery Inc., after the adoption of this amendment to the Polish legal system, TVN would be forced to sell 51% of its shares.

To this day, AmCham has sent its position to Prime Minister Mateusz Morawiecki, former Deputy Prime Minister Jarosław Gowin, and the Chairman of the National Broadcasting Council, Witold Kołodziejski, with postulates to issue a decision to extend the license and to change the range of countries that may be the majority owners of media in Poland from EEA countries to OECD. We are currently observing the legislative process and plan our next steps.

OTHER ADVOCACY ACTIVITIES

AmCham is also working on many other legislative initiatives, including:

• Draft act on quality in healthcare and patient safety;
• Amendment to the Act on the reimbursement of drugs, foodstuffs for particular nutritional uses and medical devices;
• A draft act amending the Act on the management of packaging and packaging waste and certain other Acts;
• Regulation of the Minister of Infrastructure on evaluating applications in the adjudication proceedings (Offshore wind farms).

If your company is interested in participating in these or any other advocacy initiatives, please contact AmCham's Legal team.

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LETTER FROM THE CHAIRMAN

DEAR AMCHAM MEMBERS AND FRIENDS,

Summer 2021 has been an active time for AmCham and this high level of advocacy and engagement will continue into fall. On behalf of the Board of Directors, I would like to update you on several important issues for AmCham during the past several months.

As you are all aware, the legislation concerning ownership restrictions for non-EU entities is the center of an ongoing debate that touches on how US capital is treated, the retroactive implementation of the law on existing investments, the role of private media, and on the wider US-PL relationship.

AmCham is committed to supporting US investors and has been active in communicating issues and concerns to Polish political and policy leaders. AmCham has submitted its position successively to the appropriate institutions and the highest levels of government. In addition, we have expressed our support for Discovery/TVN as an investor, an American company, and an important part of the American business community here in Poland in numerous media statements.

We continue to engage with all political stakeholders as well as with the US Embassy to ensure that our companies are treated fairly, equally, and with due respect to the important role of US capital in the economic growth and transformation of the Polish economy.

AmCham continues its work in the Advocacy area, supporting our member companies; the current key initiative is the Polish Deal ("Polski Ład")—the tax changes will have a large impact on all investors, employees, and employers. We submitted our position in this matter.

Another key action is our live return to the Economic Forum in Karpacz. We will host a robust set of panels focusing on investment, innovation, and the future of the Polish economy, as well as have the return of the AmCham Diner. AmCham will continue to be a prime forum for discussing business at the Forum.

Throughout the country, our Chamber and members are engaging with local and regional leaders to improve communication and cooperation to boost economic impact, working with the Polish Investment and Trade Agency PAIH to increase the level of trade and investment in our two countries through the American Investor Desk and provide the best possible data to policymakers and business leaders through our economic research.

And now some big news: It is my pleasure to inform the membership that as of September 1, 2021, the Executive Director of AmCham is Dominika Fox-Matulewicz. She will be a great addition to our AmCham team. Dominika joins us from member company Deloitte, and I trust that you all join me in warmly welcoming her to AmCham. You can find more about her in this edition. Welcome, Dominika!

I would also like to announce that AmCham Deputy Director Marzena Drela has taken the new role of Director of Operations to further ensure efficient use of time, events, resources, and assets in the Chamber. It will be a pleasure to work with Dominika and Marzena in their new roles.

Busy times indeed. On behalf of the Board, I would like to again thank our tremendous AmCham staff for their efforts during the challenges of the last year and a half. Every challenge has been met and creative solutions found to continue our efforts to support our investors. Thank you!

I look forward to seeing you all in person soon.

Stay healthy.

Ever Forward.

TONY HOUSH
AMCHAM CHAIRMAN

NEWSLINE

NEWS FROM AMCHAM AND ITS MEMBERS

Bristol

Aidan Dempsey has been named General Manager of Hotel Bristol, Warsaw, a Luxury Collection Hotel. Dempsey has over twenty years of experience in the hospitality industry and considerable exposure to luxury and boutique hotel brands. During his career, he had the opportunity to manage and work with many prestigious properties and brands across Europe, the US, and the Middle East. He held senior roles at The Shelbourne Dublin, Ireland, and The Ritz-Carlton, Dubai, among others.

Dempsey graduated from Shannon College of Hotel Management with a Bachelor's Degree in International Hotel Management. He worked across all operational departments focusing on quality assurance, guest satisfaction, and successful upsell programs. He successfully led hotel strategies and was responsible for the remodeling and rebranding of several restaurants and bars, as well as supervising general hotel renovations.

Cargill

Cargill has started the construction of a soluble fiber production line at its existing factory in Wrocław. With the USD 45 million project, the company will add soluble fibers to its European portfolio of starches, sweeteners, and texturizers. Cargill plans to fully commercialize its offering in the second half of 2022.

Based on micro-reactor technology developed in partnership with Germany's Karlsruhe Institute for Technology, for which Cargill has secured both an exclusive license and granted patents, the soluble fibers enable sugar reduction up to 30 percent and support calorie reduction and fiber enrichment in confectionery, sweet bakery, fillings, cereals, ice cream, and dairy, while helping to maintain desired appearance, taste and texture.

Cargill's soluble fibers with botanical origin such as wheat and corn are relevant for applications where existing solutions fall short, such as sugar confectionery where digestive tolerance can be an issue for young consumers, breakfast cereals where taste and coating performance needs to match existing products, and ice cream where consumers desire low-calorie products that still deliver on indulgence.

The patented technology will also enable Cargill to produce next-generation fibers. As with the initial offerings, these future soluble fibers will address key market needs targeting sugar and fat reduction.

While the new project marks the company's first entry into the European soluble fiber market, Cargill is already a significant player in the sugar-reduction sector, with a full line of sweeteners. The new soluble fibers round out that portfolio, enabling the company to offer customers complete sugar-reduction solutions.

CMS

Law firm CMS had successfully represented a client in proceedings before the Supreme Administrative Court, which, in July, issued a judgment that definitively decides the matter of the application of the reduced 5-percent VAT rate for take-away meals. After five years of uncertainty, the judgment definitively decides the issue of the choice of VAT rate applied to deliveries of take-away meals. The judgment is of crucial importance for the entire gastronomy sector in Poland.

The client was represented by Paulina Karpińska–Huzior, the leader of the tax dispute team at CMS, and Rodosław Baraniewicz, from PwC. Also involved in the dispute was Adam Abramowicz, Ombudsman for Small and Medium-Sized Companies. The supervising partner was Andrzej Pośniak, Managing Partner at CMS in Poland and Head of Tax Team.

The case had earlier been submitted to the Court of Justice of the European Union, which resolved not to decide the dispute on the national level. Despite that, the Supreme Administrative Court in Poland resolved the issue in favor of taxpayers, basing the decision on the principles of neutrality and trust.

Cresa

Real estate advisory Cresa has been shortlisted for the Advisor of the Year award in Prime Property Prize 2021, organized by the PTWP Group. The title is awarded to advisory firms active on the Polish commercial real estate market to recognize their achievements in commercial space leasing, real estate disposals, investment transaction services, contribution to the development of the real estate industry, service innovation, and consistency in strategy execution.

In the review period from September 2020 to September 2021, Cresa represented clients in a number of major transactions, including Allegro, TJX Europe, which owns TK Maxx, the Kellogg Company, Tiberina Group/U-Form, and Knauf Industries Polska.

Cresa is the world's largest commercial real estate advisory firm that exclusively represents occupiers and specializes in the delivery of fully integrated real estate solutions. It also offers investment market advisory services, real estate valuation, market research and advisory, design and project management, and workplace strategy solutions.

Cushman & Wakefield

One of the largest providers of commercial real estate services, Cushman & Wakefield, and the pioneer in flexible office space, WeWork, have announced an exclusive strategic partnership to market both landlords and businesses on WeWork's management experience platform and new jointly developed solutions. The partnership is intended to provide clients with office operations by combining WeWork's proprietary platform of workplace experience management software and hospitality experience with Cushman & Wakefield's asset, facilities, and management

services. Together the two companies will provide landlords and businesses with the ability to create a differentiated workplace experience for tenants and employees in the new hybrid world of work.
In other news, Cushman & Wakefield has advised NREP on their first investment into the Polish professional rented market. The transaction comprised more than 1,000 new-built units in Warsaw, which were acquired from YIT.
NREP is the leading Nordic real estate investor with more than EUR 10 billion in assets under management.
Cushman & Wakefield advisors were Mira Kantor-Pikus, Partner, Equity Debt & Alternative Investments, Capital Markets; Sylwia Jankowska, Investment Consultant, Capital Markets; Małgorzata Dziubińska, Associate, Consulting and Research; and Katarzyna Bartos-Pońska, Associate, Valuation and Consulting. Joanna Długowska acted as a valuer in the transaction.

CVC Capital Partners

The convenience store chain, Żabka, owned by CVC Capital Partners, opened its first autonomous convenience store, Żappka, in the company's hometown Poznań. Żabka executed the project in collaboration with the US-based AiFi, a company specializing in developing autonomous shopping experiences powered by AI. The store combines the AiFi NanoStore concept with the Żabka micro-market concept.
The two companies plan to open more such stores across the country.
The Żabka chain, present in Poland for 20 years, comprises 7,200 stores managed by nearly 6,000 franchisees.

Hill+Knowlton Strategies Poland

Communications agency Hill+Knowlton Strategies Poland (H+K) has been recognized at the PRovoke Media's SABRE Award EMEA 2021 as Central and Eastern European Consultancy of the Year 2021.
PRovokeMedia, which holds the awards, wrote on its website that the H+K win came as no surprise since last year the agency was crowned EMEA Consultancy of the Decade for its remarkably consistent level of performance under the leadership of Poland CEO Grzegorz Szczepański, who, together with over 50 executives, has turned the H+K the WPP's regional hub which oversees from Warsaw more than 30 affiliates in the sub-region.
In 2020, despite the market decline of 10 percent, H+K kept its revenues flat whit which it became the second biggest PR firm in Poland. The company's blue-chip client list includes Facebook, Spotify, Shell, Boeing, Coca-Cola, plus the new business from Comirnaty, Janssen, Westinghouse, and Bridgestone.
During the pandemic, the agency has made an elevated focus on employee culture and safety, including a hybrid working model, mental health support, greater investment in professional development, and zero salary cuts.
H+K's focus on behavioral science is particularly evident in Poland, where it launched a new Habits+ offering in response to the pandemic, operating in conjunction with its creative studio. Templates were tested on focus groups, with the most effective made available for free and taken up by 50+ companies. Szczepański himself introduced a new ethics code for Poland's PR industry, which has been adopted by many of his peers in the market.

Lynka

US-based Vantage Apparel has acquired a majority stake in the leading European corporate clothing supplier Lynka, known for its multi-brand wholesale promotional apparel and merchandise. Lynka's previous stakeholder, promotional products distributor, Berendsohn AG of Hamburg, fully exited the business to work together with Lynka as a key customer.
Following the transaction, Lynka's leadership will remain intact with founder and shareholder John Lynch, at the helm as President, and a team of over 250 staff based at its facility outside Kraków.
Lynka has customers across 25 countries in Europe, including France, Germany, Scandinavia, and Central and Eastern Europe.
In the picture: Ira Neaman, CEO of Vantage Apparel; John Lynch, CEO of Lynka.

MoneyGram

Financial services provider MoneyGram was awarded the 2021 Confirmit Achievement in Customer Excellence in two categories: digital success, and B2B. With the award, MoneyGram has been recognized for its commitment to customers by continually evolving its customer experience program to gather better insights and fuel smarter, faster action.
Confirmit, the industry leader, has hosted the ACE Awards since 2005.

Orange Polska

Telecommunication operator Orange Polska received the Golden and the Diamond Leaf awards from the Polityka weekly for the company's long-standing excellent performance in CSR.
The company was recognized, among others, for its participation in the "We Are With You" volunteer program, through which Orange Polska delivered support to front-line pandemic fighters as well as educational services to the public.
The awards are granted by the Polityka weekly together with the Deloitte business consultancy and the Responsible Business Forum.

Panattoni

Warehouse developer and operator Panattoni Europe renegotiated a lease contract with Eurocash Serwis, a specialist distributor of tobacco and other products for cashier zones, for over 5,400 square meters of warehouse and 660 square meters of office and social space in Panattoni Park Janki I, pictured.
Real estate advisory firm Cresa Poland represented Eurocash Serwis during the transaction.
Panattoni Park Janki I is a distribution center comprising a modern warehouse, industrial and office space in the Warsaw region.

PepsiCo

Food producer PepsiCo has laid the cornerstone for its new production facility, a project estimated at over PLN 1 billion. The factory is under construction in the Legnica Special Economic Zone, near Środa Śląska, Lower Silesia.
When fully operational in 2025, the factory will add 450 jobs and produce brands Lay's, Lay's Oven Baked, and Doritos to be sold in five EU markets: Poland, Czech Republic, Slovakia, Germany, and Hungary.
PepsiCo's factory, with a production facility in Poland, is designed to meet the climate neutrality standards by 2035.

AGENDA

INTELLIGENCE FROM AMCHAM COMMITTEES

AGRII, FOOD & FMCG

The EU Single-Use Plastics Directive (SUP) and how Poland applied its provisions was on the agenda of the committee meeting in June, with expert speakers Daniel Maryjosz and Łukasz Pamuła, senior associates at PwC Tax and Legal Services Department.

The SUP directive was created to tackle the problem of single-use plastic items, such as bottles, bags and wrappers, caps and lids, and cigarette ends. As users dispose of them incorrectly, they massively litter seas and oceans, which is a threat to marine life and destroys fishing equipment. According to EU studies, the 10 most commonly found single-use plastic products on European beaches represent 70 percent of all marine litter in the EU. With the SUP directive, the EU aims to reduce the impact of plastic products on the environment by promoting the transition from the throw-away economy to a circular economy in which products are reused or recycled. It is the go-ahead to a new class of economy based on sustainable and non-toxic reusable products and reuse systems.

The directive also promotes the development of "alternative" materials, such as biodegradable materials, including paper, for manufacturing single-use products.

Along with this, the directive sets a new ground for reusable products. It also applies the concept of "extended producer responsibility," first used by the EU in 2018 when the European Commission decided to develop a new legal framework for waste management. This concept, however, is now applied not only to specific economic areas but to the whole economy of the EU.

The SUP directive bans the use of oxo-degradable plastics—so far commonly used in cutlery, plates, straws, beverage cups and drink containers, and cotton buds—because the time necessary for this type of plastic to break down is very long, and the process itself has a negative impact on the environment.

The SUP directive sets a goal that by 2025, approximately 25 percent of recycled PET plastic should be used again to produce plastic bottles. Another goal is that by 2030, as much as 90 percent of plastic bottles in circulations should be collectible.

In Poland, the Ministry of Environment is responsible for implementing the SUP directive. In most cases, the ministerial draft implements EU solutions directly. However, some specific provisions designed by the ministry include a "cup fee," "cleaning fee," and "educational fee."

The cup fee is imposed on points of sale, wholesalers, and certain other points of distribution. They will be under an obligation to charge the buyers of certain single-use products, such as plastic cups, a fee. The maximum amount of the fee was set at PLN 1 for a single item. Detailed rates of fees assigned to each type of product will be defined through regulation.

In turn, producers who place certain single-use plastic products on the market will be subject to the cleaning fee. The maximum fee is set at PLN 0.05 for each product delivered to the market, but it will be up to the Climate Minister to determine the rate based on the estimated costs of the running public services charged with collecting the items.

In turn, the educational fee will be imposed on producers of single-use plastic products such as food containers, bottles with a value of up to 3 liters, wrappers, bags, cigarettes with plastic filers, wet wipes, sanitary towels, tampons, and tampon applicators. The maximum fee is set at 0.1 percent of annual net revenues generated through the sale of those products. The money will go to the National Fund for Environmental Protection and Water Management.

At the time of the committee's meeting, the regulations implementing the directive in Poland were in the works. The SUP directive had to become law in Poland and other EU members states by July 3, but Poland did not meet the deadline due to parliament's busy agenda.

Also in June, the committee held a meeting with Maciej Golubiewski, Head of the Office of the European Commissioner for Agriculture and Rural Development Janusz Wojciechowski. The guest talked about the EU "Farm to Fork strategy," which is designed to enable a transition to a sustainable food production system that safeguards food security and ensures access to healthy diets sourced from healthy foods. The strategy is also pivotal in meeting the goals of the EU Green Deal, a comprehensive program to cut greenhouse emissions across the union's economy. Currently, the agriculture sector in the EU generates over 10 percent of all greenhouse gases produced in the EU.

The strategy aims to transform the EU food production system by 2030 in a number of key areas, including a 20 percent reduction in the use of fertilizers, a 50 percent reduction in the use of pesticides, and sales of antimicrobials used for farm animals and aquaculture.

The strategy also aims to make all EU member states adopt an EU Front of Pack Labelling system and make the production of "eco" foods more cost-effective by implementing "precision agriculture" solutions based on innovative digital technology.

Following his presentation, the speaker shared his thoughts on how the agricultural sector in Poland can take advantage of the new EU common agricultural policy.

DIGITAL ECONOMY

In June, the committee hosted Krzysztof Szubert, High Representative of the Polish Prime Minister for European Digital Policy; and Poland's Plenipotentiary for the United Nations Internet Governance Form 2021, which will take place on Dec 10-12 in Katowice.

The speaker presented the forum's history, highlighted its objectives, and talked about collaboration opportunities for companies the forum offers in Katowice.

The idea for the forum was conceived at

the World Summit for Information Society held in Tunisia in 2005. It was then when world leaders realized a need for a framework of internet governance—the development and application by governments, the private sector, and civil society, in their respective roles, of shared principles, norms, rules, decision-making procedures, and programs that shape the evolution and use of the Internet.
Since its first meeting in 2006, the IGF has been convened annually by the United Nations Secretary-General, in accordance with the mandate set out in the Tunis Agenda for the Information Society.
Past host countries included Germany, France, Mexico, Brazil, and Kenya. Beyond 2021, host countries will include Ethiopia, Japan, and Russia.
Over the years, the forum evolved into the largest global event dedicated to worldwide issues of digital space, bringing together top-ranking representatives of the five stakeholder groups: public administration, business, academic and scientific circles, non-government organizations, and technology developing organizations.
Poland has been pitching for hosting the forum for many years. The fact that it is the IGF 2021 host reflects Poland's growing recognition of the world as a dynamic, high-tech-oriented society.
While officially, the forum starts on Dec 7, a day earlier, high-ranking public sector representatives will meet to discuss such issues as content moderation on the Internet and the best ways to build digital competencies and invest in digital development post-pandemic. The participants will include UN Secretary-General António Guterres, Polish President Andrzej Duda, Polish Prime Minister Mateusz Morawiecki, and the Speaker of the Polish Parliament Elżbieta Witek, as well as EU commissaries and ministers of digital affairs from UN member states.
The forum ends on Dec 10, but Poland decided to add two more days for a special event—the IGF 2021 Afterparty, organized by the Prime Minister's Office. The event is dedicated to young users of the Internet, especially software programmers and entrepreneurs. It will feature competitions, performances, and other attractions highlighting the regional culture of Upper Silesia.
The forum in Katowice is promoted by Polish diplomatic services all over the world. A special promo will take place at the Expo 2021 Dubai, which starts in October. For more information about the forum, go to igf2021.pl

HR

In June, forensic experts Mariusz Witalis, Partner and Head of Forensic and Integrity Services for CEE, and Jarosław Grzegorz, Partner at E&Y, met the committee to talk about the EU Whistleblowing Directive as its provisions will soon have to be implemented in Poland.
There are good reasons why companies should have in place mechanisms allowing whistleblowers to report irregularities.
According to a 2018 report from the Association of Certified Fraud Examiners, misconduct is most often detected by information provided by whistleblowers (40 percent of all cases), compared to internal audit (15 percent), management's review (13 percent), and coincidence (7 percent). The remaining 25 percent of cases were discovered due to other circumstances. This may explain why companies that have whistleblowing control mechanisms detect fraud 48 percent faster than those without such mechanisms.
In turn, the Global Integrity Report 2020 by E&Y for Poland revealed that 58 percent of employees were concerned about facing the consequences if they reported irregularities in the company. At the same time, 32 percent of employees said that unethical behavior is tolerated if it is committed by senior or top-performing employees.
That, arguably, may explain why companies in Poland tend to implement compliance reporting systems only if they see a tangible benefit in it, such as being awarded business by a company that would not award its business to a firm with no proper compliance reporting system in place.
The EU Whistleblowing Directive sets the "minimum" standard for enabling whistleblowers to submit information as well as for the protection of whistleblowers against retaliation.
The directive makes it mandatory for companies to set up confidential whistleblowing information channels. The confidentiality aspect means that whistleblowers will be able to submit information without the need to remain anonymous. However, the directive leaves it up to the EU member state to establish rules for dealing with anonymous whistleblowing. In Poland, anonymous whistleblowing probably will be allowed because Poles tend to remain on the safe side. On the other hand, if anonymous whistleblowing is not permitted, companies will be deprived of many good opportunities to learn about irregularities taking place within.
The directive makes it obligatory for companies to respond to the info submitted by whistleblowers no later than seven days from the day on which they obtained the information. This regulation aims at offering whistleblowers the comfort of knowing what happened to the information they have submitted, so they know that the company treats it seriously. It is also a good regulation for companies because if whistleblowers are kept in the dark for too long after submitting their information to the company, they may go to external organizations, such as the media, with their complaints.
To process whistleblowing properly, companies must delegate an ombudsman—such as a compliance officer or head of the legal department—or a team of trusted employees to overlook the actions taken by the company following the tip from the whistleblower. It is in everybody's interest that the action is well-documented as of due care. The whistleblower has to receive feedback from the company on what steps it has taken in response to the information.
Companies are also under an obligation to inform all employees about the compliance system it uses. The system itself has to be transparent and approachable for whoever is interested in whistleblowing.
The directive also specifies who can gain the status of a whistleblower and therefore be protected under the law.
It is a diverse group of positions, including employees, self-employed individuals, freelancers and consultants, vendors and suppliers, and any person working under the supervision and direction of contractors, subcontractors, and supplies. Whistleblowers can also be volunteers and paid and unpaid trainees, job candidates, ex-employees, shareholders, and individuals in managerial bodies.
Legal protection of whistleblowers may also apply to third persons who are connected with whistleblowers, such as colleagues, friends, and relatives.
The law protects whistleblowers against retaliation by the company. The Whistleblowing Directive includes a long list of actions that may be viewed as retaliation if taken against a whistleblower. They include suspension or compulsory unpaid leave, dismissal, or similar measures such as non-extension of the contract or early termination of a fixed-term employment contract. Also, change of contract conditions for the worse for the whistleblowing employee may be re-

Agenda

garded as retaliation, as well as demotion, suspension of promotion or training. Whistleblowers who feel they are discriminated against by the company may go to court. The burden of providing evidence of fair treatment will be upon the company, not the whistleblower. In other words, companies will have to prove in the court that the actions or decisions they have taken to the disadvantage of the whistleblower were not related to whistleblowing. This puts additional responsibility on HR departments as they are obligated to provide internal documents to prove that the way the plaintiff has been treated by the company was based on its principles and regulations. Without such documents, it will be difficult to show in court that the company has not been driven by a need to retaliate.

However, the EU directive sets limits to whistleblowing by making it legal only when individuals who intend to whistleblow are certain that the irregularities they want to report are real. With this, whistleblowing in the so-called good faith is not allowed. In other words, whistleblowers have to know that what they are going to report constitutes a real irregularity. No "maybes" are allowed.

The European Commission gives EU member states a free hand in providing penalties for non-compliance with the Whistleblower Directive, stating only that they should be effective, proportionate, and dissuasive.

The penalties will cover natural and legal persons that hinder or attempt to hinder reporting or retaliate against whistleblowers. The regulations also cover whistleblowers if they submit information that is misleading or untrue.

The Whistleblowing Directive, once applied to Polish law, will be enacted in two stages. The first stage, starting December 2021, will cover companies in the financial sector, as well as other sectors, given the company employees over 250 people. With holdings of small companies, the accumulated number of employees in all the companies will be taken into account. By December 2023, the new regulations will be applied to companies with a staff of over 50.

MANUFACTURING

The effects of the pandemic on the market and the organizational structures of manufacturing companies were on the agenda at a meeting held by the committee online in June. The speakers were Piotr Krzysztoporski, ERP and IPA Practice Director at Mindbox; Tomasz Lazar, Head of Customer Services at Siemens Polska; John Lynch, CEO and Founder of Lynka; Szymon Najdychor, HR Director at CANPACK Poland; Agata Woźnicka-Giza, Regional HR Manager for Poland also from CANPACK; and Adam Wiesner, Senior QHSE Manager, Project Manager at TAKENAKA Europe GmbH, the Poland Branch.

For Mindbox, a provider of IT solutions for a diverse range of industries, the migration to work-from-home mode did not pose any major challenges as the company had used home-office solutions before the pandemic. Following the change, work quality remained on the same level as before the pandemic. In time, a group of workers emerged, who preferred to work at the office, and the company was happy to oblige.

Yet, when it comes to designing IT solutions for clients, before the pandemic, Mindbox engineers worked with them in the traditional face-to-face meeting mode. Because of the safety regulations introduced during the pandemic, the company had to develop processes allowing its engineers to design and create IT products in the distance-work mode.

Mindbox's Piotr Krzysztoporski noted that looking at the company's clients, the general trend was to migrate to IT and cloud solutions. Many companies decided to automate their business processes too, which in general, has put the manpower in a new role—that of supervising processes instead of being physically engaged in executing them.

Krzysztoporski also noted that when it comes to cultural change, international corporations were fast in moving their teams into virtual reality solutions for safety reasons, while small, domestic companies, having a much less strict approach to safety regulations continue to use face-to-face meetings with external people.

For the people working at the tech giant Siemens, the migration to the work-from-home mode was a major psychological challenge, said Tomasz Lazar, because it was difficult to imagine that such a big and complex organization could function as well as ever with a significant portion of its staff working from home. Today, a major part of its client service department works from home, and so does the logistics and acquisition department. The company has embarked on the hybrid-work mode for good, and it will continue it beyond the pandemic. At present, Siemens is reviewing its office needs and plans to decrease the number of desks and increase the space devoted to conferencing and group conceptual work.

Lazar also said that during the pandemic, many production companies, having seen the demand for their products drop, decided to take time off and review, upgrade, repair, and replace their production machinery. Unlike many of its competitors, Siemens continued to deliver customer service in full scope, with which the company forged strong, long-lasting relationships with its clients.

For Lynka, one of the leaders in promotional textiles in Europe, the beginning of the pandemic was a difficult time as the company saw a sharp decline in demand for a range of product categories. In 14 days, however, Lynka managed to set up a new production line of protective wear, such as face masks, to counterbalance the loss. Short decision-making processes certainly helped.

The company also saw a change in order specifics. While before the pandemic, clients were ordering large amounts of items, during the pandemic, internet sales surged in numbers, but the volumes were small. This posed a challenge for the production technicians, but all issues were solved shortly.

During the pandemic, the company also experienced a cultural change. Having grown organically over the years, the company has managed to build a close-knit social culture. As the white-collar workers were sent home, the culture was gone from the office. But Lynka managed to preserve it online through "social time" interaction between selected groups of workers. This solution was well-received by the Lynka team, who are happy to have an opportunity for such an informal interaction and treat it as a subside of the social exchange they used to have at the office.

According to CANPACK's Szymon Najdychor, during the pandemic, the company has adopted three different organizational modes having teams work exclusively either at the company or from home and teams working in the hybrid model. The company's managers are positive the hybrid model will stay regardless of the pandemic. A positive aspect of working from home, which emerged to the surprise of many managers, was with online meetings, staff members had a better opportunity to get to know one another than while working at the office.

The company also faced challenges related to new market trends. With the pandemic, consumers confined to their homes fueled the demand for cans for

drinks. Since the company's clients include the most established drink producers, it had to be at the top of its game to the growing demand for its products. It did. Last year CANPACK generated record-high annual sales.
For TAKENAKA, 2020 was fundamentally different from previous years. First, the widespread migration to online meetings, while it had its good sides safety-wise, deprived the company's managers of opportunities for direct face-to-face interaction with clients and prospective clients. According to Adam Wiesner, direct interaction is the best way to build mutual trust in the construction business.
The pandemic had also caused stagnation on the market. Many clients, wary of market uncertainties, froze their investment plans.
While different companies had diverse experiences during the pandemic, all speakers agreed that the business world changed in 2020 in irreversible ways.

SUSTAINABILITY

In June, the committee met to discuss EU funds available in 2021-2027 to finance investment projects and the principles of environmental, social, and corporate governance (ESG), along with which money will be granted. The speakers were PwC experts: Agnieszka Gajewska, Partner, ESG Leader for CEE; Mieczysław Gonta, Partner; Barbara Brzezińska, Manager and expert on EU grants; and Karina Kostrzewa, PwC representative for CEE at the European Commission in Brussels.
EU funds available for green and sustainable investments in 2021—2027 will be assigned to projects evaluated along the "Do no significant harm" principle (DNSH) of the EU Green Deal. The DNSH principle means that no money transferred to a member country from the EU can do any significant harm to the environment. In order to use the money, prospective beneficiaries will have to prove that their investments fall under that principle.
The entire amount of money available through different funds in the 2021-2027 EU financial perspective is EUR 1.824 billion. Of this amount, EUR 750 billion will be available through the NextGenEU program—a post-pandemic economic recovery program—and EUR 1.074 billion from the Multi-annual Financial Framework.
Over 30 percent of the money will go to support investments in green transformation and climate-change-related projects.
Under the 2021-2027 financial perspective, the EU funds available to Poland include EUR 62 billion from NextGen EU and EUR 108 billion from the Multi-Annual Financial Framework. At least EUR 29 billion will be dedicated to the EU green transformation.
Karina Kostrzewa highlighted the EU Green Deal objectives: cutting carbon dioxide emissions by 55 percent by 2030, reaching climate neutrality by 2050, and a climate-resilient society by the same year.
The speaker also presented the EU action plan designed by the European Commission to finance the creation of a sustainable economy. In this plan, the first objective of the European Commission aims to reorient capital flows in the EU economy towards such investment projects that support sustainable and inclusive economic growth. The second EU objective aims at managing financial risks that result from climate change, environmental degradation, and associated social issues. The third aims to foster transparency and long-term economic and financial planning and performance.

TECH & DIGITAL

The biggest challenges to cybersecurity and ways to overcome them were on the agenda of the committee meeting in June with speakers Piotr Czulak, Associate at DLA Piper; Ewa Kurowska-Tober, Partner at DLA Piper; and Marcin Spychała, Client Technical Professional at IBM Polska.
Cybersecurity has been a growing issue for companies worldwide as the pandemic forced them into the digital realm, which is prone to cybercrime. With this came a need to build the resilience of IT systems used by companies. Companies strive to apply adequate safeguards and increase threat awareness among the team, not only to make the company safe from hacking and data theft but also to keep it in sync with regulations governing cybersecurity that impose certain obligations on security levels and processes that need to to be activated in case of a security breach.
Companies are under an obligation to report security breaches. Yet, security breaches are hard to spot. Big organizations can afford to run effective systems, but for most companies, such breaches come to their attention only after their stolen data surfaces someplace else, or the attack puts the compromised IT system off balance.
Looking out for a potential breach is a daunting task. Instead, a well-designed security system, including adequate procedures and protocols, offers a resilient layer of protection.
The EU has developed cybersecurity standards through its Security of Networks & Information Systems (NIS) Directive. The directive provides legal measures to boost the overall level of cybersecurity in the EU by requiring EU member states to be appropriately equipped. In addition, each EU member state must have a Computer Security Incident Response Team (CSIRT) and a competent national NIS authority.
The directive also fosters cooperation among all the Member States by setting up a Cooperation Group to support and facilitate strategic cooperation and the exchange of information among EU member states. With this, the directive aims to create a culture of security across sectors that are vital for the economy and society and that rely heavily on ICTs, such as energy, transport, water, banking, financial market infrastructures, healthcare, and digital infrastructure.
Businesses identified by EU member states as operators of essential services in those sectors will have to take appropriate security measures and notify relevant national authorities of serious incidents. Key digital service providers, such as search engines, cloud computing services, and online marketplaces will have to comply with the security and notification requirements under the NIS directive.

OFF-COMMITTEE SESSION

In June, law firm DLA Piper held the second online session with AmCham members to discuss the problem of counterfeit products and the infringement of intellectual property rights that arose following the outbreak of the pandemic.
The speakers were DLA Piper lawyers Krystian Maciaszek, Counsel, Alicia Wolny, Senior Associate; and Aleksandra Wrońska, Legal Expert Intellectual Property, and Technology; along with Cezary Sowiński, Public Policy Manager at Amazon; and Artur Wojciechowski from the Customs and Treasury Services Office of the Ministry of Finance.
The discussion focused on the procedural issues and actions to be taken to increase their effectiveness, such as training for government officials and stricter controls at the borders. They also underlined a need for courts of law as well as law enforcement authorities to have a better understanding of issues related to counterfeit products and the infringement of intellectual property.

COVER STORY

DRIVING GROWTH

Despite pandemic-related hurdles to the global economy, Poland continues to attract foreign investors and those from the US rank among the topmost future growth-oriented that build sustainable value chains across the Polish economy. But an investor-friendly and indiscriminate legal framework that Poland has had so far is a must-have for American companies so they can meet the long-term strategic goals of their investments.

Nearly 3 out of 4 jobs created by foreign greenfield projects in Poland came from US investments. American giants, such as Arrow, Hyland, AT&T, Microsoft, and Intel, develop IT and shared service centers as well as data centers.

Eliza Przeździecka, Chief Economist, AmCham

As the outbreak of Covid-19 coronavirus reached global proportions—thus earning itself the denomination of pandemic—many economists feared that, along with disrupting markets, business models and supply chains, the pandemic would freeze the global flows of foreign direct investments. Among them were the economists of the United Nations Conference on Trade and Development (UNCTAD). In the preface to the UNCTAD Global Investment Report 2020, António Guterres, Secretary-General of the United Nations, said that because of the pandemic, the global flows of FDI were expected to fall from the 2019 levels of USD 1.5 trillion to below the level they had fallen to during the global financial crisis. In turn, in the foreword to the report, Mukhisa Kituyi, Secretary-General of UNCTAD, put it bluntly: "The immediate impact on FDI will be dramatic."

The explanation of how dramatic a change was envisioned by the authors of the report appeared on its first page, summarizing the key takeaways: "The COVID-19 crisis will cause a dramatic fall in FDI. Global FDI flows are forecast to decrease by up to 40 percent in 2020, from their 2019 value of USD 1.54 trillion. This would bring FDI below USD 1 trillion for the first time since 2005. FDI is projected to decrease by a further 5 to 10 percent in 2021 and to initiate a recovery in 2022. A rebound in 2022, with FDI reverting to the pre-pandemic underlying trend, is possible, but only at the upper bound of expectations."

But this outlook was highly uncertain, the authors of the report stressed. "Prospects depend on the duration of the health crisis and on the effectiveness of policy interventions to mitigate the economic effects of the pandemic. Geopolitical and financial risks and continuing trade tensions add to the uncertainty," they wrote.

"The pandemic is a supply, demand and policy shock for FDI," the authors wrote, arguing that "the lockdown measures are slowing down existing investment projects," because investors, facing the prospect of a deep recession put their plans on hold while "policy measures taken by governments during the crisis include new investment restrictions."

The report, published in mid-2020, said that early indicators confirmed the immediacy of the impact: "Both new greenfield investment project announcements and cross-border mergers and acquisitions dropped by more than 50 percent in the first months of 2020 compared with 2019. In global project finance, an important source of investment in infrastructure projects, new deals fell by more than 40 percent."

While the report cautioned that the disruptions to FDI flows will vary depending on regions, developing economies were expected to be hit harder as they "rely more on investment in global value chain intensive and extractive industries, which have been severely hit, and because they are not able to put in place the same economic support measures as developed economies."

Among developed countries, FDI flows to Europe were expected to fall by 30-45 percent, significantly more than those to North America and other developed economies in other parts of the world, "because the region entered the crisis on a relatively more fragile footing," the authors of the report forecast.

In other words, the UNCTAD forecast spelled bad news for all countries which in the decade before the pandemic attracted huge inflows of FDI and for whom foreign investors were not only significant contributors to the generation of their nations' GDP but also leaders in building sustainable economic sectors based on high-tech, science, flexible new business models and access to global markets.

But for Poland, a country that only a few years backcrossed the threshold on its economic growth path from a developing economy to a developed one, the UNCTAD report could be worrying.

THE IMPACT OF FDI

In light of the Foreign Direct Investment In Poland report, prepared by AmCham in December 2020 under the auspices of the International Group of Chambers of Commerce, at the end of 2018, Poland was home to 24,395 companies with investment capital coming from 107 foreign countries. They amassed the aggregated amount of USD 236.5 billion, which translated to nearly one-quarter of all FDI transferred to Central and Eastern Europe.

They grew their investments fast. From 2010 to 2018, the value of assets held by companies with foreign capital operating in Poland increased by 70 percent, topping USD 415 billion. The total value of FDI in Poland in 2019 alone translated to 40 percent of Poland's GDP, which was close to the average for developed economies. In 2018, companies with foreign capital employed approximately 1.9 million people, and that, in turn, translated to over 15 percent of Poland's total workforce in the private sector, which stood at over 12.6 million in 2018, according to Statistics Poland.

In many categories, such as the value of assets or the number of jobs created in Poland, US companies comprise the second-largest national group FDI's origin, preceded by Germany and followed by France. For instance, in 2018, companies with German capital employed 327,000 people in Poland, while those with US capital over 267,000; and French—over 191,000.

While investors representing Germany are the top among countries of origin by asset value, the company with the largest asset value in Poland is France's Orange owning a number of telecommunications companies led by Orange Polska.

Second is Luxembourg-based Arcelor Mittal, whose units include ArcelorMittal Poland—the country's largest steelmaker and also Europe's largest producer of coke.

The third place belongs to the Porsche-Piëch family, which in Poland owns Volkswagen Poznań, Volkswagen Group Polska, Volkswagen Motor Polska, Man Truck & Bus Polska, Porsche Inter Auto Polska, Sitech, Man Bus, and Scania Polska.

GOING STRONG

The grim UNCTAD forecast regarding the disruption to FDI in Europe so far has not been seen in Poland. In August, speaking at a press conference about US-Poland economic cooperation, Krzysztof Drynda, President of the Polish Investment and Trade Agency (PAIH), said that the agency had recorded a growing interest from foreign investors, particularly Americans. "Since 2010, PAIH delivered services to nearly 200 American investors," Drynda said. "At present, there are nearly 33 American investment projects in the PAIH pipeline, with the aggregated value exceeding EUR 1 billion. I hope that all those projects will materialize in Poland."

Some projects were announced earlier. In 2019, Amazon, which has been in business in Poland since 2014, confirmed its plans for a 210,000-square-meter fulfillment center in Gliwice, Upper Silesia. The investment is set to bring over 1,000 new permanent jobs. In turn, in January 2020, the company confirmed its plans for a 193,000-square-meter Fulfillment Center in Świebodzin, near Zielona Góra, which added over 1,000 new jobs to the Amazon network in Poland. So far, the company has created 18,000 permanent jobs in the country in its 9 fulfillment centers, its Development Centre in Gdańsk, and corporate and Amazon Web Services offices in Warsaw. "Poland is a very important market for us," said Marian Sepesi, Regional Director at Amazon, in a press statement. "We have been present here for over six years, investing heavily and supporting local communities over this period. We are looking forward to making a significant contribution towards developing the Lubuskie region by creating new permanent jobs and supporting local communities."

Meanwhile, in late 2020, industrial real estate developer Panattoni Europe launched an 18,000-square-meter project in Warsaw named City Logistics Warsaw VI. The construction began in mid-2021. Once delivered to the market, the project will add 18,000 square meters of multi-tenant space, including 2,000 square meters of office space.

This year, Cargill—one of the world's top producers and distributors of agricultural products—has started the construction of a soluble fiber production line at its existing factory in Wrocław. With the USD 45 million project, the company will add soluble fibers to its European portfolio of starches, sweeteners, and texturizers. Cargill plans to fully commercialize its offering in the second half of 2022.

In turn, in August, PepsiCo laid the cornerstone for its new production facility, a project estimated at over PLN 1 billion. When fully operational in 2025, the factory will add 450 jobs to the market.

ATTRACTOR FACTORS

Last year, despite the pandemic, PAIH worked on 128 projects, among which 71 were greenfield projects. In turn, since 2020, as much as 46 percent of capital expenditures and 38 percent of all new jobs in all greenfield projects have been created by US-owned companies, which PAIH has aided.

According to Eliza Przeździecka, Chief Economist at AmCham, in 2020, "Poland was a driving market in greenfield FDI going into European renewables, which grew nearly 70 percent last year. The Polish market attracted a significant number of battery projects since 2015, next to Germany and Hungary."

Pandemic or not, in many ways, Poland still is an attractive market for foreign investment. Yet, while it remains a part of the European single market, it has something that many other EU states do not have. According to Eliza Przeździecka, the expansion of foreign companies in Poland has been accelerated by the highly qualified labor force. "Against the backdrop of other CEE countries, Poland has the highest percentage of people with higher education and employment in science and technology in total population," she said. "In Poland, as much as 37 percent of the workforce has higher education or is employed in these sectors."

She added that with the fast-growing demand for highly qualified specialists, particularly in science, technology, engineering, and mathematics (STEM), Poland is third in the EU and first in Central and Eastern Europe in terms of the number of university graduates and holders of degrees in the hard sciences—mathematics, IT, engineering, production, and construction—per 1,000 residents aged 20-29. "There are 1.6 million students in university-level education, and 22 percent of them are in STEM. Each year, Polish universities turn out 37,500 engineers, which makes Poland second behind Germany in the EU."

AMERICAN VISIONARIES

While the US FDI in Poland is the second-largest in asset value and the value of FDI, a comparison of the largest investors from the three countries may suggest that American investors are among the most diverse and growth-oriented, leaving the highest footprint in terms of value-added in the Polish economy.

Among the top 10 companies by asset value in Poland, the US is represented by the private equity fund CVC Capital Partners, which owns the Zabka retail chain and power distributor PKP Energetyka.

Ever since CVC Capital Partners bought a controlling stake in PKP Energetyka in 2015, for over USD 507 million (plus covered the company's debt), the US investment fund turned the Polish provider of electric power to the national railway network into a modern, the-state-of-the art organization, which became a reliable partner to national and regional train companies in Poland and one of the leading companies in the power sector.

In turn, CVC Capital Partners, using the know-how of its high-tech partners in the US, transformed the Żabka convenience store chain into a robust enterprise using technology form marketing, client management, and other vital functions. The chain currently comprises 7,200 stores the country over managed by nearly 6,000 franchisees.

This year, Żabka opened the first autonomous convenience store in Poland in collaboration with the US-based AiFi, a company specializing in developing autonomous shopping experiences powered by artificial intelligence.

Another US investor, Amazon, is the largest "American" employer in Poland with its warehousing and distribution operations managed by Amazon Fulfillment Poland. The company also has a significant tech-oriented presence in the country with Ama-

Delivering closing remarks at the 2018 US-Poland Business Summit, **Prime Minister Mateusz Morawiecki** underlined the strategic aspect of economic cooperation between the two countries.

zon Development Center Poland and Amazon Web Services Poland.

In turn, the second-largest American employer, Advent International Corporation, runs a range of tech companies, including Idemia Poland R&D, InPost Paczkomaty, Integer Group Services, and Unit4 Software Engineering, among others.

The third largest US-based employer in Poland, IBM, is entirely hi-tech oriented, with IBM Business Consulting Services, IBM Global Financing Polska, IBM Global Services Delivery Centre Polska, IBM Polska Business Services, and Red Hat Poland.

The American-owned investor which generates the largest turnover in Poland—thus invigorating the "economic bloodstream" for the economy—is Philip Morris International, with its Philip Morris Polska Distribution, Philip Morris Polska, Philip Morris Polska Tobacco, and PMI Service Center Europe. This year the company's global CEO, Jacek Olczak, made an extraordinary statement by calling to ban tobacco products in the next 10 years, thus ending the company's most profitable source of income. Yet, with this statement, Olczak only reflected the company's determination to succeed in creating a new market of high-tech, smoke-free alternative tobacco products, which, when materialized, will improve the lives of hundreds of millions of tobacco users worldwide.

According to Eliza Przeździecka, US-owned firms in Poland are the most prone to make new jobs in creative, high-tech industries, such as the business services sector, including BPO/SSC and IT. "Nearly 3 out of 4 jobs created by foreign greenfield projects in Poland came from US investments," Przeździecka said. "American giants such as Arrow, Hyland, AT&T, Microsoft, and Intel develop their business operations in IT and shared service centers as well as data centers."

Speaking at the same press conference in August, PAIH's Krzysztof Drynda said that American investment projects "are among the most numerous representatives of foreign capital in Poland," adding that "we are happy that American investment projects represent foremost high technologies and high-quality jobs. The Polish government welcomes such investments as it would like to see the Polish economy follow this direction."

STRATEGIC THINKING

As they do not originate from within the European Union, American investors sometimes face regulatory issues in Poland, partaking in strategic national interests and nationalistic sensitivities characteristic to continental Europe.

At the same time, US investments in Poland, and more broadly, the growing US-Poland economic cooperation, are universally recognized as having strategic importance for Poland across the country's political spectrum—save for extremist, fringe parties.

The strategic importance of American investors in Poland was particularly strongly articulated by President Andrzej Duda, during the 2018 US-Poland Business Summit in Warsaw, who said that the presence of so many US companies in Poland, including the largest multinationals originating from the US, "confirms the strength of the strategic alliance between our countries."

In his opening speech, President Duda added that by developing cooperation with US business further, "Poland can secure fast and sustainable economic growth for years to come."

His view was shared by Prime Minister Mateusz Morawiecki, who delivered his speech closing the forum.

Between the speeches delivered at the summit by Poland's two top political representatives, representatives of American investors—such as Coca-Cola, CVC Capital Partners, Discovery, Emerson Automation, Emitel, Google, KPMG, Microsoft, Motorola Solutions, and Standard & Poor's—discussed their success stories in transforming their companies from focusing on the local market to the EU markets and beyond.

Among them was Katarzyna Kieli, President and Managing Director at Discovery, who, talking about the transformation of Discovery in Poland, said that the media giant might turn its Polish operation into a "hub for original content and digital content creation for global use."

Given their business experience and acumen in building growth-oriented, sustainable value-chains across the Polish economy, one can only hope that Poland will be able to continue to offer American investors the right conditions to make their visions reality without unnecessary delay.

We are happy that American investment projects represent foremost high technologies and high-quality jobs. The Polish government welcomes such investments as it would like to see the Polish economy follow this direction.

Krzysztof Drynda, President of the Polish Investment and Trade Agency (PAIH)

Opening the 2018 US-Poland Business Summit, **President Andrzej Duda** said that the presence of so many US companies in Poland, including the largest multinationals originating from the US, "confirms the strength of the strategic alliance between our countries."

EVENT

Amcham in Warsaw

Doing business TOGETHER

In July, Derek H. Chollet, Counselor of the US Department of State, met AmCham Poland representatives to discuss strengthening bilateral economic ties with Poland. On the agenda were strategic bilateral and regional issues, as well as US-Poland partnership in business and security. The venue was the Bristol Hotel in Warsaw.

1. B. Bix Aliu, Chargé d'Affaires, US Embassy in Warsaw; Amanda Jessen, European Affairs Advisor to Counselor to the Secretary of State Derek H. Chollet, US Department of State; Elżbieta Czetwertyńska, Bank City Handlowy; Krzysztof Krawczyk, CVC Capital Partners; Marta Poślad, AmCham Board Member (Google); Marzena Drela, AmCham Operations Director; Tony Housh, AmCham Chairman (Northrop Grumman); Derek H. Chollet, Counselor of the US Department of State; Katarzyna Kieli, TVN/ Discovery; Kurt Donnelly, Deputy Assistant Secretary, Bureau of Energy Resources, US Department of State; Heather Rogers, Acting Deputy Chief of Mission, US Embassy. 2. Tony Housh; Derek H. Chollet. 3. The meeting in progress. 4. Tony Housh; Elżbieta Czetwertyńska; Katarzyna Kieli; Marta Poślad. 5. Cindy Biggs, Senior Commercial Officer US Department of Commerce, US Embassy in Warsaw; Elżbieta Czetwertyńska.

FOCUS
Business support

Working together at the press conference: Grzegorz Słomkowski, Member of the PAIH Management Board; Krzysztof Drynda, PAIH's Chairman; Tony Housh, AmCham Chairman.

WORK IN SYNC

AMCHAM ALLIES WITH THE POLISH INFORMATION AND INVESTMENT AGENCY TO SCALE UP THE SCOPE OF ITS SERVICES

In July, AmCham and the Polish Agency of Trade and Investment (PAIH) signed a cooperation agreement to harmonize their programs. Both organizations support Polish firms looking for business opportunities in the US and American investors eyeing business opportunities in Poland. The agreement was announced at a press conference held in Warsaw in July by Krzysztof Drynda, PAIH's Chairman; Grzegorz Słomkowski, Member of the PAIH Management Board, and Tony Housh, AmCham Chairman.

LOOKING FOR SYNERGIES

Talking at the press conference, Krzysztof Drynda said that both AmCham and PAIH focus on helping investors from their countries with which they both contribute to the development of the US and Polish economies. Both organizations have similar goals in some areas – while AmCham helps US investors in Poland, so does PAIH through its program in which the agency assists foreign investors who plan major projects in the country. On the other hand, PAIH's bureaus in the US assist Polish investors eyeing business opportunities in the US, while the American Investor Desk program from AmCham offers Polish business people access to experts on US markets and state and local government representatives in the US responsible for attracting FDI into their areas. "Our intention is to use the synergies that exist between our programs to make them more effective," said Krzysztof Drynda.

PAIH Chairman also said that the cooperation would create a more substantial promotion of Polish exporters and investors interested in the vast US market by offering a more comfortable road for these investors to enter and succeed in the US.

HELPING BOTH WAYS

In turn, Tony Housh said that AmCham and PAIH have collaborated in the past on many occasions. The cooperation agreement will streamline the work in assisting or directing companies to the right experts to ensure they thrive on our markets when taking a leap into the vast American market for Polish companies or new opportunities in Poland when looking at Central Europe for American firms.

Housh also said that the PAIH is a reliable partner "due to the agency's vast experience in dealing with foreign investors and its in-depth understanding of their needs. We are glad to have a partner whom we can rely on when working on common projects for American investments in Poland as well as giving a hand to Polish companies looking at the U.S. market."

THE AID

The AmCham American Investor Desk, launched in 2019, supported Polish companies interested in expanding to the US market. The service is free of charge. The program has helped a number of Polish investors as an informational contact point to acquire the necessary information about the US market or gain various assistance and networking possibilities. Since 2019, the program has completed over 20 events. From January to July 2021, the program attracted over 500 individuals who registered to its online events that covered various topics such as exports, investments, and professional services available to companies through the American Investor Desk channels.

MONTHLY MEETING
JUNE

COLLABORATING FOR THE COMMON GOOD

PRIVATE PHARMACEUTICAL COMPANIES AS WELL AS PRODUCERS OF INNOVATIVE MEDICAL DEVICES HAVE A LOT TO OFFER, BUT IN ORDER TO TAP INTO THEIR POTENTIAL, THE NATIONAL HEALTHCARE SYSTEM NEEDS CLEAR RULES OF ENGAGEMENT.

Adam Niedzielski, Minister of Health, and Dr. Radosław Sierpiński, Head of the Medical Research Agency, were the speakers at the AmCham Monthly Meeting in July. The virtual event was moderated by Tony Housh, AmCham Chairman, who was aided by Dr. Jacek Graliński, Chairman of the AmCham Pharma Committee, and Dariusz Adamczewski, Chairman of the AmCham Medical Devices Group. The discussion focused on the government reforms of the healthcare system in Poland and the role of the private sector in helping to modernize it.

BEYOND THE PANDEMIC

As the meeting took place in July, Poland had a downturn in new Covid-19. Minister Niedzielski said that people who had recovered from Covid-19 and became immune to the virus create a natural barrier for the spread of the epidemic. However,

Not so fast! Dr. Jacek Graliński, Chairman of the AmCham Pharma Committee, noted that while introducing new laws, the ministry needs to make sure it observes the statutory time for public consultations.

he expected the fourth wave of the epidemic would hit the country later this summer due to the higher mobility of the population during the summer vacations and the low levels of fully vaccinated people across the country.

The minister said he was surprised by the high numbers of people in Poland who refuse to take the jab despite the universal availability of both vector and mRNA vaccines across the country.

The fourth wave of the pandemic may also be caused by a new, more "aggressive" variant of the virus, which, according to Minister Niedzielski, has a much higher potential to stretch the healthcare system in Poland thin than the vacation-related higher mobility of the population.

According to the minister, the authorities were monitoring the epidemic situation, analyzing data from border checks and the data available from Google. Minister Niedzielski explained that the healthcare system in Poland was ready to handle up to 10,000 new Covid-19 cases daily before its resources were put to the test.

While the pandemic continues to be a major threat to public health across the country, the minister said that the Ministry of Health plans to bring the national healthcare system "back to normal" as soon as possible by opening the pre-pandemic services of medical facilities which, during the crisis, were closed down for safety reasons.

During the pandemic, the health of the Polish population deteriorated due to the lack of availability of many pivotal healthcare services and treatments and because the physical activity of the entire population deteriorated with pandemic-related limitations introduced in public places.

The overall deterioration of public health has caused the ministry to launch, among others, a new program offering all citizens aged 45 and over a general medical checkup on a regular basis. The minister said that, telemedicine was used too often during the pandemic, which is why many patients with serious health conditions were overlooked.

CLINICAL RESEARCH NETWORK

Another major reform of the National Healthcare System is the creation of the Polish Clinical Research Network. The project is executed under the auspices of the state-owned Medical Research Agency. The design of the network follows similar solutions present in Western Europe. The network's main objective is to implement a common quality standard and harmonize operational processes in commercial and non-commercial medical research. With it, the network will bring tangible benefits to all its participants, including hospitals, researchers, and patients.

Academic centers are meant to benefit by gaining access to the know-how and experience of other member centers. They will be able to address problems jointly and improve national cooperation between networked centers.

The network also aims to ensure an effective recruitment process at the national level and improve clinical trials' feasibility phase.

The Medical Research Agency's role in the scheme is to provide the network the IT platform to serve as the networks' main communication and information tool. In addition, the MRA will carry out educational programs, prepare uniform models of documentation and support the promotion of network centers.

By June, 16 scientific centers had been admitted to the network. Among them are medical universities in Białystok, Gdańsk, Łódź, Poznań, and Wrocław, the Military Medical Institute, the Maria Skłodowska-Curie National Institute of Oncology, the Cardinal Wyszyński National Institute of Cardiology, and the National Institute of Geriatrics, Rheumatology, and Rehabilitation, among others.

Dr. Radosław Sierpiński said that the network would serve its participants as an excellent platform for cooperation, including private companies developing innovative drugs. "I hope that the development of commercial drugs will follow the logarithmic progression, on the one hand, contributing to the development of the Polish economy, and on the other, offering innovative therapies and drugs that patients need," Sierpiński said.

Dr. Sierpiński also noted that the ministry and the agency are working on a draft of a bill governing the new standards in clinical trials. The document is meant to "bring order to the market," the speaker said.

WARSAW HEALTH INNOVATION HUB

Another project recently initiated by the Medical Research Agency is the Warsaw Health Innovation Hub. It is a joint project executed by the agency in collaboration with medicine, pharmacy, and biotechnology companies.

Making it work: Dariusz Adamczewski, Chairman of the AmCham Medical Devices Group, noted that the healthcare system lacks efficient rules and regulations for implementing innovative medical devices.

The WHIH aims to develop innovative medical, technological and legal solutions to improve the efficiency of the Polish healthcare system. The hub focuses its work on three key areas: pharmaceutical innovation, medical technologies, and healthcare-related IT solutions.

The hub serves as a platform enabling collaboration between the public sector, including state-owned academic and scientific centers and businesses. It is designed to become an important center of innovation in medicine and biotechnology, and its products will make the National Healthcare System more efficient and fit to face the challenges of the post-pandemic era.

Participating partners in the hub should expect a high-quality environment where they will transform new ideas into products, processes, and services fast and efficiently in commercial terms.

Dr. Sierpiński noted that some American companies had already joined the hub. He hoped more would follow in their footsteps, including firms that specialize in biotech but also those developing medical devices. Dr. Sierpiński underlined that "there is huge potential in the area of medical devices."

TREATING RARE DISEASES

Another major reform of the National Healthcare System focuses on treating rare diseases, which has not been properly addressed for at least a decade, Minister Niedzielski noted.

The National Scheme for Treating Rare Diseases encompasses many very sensitive areas for all the stakeholders, including patients, doctors, medical personnel, and medical and pharmaceutical companies. The government had already drafted the set of regulations setting the framework for the National Schemed and submitted it for public consultations. As a result, the extensive feedback the ministry received exceeded the expectations of ministerial experts. During

In addition to allocating more money to the National Healthcare System from the state budget, the government plans to use the EU funds dedicated to healthcare in speeding up the process of reaching the 7-percent GDP target earlier than scheduled.

the time of the meeting, they were still analyzing the feedback aiming to send the final draft to the Parliament so it could be debated upon by the lawmakers and voted on in September.

PROPER LEGISLATIVE PROCESS

The minister agreed with AmCham representatives who voiced their concerns regarding the quality of the legislative process during the pandemic. They said that while the Health Ministry made new acts and regulations, it did not allow enough time for public consultations with stakeholders making it practically impossible, in some cases, for them to prepare responses and comments to the proposed acts.

Minister Niedzielski agreed, explaining that not only the Health Ministry but the entire government was acting under heavy pressure to act swiftly in the initial phases of the pandemic, which did not allow it for the comfort of allocating the statutory amount of time for public consultations. Yet, once the healthcare system has been adjusted to face the pandemic-related challenges, the lawmaking process may be back on track along with the statutory regulations. This will regard, for instance, the new Pharmaceutical Law, being drafted by the ministry.

BUDGETING

Minister Niedzielski also agreed with AmCham representatives regarding the need to allocate more money to the National Healthcare System so it can embrace innovative therapies and medical technologies and deliver quality service in sync with modern medicine.

The speaker said that the government's goal is to raise the healthcare budget to 7 percent GDP, and it seems the government is on the right path to reach that target. PM Mateusz Morawiecki recently declared that the level of 6 percent GDP would be reached by 2023 instead of 2024 as originally planned.

Minister Niedzielski said that in addition to allocating more money to the system from the state budget, the government plans to use the EU funds dedicated to healthcare in speeding up the process of reaching the 7-percent GDP target earlier than scheduled.

IMPLEMENTING INNOVATIONS

Minister Niedzielski agreed with AmCham representatives that there was a lack of good regulations governing the criteria and processes for implementing innovative medical devices, technologies, and systemic solutions into the National Healthcare System. To amend that, the Ministry of Health had created a department charged with monitoring and implementing innovative technologies. The department, headed by Anna Goławska, Deputy Minister of Health, is also charged with developing the rules for certifying innovative products along with the EU standards. This includes pilot programs for implementing them into the system and developing the criteria, including economic ones, along which individual solutions will be evaluated.

The speaker noted that the department was currently working on a pilot program to implement an electronic stethoscope, which offers a new capability for monitoring patients' health in real-time, 24/7.

The minister was proud to note that the ministry successfully implemented an innovative solution for Covid-19 patients during the pandemic. In the program, the ministry sent out pulse oximeters to over a million Covid-19 patients. The devices were equipped with data transmission devices, and the data was fed 24/7 into a monitoring center developed by the Ministry of Health. According to the speaker, the system was a big game-changer for the patients who were in it. Minister Niedzielski explained that Poland had high fatalities among Covid-19 patients because many patients hoped to cure themselves at home. They tended to wait to go to the hospital until the infection was no longer curable. However, with the electronic monitoring system, doctors in the monitoring center could decide which patient needed hospital treatment and called for an ambulance with the electronic monitoring system. "As far as I can see, the monitoring center rescued some 5,000 patients," Minister Niedzielski said.

ADAM NIEDZIELSKI

Appointed Minister of Health in August 2020, Adam Niedzielski graduated from the SGH Warsaw School of Economics in two fields: economics and quantitative methods and information systems. In 2003, he earned a Ph.D. from the Institute of Economic Sciences of the Polish Academy of Sciences PAN. Before going to the Ministry of Health, he worked at the Ministry of Finance, the Supreme Audit Office, the Ministry of Justice, and the Social Insurance Institution (ZUS). In 2016, he held the position of General Director of the Ministry of Finance. In 2018, Niedzielski was appointed Deputy President of the National Health Fund, responsible for operational affairs; in July 2019, he was appointed President of the National Health Fund.

DR RADOSŁAW SIERPIŃSKI

Appointed President of the Medical Research Agency in 2021, Dr. Sierpińsi holds a Ph.D. in cardiology. He has wide experience in R&D in biotechnology and innovative technologies, trial management, and commercialization. In 2019, Dr. Sierpiński obtained a Master of Business in Medicine at Lazarski University in Warsaw.

Before going to the MRA, Dr. Sierpiński worked in the Clinic of Arrhythmias at the Institute of Cardiology and in the private healthcare sector as a physician and medical director. Between 2018 and 2019, he was an advisor to Health Minister Łukasz Szumowski. Dr. Sierpiński is a member of the expert group advising the European Commission on clinical research.

FOCUS

Regional cooperation

Photo corteasy of AmCham Bulgaria

Standing united: Some of the signatories of Declaration—Jordan Dimitrovski, Board Member, AmCham North Macedonia; Tony Housh, Chairman, AmCham Poland; Maja Filipcheva, President, AmCham North Macedonia; Ajša Vodnik, CEO, AmCham Slovenia, and Vice-Chair of AmChams in Europe; Petar T. Ivanov, CEO, AmCham Bulgaria.

FACILITATING DIALOGUE

AMCHAMS IN THE CEE REGION SIGN A DECLARATION SUPPORTING THE THREE SEAS INITIATIVE INVESTMENT AGENDA

No matter where it works around the world, AmCham is always committed to building momentum for its members to help them tap into new investment opportunities. If such opportunities appear on a regional scale, AmChams in the region join forces. Such was the case in July when 10 AmChams from the CEE region signed a joint declaration supporting the investment agenda of the Three Seas Initiative—a joint infrastructure development plan undertaken by the governments of 12 countries between the Adriatic, Baltic, and Black seas: Austria, Bulgaria, Croatia, the

Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, and Slovenia.

With the 2021 Sofia Declaration to Support Three Sees Initiative Future Development, the ten signatories of the document formalized the AmChams' goal to drive the region's economic growth by attracting investors' interest in such areas as energy security, smart connectivity, and climate goals.

The declaration underlines AmCham's belief that it can bridge the gap between business and decision-makers to help investors build trust in the Three Seas challenging scheme to build a more integrated, prosperous, and secure region within the EU Single Market.

The document was signed on July 8 at the 2021 Three Seas Summit and Business Forum held in Sophia, Bulgaria.

COMPLETING EUROPE

The concept for an integrated political and economic activity in the CEE region came from the Atlantic Council, a US think-tank, which in 2014 published a report entitled "Completing Europe." The authors of the report argued that the past split of Europe into Western and Eastern parts negatively impacted the infrastructural development of the eastern part for half a century. While the nations of Western Europe were linked by roads and railways, power lines, and oil and gas pipelines, the countries of Central and Eastern Europe remained comparatively disconnected from one another in terms of modern infrastructure. The deficit is particularly acute along the region's north-south axis.

Although the common economic and customs space of the EU has paved the way for stable development of the continent as a whole, countries in CEE continue to stand out from their counterparts in Western Europe for their economic disparity and outdated infrastructure. Despite Brussels' collective policies, the gap that developed in the latter half of the 20th century has yet to be bridged. Eliminating this deficit in development would give an enormous boost to the region's economy and make the EU stronger and more united as a whole.

THE OBJECTIVES

The political momentum for creating the Three Seas Initiative (3SI) came in 2015 when Croatian and Polish Presidents Kolinda Grabar-Kitarović and Andrzej Duda agreed to rally other political leaders in the region for an idea of a joint economic development program.

From the outset, the 3SI was designed to complement rather than compete with the EU. The European Commission has been involved in the initiative from the very beginning, and its high-ranking representatives have participated in its past summits.

The 3SI objectives focus on the economic growth of the region. It can be achieved by creating a cohesive, well-functioning energy market that safeguards a level playing field for all market participants and gives consumers the freedom to choose between suppliers. This will increase open market competition and ensure that the region is better supplied with energy and provides high levels of energy security.

Smart connectivity is another area with huge growth potential. The partners of the initiative hope to make the most of the region's experience and potential for implementing digital solutions. It is meant to go beyond the development of digital infrastructure and cover such areas as creating smart, modern solutions for data exchange and more efficient use of information.

Achieving EU climate goals is another area of focus. A cohesive approach from the CEE countries, aimed at developing new and modern infrastructure, will help the region move towards lower carbon emissions and achieve carbon neutrality.

The concept for an integrated political and economic activity in the CEE region came from the Atlantic Council, a US think-tank, which in 2014 published a report entitled "Completing Europe."

STEP BY STEP

The first 3SI summit was held in Croatia in 2016. Among the guests were the Chinese Ministerial Assistant for Foreign Affairs Liu Haixing, who spoke about China's Belt and Road Initiative and how it may benefit from the development of railway infrastructure in the 3SI countries. In turn, former US National Security Advisor General James L. Jones stressed the 3SI's role in European development and security. The summit resulted in the signing of a declaration of economic cooperation by representatives of the 12 participating nations. The cooperation areas covered energy as well as transport and communications infrastructures.

The second 3SI summit took place in Warsaw in 2017. For the first time, the need to attract business to the 3SI ambitious plans became apparent. As a result, the participating countries agreed to set up a Three Seas Business Forum.

The 3SI summit is an annual event. In 2018 it was held in Bucharest, Romania, hosted by Klaus Iohannis, President of Romania. Guest speakers included Jean-Claude Juncker, EU Commission President; Minister Heiko Maas, Foreign Minister of Germany; and Rick Perry, US Secretary of Energy. The 2019 host of the summit was Borut Pahor, President of Slovenia. Among the guest speakers were Frank-Walter Steinmeier, President of Germany, along with Jean-Claude Juncker and Rick Perry. In turn, the 2020 summit was held online virtually hosted by Kersti Kaljulaid, President of Estonia. The virtual format was not necessary in Sophia, where Rumen Radev, President of Bulgaria, hosted the 2021 3SI Summit. The participants focused on how "smart" infrastructure can boost the region's economic growth and help it bridge the gap in GDP generation to Western Europe EU member states.

FOLLOWING DEVELOPMENTS

AmCham Poland has a long track record of discussing the business potential of the 3SI with high-level government officials in Poland. Last year, Paweł Jabłoński, Deputy Minister of Foreign Affairs, who is responsible for the government's coordination of the 3SI, met with AmCham members at the chamber's Annual General Meeting to talk, among others, about the US business in Poland and the region. He said that the Polish government sees a vital role for US investors in developing the 3SI by getting involved in developing projects to close the gap in infrastructure development between "old" and "new" EU member states. "The value of the gap is estimated at EUR 600 billion in spending on infrastructural projects, so this is a huge business opportunity," he said.

Deputy minister Jabłoński concluded his address to the chamber by saying that the Polish government believed "that this initiative will change our region for decades. We hope to cooperate with American business and welcome more American investors, not only in Poland but also in the whole CEE region."

GROWTH POTENTIAL

The 12 countries of the Three Seas Initiative comprise of the total population of 112 million—some 25 percent of the en-

With the AmCham widespread network and in-depth knowledge, the organization is in a position to become a competent partner to the public sector in helping consult about the right companies, technologies, know-how and capital in focused projects.

tire EU population—and generate the estimated 19 percent of the union's gross domestic product.
However, figures from 2018 show that their average GDP per capita in the 12 countries is just 78 percent of the EU average. At the same time, the average GDP growth in the 12 countries in 2015-2019 was 3.5 percent, compared to 2.1 percent for the entire EU. A forecast from the International Monetary Fund in 2018 said that the Three Seas countries would post an average economic growth of 2.9 percent in 2020, compared to an average of 1.6 percent for the European Union as a whole.
The "edge" in the speed of the economic development of the Three Seas countries over Western Europe member states signifies a serious growth potential. It can be made a reality by combining the expertise and investment money of the private and public sectors.

THE 3SI FUND

To facilitate cooperation between the two spheres, in 2019, the 3SI member countries created an investment fund.


July 8th, 2021
Sofia, Bulgaria

AMERICAN CHAMBER OF COMMERCE IN BULGARIA

Olivier Marquette,
President, AmCham Bulgaria

AmCham
Američka gospodarska komora u Hrvatskoj
American Chamber of Commerce in Croatia

AmCham
American Chamber of Commerce in the Czech Republic

AmCham Estonia
American Chamber of Commerce

Ruža Tomic-Fontana
President, AmCham Croatia

Weston Stacey,
Executive Director,
AmCham Czech Republic

Dr. Indrek Laul,
President, AmCham Estonia

AmCham HUNGARY

AmCham Latvia
Thought leadership hub

AMERICAN CHAMBER OF COMMERCE IN POLAND

Zoltán Szabó,
President, AmCham Hungary

Zinta Jansons,
President, AmCham Latvia

Tony Housh,
President, AmCham Poland

AMCHAM ROMANIA
AMERICAN CHAMBER OF COMMERCE IN ROMANIA

AmCham SLOVAKIA

AmCham Slovenia

Ionut Simion
President, AmCham Romania

Gabriel Galgóci,
President of AmCham Slovakia

Ajša Vodnik
CEO, AmCham Slovenija
Vice-Chair, AmChams in Europe

2

Signing together: Tony House, AmCham Poland Chairman, signed the declaration of support for the Three Seas Initiative's development agenda, along with nine other presidents of AmChams in the region.

The initial two founding institutions from Poland and Romania have made a commitment to make payments totaling over EUR 500 million. The signatories of the 3SI Investment Fund were the National Development Bank (BGK) of Poland and Export-Import Bank of Romania.
The fund will focus on creating transport, energy, and digital infrastructure in the Three Seas region. Private investors from pension funds, private investment funds, and other entities will also be invited to the fund.
The fund engages, on a commercial basis, in infrastructure projects. Its goal is to activate other sources of financing, such as the resources of individual countries of the region or EU funds.
The fund operates under Luxembourg law on a commercial basis and market principles.
Fuchs Asset Management was appointed as the Alternative Investment Fund Manager, responsible for risk management, portfolio management, governance, and distribution. Fuchs' team was assisted by investment advisors in selecting and analyzing potential investments to be recommended to the different investment committees.
The fund is open for other 3SI countries to join once the necessary permits are obtained.
The fund is to enhance other financing sources, such as national resources of individual countries in the region or the EU funds. The investment strategy assumes the possibility to invest in various projects at various stages of advancement. These may include, among others, greenfield investments or already undertaken, the so-called brownfield investments, acquisition of shares, and participation in special purpose vehicles.

DECLARATION

The 2021 declaration signed by ten AmChams from the 3SI countries supports the 3SI by recognizing it as a genuine tool for regional collaboration and accelerated development in the region's energy, transport, and digital connectivity.
The declaration recognizes the goals of the Three Seas Initiative Fund to invest in transport, energy, and digital infrastructure of the north-south axis of the Three Seas countries to offset the gaps in the development of individual regions of the EU.
In the declaration, AmCham pledges to offer its structures in the region to facilitate the dialogue between business representatives and decision-makers. With the AmCham widespread network and in-depth knowledge, the organization is in a position to become a competent partner to the public sector in helping consult about the right companies, technologies, know-how, and capital in focused projects.

FOCUS

Public investment

Knowledge-based: Through collaboration between academia and the private sector, Kraków has managed to build a diverse economic ecosystem maintained by nearly 32,000 firms registered in the city, including 4,900 firms with foreign capital.

ALWAYS FORWARD!

DESPITE THE PANDEMIC, KRAKÓW CONTINUES ITS AMBITIOUS CITY DEVELOPMENT PLANS TO BOOST ITS ECONOMIC POTENTIAL AND IMPROVE THE QUALITY OF LIFE OF ITS RESIDENTS.

In June, AmCham Kraków & Katowice held an online meeting with deputy mayors of Kraków, Andrzej Kulig, who is responsible for municipal infrastructure development, and Jerzy Muzyk, responsible for sustainable development. The speakers gave an extensive and in-depth pesentation of the development plans for the city's infrastructure currently in the making and talked about the role of the private sector in helping the city achieve its strategic development goals. The meeting was moderated by Mateusz Jurczyk AmCham Kraków and Katowice manager.

ONE OF ITS KIND

In general perception, Kraków is historically associated with the Jagiellonian University, the oldest university in Poland and one of the oldest in Europe. With the Jagiellonian at its center, the city has been home to a thriving academic and

The high-durability of the Kraków economy is well visible in the shape of its office market, which, comprising 1.57 million square meters of modern space, is the second-largest market in Poland, after Warsaw.

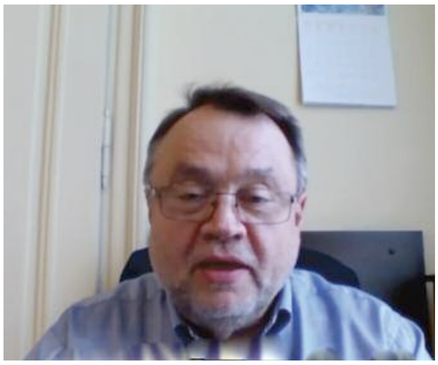
scientific community. At present, there are 23 institutions of university-level education in Kraków, state-owned and private, which cater to 130,000 students. Approximately 33,000 students study at the AGH University of Science and Technology, and some 20,000 at the Kraków University of Technology. According to deputy mayor Muzyk, the availability of technology-educated university graduates is the backbone of the city's economic development.
The Kraków council plans to boost the city's academic potential, which once was home to 200,000 students. The city collaborates with the Kraków Academic Center—the association of all higher education institutions in the city—to develop joint programs attracting even more students.

Thinking out of the box: Contrary to city authorities who advocate freezing investments to save cash for a rainy day during the pandemic, Jerzy Muzyk said that Kraków can not limit its investment projects because, if it did, the city could find itself in a development trap in a few years from now.

The city is well aware of its high academic potential and plans to develop it further to increase the economic diversity and potential of the city and the region. "In this respect, Kraków is an unquestionable leader in Poland," said deputy mayor Muzyk, adding, "Our reference point is not Poland but Europe."
Through this collaboration between the academia and the private sector, Kraków has managed to build a diverse economic ecosystem maintained by nearly 32,000 firms registered in the city, including 4,900 firms with foreign capital. In recent years, the city has attracted many investors representing the sector of business support solutions. The 247 business services centers in the city at present employ 82,000 people. In turn, the unemployment rate in Kraków is relatively low, at 3.3 percent, and rose only slightly because of the pandemic, from 2.1 percent in 2019.
These numbers show the high resilience of the city's economy vis-a-vis the effects of the pandemic.
As deputy mayor Kulig noted, the drop in municipal income in 2020 reached PLN 350 million, which was of no paramount consequences given the city 2020 budget stood at nearly PLN 7 billion. "We learned that the Kraków economy could function during the pandemic relatively well," deputy mayor Kulig said.
The high durability of the city economy is also well visible in the shape of its office market. Comprising 1.57 million square meters of modern space, it is the second-largest market after Warsaw. Some 300,000 square meters are currently in the pipeline as the demand for office space in the city continues. At the same time, the vacancy rate in the city stood at 14 percent by the end of 2020, a mere rise by 5 percentage points from the end of 2019.
According to deputy mayor Muzyk, while there has been a dramatic drop in demand for modern office space in the city during the pandemic, the design that landlords look for now includes bigger spaces allocated to individuals workers.

COMMUTING MADE WISE

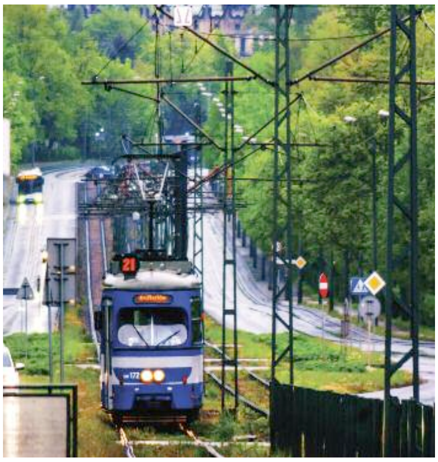
Population-wise, Kraków is a relatively young city. Nearly 77 percent of its 780,000 inhabitants are working-age people and younger. Meanwhile, some 1.2 million people commute to work in the city every day. A significant part of the city's workforce lives in neighboring areas, and according to city demographic long-term forecast, the trend will continue. The city population is expected to grow, but the trend will peak in around 2025-30 at 800,000, after which the Kraków population is expected to stabilize at approximately 700,000.
The numbers show that the city will simply integrate with its neighboring areas. According to deputy mayor Muzyk, the trend is already visible, and as such, it is not characteristic only to Kraków but in all major cities in Poland—increasing numbers of people find it more convenient to live outside of big city centers.
The integration of Kraków with its neighboring areas means that the city needs to modernize its transport infrastructure to support the growing number of commuters.
Another reason why the city needs to expand its road network and public transportation system is that the high numbers of passenger cars on the city streets pollute the air. Approximately 240,000 cars are entering the city each working day between 6 to 9 a.m. At the same time, the number of private vehicles registered in the city is at a record high at 750 units per 1,000 inhabitants and is still growing.
Clear air is a sensitive issue for the city, which is located in a land niche and prone to smog with little winds and poor natural ventilation. On Sept 1, 2019, Kraków embarked on a pioneering clean air project. Kraków was the first city in Poland that prohibited the use of wood and coal for heating homes, including regular heating systems and fireplaces, and big grills. The ban came along with a monitoring system equipped with drones to scan for breaches, and the city was consequently policing the culprits. Had it not been for the exhaustion fumes generated by cars, the problem would have been solved. During the first lockdown in 2020, when the car traffic was practically non-existent, the air quality in the city reached the EU health safety standards. With this, the city authorities knew that without taking away car traffic from the city center, there is no way to have clear air in Kraków.



Ready to go: According to Andrzej Kulig, Kraków has enough investment projects in different planning phases to absorb several billion złoty in the next 7-8 years.

ALL ROADS LEAD TO KRAKÓW

Kraków public transport has been developing for the last 120 years. Today, it is based on a fairly dense network of tram and bus routes operated by a municipal company, supplemented by a number of private minibus operators. Local trains



Strategic linking: The modernization of the tram connection between the city center and Nowa Huta is one of Kraków the strategic development priorities.

connect some of the suburbs.
Along with plans to put the city center off-limits for vehicles with "unclean" engines, the city has readied a range of investment projects into the road infrastructure, the tramway network, and new bus fleet with hydrogen-powered engines—the latter being in sync with investment plans from the private sector to set up in Kraków hydrogen production facilities.
When it comes to the road network, the city has opened a range of projects linking the center with the suburbs and the city beltways.
Along with developing the road system, Kraków expands its tramway network. Strategic investments realized through public-private partnerships include a fast line between the Nowa Huta district and the city center and extending connections between such communication hubs as Płaszów, Skawina, and Azory, among others.
The most ambitious project is the construction of the "Pre-Metro" system—a tram line linking the Wzgórza Krzesławickie and Bronowice districts on the east-west axis. It will consist of 32 stations, two underground tunnels, including one that's 11-kilometer long under the city center, and an overland passage. The total cost of the 22-kilometer long project is estimated at PLN 5.8 billion.
The city also plans to supplement the road and tramway network with a park & ride system to make more commuters use the public transportation, which, according to deputy mayor Kulig, will be more ecological than cars and faster.
Developing the transportation network in the city is a major task not only because of the need to make it more efficient and cut the traffic-related air pollution but also because Kraków is the second-largest city in Poland in regard to its geographic spread, after Warsaw.
Kraków has tapped into EU funds to finance many of its investment projects. Since the EU financial perspective ends in 2022, the city has prioritized finishing them by the end of 2023, which is the decline for submitting financial clearance for those projects to get the money from the EU.

Renaissance city: Although Kraków is viewed as a major tourist destination in the region, the tourism industry generates only 7 percent of the city's GDP.

URBAN REGENERATION

Along with modernizing its public transportation system, Kraków has embarked on a major urban regeneration program which comprises four major schemes. One of them is actually out of the city proper and covers the land around the Kraków-Balice Airport. In 2019, nearly 13 million passengers used the airport, and had it not been for the pandemic, the number would have been on the rise in 2020 and 2021. In fact, the Balice Airport is planned to become the largest regional airport in Europe. With this in mind, the city has prepared two zoning plans around the airport, which envision the construction of new fast roads linking the airport with the city center as well as the beltway system. This project is scheduled for completion by 2023.
The city has also developed plans for a service infrastructure to supplement the airport in a similar fashion, such as those developed around airports in Munich, Frankfurt, and other major communication hubs in Europe.
Another major project is under construction in the eastern part of Kraków—the Płaszów New City. It comprises nearly 700 hectares to be tuned into a multifunctional residential and office district, with low rise and high-rise buildings (up to 150 meters tall), which, when completed, will become home to 100,000 residents.
Another major urban development is planned to take place on the grounds of the Nowa Huta steelworks, following its decommissioning by Accelor Mittal. Several thousands of hectares of land will be turned into a science and technology park along with an industrial and logistics center.
The Vistula River Park is another major urban revitalization project. Covering 32 hectares of land along the Vistula river, it will be developed into a recreation and entertainment area, including a municipal beach.
According to deputy mayor Muzyk, the city attaches priority to developing "bioactive" areas, such as public parks and common greens for recreation. Along with a sustainable economy, the city's goal is to create an extensive leisure infrastructure to make the city more attractive to live in, which is important not only to the city residents but also to investors. As the private sector creates attractive jobs in the city, it is expected that the city will create attractive living conditions. It is also in sync with the expectations of the Kraków residents, who voice their expectations during public

Downtown traffic: Approximately 240,000 cars enter the city each workday between 6 to 9 a.m.

Invisible tram: Kraków plans to build a new tram line linking the city's east and west districts, including an 11-kilometer-long tunnel under the city center.

Quality of life: The Vistula River Park covers 32 hectares of land along the Vistula river that will be developed into a recreation and entertainment area, including a municipal beach.

consultations regarding new zoning plans.

SUSTAINABLE TOURISM

Along with being perceived as a major academic center in Europe, Kraków has also been viewed as a major tourist destination in this region of Europe, attracting domestic and international visitors.

While the city has always been popular with domestic tourists as well as international tourists attracted to the city by its rich cultural heritage, the rise of low-cost airlines in the 1990s transformed the city's tourism market by bringing in crowds of weekend visitors from Western Europe who found Kraków a relatively inexpensive place to stay. The city

High flier: In 2019, the Kraków-Balice Airport serviced nearly 13 million passengers and is set to become the largest regional airport in Europe in a few years.

became one of the most popular destinations for stag parties for tourists from the UK, among others. While the city's cultural offer evolved to embrace this emerging source of revenue offering new attractions in the "pop" category, the room for "high culture" seekers became sparse. In 2004, after seven years in Kraków, the Ludwig Van Beethoven Easter Festival, organized by the world-renown composer Ludwik Penderecki, could not find sponsors and left the city for Warsaw.

In 2019, nearly 14.5 million tourists visited Kraków, generating a turnover of nearly PLN 8 billion. Among them were nearly 4 million foreigners who stayed in the city for more than two days.

Deputy mayor Muzyk noted that, while Kraków is universally perceived as a big tourist destination, tourism generates only some 7 percent of the city's gross domestic product. "Tourism is spectacular, and we are happy to see tourists come back to the city streets this year," the deputy mayor said. "But it is worth remembering that Kraków does not have a tourism-based economic monoculture."

Yet, the city is watching its tourism market, analyzing long-term trends. A study revealed that while tourists return to the city this year, for many, Kraków is a one-time weekend destination. This is why the city has opened an investment scheme, codenamed "Sustainable Tourism Development Program," to boost the city's offering for "premium" tourists, who seek destinations with diverse, multicultural portfolios which make them want to visit the place more than once.

A strategic area to achieve this is the adequate number of five-star hotels in the city. According to deputy mayor Muzyk, a significant improvement was made over the last decade in this respect. "Ten years ago, there were a few of them, and now, there are several," he said.

But five-star hotels are just one end of the equation. With the development of the Kraków Music Center—a major municipal investment project to build a state-of-the-art venue for live performances—the city plans to return Kraków on the European map of "high-end" musical events. We know that "premium" tourists in Europe and beyond, when picking their destinations, do take into account not only historic sites they want to see but also cultural events, including musical events," noted deputy mayor Muzyk.

INVESTORS WELCOME

To be able to open so many large investment projects to execute a long-term development vision, Kraków first had to make zoning plans for the areas impacted by the investments. The city took to the task intensely. Today, with 70 percent of the city area covered by zoning plans, Kraków is the top regional capital in this respect in Poland.

The city plans to do zoning plans for the remaining 25 percent of the land by 2023. Five percent of the Kraków area is used by military and civil service and is off-limits to the city zoning authority.

With all those ambitious and extensive city development plans, Kraków mayors are also confident the city can tap into the financing it needs. According to deputy mayor Muzyk, the 2021 investment budget stands at PLN 1.2 billion. But the city budget is just one source of money. Some projects in the road infrastructure are co-financed by the Małopolska Province government. In addition, Kraków will tap into the EU funds designed for infrastructure development in 2021-2028, and the National Reconstruction Plan, which offers EUR 60 billion, including EUR 24 billion through grants. Deputy mayor Muzyk added that being a major academic and business center, Kraków must not limit its investment projects in the time of the pandemic, because if it did, it could find itself in a development trap in a few years from now and dwarf its chances for a fast post-pandemic economic recovery.

In turn, deputy mayor Kulig said that at present, Kraków has enough investment projects in different phases of planning to absorb several billion złoty in the next 7-8 years.

Kulig added that the city is looking forward to collaborating with the private sector in any economic area that supports the realization of the city's long-term development plans and encouraged American investors who might be interested in finding more about investment opportunities in Kraków to contact the city halls directly.

Kraków is looking forward to collaborating with the private sector in any economic area that supports the realization of the city's long-term development goals.

FOCUS

US medical devices market

X-RAYING FOR OPPORTUNITIES

LAUNCHING A MEDICAL DEVICE PRODUCT IN THE US MARKET MAY BE EASIER THAN YOU THINK.

In June, the AmCham American Investor Desk held an online session with Rick Proctor, Managing Partner at Breakthrough Life Sciences LLC, and Jeff L Smith, President and CEO of Braveheart Group, Inc. The speakers talked about the steps that producers of medical devices need to take to enter the US market successfully.

Before they find buyers, however, the producers need to properly register their products with the US Food and Drug Administration (FDA). According to the FDA website, medical devices range from simple tongue depressors and hospital gowns to complex programmable pacemakers and robotic surgical systems. The FDA Medical Device Product Classifica-

Companies that plan to market a medical device in the US should also consider protecting their product vis-a-vis intellectual property risks. They can choose four basic ways to do so: patent, trademark, copyright, and trade secret protection.

tion database lists over 6,000 types of medical devices regulated by the FDA's Center for Medical Devices and Radiological Health (CDRH) and the classification assigned to each type.

Depending on the device classification, along with other factors, federal regulations define requirements that must be fulfilled for CDRH to approve or clear devices sold in the US.

There are two ways to get the FDA classifications. Producers may either conduct research and find the same devices they intend to sell in the US already classified by the FDA, or they can simply contact the agency and have their products classified by FDA experts for a fee.

According to **Rick Proctor**, there are hundreds of thousands of apps that are related to health in the US market, but the actual use and utility of those apps are very low, and what makes a difference between success and failure are app features that are pretty straight-forward but hard to pull off, such as great user experience, integration with wearables, interaction with patient groups, and provide simple communication with health service providers.

SOFTWARE AS A MEDICAL DEVICE

Apart from hardware medical devices, the FDA may classify a piece of software as a medical device, given the application meets the right conditions. It must be software intended to be used for one or more medical purposes and work so that it is not an integral part of a hardware medical device. However, it may be used in combination with other medical devices and other software, including general-purpose software, and can run on general-purpose platforms.

The FDI understanding of a "software for medical purpose" includes applications that provide means and suggestions for mitigation of a disease, or information for determining capability, detecting, diagnosing, monitoring, or treating physiological conditions, states of health, illness, or congenital deformities. It may also be software that is an aid to diagnosis, screening, monitoring, determination of a predisposition, prognosis, prediction, determination of physiological status.

The FDA may also view software for laboratory diagnosis, including in-vitro diagnostics as a medical device. It can also be computer-aided detection software running on a general-purpose computing platform located in the image-acquisition hardware medical device.

The status of a medical device may also be applied to software that provides parameters that become the input for a different hardware medical device, such as treatment planning software that supplies information used in a linear accelerator.

The FDA may also recognize mobile apps as medical devices, given they meet the above-mentioned purpose criteria. For instance, medical devices will be apps that allow a commercially available smartphone to view images for diagnosis purposes obtained from a magnetic resonance imaging medical service or apps using the triaxial accelerometer that operates on the embedded processor on a consumer digital camera.

NOT A MEDICAL DEVICE

However, not all software that is used in medical equipment will fill the bill for the FDA to be considered a medical device. For instance, software that is used to "drive" or "control" the motors and the pumping of medication in an infusion pump is not a medical device. This also includes software that relies on data from a medical device but does not have a medical purpose, such as software that encrypts data for transmission from a medical device. Programs that monitor X-ray tube performance to anticipate the need for replacement are not medical devices. Similarly, software that integrates and analyzes laboratory quality control data to identify increased random errors or trends in calibration on in-vitro diagnostics does not meet the FDA requirements for a medical device.

THE PAPERWORK

The FDA believes an agile regulatory paradigm is necessary to accommodate the faster rate of development and potential innovation in software-based products. It means that the FDA does not hold the producers to the same standards in design as it does in the case of, say, a stethoscope. Instead, the FDA has a path that allows producers of innovative medical software to get to the marketplace quicker. It is called the Software Pre-Certification Pilot Program.

According to **Jeff Smith**, bidding for the US government business using the System for Award Management is not a guarantee for getting a contract. While the selection process is arduous and can be very frustrating, it is rewarding for those who are selected.

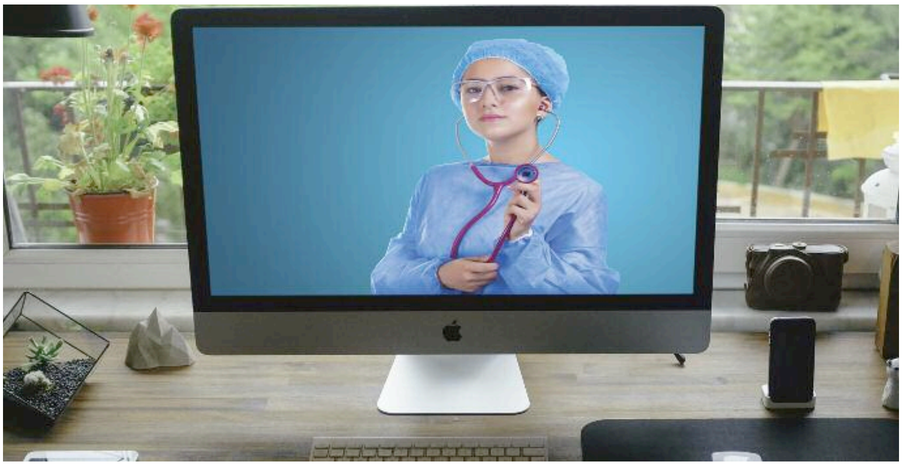
To obtain the DFA grading for their medical devices, producers need to specify the device's objective. The definition has to include the healthcare type that the device is going to fill and the functionality. The documentation has to include such aspects as requirements, design, testing, use, and maintenance.

Once the producers of the software medical devices submit to the FDA the documentation describing the products they intend to sell in the US, the agency will give them an appraisal for the excellence of the product. Once that is done, producers need to submit their products for a review determination. Depending on the risk and what they intend to do with their products, they either are going to get a streamlined review which confirms the product in question was viewed as fit for the US market or, in the case of low-risk products, the FDA will let their products go straight to the market bypassing a streamlined review process. However, once the product is in the market, performance-based feedback may trigger the producer to introduce changes to the software to upgrade and improve it. In other words, this pre-certification program can allow producers to get their precut into the regulated marketplace much quicker and put the producers in very good standing with the FDA.

MOBILE MEDICAL APPS

Apart from software that can be classified by the FDA as a medical device, the agency recognizes a special category of software—Mobile Medical Apps (MMAs). This software runs on a mobile platform or can be accessed via mobile devices but is run on a web-based server and performs medical device functions. By mobile device, the FDA understands a handheld mobile, off-the-shelf, commercial computing platform, with or without wireless connectivity such as a smartphone or iPad.

MMA comes in two categories: regulated and unregulated. Regulated MMAs are the ones that meet any of the three criteria. The first is that the app is intended for use in the diagnosis, cure, mitigation, treatment of disease prevention, or affects the structure or any function of the body. Another criterion is that the app is used as an accessory to a regulated medical device or transforms a mobile platform into a regulated medical device. The third criterion is that the app's functionality can pose a risk to a patient's safety if the device does not function as intended.



Virtual world: Telemedicine has boomed in the US during the pandemic and today, users of mobile medical apps expect that they give them easy access to healthcare providers.

In practice, apps that are regulated include such that control medical devices, such as blood pressure sensors, insulin pumps, and others.

Regulated apps are also those that transform a mobile platform into a medical device with attachments, displays, and sensors, such as attachments to read glucose strips, collect monitor ECG, and also apps that monitor sensors to monitor sleep apnea, electronic stethoscopes. They also include apps that provide patient-specific analysis and diagnosis or treatment recommendations, such as calculating dosage for a treatment plan or doing CAD image processing.

Some apps fall into the category of Enforcement Discretion MMAs. The FDA does not intend to regulate them but, if it finds it necessary, it can. Such apps include software that helps users self-manage their disease or conditions without specific treatment or treatment suggestions, such as coaching software which helps users manage such conditions as obesity, diabetes, mood disorders.

Telemedicine software and apps that automate tasks for healthcare providers are also regulated.

Unregulated medical software, because it does not meet the definition of medical device, includes software that lets users access copies or reference materials, training and education for clinicians, patient education, office and practice management, patient logs, health tracking aids, and transfer, store, format, display data from a regulated MMA without changes.

If an app falls into a regulated category, it will have to undergo the premarket submission for approval or clearance. The producer will also need to establish a registration and medical device listing for its product.

With products that have a critical impact on the health of the patient who uses them, the producer must prove that the device functions exactly as it is labeled, which involves quality system regulations and product labeling, and adverse-event reporting.

INTELLECTUAL PROPERTY PROTECTION

Companies that plan to market a medical device in the US should also consider protecting their product vis-a-vis intellectual property risks. They can choose four basic ways to do so: patent, trademark, copyright, and trade secret protection.

Patents in the US protect novel ideas embedded in the software. They can be editing functions, user-interface features, compiling techniques, operating system techniques, program algorithms, menu arrangements, display presentations or arrangements, and program language translation methods.

The difference between patent and copyright is that the latter is a protection for the particular form in which an idea is expressed, such as literary work. In the case of software, copyright protection may be applied to source and object code (with only registered versions), user interface and how information is displayed.

In turn, trade secrets are formulas, patterns, compounds, devices, processes, tools, or mechanisms that are not generally known or discoverable and maintained in secrecy because they give its owner a competitive advantage. Trade secrets are software code, as well as concepts and ideas behind code.

A good example of what types of intellectual property come to play with software-based devices is the smartphone. Trademark protection covers the product's name, code, and the start-up tone associated with the phone. In turn, patent protection covers such areas as the data-processing method, the operating system, and the operation of the user interface.

Copyright, in turn, can be areas associated with the software, user manuals, ringtones, start-up tone, and images. In terms of trade secrets, there could be some technical know-how kept "in-house" and not published.

With hardware products, generally, the patent is the ideal way of protection. However, it is difficult to protect an application via patent alone.

ARTIFICIAL INTELLIGENCE PROTECTION

Artificial intelligence complicates regulation and intellectual property associated with medical devices. AI can change many technical and performance aspects of regulated devices, triggering the need for additional approval. When the performance, particularly for medical devices, is changed, it may require additional testing and will lead to a submission of proof to the FDA that the AI-enhanced medical device works as designed.

In 2019, the FDA provided a framework for modifications of AI and machine learning to give some guidance on what happens when AI components are

In 2019, the FDA provided a framework for modifications of AI and machine learning to give some guidance on what happens when AI components are changed in medical devices, and how it can be addressed from the regulatory standpoint.

changed in medical devices and how it can be addressed from a regulatory standpoint.

When it comes to intellectual property, AI is difficult to describe in a patent application. This fact makes it tougher to obtain a patent for an AI solution. To combat that, producers need to detail all the technical improvements in a detailed and specific way to obtain intellectual property protection, such as a patent, for an AI solution.

In 2020 the US Patent and Trademark Office released a report entitled Inventing AI, which provides useful guidance for companies that sell medical devices.

PROMOTIONAL PRACTICES

The primary regulatory group for medical devices in the US is the FDA. However, when it comes to claims made by companies developing software and medical applications, the Federal Trade Commission comes to play. The commission's primary charter is to protect consumers. In 2015, the FTC started to get involved in cases where it saw misleading claims regarding software in medical applications.

Both the FDA and the FTC have an overlapping authority of scrutinizing advertising and promotion, and both can get involved if they see something that they do not like.

PRIVACY PROTECTION

There is a lot of sensitivity in the US to software that collects patients' medical data and is provided by third parties. Software that collects medical information from patients undergoes the Health and Insurance Portability and Accountability Act. It protects the privacy and security of certain health information and requires certain entities to provide notifications of health information breaches. The rules of the act are enforced by the Office for Civil Rights within the US Department of Health and Human Services.

CONSUMER CHOICE

Today, hundreds of thousands of mobile applications in the US market are related to health, but most of those apps' actual use and utility is low. Some aspects of mobile health apps that make a difference between success and failure were outlined in a survey published over a year ago, which showed what patients in the US expect of their MMAs.

In most cases, those are simple things but hard to pull off. Applications that are easy to use, offer a great user experience, and are integrated with wearables were the three top choices. But the survey revealed that nearly equally important is the ability for users to interact with patient groups, as an increasing number of patients in the US want to have access to people who are in a similar situation using the app. They want to be able to communicate with them, see what their experience is, talk to them about their own health challenges and common problems. With this in mind, vendors should not forget to include in their MMAs a way to interact with other patients using the same software.

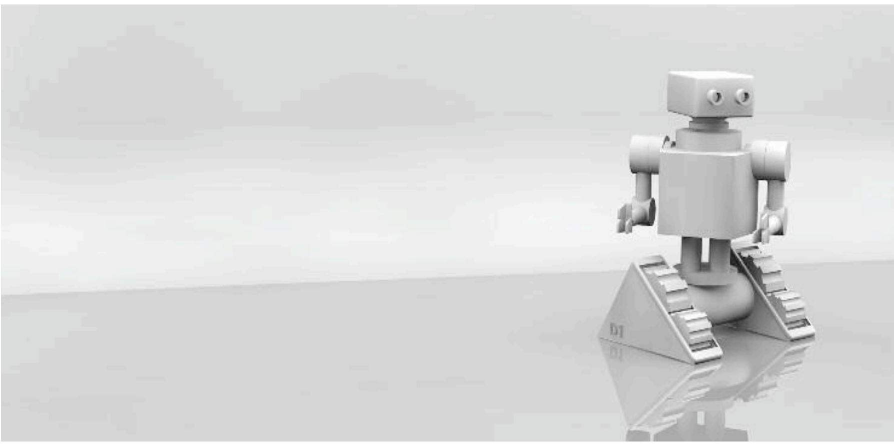
Another critically important aspect of MMAs for patients in the US is that they can use their MMA to communicate with healthcare provides. The role of telemedicine increased significantly over the pandemic. Many telemedicine platforms are mobile platforms for doing telemedicine visits. App developers need to find a way to communicate with telemedicine providers, and it has to be relatively simple for the user.

MMAs also need to offer actionable information. Patients in the US expect to get advice, guidance and information from their healthcare app that is useful in their condition.

US GOVERNMENT CONTRACTING

Companies interested in winning a contract with the US government need to be familiar with the Federal Acquisition Regulation. The document covers the rules for all US government procurement and acquisitions activities along with all the requirements for providers. The next step is to get familiar with the System for Award Management (SAM), where companies have to register and obtain a NATO Commercial and Government Identity Code and a Data Universal Numbering System number. Once the numbers are obtained, the company can start using the system. SAM users can see whether some of the existing or new open contracts are offered for sourcing to the US government. They can view data along with a number of searchable categories using keywords or a product and service code. The service code refers to specific services—for instance, 5415 refers to computer system design and related services; 541511 to custom computer programing services; 541715 to R&D in the Physical, Engineering, and Life Sciences, except for Nanotechnology and Biotechnology.

When users identify a contract in the SAM that is of interest to them, they may submit their bid based on the CFR requirements. However, when the selection begins, not everybody is going to win the business. Using the SAM is not a guarantee for getting a contract. The selection process is arduous and can be very frustrating but rewarding for those who are selected.



I, Robot: Artificial intelligence I is difficult to describe in a patent application, making it tougher to obtain a patent for an AI solution.

FOCUS

Corporate social responsibility

STRONGER TOGETHER

AMCHAM MEMBER COMPANIES PLAY THEIR PART IN AIDING ANTI-PANDEMIC EFFORTS.

In June, AmCham published a report on the aid executed by member companies between March 2020—June 2021 towards the efforts to battle the pandemic in Poland. The 23-page long report, entitled *AmCham Poland Members Lend Their Support*, covers 93 companies and, in a nutshell, depicts the breadth and depth of social responsibility embedded in the corporate fabric of American enterprises.

The 93 companies collectively rendered financial aid exceeding PLN 200 million and donated hundreds of thousands of in-kind items, ranging from face masks made by hand by volunteers in the early stage of the pandemic, to face shields created on 3D printers, to high-tech medical equipment donated by medical corporations.

AmCham-member companies also offered services focused on supporting health and care personnel, as well as legal services delivered pro bono to companies facing legal issues related to the pandemic.

The 93 benefactors represent nearly all sectors of the economy. From the IT, telecommunications, business consulting and legal services, manufacturing and food processing, pharmaceutical and medical, educational, financial services and insurance, energy, real estate, logistics, chemicals, beauty and body care, delivery and carrier services, promotional wear and advertising, the media, convenience shopping, and aerospace.

HOTELS

Some benefactors represent sectors of the economy that were the most severely hit by the pandemic-related lockdowns: hotels and restaurants.

Hotels were hurt badly by lockdowns and international and domestic travel restrictions. Facing plummeting turnovers, they had to put their primary functions on a standstill and idle some of their workforces, and develop new offerings to match the situation.

Despite that, some of them managed to assign resources to aid healthcare professionals and other frontline workers.

Starting in the initial phase of the pandemic, the Bridge Wrocław MGallery hotel produced 100 meals a day for local hospitals in Wrocław and Oborniki Śląskie.

In turn, the Courtyard by Marriott Warsaw Airport Hotel—a part of the Polish Hotel Holding (PHH)—collaborated with the Polish Ministry of Health and the National Health Fund to accommodate the medical staff of the Central Clinical Hospital of the Ministry of Interior and Administration in Warsaw, and offered complimentary comfortable rooms and meals. In addition, the hotel's kitchen staff joined the PHH catering department, which prepared nearly 23,000 meals for over 300 employees of epidemiological stations in Warsaw.

The report depicts the breadth and depth of social responsibility embedded in the corporate fabric of American enterprises.

The PHH employees also volunteered to undergo training to support the NFZ hotline and the Chief Sanitary Inspectorate. The PHH volunteers received almost 35,000 phone calls.

Warsaw Marriott Hotel aided the efforts of the Ministry of Health and the National Health Fund to create appropriate conditions for post-work rest for medical staff. The hotel arranged an off-limits floor for them along with meals.

Warsaw Marriott volunteers also sewed face masks for the Red Cross while the hotel donated shampoos, lotions, tooth kits, shower gels to the healthcare personnel of the Central Clinical Hospital of the Ministry of Interior and Administration in Warsaw.

RESTAURANT CHAINS

During lockdowns, restaurant chains functioned in a drastically limited capacity. Some restaurants, such as those in shopping centers, were closed, while others, being not permitted to service clients inside, worked hard to extend their takeaway offers, expand delivery networks to cover larger areas, as well as making their ordering functions available in multi-channel formats. Despite all that, they still rendered an effective aid to the pandemic-fighting efforts.

Starting in mid-March 2020, Amrest, which operates in Poland KFC, Pizza Hut, Starbucks, and Burger King restaurants, provided meals to 50 hospitals in several cities across the country.

By June 2021, the company delivered over 7,000 meals, coffee packs, and desserts. In March 2020, Amrest donated 3 tonnes of food to the Food Bank and has been donating surplus food to the institution ever since.

In March 2020, McDonald's assigned some of its restaurants to make Power Packs—nutritious fee meals—for the "Wzwamy-Posiłki" national aid program, of which McDonald's became a strategic partner. Through this program, the restaurant delivered Power Packs for healthcare workers and other frontline professionals involved in battling the pandemic. As a result, the 100 restaurants that produced Power Packs donated over 81,000 sets to 50 healthcare facilities across the country.

FOCUS
Mentoring

PURSUING INDIVIDUAL IDEAS

A GRASSROOTS MENTORING PROGRAM EXCEEDS THE EXPECTATIONS OF ITS INITIATORS

Mentoring is a form of human resource management focusing on sharing knowledge and experience, and building on the strengths of the mentee. But, arguably, most of all, mentoring is a form of building relationships.

Mentoring starts with choosing the right program. There are programs on the intra-company scope, national or even global. But the right program to choose depends on the needs of the mentees, their expectations, goals and to what degree they are ready to open up for the change. This is why the most important aspect of a well-chosen mentoring program is trust. When entering into a mentoring relationship, mentees have to remember that they will have to work hard on themselves. The process often consists of overcoming personal weaknesses and dealing with difficult personal topics. I often have participated in the monitoring programs of the Business Leaders Foundation and the Mentoring Walk Vital Voices, along with three other colleagues from GE Healthcare, Magdalena Grzeda, Anna Hruszka, and Anna Paczuska. One day, we thought it would be a good idea to create a program of our own. We decided to create a program dedicated to women to help them develop professional careers. We used an idiosyncratic approach to each program participant depending on her specific goals such as getting a promotion, a raise, getting transferred to a different department or even considering changing jobs. This is how the Grow & Fly Program came to life under the patronage of the GE Women's Network.

GROWING BIG

Over the course of the program, it became apparent that it could not continue as a project dedicated exclusively to women. Male colleagues from the companies that helped start the program—GE Healthcare and Bank BPH—and colleagues from other companies began to get involved. As a result, in this exclusively online program, 35 mentoring/coaching pairs were formed. The goal was to make the program benefit both sides of the monitoring equilibrium, as mentoring is about mentee development and broadening the mentors' horizons. In this way, they learn to sense, understand, and guide their mentees so that they do not think new ideas are imposed on them. With this in mind, we created a successful mentoring process as the mentees grew ready to work on themselves and realize that the mentoring process itself was only the beginning of an adventure that never ends.

Author: *Anna Zemła, Communications Manager at GE Healthcare*

Company Profile: AICPA & CIMA

CHANGING EQUILIBRIUM

AmCham.pl Quarterly Editor Tomasz Ćwiok talks with **Jakub Bejnarowicz**, Regional Director for Europe at the Association of International Certified Professional Accountants (AICPA & CIMA), about the evolving roles of finance professionals in business organizations.

Fall 2021 will mark the 10th anniversary of CIMA activities in Poland. Looking back, what were the milestones in the organization's development?

During the past 10 years, we have been working hard to bring the European community of finance professionals together, grow key markets, raise the employability of CIMA students and members and build recognition of Chartered Global Management Accountant—CGMA—designation in the region. In ten years, we have achieved a lot. Our office in Warsaw now serves as the hub for Europe. We have been collaborating with top employers in Poland to ensure the CGMA designation remains the first choice when recruiting financially trained business leaders. The CGMA designation holders are now widely employed in public, private, and non-profit sectors in Poland. During this time too, CIMA has also entered into a joint-venture with the American Institute of Certified Public Accountants to create the Association of International Certified Professional Accountants, and become the world's leader in public and management accounting issues.

While growing our membership pool in Poland and in the region, we had many successes, reached many milestones, and undoubtedly faced some challenges. But what seems important from today's perspective is the strategic alliances and valuable partnerships we have managed to maintain and extend throughout the years. Some organizations we work closely with include the Association of Business Service Leaders, the Polish Chamber of Statutory Auditors, the British Embassy Warsaw, the Warsaw School of Economics, the Otto Beisheim School of Management, PwC and the PwC Academy, the First Intuition and Channel Partners, the CFO Club, Hays Poland and Michael Page Europe, Diversity Hub, the *Rzeczpospolita* daily and many leading universities and top business schools in mainland Europe and Eurasia.

Last year, we reached a milestone in our development in the region by signing a memorandum of understanding with the Polish Chamber of Statutory Auditors aiming to develop the competencies of professionals providing audit and advisory services in Poland, and raise their professional qualifications. This also opened a possibility to establish strategic relations with other auditors in Europe.

In March this year, CIMA and the Association of Business Service Leaders signed a letter of intent to support the growth and increase the competitiveness of a modern business services sector in Poland and CEE. As part of the new project, called Skills of the Future Academy 2021-2026, AICPA & CIMA, and ABSL will identify competency gaps in the modern business services sector and work on implementing world-class solutions that will address them.

What are the other plans for Poland this year and beyond?

Recently we have shared recommendations with the Polish government on supporting economic recovery in Poland by introducing schemes to help small and medium-sized enterprises with digitalization, strengthening Poland's critical assets, such as skilled talent pool, and helping businesses with addressing environmental, social and governance issues to meet sustainability challenges. In September we are organizing a panel discussion with representatives of prominent institutions and organizations we cooperate with, such as AmCham, on the ways to maximize organizational potential and support Poland's economic recovery and sustainable growth by investing in skilled talent and the right competencies.

In turn, in November, together with the *Rzeczpospolita* , we organize the 4th edition of our flagship event—the CFO Strategy & Innovation Summit 2021—to discuss trends that affect and will affect the work of CFOs. This year's focus is on the value creation and the mindsets required for successful C-suite leadership in the post-Covid volatile, uncertain, complex and ambiguous business environment. Our topnotch international speakers will include Riccardo Calliano, Head of Global Finance Capabilities and Talent at GlaxoSmithKline; Yan Jin, Global SVP responsible for Investor Relations at Eaton; Modi Kairav, FCMA, CGMA, Executive VP and CFO, Siemens Limited, and Barbara Larson, Global Senior Vice President, Accounting, Tax & Treasury at Workday. With this event, year-on-year we are facilitating the discussion on the changing role of finance professionals and the latest trends in financial management as well as building a European community of CFOs and business leaders.

What are the key roles that finance leaders play in organizations?

Nowadays, organizations need a holistic approach to create value and drive their business performance. It is about tracking and making sense of the past, understanding the present and modeling the future to make good decisions, manage risks and create sustainable business models. This is all while optimizing resources and performance along the way.

To get this right, today's enterprises need people who use and leverage the powerful combination of finance and business. They need to be financially literate, digitally and commercially savvy, ethical and purpose-driven leaders who can influence their peers through strategic insight, driving growth and creating value... Individuals who manage tasks and projects as well as teams and organizations... Financial experts who apply their accounting and finance skills across the organization... Professionals who are capable of using financial and non-financial data to drive integrated thinking and better decision-making.

And this is the DNA of CGMA designation holders. They are data-driven, problem-solvers and business architects of value. They embody confidence and expertise because their knowledge and skills are based on mastering the comprehensive, employer-and practice-based CIMA syllabus. Because of this, CGMA designation holders work as strategic partners across the business and financial teams, providing the decision-based financial and operational data required to make good decisions, manage — then optimize — the performance of an organization, create value for the future and drive it forward.

How have the roles of financial leaders evolved over the last decade?

Over the last decade, businesses have undergone a dramatic change. Technology is disrupting not only the products they offer but also the way they earn profit, moving from the manufacturing of tangible goods to service-based business models and knowledge-related activities sold via licenses and subscriptions.

At the same time, technology, such as robotics and computer algorithms, are taking over the basic routine functions of finance professionals giving companies more information than ever before data on their market, their customers, their suppliers, and their own organization.

With this, companies have to figure out how to convey a goldmine of information, including non-financial and intangible assets such as intellectual property and human capital, in an accurate and holistic way, to drive their strategy and remain forward-thinking. These developments pushed finance professionals to redefine their roles as business partners and value creators, at the same time giving them a clear mandate to go beyond their core accounting role and become more influential. With this, finance has been moving from a technical function, mainly focused on budgeting, planning, and reporting, to being a business partner and enabler that creates values by combining skill sets of management accountants with technology solutions.

What is the role of technology in the profession?

Accountants and finance teams around the globe had to learn how to embrace digital transformation strategically and thoughtfully, addressing the unique needs of their firms or organizations. As much as 97 percent of respondents in an informal poll conducted within AICPA and CIMA members in fall 2020 revealed that the pandemic had accelerated digital transformation in their organizations, firms, and small businesses.

But keeping up with digital transformation is not solely about investing in technology. It is largely about training your workforce so that your employees have the necessary skills to perform their roles now and in the future. This is what CIMA is helping organizations and individual students and members to achieve.

What is the specific impact of the pandemic?

With the pandemic, finance and accounting professionals have been drawn to the centre of decision-to use all available resources to keep their organizations afloat. Other departments seek support from the finance team to help develop new partnerships, manage risks, restructure the business, and respond to changing customer expectations so that their organizations can thrive in the post-pandemic world. In recent months, the finance team has truly become the so-called valued partner that businesses desperately needed. This trend is likely to accelerate further as the economic recovery gathers pace.

The pandemic has also brought organizations' environmental, social, and governance, the so-called ESG agenda, into sharp focus. Companies have started looking at how to incorporate sustainable practices into their business models. Finance teams have a key role in driving sustainable strategic and operational decisions, including risk management. They do this by providing reliable and relevant accounting and management information, including financial and non-financial measures, to ensure that organizations can confidently make important decisions and deliver their ESG strategy. Without the rigor and business acumen of finance teams, it may prove impossible to truly embed sustainability and responsible business practices into the business-as-usual standard.

The pandemic has caused large-scale disruption for individuals, businesses, and societies across the world. At the inception of the crisis, organizations needed to act quickly to protect their employees, customers, suppliers, and balance sheets. Throughout the crisis, finance and accounting professionals provided vital support and guidance to business leaders to help address immediate concerns about safety and survival, stabilize the business in the short- to medium-term, reduce uncertainty, and position it for recovery.

Now we are in a transition period and have an opportunity to learn the lessons from the past year and prepare for the future. Moving into the post-pandemic world, we are finding the world has changed forever. Organizations, as well as the finance profession, are changing with it. Finance professionals at every level are gaining a huge amount of experience, and this is set to continue.

The pandemic-related crisis has changed the way the world does business, with digital solutions enabling many businesses to survive or even thrive in extraordinary circumstances. Whether organizations were ready or willing to embrace digital transformation, the reality was that the pandemic has catapulted them into new ways of doing business. Companies, big and small, had to reimagine how they could maintain customers or clients and innovate products and new ways of delivering their services through digital and remote technologies. They not only protected their traditional revenue sources but, in many cases, have also created new value streams.

What are the biggest challenges for leaders in finance in the years to come?

Apart from the uncertainty caused by the pandemic, which is likely to persist for the foreseeable future making it difficult for the finance leaders to plan, they will also face issues with the development of junior staff, as well as acquiring, developing and retaining talent with the right skills, competencies and mindset to develop and deploy solutions.

In addition, digital transformation can leave organizations vulnerable to a variety of cyberattacks. And the fact that many of us are routinely working from home potentially creates weak spots in companies' cybersecurity architecture. Finance professionals can therefore expect to pay more attention to cybersecurity and the impact of remote working on their organization's control environment.

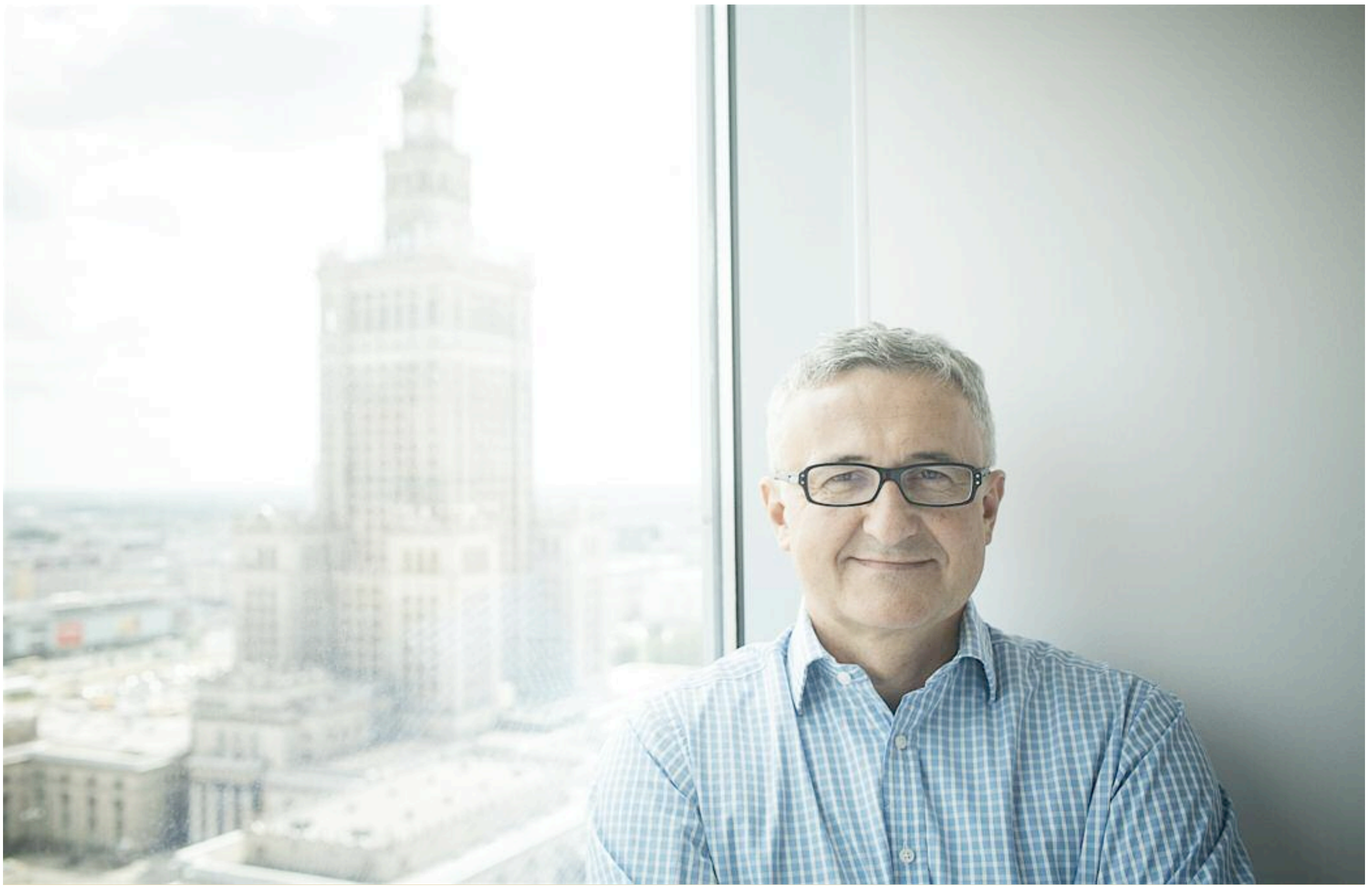
What can you tell us about CIMA educational programs and the certification system?

The best way to learn about it is to get in touch with our Warsaw office for all the details on our offering. Our CGMA Finance Leadership Program, launched in Europe in 2020, was initially addressed to employers and universities in the region. Starting May 2021, individuals can also take advantage of it. It is a guided, digital-first route to completing the CIMA Professional Qualification and earning the CGMA designation.

The program meets the accelerating demand for a remote digital self-paced learning driven by the pandemic. This world-class, smart and scalable online tool helps to raise the digital competencies of financial professionals which during these unprecedented times gained even more importance.

Company Profile: Bain & Company

AHEAD OF ITS TIME



AmCham.pl Quarterly Editor Tomasz Ćwiok talks with **Jacek Poświata**, Managing Partner at Bain & Company for Poland and CEE, about the company's policies regarding its clients and as well as some of the most urgent issues impacting the corporate world today.

In 2021, Bain & Company was recognized by members of the Polish Association of Capital Investors for the third time as the Best Strategic and Commercial Advisor. What were the key professional aspects for which Bain was so highly recognized by the investor community in Poland?

The recognition is, undoubtedly, a huge honor for us. Through these awards, the Polish Association of Capital Investors promotes the highest standards in private equity and venture capital. Being recognized for our work in 2020 is especially satisfying, as last year was an exceptionally difficult period for investors—a time of fluctuations and uncertainty driven by the pandemic. We are all the more pleased that we could support funds in their investment and portfolio management decisions at this difficult time.

You can also ask the funds why they like to work with us and why they keep coming back, but I believe they do because we really do have a great understanding of their needs. Advising private equity is Bain's core business which is absorbing more of our resources than our work for any other industry. Thanks to this focus we have developed a unique skill set and approach to serving private equity funds. Our consultants do not just work in Poland but also contribute to large-scale global transactions and that lets them suggest proven solutions from other markets. We have very rich sector-based experience. We do extensive research, relentlessly observe trends, and our depth of knowledge and comprehensive approach to our clients brings the right results.

How has the pandemic changed the market for private equity investors?

The pandemic slowed investment activity only for the first few months in 2020. Investors needed time to evaluate how the crisis would affect companies and their valuations. But in the third quarter 2020 we saw a clear market recovery and by the end of 2020 there was a record number of

transactions. As our research shows, the number of acquisitions by investment funds in Poland last year grew by about one-third, compared to 2019, with more than half of them taking place in the fourth quarter. Interestingly enough, despite the uncertainty related to the pandemic, valuations of acquired companies grew for yet another year. The activity growth trend continues this year and it is so mainly thanks to the general improvement in the economy. Also, transactions that were frozen last year now are going through because funds have significant resources to invest.
It seems that this year we may see a global record, with the total value of acquisitions by funds exceeding USD 1 trillion. The situation on the Polish private equity market, and the trends we see here, do not differ significantly from global trends. But one aspect in which we definitely stand out is that transactions get lower evaluations on the average. However, with the Polish economy being more attractive compared to Western Europe when it comes to growth potential, local companies often display better growth prospects and, with time, we should see more and more larger-scale investment opportunities in Poland. The country remains an attractive place to invest due to the domestic market size and the prospects for consolidation in numerous sectors. The economy has a huge growth potential while the relative stability of the regulatory environment that results from the country's membership in the European Union makes business in Poland even more attractive.
When it comes to the most attractive industries, it is IT, e-commerce, healthcare and consumer goods. But this year we also see a growing interest in such sectors as manufacturing, especially among companies with the potential to expand onto the markets of the Western Europe to capitalize on the global trend of shortening and diversifying supply chains.

Many people probably know the EcoVadis Corporate Social Responsibility assessment—which is a paid service to assess your company's material sustainability impacts based on documented evidence. In April, Bain & Company earned the Gold rating from EcoVadis for its exceptional sustainability practices. Addressing climate-related issues has become critical for business. What is the company's culture in this respect?
Our sustainability teams around the world work hard on these issues and we are thrilled to see that the hard work was recognized in this rating. Bain & Company ranks among the top 2 percent of consulting firms globally for environmental, social and ethical performance. We were one of the first global consulting firms to commit ourselves to carbon neutrality. This summer marks our 10th year as a 100-percent carbon neutral firm. We utilize renewable energy across all our offices, including in Poland, and we are committed to reaching the net-zero carbon emission goal by 2030.
We are committed to these targets. Bain is a signatory of the letter called Business Ambition for 1.5ºC, with the Science Based Targets initiative as well as the UN Global Compact. We have adopted the GRI reporting standards— a common language for organizations to report on their sustainability impacts in a consistent and credible way—and in 2020 we were rated A for our public disclosures by the Carbon Disclosure Project. We also include sustainability risk in our global strategy and governance considerations. In turn, our program to cut carbon emissions is one of the leading initiatives in our industry.
We encourage our team members to put their sustainability passions to work every day. With this, we develop valuable expertise which we share with our clients. It is a win-win for our clients and, most importantly, for our planet.

Gender equality and women's empowerment are also critical issues for today's business organizations. I wonder how this is addressed by Bain & Company in Poland?
We have made gender diversity a strategic priority. It is reflected in our efforts to not only hire the world's most talented business leaders, but also invest in them, so everyone thrives, personally and professionally. In Poland, we work with the group called Women in Business to provide opportunities for women from Bain to run workshops on consulting for their peers.
Through our Global Women's Leadership Council and Women at Bain affinity group, we do not just increase diversity but are building an inclusive culture. The WAB program ensures that women are equipped to achieve their full potential here and emerge as thought leaders, inspirational leaders and company leaders. This is achieved both through local WAB networks as well as global efforts which are managed by the Global Women's Leadership Council. The council does that through sponsorship and mentoring programs, and also by ensuring options for flexible career paths. As women in our company develop professionally and aspire to senior positions we support their professional ambitions, ensuring that our every female employee around the globe has a network of formal and informal mentors. In addition, we have also established a formal sponsorship program for senior women. In terms of career paths, our research indicates that women more often than man face the challenge of balancing intense dual-career relationships and primary caregiver roles. So, in response, we do not just create opportunities for flexible working in existing roles but offer a variety of career path options to support individuals—both men and women in fact—who need a different level of flexibility or a new role.

Strategic advisory requires multidisciplinary skills and experience. Do you find it easy to recruit the right talent?
Well, our motto is: We champion the bold to achieve the extraordinary. To put it into practice we have to make sure we recruit the right people. We look for university students with a strong academic background, exceptional personalities with sharp analytical skills and the drive to make an impact. To attract the best candidates, we work with a number of Polish universities, including the Warsaw School of Economics and the University of Warsaw. We encourage students to take part in internships and to participate in our event called Brainworks, which showcases the roles of consultants at Bain. We are also a strategic partner of a program for university students run by the Lesław A. Paga Foundation. It is an intensive program which attracts high fliers.
We also focus at Polish students abroad. We maintain contacts with Polish student groups at foreign universities. For instance, the Polish Economic Forum at the London School of Economics, is the largest economic conference dedicated to Poland held outside the country. For the last four years Bain has been supporting this ambitious initiative by Poles studying at the LSE. Our intention is to make it clear for the students that when they come back to Poland after graduating they can develop an international career here, both in global companies and with large Polish enterprises that are looking to expand abroad.

As the top manager for Poland at Bain & Company, I wonder what personal impact you have on your team when it comes to the values that you promote among the people you work with...
I identify with the values that Bain promotes as a company, and I try to put them into practice in my work every day. Bain is, first and foremost, a uniquely collaborative culture. We are a team of passionate people who genuinely care about our clients' and our colleagues' success. Our emphasis on teamwork, trust and tolerance of diverging opinions helps our clients focus on their opportunities, build their capabilities and win the future. We compete hard to win clients, but we are very supportive with each other. And it is great to work with people who love what they do. I am understandably proud that Bain is the Number One on the list of Glassdoor's Best Places to Work. We have been in the Top Four for the last 13 years now.

What are the the challenges that the company will have to face in 2021 and beyond?
We had a remarkable start to 2021 and now we have been growing at an unprecedented rate in virtually every region and in ever sector. As our clients navigate a world disrupted by the pandemic and the advances of technology, and face new dynamic trends in business, we provide more value to them than ever before by helping them make sense of this new reality and seize opportunities to thrive. We are bold in shaping a more sustainable, inclusive and equitable world, which once again, goes back to our continual efforts to make Bain the best place to work for everyone.

Company Profile: Clear Channel Poland

FOLLOWING CUSTOMERS' JOURNEYS

AmCham.pl Quarterly Editor Tomasz Ćwiok talks with **Dariusz Janczewski**, CEO of Clear Channel Poland, about the new trends in outdoor advertising and the difference that the digital out-of-home solutions make.

Looking at the history of the company in Poland, what do you consider the milestones of Clear Channel Poland business development?
We believe that the decision to start transforming our business unit into a digitally-led company was one of the most important milestones in our history. Currently, we focus our efforts on supplementing the advertising market in Poland with digital out-of-home, or the so-called Digital OOH, solutions. This reflects the way Clear Channel is developing its offering across most of the markets. We believe that by growing the number of digital ad shells we will make everybody perceive our OOH solutions as a real alternative to traditional media which will result in a significant step-change in the distribution of advertising budgets.

What can you tell us about the company's offer and the scope of company's competency in facilitating your clients' needs?
Our efforts aim at showcasing to the market that we can cover customer journeys efficiently and reach diversified audiences on the go. Especially after turbulences caused by the pandemic we see that audiences started to leave their homes and OOH is a great medium to build high coverage in a cost-efficient way, especially towards affluent, young people who live in Poland's biggest cities. With our offer, which consists of displays such as billboards and ad shells across city transport systems and shopping malls, we can reach audiences the moment they leave their homes and follow them until they come back home. In other words, we are where our audiences are and can communicate with them in a most appealing and convincing ways.

What is the role of technology in facilitating new ad formats?
Digitalization allows accountability and management of big data. This means that we are able to target advertising campaigns even more efficiently providing our customers with demographic data. This will allow for more precise targeting of digital OOH campaigns. Recently, Clear Channel Poland has moved all its software to a new technology solutions called Broadsign, which is a first step into new sales offering, including programmatic sales.

What is driving the market today in terms clients' expectations?
Clients expect higher accountability and precise targeting of advertising campaigns. This is what drives the market today. Digitalization allows to offer more precise answers to customers. Digital OOH will soon

be the dominant version of our out-of-home advertising. We follow the trends in western markets such as the UK, the Nordics, Spain and France. Digital out-of-home solutions will be driving the industry for the next years to come.

What was the effect of the pandemic-related lockdowns on the market?
Unfortunately, the pandemic and lockdowns had a very negative effect on the OOH industry as clients cut advertising budgets substantially. It is true that 2021 is still below 2019 numbers but we see some clients reactivate their investments. We believe that as the vaccination rate across the population goes up people will start living homes in large numbers and soon we will be able to forget about the 2020 turmoil.

With you huge experience in top management in the advertising industry, what do you see as the main challenges for the industry in Poland?
I am an optimist by nature and believe that the ad industry will recover from the pandemic side effects quicker than expected. With OOH, I believe that the main challenge will be to convince some advertisers that it is an important medium with which they can build effective coverage of their media campaigns. In fact, allocating all resources into television and online campaigns does not bring about the best communicative solutions. The clutter associated with television and ad-blocking with online media is a problem. In fact Poland has one of the highest ratios in using ad-blockers. Strong OOH campaigns on Digital Ad Shells in particular are extremely efficient in supporting major ad campaigns.

Poland is often top-rated as a good country for foreign investors in Central and Eastern Europe. Would you agree?
Absolutely! This is precisely the approach our headquarters are assuming Poland to be. Though the country is always strongly impacted in the very beginning of any economic turmoil, it recovers quicker than other economies. The Polish GDP is expected to grow and I notice that the investment sentiment among our stakeholders is high.

Again, Poland is viewed as a country offering a highly qualified workforce. What competencies do you look for when recruiting new talent?
Poland has a very good reputation of high quality, skilled and well-educated workforce. This is why many companies move their divisions into our country. I believe that we are highly motivated to work hard and deliver results and, in many cases, learn faster than our colleagues from other, more established markets. We have to remember that skill is one thing, which you can train, acquire, or drill. But the other thing is the attitude. When we recruit new talent, we do not only look at skills. We want to work with people who can easily adopt to change, are willing to do things differently and are open to think out-of-the-box.

Are there any regulatory issues that in your opinion dwarf the development of outdoor advertising?
Landscape laws that that many cities have recently introduced, is in my opinion, is a good step in the direction of improving how the cities will look like in the nearest future. I am a big supporter of introducing regulations that would stop advertising that is ugly and chaotic. If you visit cities such as Madrid, Paris or London you see that their cityscapes are all very neat and nice to look at. We miss that in Poland in some in so many places. The problem I see is that sometimes street furniture solutions, such as digital ad shells, are treated in the same way as big advertising formats.

Clear Channel is the leader in many cities in Western Europe when it comes to offering neat and attractive solutions that are nicely woven into the fabrics of the city infrastructure. I would love to see that the same concept is present in Poland. Our OOH solutions support the concept of smart cities. With them we can support local communities according to our Clear Channel policy visions codenamed Platform for Brands and a Platform for Good.

What are the company's plans in Poland for 2022 and beyond?
We want to be a market leader in the digital out-of-home market in Poland!

Although Poland is always strongly impacted in the very beginning of any economic turmoil, it recovers quicker than other economies. The Polish GDP is expected to grow and I notice that the investment sentiment among our stakeholders is high.

Company Profile: MoneyGram

THE ART OF ENHANCING EXPERIENCE

AmCham.pl Quarterly Editor Tomasz Ćwiok talks with **Adam Brzeziński**, President of the Management Board of MoneyGram Poland, about the corporate culture of the award-winning provider of financial services.

MoneyGram was awarded a 2021 Confirmit ACE Award for its achievement in Customer Excellence in two categories: digital success and B2B. In a press release Forsta, which holds the awards, said MoneyGram was awarded for showing its commitment to customers by continually evolving its customer experience program to gather better insights and fuel smarter, faster action. What were they key aspects in fostering client experience?

First and foremost, I would like to thank you for the opportunity to talk about MoneyGram with AmCham's magazine. I appreciate that!

Yes, MoneyGram was awarded a 2021 Confirmit ACE —Achievement in Customer Excellence— Award in two categories: digital success, and B2B. Since 2005, Confirmit has recognized some of the most innovative companies they work with, and specifically, those dedicated to achieving universal customer excellence. As a recipient of the ACE Award, MoneyGram has shown its commitment to customers by continually evolving customer experience programs to gather better insights and fuel smarter, faster action. We have prioritized our customer-centric strategy, and we truly think about our customers in every action we take and decision we make. This is why our consumers around the world value the quality of MoneyGram's modern, mobile, and mission-driven customer experience. They think in high terms about our leading app which scored 4.8 stars in the customer review. They also value highly the rapid expansion of our customer-centric digital capabilities internationally and are keen to use our loyalty program and personalized communications, which is evident through our high retention rates for existing customers, and the efficiency with which we target new customer segments. The positive effects of our customer experience are also evident through the growth of our instant transfers, real-time payout, bank account and mobile wallet capabilities, which we have achieved through investments and partnerships with leading brands.

How has the pandemic changed the market?

It is fair to say that the pandemic and resulting disruptions in the global economy turned the business world—as well as everyday life—on its head. The pandemic has accelerated the shift-to-digital, and transformed business forever on so many layers. Some say that because of the pandemic companies have accelerated the digitization of their customer and supply-chain interactions

as well as their internal operations by three to four years.
About four years ago, MoneyGram began putting major emphasis on our digital transformation. We set out to disrupt ourselves by reengineering our products, processes and customer service strategies with a startup mindset and agile approach. As a result, we have built a direct-to-consumer digital business, MoneyGram Online.
Over the past year, this business has accelerated rapidly as consumers increasingly look for online options to send and receive money without leaving the comfort of their own homes. Many of our clients have discovered a new MoneyGram, so to speak, which is a modern, mobile, mission-driven company with the industry's best app and a digital presence in over 90 countries!
In terms of our Warsaw operations—the shared service center for MoneyGram is in Warsaw—we not only need to maintain the pace of this fast-growing business, but we also work on continuing to strengthen within our structure. From the perspective of our Warsaw shared services center, we have been able to enhance our internal processes to deliver outstanding services for MoneyGram. We are proud that we have recently deployed complex process automations and bot-driven solutions that have resulted in shortening the time of handling customer inquiries.

Poland is usually ranked high in different investor's almanacs as a good country for doing business in. Are there any legal or regulatory issues that stall the development of the market?
It is truly a difficult question to give a definitive answer. Looking at the bright side though, I will say that I believe Poland is very conducive to innovation. It is one of the best places for professionals to network and businesses to grow and prosper. I have been able to grow in my career by meeting and collaborating with peers across several successful organizations and industries. Even though we may not be the largest company in the country, we are arguably one of the most global and diverse, which has helped our business continue to blossom. I am very grateful that MoneyGram has an office in such a thriving area! We have 600 employees and counting, and the talent pool in the country is very strong!

No issues with finding the right talent in Poland?
We do have a high demand for new talent, but fortunately, we do not have any issues with finding the right talent in Poland. It might be because we have such an excellent Talent Acquisition Department!

What can you tell us about the company's corporate culture and values?
MoneyGram is committed to creating a positive, supportive, and enriching environment, because it brings out the full potential in each of us, which, in turn, contributes directly to our business success. I am proud to be a part of the organization and having the opportunity to engage daily with people of different ages, genders, ethnicities, abilities, socio-economic statuses, sexual orientations, and belief systems.It is a life-changing experience. We prioritize an inclusive environment and are proud to put that on display.

As a top manager at MoneyGram in Poland, what impact do you exercise upon your team members?
Interestingly enough, it seems that the most important person you will ever communicate with is yourself. If you constantly tell yourself that you are going to fail, chances are, you will. Inversely, if you are positive have positive thoughts then you unconsciously spread the aura of success and chances are you will succeed. Seriously, this is not some positive psychobabble! I do believe that. Marcus Aurelius said that the happiness of your life depends upon the quality of your thoughts. When you think about it, it makes a lot of sense.
I have been with MoneyGram since 2014, and I have always been extremely pleased with the organization and the way it operates. This is by far the best job experience that I have ever had. I believe in the organization I am with. This gives me the advantage of having that extra motivation to work hard and lead by example. I take on projects, manage them and, still, do lots of legwork. I am working with the team and try my best to lead by example by implementing the so-called ownership approach across our entire team. MoneyGram is not my company, but I think of it as if it was. I give my 100 percent to it every day and expect the same from people I work with.
I am also a big fan of constructive criticism. There is nothing wrong with learning that there is room for improvement. I encourage people to provide their honest feedback as I like having my work proofed and appreciate that someone invested time and effort to do so. I never take it personally, as nobody is perfect, and what really counts is the quality of the end product your department is delivering. I hold people accountable, but even more, I hold myself accountable.
Last, but not least, I have also been fortunate enough to have a great boss at MoneyGram, Elizabeth Weathers, Associate General Counsel. I am constantly learning from her, and her high standards have pushed me to grow over the course of my career.

CSR is an important aspect of business today. What can you tell me about the MoneyGram foundation activities in Poland?
I am incredibly proud to be part of an organization that is dedicated to helping others in so many ways. You may know that the MoneyGram Foundation is inspired by the 80-year-long history of the company, which excelled in providing global financial services used by millions around the world to secure the essential needs of their families and friends. Out foundation seeks to make an impact in the communities of our customers, employees and agents through volunteer work and charitable grants that address financial literacy, workforce development and job readiness.
In addition to our foundation's ongoing operations, I am happy to say that this year marks the fifth year when MoneyGram Poland Office took part in the charity program called in Polish *Gwiazdor*. This event aims to help underprivileged children by making positive impacts on their lives. Throughout the past five years, we were able to provide gifts for over 400 children and I can not wait to see our company do it again this year!

What are the challenges that the company plans to focus at in the near and mid-term future?
MoneyGram remains focused on executing our corporate growth strategy which focuses on positioning us to continue to attract consumers. The pillars of our corporate strategy include delivering a differentiated customer experience, scaling our digital business, being the preferred partner for cross-border, and capturing new revenue by monetizing capabilities.
Similar to many other organizations, we are managing effects of the pandemic on both our business and our employees. We are shifting into a hybrid work model, and we are in the process of rearranging our office structure to better serve our employees' needs. No matter how the pandemic situation unfolds, many employees prefer to keep the flexibility associated with thew work-from-home arrangements, and we plan to accommodate them. To help ensure that our employees in Warsaw are still connected with colleagues—even through they work remotely—we invited them to participate in an office game called Play the MG Way. Members of our teams will have various funny yet challenging tasks assigned on a weekly basis. We hope to introduce the idea globally in the near future!

The pillars of our corporate strategy include delivering a differentiated customer experience, scaling our digital business, being the preferred partner for cross-border, and capturing new revenue by monetizing capabilities.

Company Profile: PepsiCo Poland

BUILDING A HEALTHIER SUSTAINABLE WORLD

AmCham.pl Quarterly Editor Tomasz Ćwiok talks with **Michał Jaszczyk**, General Manager of PepsiCo Poland, about market trends, challenges, and projects the company develops in Poland.

PepsiCo has just announced it will invest over 1 PLN billion in a new production facility in Poland. It will be the fifth facility the company has in Poland. How much has the company invested in Poland so far?

We have been active in Poland for over 30 years, establishing four manufacturing plants and investing more than PLN 1.5 billion over the past decade. As we look to the future, we want to continue that investment in a way that brings a positive impact to the planet, which is why we have put sustainability at the heart of the design. With this, our latest project in Środa Śląska will be our greenest facility in Europe.

What is driving the market of snacks today?

The macro-snack market generates PLN 17.6 billion annually in Poland, with the savory segment rising, and potato chips being the biggest contributor to growth. The pandemic has developed a homebody economy trend with consumers who eat less on the go, and more at home. This has negatively affected some of the impulse product categories and sizes, but, in turn, triggered the growth of the snacks category more suitable for consumption at home.

On the other hand, consumers in Poland are growing more health-sensitive and look for snacks addressing this need. This makes such categories as nuts and seeds, as well as the "better-for you" segment grow dynamically year-on-year. Snack novelties communicate mindful living to a higher degree, and address the need for healthy, more natural, sustainable products. Consumers look for new flavors and experiences which are more natural and closer to what they prefer in their diet. Our Lay's "Inspired by nature" line has been very successful in this respect. The ingredients are healthy and natural and include sustainably grown potatoes, olive oil, dried tomatoes, basil, oregano, sea salt and other herbs.

Another important sales driver for us is our engagement in sporting events. Our partnership with the UEFA Champions League has led to a great reactivation of the entire snacks portfolio. We listen to feedback from our consumers and launch new flavors and shapes which people like. Our new Lay's Oven Baked Crunchy Biscuits is now available in many different flavors.

Yet another market driver is the growing consumption per capita, which in Poland is still below Western European levels. Consumers constantly look for high quality products from well-known brands, which perfectly matches our profile. They look for healthier products with a lower sugar, sodium and fat content. Hence our shift to Lay's Oven Baked chips and Lay's Oven Baked crackers and sugar-free options in beverages.

What are the market-related challenges that the company faces today?

There are many, including high competitive pressure and the rising costs of commodities, driven, among others, by the pandemic. We have also seen an increasing pressure from supermarkets, hypermarkets and discount stores on traditional trade, most notably small and medium stores. More consumption takes place at home and that triggers change to the snack pack sizes, which have evolved from small to big.

On the other hand, we are also seeing that the traditional trade segment has been shrinking fast because of the growth in online sales. Consumers shift their preferences pursuing more affordable options.

How about technology-related challenges?

Consumer digitalization is one of them. Consumers use the digital channels with ease and confidence. With this, marketers need to contact them in their familiar environment, speak their familiar language, and deliver precise messaging using social media management tools.

Another trend is trade digitalization. A growing array of tools for personalization and portfolio adaptation to meet consumer needs means that companies need to excel in using retailer apps, store management tools, client segmentations, and portfolio optimization to a specific occasion, time, and even individual users.

Then there is the digitalization of logistics. For the last 12 months we have seen a significant change in delivery times for products to reach consumers. There are logistics providers who are able to deliver products within an hour. With this, logistics will be a game-changer in the operational optimization of process handling from order placement to delivery. Providers like PepsiCo will be challenged to optimize delivery times to their partners and use increasingly complex platforms for online ordering.

What makes Poland a good investment market for PepsiCo?

Poland has a favorable investment climate and a skilled talent pool. PepsiCo currently employs 3,600 people, but this, in turn, generates some 15,000 extra jobs across the supply chain throughout Poland. Over the last 30 years in Poland our company has established four manufacturing plants: two beverage and two snacks plants. The new project in Środa Śląska is our fifth and biggest investment yet. The new facility serves as a great central hub as we capitalize on the growing consumer demand for Lay's and Doritos in Eastern Europe. In the coming years, the new plant will employ over 450 qualified employees.

Poland is also important for us because it supplies great agricultural produce. Currently, we work in close collaboration with some 80 Polish farmers under the PepsiCo Polish Farming Program initiated 28 years ago. Thanks to the good working relations with the farmers and the close ties we have developed with them over the years, we source annually over 230,000 tons of sustainably grown potatoes. With the new plant, which will open in 2023, this volume is expected to grow by 60,000 tons per year. In addition, we will build new relationships with corn suppliers, seeking to source from 10,000 tons of corn for the manufacture of Doritos in 2023 to 30,000 tons by 2027. With the new snacks facility now under construction, PepsiCo will significantly expand the Polish Farming Program to cover 7,500 hectares and over 100 farms in the coming years.

The new production facility is in the Legnica Special Economic Zone in Lower Silesia. What was behind choosing such a location?

The 30-hectare plot was carefully selected. Some of the key factors included its convenient location close to major roads, access to a pool of highly qualified staff, as well as a customized assistance offer extended by the Legnica Special Economic Zone, coupled with the support of local and central governments.

In addition, Poland offers a central location for our production which meets consumer demand across Europe. Manufacturing closer to those markets will save us an average of 4.5 million kilometers in truck transportation per year, which translates to a 4.7 metric ton reduction in carbon dioxide emissions annually.

Poland's strategic location between Western Europe, the Balkans and Ukraine ensures a high growth potential in the targeted region, and the site is designed to allow to expand as needed, to meet future production demands.

This location also serves to meet the growing consumer consumption rate and demand for PEP snacks in Poland and Western Europe, and addresses a need for greater production capacity across Europe. In addition, as has been mentioned already, the country offers high-quality agricultural raw materials, including corn, potatoes and sunflower oil.

PepsiCo's goal is to reach climate neutrality by 2040. How is the program executed in Poland?

PepsiCo has pledged to achieve net-zero emissions by 2040, one decade earlier than called for in the Paris Agreement. Specifically, PepsiCo plans to reduce its total emissions of greenhouse gases—GHG—across company's direct operations by 75 percent and its indirect operations by 40 percent no later than by 2030, using the 2015 baseline. This action is expected to result in the reduction of more than 26 million metric tons of GHG emissions or the equivalent of taking more than five million cars off the road for a full year.

The PepsiCo action plan is centered on the mitigation and reduction of greenhouse gases. We aim to decarbonize our operations and supply chains, and build and improve resilience, which aims to reduce vulnerabilities to the impacts of climate change by incorporating climate risk into our business continuity plans. In Europe, PepsiCo has already reduced its total emissions by 6 percent since 2015. Our new comprehensive emissions reduction plan will focus on priority areas such as agriculture, packaging, distribution, and operations.

In Europe, PepsiCo already sources 100 percent renewable electricity and have renewable energy sources installed on-site at its 13 facilities in 11 countries. These include wind turbines, solar photovoltaic panels, and biomass generators. PepsiCo will also work with its suppliers in a transition to a low and zero emissions fuel in the logistics area, while also expanding the use of artificial intelligence technology for a better route planning to reduce emissions in distribution.

In Poland, we already use 100-percent renewable energy to power all our four plants and our headquarters Warsaw. We have installed solar panels in selected locations, such as the beverage plant in Michrów, and the central warehouse in Mszczonów. We will soon add solar panels in our new project in Środa Śląska. PepsiCo plans to lower the greenhouse emissions impact with a continued drive to reduce the use of the so-called virgin plastic and increase recycled content in our packaging. Since 2020, PepsiCo Poland has used fully recycled rPET bottles for our Lipton Ice Tea portfolio. In 2021 we are investing USD 3.6 million, followed by USD 8 million in each subsequent year, to help us use only rPET bottles for the Pepsi and Mirinda beverages.

We have implemented upgrades to our manufacturing lines to achieve better performance that requires less resources. We have also reduced our water and energy consumption. Over the last 10 years we have cut the use of water by 26 percent and electricity by 42 percent.

Poland has been generally viewed as a market which offers skilled labor. Is this true for PepsiCo?

It is very true that in Poland we have very qualified and skilled labor market. There are many professionals and experts in many different areas. PepsiCo, like other global organizations, want to attract the best talents from the market. In many cases we succeed, but in some, we need to compete with others, especially in engineering, supply chain, manufacturing, and IT markets. Engineers are extremely sought after in automation and new technologies. Environmental aspects and sustainability are also on our priority list, but the pool of such experts remains limited.

PepsiCo follows the trends to be an agile and technologically advanced company, We are transforming our processes and culture into a more advanced working environment. That is why we are looking for certain skill sets for our plants. The pool of such skilled labor is still limited, making us face challenges to find and attract the right talent. We are constantly working on adapting our ways of work to what employees expect. However, we can offer a great place to work for everyone, a culture of teamwork, respect and diversity, where anybody can find their own way and find support for their own personal development.

How would you summarize the company's accomplishments in Poland?

PepsiCo has been present in Poland for 30 years. During this time, we have invested in the construction or purchase and then modernization of our four plants. We also invest in the recruitment and development of our employees. We now employ 3,600 skilled people in Poland, and in 2020 we opened our Global Business Services center in Kraków, where over 400 employees deliver support to 28 national markets in marketing, commercialization, sales and finance. Also, we have moved our global Cyber Security office from New York to Poland. And the last but not the least, in Środa Śląska we our building our largest and most sustainable snack factory yet!

What are the company's plans in Poland beyond the most recent big investment?

We are focusing on improving our existing operations to drive down resource use and emissions through modernizations and upgrades. In addition to that, we will be looking at market trends to adapt better to changing consumer expectations. Our focus will also include internal projects and development, such as the modernization of our IT systems. We also plan to provide our employees with a modern, but also environmentally sustainable new headquarters in Warsaw's Praga district starting in the first half of 2022!

EXPERT Business leadership

INFLATION BUSTERS

By ***Andrew Harding****, FCMA, CGMA, Chief Executive, Management Accounting at the Association of International Certified Professional Accountants, representing AICPA & CIMA*

Strategies for combatting rising prices

How much should organizations be concerned about inflation? With the support of their finance teams, businesses must start planning for their future now to cope with the uncertainties of tomorrow's new business environment.

In July, Poland recorded its highest consumer price inflation in a decade, reaching 5 percent compared to the same period last year, according to a flash estimate by the country's Central Statistical Office (GUS). The new figure marks the highest inflation level since May 2011, when the same rate of 5 percent was recorded. This might create additional pressures for the country's damaged economy and businesses, which are struggling to survive.

UNCERTAINTIES OF TOMORROW

Economists explain that this inflation rate is being driven primarily by rises in food, energy, and fuel prices, which increased by 3.1 percent, 5.3 percent, and 30 percent year on year according to GUS's estimates. In light of the data from the European Union's statistical office Eurostat for June 2021, this was the second-highest increase in the entire European Union, just behind Hungary.

Economists say that Poland may end the year with an inflation rate of 5 percent. This would pile more pressure on the country's central bank, the National Bank of Poland, to raise interest rates—which have been kept at 0.1 percent since May 2020— in an attempt to prevent inflation from getting out of control and hampering Poland's post-pandemic recovery. Meanwhile, uncertainty remains, and we cannot rule out further Covid-19 restrictions later this year. That is why businesses must future-proof their organizations and become resilient by design now.

MITIGATING INFLATIONARY PRESSURES

Businesses fail not only because they are unprofitable in the short term but because they suddenly run out of cash. This can happen for a variety of reasons, including poor working capital management, such as inventory obsolescence or bad debts, or the loss of funding, such as bank loans or bond redemptions. Businesses also fail because of the increased cost of capital, such as higher interest rates or the need to maintain healthy dividends. For businesses facing inflationary pressures, cash reserves can serve as a buffer. In other words, cash makes a business resilient.

As business leaders look forward to the next 12 months, they should ask themselves some key questions: When planning for the future, have you run different scenarios for your business? Have you run scenarios that include your business operating in adverse conditions? Can your business survive such shocks? And if your business experiences hardship, how can it continue to generate a healthy free cash flow?

With the support of their finance teams, businesses must start planning for their future now to cope with the uncertainties of tomorrow's new business environment.

PRACTICAL APPROACH

One of the many things I value about my role is hearing the differing perspectives of our members, who are based all over the world. Recently, I was interested in some insights our members in China provided since they have a lot of experience managing growth in an inflationary environment. As it is a growing concern for finance professionals elsewhere, they shared several practical suggestions to mitigate inflation risks. In a nutshell, they can be summarized as follows:

- Use hedging strategies to complement procurement. Hedging strategies mitigate the risk that commodities and other raw materials suddenly skyrocket in value and affect a business's profitability.
- Increase the prices charged to customers. Higher prices help to offset the impact of rising commodity prices on profit margins. Companies with a strong market position are particularly well placed to do this and should take advantage of that position. Ideally, price rises should be small but frequent.
- Renegotiate terms with suppliers. This is a particularly good option if the business is growing and has ever-larger contracts to offer.
- Be innovative. Find opportunities to reduce the cost of the goods or services your business provides — perhaps by using fewer components in a product or simplifying packaging. Also, find new channels to engage with customers — try connecting through social media rather than by hosting face-to-face events.
- Look for ways to reduce fixed and variable costs. An obvious option is to downsize office space and encourage more home working so that people are not in the workplace full time. Also, minimize travel costs by using videoconferencing tools. Applying digital technology can improve the efficiency of manufacturing and service processes.
- Drive revenue growth. Higher revenue helps minimize the impact of inflation on salaries as long as other strategies are also applied to protect profit margins, such as managing supply-chain costs and passing on price rises to consumers.
- Focus on sustainability. Sustainability initiatives can potentially help buffer companies from the negative impact of inflation. Becoming more energy-efficient is a way to reduce costs. Companies may also be able to sell any carbon credits they generate on a carbon trading market.

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EXPERT Logistics and warehousing

FREIGHT TRAIN COMIN’


By **Jakub Dudkiewicz**, *Senior Advisor, Industrial and Warehouse Department, Cresa Poland; and* **Michał Rafałowicz**, *Head for the Pomeranian Region, Cresa Poland*

Intermodal transport is driving warehouse development but railway infrastructure needs significant and costly upgrades.

Intermodal transport involves the movement of goods in the same container, or swap body, using two or more modes of transportation along the entire route. The whole process is also covered under a single agreement with a carrier.

The new method is booming across the continent.

The growth of intermodal connections along the New Silk Road and the Baltic-Adriatic Corridor is creating many new opportunities for warehouse developers. Upgrade works are continuing apace on the railway lines in Małaszewicze, Bydgoszcz and Pomerania.

Looking ahead, intermodal transport is likely to become a leading mode of freight movement in Poland in the coming years. This will be driven, among other things, by the growth in seaport freight traffic and the extension of seaport infrastructure. The number of sea and inland intermodal terminals across Poland increased by 70 percent over the last 10 years to 38 units in early 2020. Terminals are being built not only by state-owned companies, but also by private entrepreneurs, albeit on a considerably smaller scale.

A way to go: Poland needs to upgrade its railway infrastructure so freight trains can run at the average speed of 45 km/h whereby meeting the standards of the TEN-T network.

THE MAŁASZEWICZE PASS

Among the largest dry ports in Poland, or inland intermodal terminals connected to seaports for the loading and distribution of goods, is the Małaszewicze terminal in Terespol. Through it runs one of the shortest rail routes connecting Western Europe and Asia. The extension of this international intermodal terminal began last summer and is scheduled for completion in 2021. When completed it will include an extension of its rails and reloading platform, making it possible for unloading an entire trainload without having to move the train. Experts expect the Małaszewicze pass to become a key location along the New Silk Road. It already accounts for approximately 90 percent of the total traffic of goods delivered by rail from China.

ALL ROADS LEAD TO THE TRICITY

One of the objectives behind the development of intermodal connections and the investments in seaports is also to attract logistics companies from southern Europe to Poland and to extend the Baltic-Adriatic Corridor. With projects underway and dry ports, the Tricity will have a chance to compete with German or Dutch seaports in the future. Polish seaports are easily accessible and offer far lower service costs in comparison with those in Western Europe. That is why every year sees new companies choosing Pomerania for their logistical operations.

One of the key projects in the region is the upgrade of the TEN-T railway lines running to the seaports of Gdańsk and Gdynia—the northern point of the Baltic-Adriatic Corridor. The cost of the extension is estimated at approximately PLN 2.5 billion. Nearly 40 percent of that amount will come from an EU infrastructure development program called Connecting Europe Facility. The extension is expected to be completed this year.

SEA OF COMMERCE

Investments in seaports as well as the improvement of intermodal connections with the Pomeranian region have had a huge impact on the logistics and warehouse markets. Pomerania has seen high levels of interest from both warehouse tenants and developers for quite some time. The Tricity market contains 952,600 square meters of modern warehouse space, while another 166,700 square meters is currently under construction, which, when completed, will soon push the region’s total stock above the one million square meter mark.

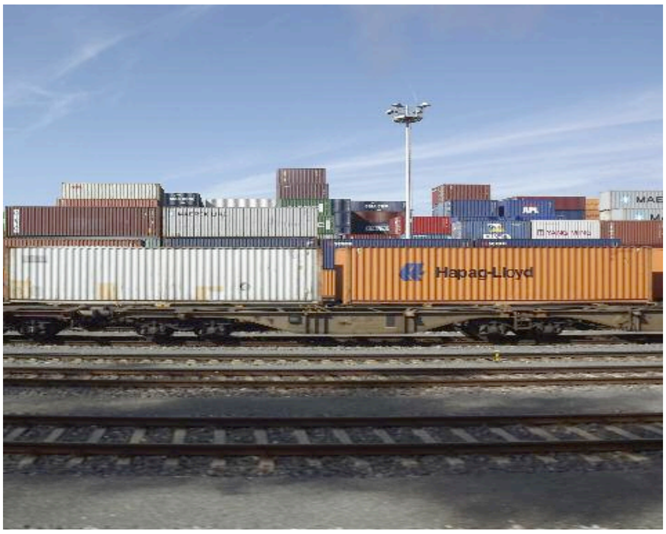
Leading developers in the vicinity of the Gdańsk seaport include GLP, Panattoni and 7R. One of the largest projects underway is GLP’s Pomeranian Logistics Centre located in the immediate neighborhood of the Deepwater Container Terminal. At full build-out, it will provide 505,000 square meters of leasable space. Another project under construction near the seaport is 7R Park Gdańsk Port. The project is scheduled for delivery in the second quarter of 2022 and expected to provide a total of about 119,000 square meters in two buildings. Additionally, Panattoni is developing industrial parks on Elbląska Street, close to Lotos' refinery. With access to Tricity's southern ring road, they are a good alternative for companies that rely on the seaport, but do not need to have a warehouse right by the seaport terminal.

THE BYDGOSZCZ EMERGING MARKET

Recently, the Bydgoszcz city council has requested the European Commission to recognize the city as a core road and rail node of the TEN-T network, claiming that Bydgoszcz, one of Poland's larger cities, is located on railway line 131, part of the TEN-T core network. Additionally, 131 connects to the 201 railway line, which is being upgraded for freight trains running at over 100 km/h.

With this, the intermodal terminal Bydgoszcz Emilianowo is expected to grow into a major inland base for Polish seaports in the near future. It is one of the most important projects in the country along the new logistics corridor connecting the Baltic and the Adriatic. A special purpose vehicle was set up in July 2020 as part of the project's first stage. The Intermodal Terminal Bydgoszcz Emilianowo will be a dry port, a logistical rail and road hub, and an inland base for Pomerania's grain ports. It will be built around a rail and road platform near a junction of the 201 railway line, the S10 expressway, the Bydgoszcz Airport and an inland port on the Vistula River.

The terminal in Bydgoszcz Emilianowo is also likely to operate as a logistics centre, as this location has been recently targeted by Poland's largest warehouse developers. At the end of the first quarter of 2021 the total warehouse stock of the Bydgoszcz and Toruń region amounted to over 413,000 square meters, while another 11,800 square meters was under construction. The most active developer in the region is Panattoni, which has delivered more than 180,000 square meters of modern warehouse space in the Bydgoszcz area in recent years across both multi-tenant and BTS projects. With 95,000 square meters in the pipeline, Panattoni leads the way in warehouse space both delivered and underway. In turn, Hillwood, one of the leading developers in Poland, has secured development sites for more than 100,000 square meters of warehouse space to be built in the vicinity of the planned intermodal terminal. Bydgoszcz also has a large park providing extension options which is in the hands of Fortress REIT (formerly Waimea Logistic Park Bydgoszcz), a new player on the Polish commercial real estate market. 7R and P3 also own development lands in the city—7R has just commenced the construction of its first logistics centre there.



Green is good: Trains produce three times less emissions than road transport and eight times less than aircraft, which is why the EU has decided to support investment projects in railway infrastructure.

SPEED IS THE LIMIT

While the logistics infrastructure is growing in sync with the recognized potential of intermodal transport in the region, one of the biggest challenges will be to build railroad infrastructure that enables freight trains to travel at the speed achieved on the railway lines of the TEN-T network in the European Union. At present, the operational speed is assumed to be 40 km/h. Despite investments in railway improvements in recent years, the average speed for intermodal transportation in Poland is approximately 32 km/h, which is quite low, among other things, due to limited traffic capacity on short sections, particularly near border crossings. It is also not very impressive when compared with average speed of intermodal transportation in other EU member states. For example, it is 64 km/h in the Netherlands and 53 km/h in Spain. However, if Poland continues to upgrade its railway infrastructure freight trains will run at the average speed of 45 km/h by 2023 whereby meeting the standards of the TEN-T network. But Poland must ensure a substantial spend on rail to offer similar speeds. Already, Polish rail infrastructure enables trains to run on some sections at the speed comparable to the maximum speed of trucks or even higher.

REDUCING EMISSIONS

There is more to rail upgrades than just a greater speed and being able to compete on the competitive European market. Rail transport is also considered to be the most environmentally-friendly option. It is estimated that overall transport accounts for about 25 percent of global greenhouse gas emissions. It is also clear that trains produce around three times less emissions than road transport and eight times less than aircraft, which is why the European Union, which champions environmentally-friendly projects, has decided to support investment projects in railway infrastructure. Construction and upgrade works will be financed from various EU funds, not only from the EU's main budget. With this, rail transportation is likely to become one of the key beneficiaries of the European Green Deal.

As it impacts the climate less than truck and aircraft transportation, rail transportation is likely to become one of the key beneficiaries of the European Green Deal in Poland.

FIRST COMES THE WORKFORCE

The future of work is human-centric

By **John Guziak**, *Partner, Human Capital Leader, Deloitte CE*

Organizations need to examine the responses of their workforces to Covid-19 inflicted changes. What were their coping mechanisms? What brought them success in the face of the pandemic's ever-present and evolving threat?

Sixty per cent of workers across Europe claim to have had no major difficulty adapting to the new work circumstances, according to Deloitte's European Workforce Survey, which covered the population of 10,000 employees across seven European countries. It is a reassuring result, but rather bringing relief to managers it should be approached with consideration.

NO MORE OLD PARADIGMS

The Deloitte research has revealed values and trends that should not be ignored by any organization that prioritizes resilience in an uncertain future. Workers' pandemic experiences have not been uniform, and unique situations call for unique accommodations. Rather than cling to old paradigms, business leaders should be investing in understanding their workers' varied and complex needs now and forecasting them beyond the pandemic. If not, leaders risk allowing productivity and morale to wane by implementing ineffective measures.

Any future of work framework should incorporate strategies that value human capital as much as technology. Ideally, business leaders will co-create a new framework with input from their workforce. In so doing they will empower the workforce to perform well and ensure that any future conflicts are easily surmounted.

A DELICATE BALANCE

It is useful to consider Deloitte's European Workforce Survey analysis in the context of a broader phenomenon seen across organizations where technology is often identified as the main driver of enterprise value and human interests are portrayed as antithetical to the fullest capitalization of technology. What the European workforce tells us is that the human factor is critical to easing work's transition to the new situations that emerge after the pandemic.

It is clear that business leaders should be considering human capital and technology together, not separately. Those who recognize that they are equally important can adapt their organizations faster to new modes of working and business, placing them ahead of the game once the pandemic becomes a distant memory.

PURPOSE AND BELONGING

In a world that is now more connected than ever, it may seem odd that belonging was deemed one of the two greatest needs in organizations today, according to the Global Human Capital Trends report. But if you consider our polarized society, in which workers might struggle to find meaning and solidarity, it is not hard to understand that they look in the workplace for purpose and a community of people with common values.

According to Deloitte's Global Human Capital Trends, experiencing belonging as a worker is the outcome of three mutually reinforcing attributes: comfort felt in your work environment, connection to the people you work with, and your contributions coming to life within the organization. These elements represent an evolution: comfort must be established before connection can be fostered, and so on. How can all of these elements be applied in a remote context, where being physically close is impossible? What tools do organizations possess to promote them?

CREATING COMFORT

The organization does have the power to foster feelings of respect and comfort. In addition, organizations can promote mutual trust and transparency via genuine and unfiltered communications from the company. Companies that are consistent and clear in their messaging, highlight their priorities and share their successes and failures equally, tend to succeed in keeping their workforce engaged better than others. Organizations with an inclusive culture that fosters respect have shown themselves to be twice as likely to meet or exceed their financial targets, three times as likely to be high performing, six times more likely to be innovative and agile, and eight times more likely to achieve better business outcomes.

ENABLING CONNECTIONS

The digital context in which we are now operating has all but eliminated the so-called peripheral or subsidiary relationships at work. Communications are largely limited to only the people we work with directly. This means that individuals are missing out on those second-degree exchanges that in many cases are the source of added creativity and strong professional networks. This applies to established employees, as well as those who join an organization without ever having seen the workplace or their colleagues. Leaders need to think carefully about how to enable connections among a remote workforce and how to create a balance between positive reinforcement and requiring employees to change their way of working.

EMPHASIZING CONTRIBUTION

Through the work they deliver, employees are expected to contribute to the organization's goals. In a remote working world this depends on trustworthy employer-employee relationships. The supervisor manages with the assumption that everyone is contributing equally and responsibly, even though out of sight, and the worker performs and delivers without being seen or guided. Establishing such a relationship of mutual trust will ensure that remote performance is comparable to office performance.

TRUST, AUTONOMY, ADAPTABILITY

It is to be hoped that we are not in the eye of the storm but rather beyond the alarming initial stage of pandemic responses. It is a learning moment: a time to reflect on what has worked well, and use those lessons to fundamentally redesign work, focusing on outputs rather than activities. Behind every new future of a work framework, three fundamental tenets should be evident: trust, autonomy, and ensuring the worker can continue to adapt to a rapidly changing future. Our working world has changed immensely, but pre-pandemic values and concerns remain, and have even intensified. By listening to the workers, then embedding well-being, belonging and ethics into every aspect of the design and delivery of work itself, an organization gives its workforce the means to live and perform at their best.

EXPERT Private rental sector

PIONEERING MARKET

Things you need to know about transactions in the private rental sector

By **Magdalena Szwarc-Brożyna**, *Partner, Real Estate Dentons*

In the last few years, we have seen an unprecedented growth of transactions in the private rental sector (PRS). The sector is still very popular in Western Europe, yet in most countries of Central and Eastern Europe, developers that offer residential property for rent are considered market pioneers. The sector is becoming increasingly popular in Poland, and even the pandemic has not stalled its growth. The demand from institutional investors, especially those with appetite properties with residential zoning, has been on the rise in recent months, which in turn dwarfed the availability of buy-to-let schemes offered by developers.

NEW AREA

Despite that, the Polish specifics of the PRS are still in the making. There are no formal Polish equivalents for such terms as resi-for-rent, B2R (Built to Rent), or ready-for-rent that are commonly used by investors. Therefore, this may cause some issues once the assumptions and details of particular investments are assessed from a legal and tax perspective. Therefore, relevant expertise may prove crucial for investors.
This is also due to the fact that there is no special permitting procedure in Poland for the PRS-type of investment, although recently, an amendment to the zoning law simplified regulations governing the development of residential projects if certain additional conditions are met.
Therefore, investors in PRS schemes need to analyze zoning conditions for particular development case by case. More so, as the majority of investment areas in Poland are not covered by any zoning plan, a zoning permit needs to be obtained for contemplated projects, and this factor may significantly extend the investment process.
The zoning and tax perspective needs to be taken under consideration by investors to assess whether the planned type and conditions of leasing and other types of services will be admissible in the property they have decided to acquire.

STRUCTURING INVESTMENTS

Investments in a PRS scheme may be structured as an asset deal or a share deal. The subject of the transaction is usually land to be developed with a building or buildings, or apartments/premises blocks to be developed within a building or buildings, separated or not, with a share in a common property.
From a legal perspective, PRS transactions do not differ from other real estate transactions pertaining to undeveloped sites, usually only with a zoning permit or a building permit in place.
The transactions are usually structured as forward funding deals, in which the parties commit to each other through entering into a preliminary purchase agreement, following which the purchaser finances the development via installments payable once the milestones of the construction, scheduled by the parties, are achieved. But there may also be one-step-transactions with development management agreements executed by the parties pertaining to the post-closing stage.

ADDITIONAL FACTORS

The involvement of the purchases' technical advisors in the development process is crucial. They monitor the progress and the quality of construction in order to sign off drawing down the subsequent tranches (in case of forward funding transactions) or final reconciliation of costs. In the case of forward funding deals, the return of advance payments is typically secured via mortgage, corporate or bank guarantees, the various purchaser's rights to step in the development process, or a mix of the above instruments.
In the case of external financing, the lender usually expects its supervisors to be involved and funding to be secured via mortgage. In the case of mixed-financing, the ranking of the securities for the bank's commitment and equity exposition needs to be agreed upon.
From the developer's point of view, the purchaser's commitment should be adequately secured. Corporate guarantees are commonly used instruments.

SPECIFIC SITUATIONS

Parties to PRS transactions are bound for a time necessary to complete the investment where, in most cases, the construction works have not even started. Therefore, the proper performance of the parties' obligations should be secured, giving them enough comfort from the time perspective.
Buy-to-let products are handed over to the investor when fully fitted out and, depending on the investors' policy, fully or partly furnished. The details of the fit-out and furnishing are usually specified at the very early stage of the transaction and often prove to be the most time-consuming subject of the parties' negotiations. Often, the design of the product needs to correspond to other investor's projects in different locations.
In the case of the transactions where the building permit has already been issued, this may make it necessary for an amendment of the building permit to be addressed in the transaction documentation.
Except for standard conditions precedent for closing, such as obtaining a VAT tax ruling (in asset deal transactions) or issuance of an occupancy permit for the whole investment, separation of the units, transformation of the perpetual usufruct right to the land into ownership (in case of residential buildings) or final handover of the development by the purchaser's and bank's monitors are vital to be agreed from the investor's perspective.
If the project is a part of a bigger complex, residential or mixed-use, but the property will be separated therefrom, or if neighboring lands may impact the project's further operations, a good neighborhood agreement shall be secured. This is advisable in order to avoid further struggles with third parties during the operation stage as well as to secure a smooth further development process if any expansion is envisaged. A quoad usum agreement is an adequate instrument to stipulate the rules of further co-existence of the various users of the project.

MORE TO COME

Since most PRS products are still under the development phase and the Polish market has just started to watch how they operate, the terms and standards of PRS transactions will certainly develop based on lessons learned.

EXPERT Property restitution

CUTTING THE GORDIAN KNOT?

The Lower House of the Parliament may practically block claims to property nationalized after WW2.

By ***Andrzej Bundyra****, Associate at Łaszczuk & Partners*

"To cut the Gordian knot" is an expression often used to describe a decisive solution to a seemingly insurmountable difficulty. The legend has it that after struggling to untie the knot tied by Gordius, king of Phrygia, Alexander the Great drew his knife and sliced the knot in half with a single cut. A problem that a patient thought process could not solve was solved with a simple action, yet for a price.

Such an insurmountable problem in many countries in Central & Eastern Europe is reprivatization. In Poland, after WW2, the Communist regime nationalized various industries as well as large agricultural areas. After the collapse of the Soviet bloc due to the political transformation, many former owners and their heirs believed they would be able to regain the title to the nationalized property that used to belong to them before the war. Yet, despite their expectations, the problem of how to do it in practice has never been addressed by a holistic legal solution in Poland.

LEGAL MEANS

It is possible to recover nationalized property if, for example, the expropriation decision has been found null and void. In particular, any property owner (or their heirs) deprived of their property after the Second World War could apply for the annulment of the expropriation decision. Most importantly, such applications were not limited in time if the expropriation took place without legal basis or in a gross violation of the law. Invalidation of the decision opened the path for formers owners to seek the restitution of the seized property.

However, so far, an expropriation decision could not be invalidated if the expropriation had caused irreversible legal consequences, such as the destruction of the property or its sale to a private person. Consequently, if the expropriation could not be invalidated, the public administrative authority could only rule that the decision was issued contrary to the law and indicate the circumstances barring invalidation of the decision. In such a case, the decision would remain in force, yet injured persons could seek compensation for illegal deprivation of their property rights.

RADICAL ACTION

The Polish Parliament resolved to cut the Gordian Knot of reprivatization in Poland by restricting the possibility to annul the oldest expropriations. The comparison to the Gordian Knot is all the more apt because the amendment to the Polish Administrative Procedure is just a one-page bill containing only two articles. The Lower House of the Parliament adopted it on June 24.

According to the amendment, after 10 years from the issuance or publication of the expropriation decision, it will be impossible to invalidate it. Furthermore, after 30 years from the issuance or publication of the expropriation decision, it will also be impossible to rule that it was issued contrary to the law.

What is more, the amendment states that its rules shall apply to pending proceedings. If this becomes law indeed, it means that after the grace period of 30 days from publication of the amendment, all ongoing cases seeking annulment of expropriation decisions will have to be dismissed if 30 years have passed since the decision was delivered or announced.

ROOM FOR CONCERN

In July, the Senate proposed revisions to the bill adopted by the Lower House. The Senate proposed that even after 30 years from issuance or publication of the expropriation decision, it might be possible to declare that the decision was issued contrary to the law, thus entitling the claimant to compensation. The Senate also extended the grace period before the amendment comes into force to three months. With this, it would still be possible to initiate proceedings seeking compensation for the illegally nationalized property.

Yet, the revisions made but the Senate can be accepted or rejected by the Lower House, which is in a position to decide upon the final working of the amendment.

After the act leaves the Polish Parliament, it will be up to the President of Poland to sign it or veto it. Considering the strong political support for the proposed changes from the ruling party as well as the opposition, it is unlikely that the President will veto the act.

QUESTIONS

It is important to point out that the amendment will not completely shut down property restitution claims in Poland. Some types of properties, such as farmland, were nationalized not through expropriation proper but a nationalization decree. In other words, no expropriation decision had been issued regarding such property. So, the title to such property can still be restored in Polish courts.

Another point is that, according to the proponents of the amendment, the amendment has to be done to bring the restitution law into compliance with a judgment of the Polish Constitutional Tribunal of May 12, 2015. The tribunal ruled that the provisions of the code allowing a grossly unlawful decision to be set aside many years later are unconstitutional. Yet, according to the Senate, the wording of the bill adopted by the Lower House is not consistent with the Polish Constitution as it violates the principle of the citizens' trust in the state and in the law established by it, which is a constitutional value.

WHAT NEXT?

As the legislative process is still pending by the time of writing this article, it cannot be clearly said yet if the amendment prepared by the Lower House of the Parliament will bring an end to restitution claims in Poland, and if so, to what extent.

However, it is already clear that it will stop restitution claims aimed at recovering nationalized property in kind. If worded in a specific way, it may sweep away the options to seek compensation for the nationalized property loss that the heirs of the former owners have had so far. This is why the Senate decided to add its amends to the law.

If the Lower House of the Parliament rejects the revisions made by the Senate, and the amendment becomes law as worded by the Lower House, it cannot be excluded that former owners of nationalized properties and their heirs, deprived of their right to compensation, will seek justice before the Constitutional Tribunal or the European Court of Human Rights.

EXPERT E-Commerce

MAKING IT SIMPLE

By **Izabela Jędra**, *Assistant Manager, Indirect Tax Services, KPMG in Poland; and* **Kamil Chmielewski**, *Supervisor, Indirect Tax Services, KPMG in Poland.*

The VAT E-Commerce Package from the EU will uniform VAT payment for EU-based online sellers of consumer goods and services across the union.

The VAT e-Commerce package is to bring a raft of amendments to the EU VAT Directive, including new procedures and regulations to be applied to the cross-border sales of goods and services in business-to-consumer transactions. Due to the pandemic, the implementation of the package has been postponed from January to July 2021. Individual EU member states, including Poland, are required to implement the provisions of the package into national legislation.

GOOD INTENTIONS

The main purpose of the VAT e-commerce package is to facilitate cross-border trade within the EU while easing the administrative burden on business entities. It has been one of the EU's priorities under the Digital Single Market Strategy. In addition, the solutions are intended to level the playing field for EU and third country entities, especially given that the latter have long been using the opportunity to make VAT-free dispatches and successfully avoid becoming registered as EU VAT payers.

Given the scale of the package and the magnitude of amendments it brings to the B2C trade, it seems of paramount importance for companies—even those making moderate cross-border sales to consumers—and online marketplaces to thoroughly analyze the impact it may have on their operations. They may need to adjust their operations to the new requirements to keep their competitiveness and make the best possible use of new solutions offered, such as the Union One-Stop Shop (OSS), the electronic portal businesses can use to comply with their VAT obligations on e-commerce sales within the EU to consumers since 1 July 2021, and the Import One-Stop Shop (IOSS) mechanism which was created to facilitate and simplify the declaration and payment of VAT for goods sold from a distance by sellers from either the EU or from a non-EU country or territory. Although using the OSS and IOSS is voluntary, resorting to them may boost business expansion across new EU markets.

TAXING DISTANCE SALES

At present, suppliers executing mail-order sales to buyers in the other Member States may choose to charge local VAT in the country of dispatch, as long as they stay below the sales threshold set by each individual EU country, ranging from EUR 35,000 to EUR 100,000. Yet, once the sales threshold is exceeded, the supplier must register for VAT purposes and settle the local VAT in the country of destination.

Consequently, many small businesses avoided registering for VAT purposes in the country of destination, thus dodging supplementary costs related to VAT registration, VAT compliance, as well as tax and legal support. For instance, imagine a Polish company selling electrical equipment to consumers in various EU states. Say that in 2021, the company sold goods for EUR 33,000 to French consumers and EUR 99,900 to German consumers. The company did not exceed the sales thresholds set by France (EUR 35,000) and Germany (EUR 100,000).

Consequently, since the French VAT threshold was not surpassed, the company taxed the French sales at the Polish VAT rate and settled the VAT due in the country of dispatch—Poland. The distance sales to France were declared by the company in JPK_V7M and marked with the "SW" designation.

Regarding sales to Germany, the distance sales of EUR 99,900 were settled by the company in Poland. But suppose that there came another order from Germany, amounting to EUR 10,000. It, along with each subsequent one, should be taxed in Germany, and this will require that the Polish company register in Germany for VAT purposes and submits German VAT returns.

With the VAT E-commerce Package comes a new definition of intra-community distance sales of goods, which is to replace the definition of the distance sales of goods. Moreover, it provides for leveling the sales threshold across the entire EU, which is now to amount to EUR 10,000. In addition, the new regulation covers intra-community distance sales of goods, including TBS Services (telecommunications, broadcasting, and electronic services) provided to consumers

With the VAT E-commerce Package comes a new definition of intra-community distance sales of goods, which is to replace the definition of the distance sales of goods.

EXPERT E-Commerce

within the EU. Once the threshold of EUR 10,000 is exceeded, the sales made by the taxable person will become subject to VAT in the member state to which sales are directed, in line with the applicable rate.
In some instances, the threshold of EUR 10,000 will not be applied at all, including intra-community distance sales of goods made by taxable persons who have established their business outside the EU and supplies of goods made by sellers who are established or have their fixed establishment in more than one EU member state.

VAT-OSS PROCEDURE

By lowering the threshold in the EU, the lawmakers intended to cover a wider group of entities performing the above-mentioned sales with the obligation to register for VAT purposes and settle VAT in the EU member state to which they deliver goods. However, entities may avoid registering for VAT activities in the country they sell their goods to if they apply the newly introduced VAT-OSS procedure.
Imagine a Polish company that sells goods and TBE Services to consumers across the EU. The total value of the company's cross-border sales exceeds EUR 10,000 in 2021, while the value of sales to each EU member state remains below the threshold of EUR 10,000 (EUR 6,000 for Germany and Spain and EUR 5,000 for France).
Starting 1 July 2021, the threshold will be set at EUR 10,000 annually to cover all intra-community distance sales of goods and TBE services made to all purchasers across the Member States.
It means that the company exceeded the sales threshold of EUR 10,000. Consequently, the place of supply of intra-community distance sales of goods and TBE services will be the EU member state to which the goods are dispatched. To settle the VAT due, the company may use two choices. One is to register for VAT purposes in each EU member state where it sells goods to and declare and settle the VAT due via local VAT returns. Another choice is to register for the VAT-OSS procedure in Poland. Once registered, the company will be able to declare and settle the VAT due in EU member states it sells to of consumption under the One-Stop Shop scheme.

THE MOSS

The VAT E-Commerce Package provides for extending the currently applicable special procedure for settling VAT on TBE Services rendered to consumers. It is commonly referred to as the Mini One-Stop Shop (MOSS), establishing a new One-Stop Shop (OSS) procedure and introducing the Import One-Stop Shop (IOSS).
Under the VAT-OSS procedure, a single return containing information on all the sales made to consumers in various EU member states (taxed at local VAT rates) must be submitted to tax authorities of the member state of identification. Next, the member state will accordingly transfer the remitted VAT to the "member states of consumption."
The VAT-OSS procedure may be applied to settle VAT on intra-community distance sales of goods, and certain consumer-oriented services, the place of supply of which is determined under the special rules (covers services for which place of supply is in the territory of the EU member state of consumption, such as access to cultural events or accommodations). It may also be applied to the sale of goods inside a member state (domestic supplies) made via electronic interfaces facilitating such supplies within the meaning of the proposed Article 7a.

VAT-OSS IN POLAND

The key implications of using VAT OSS in Poland imply a range of changes. Firstly, under the VAT-OSS procedure, Polish companies obliged to settle VAT on sales in other EU member states, as a result of exceeding the EUR 10,000 sales threshold, will not have to register for VAT purposes in the EU member states to which they supply goods, but will be able to submit a single VAT declaration in Poland.
To use the VAT-OSS procedure, a company must first submit the registration application. As a rule, the application should be submitted before the first day of the calendar quarter from which the procedure is to be applied. Note, however, that the regulations provide for some exceptions.
Importantly, the VAT-OSS return will be submitted quarterly and will be independent from the JPK_V7M / JPK_V7K forms.
This means that taxpayers using the VAT-OSS procedure will have to analyze the VAT rates applicable in the Member States of consumption to properly calculate the VAT due on each supply.
Using the VAT-OSS procedure is optional, yet, once the taxable entity is OSS-registered, it will be obliged to use the procedure to declare and remit VAT on all services and supplies covered by the procedure's scope. This means that the services or supplies cannot be declared and settled selectively—some via the VAT OSS return while others via domestic tax returns of the EU member states of consumption.
The VAT-OSS procedure can not also be used to recover the input VAT. Companies remitting VAT abroad and not having a local VAT identification number in that EU mem-

One for all: With the VAT E-commerce Package, the lawmakers intended to cover with a uniformed VAT regime a wide group of companies that sell consumer goods online across the EU.

To use the VAT-OSS procedure, a company must first submit the registration application before the first day of the calendar quarter from which the procedure is to be applied.

The tax due on import of goods will be collected by declarants, such as postal operators, courier firms, customs agents, from consumers at the time of delivery at the latest.

ber state will still be required to apply for a VAT refund under Directive no. 8 and 13.

PRODUCT ORIGIN

One of the aims of the EU VAT E-commerce Package is to tackle the practice of circumventing the requirement to settle VAT on goods imported from third countries within the EU. In order to achieve this, the VAT exemption on imported goods in consignments of an intrinsic value not exceeding EUR 22 will be revoked in all the EU member states, and the concept of distance sales of imported goods will be defined.

By definition, distance sales of goods imported from third territories or third countries means a B2C transaction under which the goods (other than excise goods) are dispatched or transported by the seller or on their behalf from outside the European Union to a member state.

Importantly, for declaring and settling VAT on distance sales of imported goods in consignments not exceeding EUR 150, a new special procedure, called Import One-Stop Shop (IOSS), will be introduced, also as a voluntary scheme.

Where the IOSS is not used, import VAT will be collected from recipients (consumers) by the customs declarant, such as postal operator, courier firm, customs agents, which will pay it to the customs authorities via a monthly payment. Alternatively, regular customs procedures may be applied, including paying VAT at the point of import.

IOSS MECHANISM

Under the IOSS procedure, VAT on distance sales of goods imported from third territories or third countries will be settled in the member state of consumption via the seller's member state of identification. Thus, the import of goods itself will be exempt from VAT since the goods will be taxed at an earlier stage, that is, upon being sold.

In principle, to use the IOSS scheme, taxable persons not established within the EU community will have to appoint an intermediary, which will be liable for payment of the VAT on distance sales of goods imported from third territories or third countries. It is so because the key purpose of the IOSS scheme is to enable simplified VAT settlements on distance sales of goods imported from third territories or third countries by giving the possibility of electronic registration for VAT purposes in a single EU member state, which will be treated as the entity's member state of identification.

Also, the IOSS scheme aims at the settlement of VAT under a single monthly return submitted by electronic means to the member state of identification and according to the rates applicable in the member states of consumption. Records related to IOSS will have to be kept for 10 years from the end of the year in which the supply was carried out and made available electronically on request from tax authorities of the member states of identification and consumption.

Under the IOSS procedure, invoices will be issued in line with the regulations at force in the member state of identification.

The global monthly declaration and payment of import VAT is another optional arrangement that can be used to simplify the collection of VAT where goods were imported to Poland by the consumer, but the IOSS was not used.

Just as in the case of IOSS, the monthly payment procedure can be applied to goods not exceeding EUR 150 and not subject to excise duties imported by end consumers. Nevertheless, the very mechanism of operation differs significantly.

OTHER CONSIDERATIONS

The tax due on import of goods (in Poland, will amount to 23 percent regardless of the type of goods imported) will be collected by declarants, such as postal operators, courier firms, customs agents, from consumers at the time of delivery at the latest. These entities will act on their own behalf and on behalf of the individual for whom the goods will be destined in the country of import, and they will be responsible for tax collection. The monthly payment must be made until the 16th day of the month following the month when VAT is collected. This is why, under the currently developed Act, such individuals are referred to as "persons responsible for tax collection."

Under the procedure, the declarations submitted by the entities listed above will constitute a monthly overview of customs declarations, made according to the place where goods are declared, containing the total amount of tax collected in the month for which they are submitted.

Entities responsible for tax collection will be required to keep electronic records of the goods imported, store them for 10 years from the end of the year in which the tax liability arose, and make them available on request by customs authorities.

EXPERT Commercial real estate

BETTER TIMES AHEAD

E-commerce only complements brick-and-mortar retail formats as they evolve to give customers convenience and the freedom of choice.

By **Marta Mikołajczyk-Pyrć**, *Head of Retail and Mixed-Use Property Management, Savills*

The Polish retail market has notably improved since last year, but it will still take some time for the market to recover to pre-pandemic performance levels. I am confident, however, that customers will soon be going back to shopping centers in ever-larger numbers unless another lockdown is put in place. They will also be increasingly willing to visit the new concepts of mixed-use centers developed in response to the evolving needs of consumers.

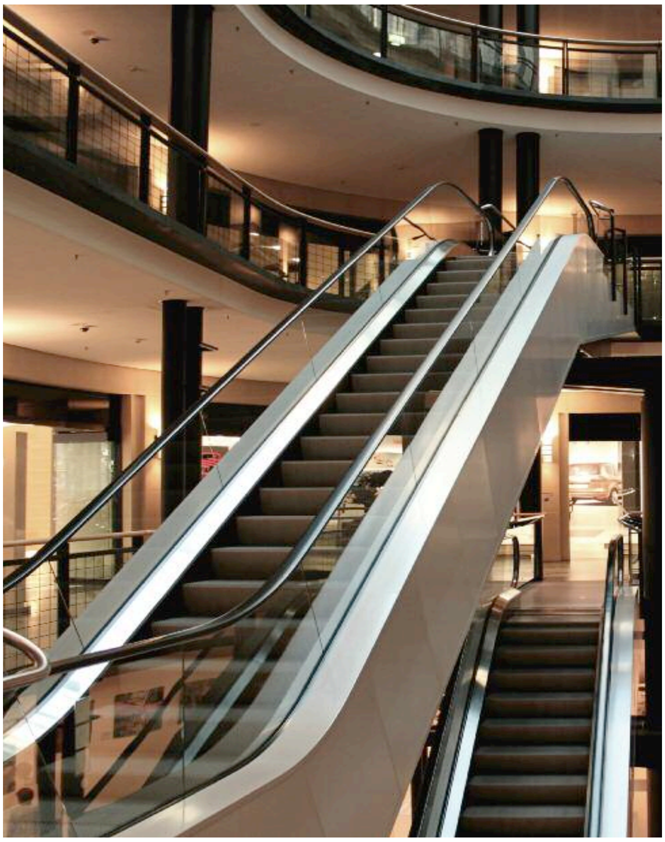
PARALLEL TRENDS

This process will occur in parallel with the ongoing growth of e-commerce, which does not need to go against traditional retailing, but may complement it through the increasing use of omnichannel strategies combining click & collect, home delivery, as well as reserve & collect.

The key to understanding the evolution of retail is to recognize how logistics can contribute to a more comfortable shopping experience and how retail provides experiences. Logistics space may complement experience-based retailing. Smaller fulfillment centers within shopping centers may save buyers time returning products. An example of this might be Nordstrom's flagship store in New York, whose entire floor is dedicated to customer service, including returns management.

NEED TO REINVENT

A time will also come for older retail schemes failing to respond to the new needs of customers to reinvent themselves. As a matter of fact, many first-generation shopping centers, which frequently boast a prime location, could attract potential investors interested in carrying out their transformation. There is still, however, room for more retail projects in Poland, with the largest now underway including Projekt Góraszka comprising 77,000 square meters of gross leasable area, of which 21,000 square meters will be dedicated to leisure; Karuzela Kołobrzeg, 30,000 square meters; and Galeria Andrychów, 24,000 square meters. The space saturation rate for shopping centers averages 275 square meters per 1,000 inhabitants. Inclusive of retail parks sized over 5,000 square meters and outlet centers; this rate stands at more than 325 square meters per 1,000 inhabitants. Poland's retail space saturation is, therefore, relatively high. As a result, before commencing new projects, it is imperative that investors carefully analyze the local market, develop the offer to meet the unsatisfied shopping needs of local inhabitants.



High hopes: Customers will soon be going back to shopping centers in ever-larger numbers than before the pandemic unless another lockdown is put in place.

VARIED IMPACTS

Landlords, managers, and tenants of shopping centers alike continue to see the impact of the pandemic on their business metrics. It varies by location, which may lead some tenants to optimize their store portfolios. Some may also decide to open stores in high streets. Not all stores in shopping centers have reopened after a series of lockdowns. Such vacated premises are likely to provide new offers in the future.

The years preceding the pandemic saw an intensification of the trend towards extending food and beverage offerings, with F&B facilities growing to occupy more than 10 percent of the total leasable area of many shopping centers. Many F&B operators, including those present in shopping centers, survived lockdown by offering takeaways, while some chose not to open during lockdowns at all. In properties under Savills management, we see substantial demand for vacant F&B space. Many existing tenants have also asked us for permission to extend restaurant terraces.

Tenants from the entertainment sector have been harder hit by the pandemic, but they are also reporting a gradual uptick in customer numbers, which is especially true in the case of multiplex operators.

LOOKING AHEAD

In the long term, the pandemic is unlikely to stop the trend towards the growth of mixed-use projects, particularly those with a residential function. Looking ahead, no shopping center will be about retail and entertainment only. As retail evolution progresses, new functions and uses will continue to emerge.

EXPERT Consumer and competition protection

PARENTAL LIABILITY

Parent companies to be liable for their subsidiary violating competition protection law.



By **Marcin Wnukowski**, *Partner;* **Karolina Łasowska**, *Associate; and* **Justyna Świnka**, *Lawyer, Squire Patton Boggs.*

Consumer protection may get a boost in Poland following the publication of a draft amendment to the Competition and Consumer Protection Act, published on January 14. The draft incorporates Directive 2019/1 of the European Parliament and the Council of Dec 11, 2018, known as the ECN+ Directive. Its main assumption is to enforce more efficient and effective competition protection laws within the EU and further empower the competent authorities in those jurisdictions by adding new competencies. In Poland, they belong to the Office of Competition and Consumer Protection (UOKiK).

Yet, with all the well-meaning of its authors, the draft introduces a rather controversial principle of parent entity's liability for its subsidiary's violations. In addition, the new regulations provide for a possibility to fine a parent undertaking for violating anti-monopoly laws if it "has exercised decisive influence" on the violating subsidiary.

If the draft becomes law, companies will be subject to a fine for entering into anti-competitive arrangements or abusing an undertaking's dominant position. Yet, the fine will be imposed not only on the violating undertaking but also on that exercising decisive influence, and it will be calculated based on the aggregate turnover of both entities. The undertakings' liability will be joint.

DECISIVE INFLUENCE

The amount of the fine so far could reach up to 10 percent of the violating entity's turnover generated in the year preceding that in which the fine is imposed. The draft regulation's assumption is that if it should transpire that decisive influence had been exercised on the violating entity, the UOKiK will be authorized to impose an aggregate fine on both companies—the violating entity and the undertaking exercising such decisive influence. Both companies will then be jointly liable for the violation. Further, when determining the turnover amount, the UOKiK will consider both the violating entity's turnover and that of the undertaking or undertakings exercising decisive influence. The new fine calculation method will increase the basis for determining its amount.

Another regulation in the draft prevents undertakings from dodging liability by suspending operations. So far, the key problem is that undertakings that, fearing liability for a violation of the Consumer Protection Law, anticipate that the UOKIK may impose a fine on them, simply close down the business temporarily. The draft may put an end to such practices by indicating that, for the purposes of applying the law, it is assumed that the definition of the undertaking will also include an individual who has ceased pursuing business operations. And that is a game-changer.

FOLLOWING CULPRITS

So far, court practice shows that associations of undertakings are the most inclined to breach the competition protection law in this respect. Pursuant to Article 13 of the ECN+ Directive, anti-monopoly authorities ought to be authorized to impose fines on associations of undertakings. The Competition and Consumer Protection Act is currently silent on any particular regulations pertaining to imposing fines on associations of undertakings. However, one should not think that imposing such fines is impossible. The practice so far indicates that, for the purposes of assessing a potential violation, an association of undertakings is considered a single business entity. The current wording of the act, however, does not feature any regulations with regard to calculating the turnover of an association of undertakings and its particular members for the purposes of imposing a pecuniary fine, nor to enabling the enforcement of such a fine, should the association be insolvent.

The draft somewhat specifies the above issue. The proposed regulations assume that the aggregate total of each association member's turnover ought to be the basis for determining the fine amount. The fine imposed on an association of undertakings may not exceed 10 percent of the total turnover of each of such association's members operating on the market on which the violation has been committed in the financial year proceeding that in which the fine has been imposed.

However, in a situation when an association of undertakings should prove insolvent, the regulation renders it necessary to call upon the members to make certain contributions toward covering the amount of the fine. Inability to make such contributions by the date set by the UOKiK may lead to more severe consequences. That being the case, the UOKiK will be able to request that the fine be paid by each of the undertakings whose representatives were such association's officers.

IN EUROPE

Liability on the part of a parent entity for its subsidiary's violation of the antimonopoly law is by no means a novelty in the EU law, where such form of liability has existed for a long time, having been established by ample case law. In light of the EU law, if a parent company and its subsidiary comprise a single economic unit, they constitute a single undertaking as provided for in Article 101 of the Treaty on the Functioning of the EU. That being the case, the European Commission may address the decision imposing a fine directly to the parent company, without it being necessary to determine whether it has been directly involved in the violation. Such position was taken in the judgment issued by the European Court of Justice on 14 July 1972 in C-48/69 Imperial Chemical Industries v. the European Commission, whereby the possibility was allowed to attribute liability for the subsidiary's actions to the parent company based on the "single economic unit" concept. In this concept, a subsidiary does not make its own strategic decisions, but it rather executes the will of its parent company, which exercises decisive influence over it, though the degree of a company's independence should be determined from time to time. Such definition of the undertaking was also corroborated, among others, in the judgment of the European Court of Justice issued on 24 October 1996 in C-73/95 *Viho Europe v. the Commission* and in the European Commission's Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements.

EXPERT Corporate lability

STANDING IN HARM'S WAY

By **Katarzyna Saganowska**, *EMEA Head of Compliance, TMF Group*

A new law regulating the liability of companies is a must, but ideas for the most effective solutions are still in the making.

Ever since it became law, the Act of Liability of Collective Entities has raised controversies of compliance experts in Poland and the business community because of its ineffectiveness to penalize the culprits of corporate crime adequately.

From a legal perspective, damages caused by corporate actions constitute a complicated issue. First, the corporate crime most often causes widespread and serious consequences. Collective entities operate within an organized operational and managerial structure, which translates into economies of scale. Behind those structures are individuals who take decisions that may lead the company to do harm that was not intended. But they may also make decisions that do harm by which they benefit their companies. The scope of liability of such individuals in the managerial system is difficult to weigh. It is equally difficult to design regulations that would embrace the problem effectively. The main problem in making such regulations lies in how to define the principles of liability of the collective entity properly and specify the prerequisites to ensure the effectiveness of enforcement of the liability. Work on such regulations is still in progress.

IDEAS FROM THE MINISTRY OF JUSTICE

The idea to enact a completely new law in this respect appeared in 2018 when the Ministry of Justice prepared a draft of the new Act of Liability of Collective Entities. The authors of the draft assumed a new and, in a way revolutionary approach, by proposing to introduce a completely new component—pre-trail proceeding—to be conducted by the prosecutor. The proposition is based on a similar solution present in Criminal Law.

This proposition has caused quite a stir across the business community, who did not like the restrictive provisions included in the proposition, namely, the prosecutor's authority to apply preventive measures to businesses. One of the most glaring examples the critics of the proposition pointed to is the ban on participating in tenders or conducting certain types of business activities. If applied to companies in some industries, such a ban would certainly result in the loss of their liquidity or even their bankruptcy. From a legal perspective, however, the most important change introduced by this solution is the complete separation of the liability of the individual from that of the enterprise. With this, it would no longer be necessary to prosecute individual persons.

RADICAL THINKING

However, having in mind the need to promote the implementation of internal whistleblowing channels, the ministerial draft contains a significant problem. In the event of the absence of appropriate internal procedures allowing for anonymous reporting, as well as failure to take appropriate action in the event of obtaining information through internal channels on a particular reported concern, the draft puts the maximum financial penalty to PLN 60 million, from the current PLN 30 million.

Unsurprisingly, such a radical change has caused a strong resistance not only across the business community but the compliance community as well. It is universally acknowledged that this can be achieved by promoting the positive aspects of internal solutions for reporting concerns as a tool for improving the culture and integrity of the organization and its protection, inter alia, from the perspective of reputation and fraud prevention.

CONCLUSIONS

As work on the draft continues, apparently, the Ministry of Justice considers softening its position, so the new law will not be applicable exclusively to big companies. In my view, however, the introduction of new principles of liability of collective entities is necessary because the present regulations do not allow for an effective application and execution of the law.

Yet, it seems that still, many entrepreneurs are not open to the new aspects of compliance management and the protection of whistleblowers. I believe that the proposed changes and obligations arising from them may contribute to limiting exposure to other not yet defined risks for many organizations that may appear not exclusively in the area of liability of collective entities.

The introduction of new principles of liability of collective entities is necessary because the present regulations do not allow for an effective application and execution of the law.

LEAVE IT TO THE PROFESSIONALS

By **Krzysztof Wójcik**, *Attorney-at-Law, Head of Legal & Corporate Secretarial Services at Vistra Poland*

It is crucial to have contracts in M&A deals executed according to the rulebook.

Recently, the M&A market in Poland has witnessed an increasing number of takeovers. With this, the trend for transactions in Poland is getting more similar to global standards. Examples of practices that are gaining popularity are Warranty and Indemnity (W&I) insurance, which is seller liability insurance for breach of representations and warranties and indemnified circumstances, and the Sellers' representative service. This means that only a properly structured transaction has a chance to meet the requirements of insurance companies offering W&I insurance, and the transaction structuring process must be consistently implemented from the level of the letter of intent, through due diligence, to the content of the due diligence report and the proper content and structure of transactional documentation. In such circumstances, it is necessary to entrust transaction advisory on both sides to specialized entities, often working in multidisciplinary teams and understanding the nature and requirements of this type of transaction.

COMPLEX REQUIREMENTS

The support of appropriate advisors can usually guide the parties through the arduous transaction process from negotiation through signing to closing. However, it is a misconception that closing means the end of the transaction process. Each professional M&A agreement provides for a number of provisions concerning sellers' liability supported by an appropriate procedure. Provisions concerning the adjustment of the sale price are very frequent and increasingly common is splitting the remuneration into the basic part and conditional earn-out. Future payments are often secured with a deposit of part of the price in the escrow account and the like. All this requires interaction and cooperation of the parties after the closing. The execution of an agreement is another, often complicated, legal and business process. The procedures set out in an M&A agreement are usually closed with strict and restrictive deadlines.

PROPER EXECUTION

Even the most professionally structured contracts protect the parties only if they are fully and correctly executed. One of the biggest practical difficulties that can arise some time after a transaction is the exchange of correspondence between the parties. This is true in the case of the delivery of notices to sellers who are natural persons. They may change their residential address, go abroad, take long holidays, or be cut off from their telephone or email accounts, which is not uncommon and perfectly understandable. M&A contracts try to prevent such difficulties by containing a number of provisions concerning the service of documents, the obligation to inform about the change of address, and the sanction of declaring correspondence sent to the old address as delivered.
However, such provisions are often challenged by the Polish courts. They deemed correspondence delivered if the addressee was able to learn its contents. Recent amendments to the law require that correspondence be delivered to the natural person's actual residence address.

Under these circumstances, one of the professional services worth taking care of at the stage of concluding an agreement that works in the interests of both parties is a professional agent for service. It gives the party who is to send correspondence the certainty of effective delivery, while the recipient of the correspondence the certainty that he or she will not miss any statement of the other party, the value of which may be very high.

MULTIPLE SELLERS

A relatively new phenomenon taking place on the Polish market more and more often is the presence of several or more persons on the selling side.
More and more frequent cases of granting employee shares as part of incentive programs have the consequence that the sale of the company involves large groups of sellers, often holding relatively small shares. This situation presents the buyer with the further challenge of having to communicate with many individuals. Clearly, the problems of service described above are multiplied, and in addition, there is no clear date of service, so the time limits involved may run unevenly. One person's deadline may be due, while another person's deadline may be still far away. This is a direct route to chaos.
However, delivery is not the only problem. It also arises at the level of making statements by such a "multiparty." Most often, the buyer expects a uniform position of all sellers, who, while at the time of sale have a common interest, may no longer have such a common interest during the performance of the contract.

SELLERS' REPRESENTATIVE

As an answer to the above problems, the Anglo-Saxon system has the "sellers' representative" service to answer the above problems. It is one of the fiduciary services and consists of replacing the "multiparty" of the transaction with a single, professional representative for receipt and making statements. The content of the statements is determined in accordance with an internally adopted procedure that ensures a uniform position and timely expression. The "sellers' representative" service, although not widespread on the Polish market, seems to be a good answer to the needs of both sides of the transaction. Foremost it is a service aimed at sellers who benefit from the professional service of collecting and submitting the other party's statements. At the same time, an important beneficiary of the service will be the investor, for whom the possibility of contact with one entity may be crucial to efficient handling of the transaction process after closing. Entrusting the service of "Sellers' representative" to a professional entity ensures the correct circulation of statements and the necessary objectivity.

CONCLUSIONS

Modeling an M&A transaction is a tedious process, but the success of such a transaction does not come down only to finalizing the sale. It is worth remembering to ensure proper post-sale procedures and professionalize their service. All parties will benefit from such solutions, and the cost may turn out to be disproportionately low in relation to the risk of difficulties that each party may encounter during the execution of the M&A agreement and the risk of related disputes.

EXPERT Corporate acquisition

GAMES PEOPLE PLAY

By **Michał Pypka**, **Jan Kaźmierczak**, *Lawyers; and* **Maciej A. Szewczyk**, *Attorney-at-Law, M&A and Corporate Practice, Wardyński & Partners*

The basics for running due diligence in companies developing video games

As new generations of computer users engage with video games, the video gaming industry is booming on a global scale. In recent years the video game market has been rocked by many large M&A deals including two by Microsoft: the acquisition of the studio Mojang, responsible for Minecraft, for USD 2.5 billion; and of ZeniMax Media for USD 7.5 billion.

Game development is also a major industry in Poland. In 2020, CD Project became the largest public company in Poland by market capitalization, overtaking such giants as PKO Bank Polski, PKN Orlen, and KGHM.

ATTRACTING INVESTORS

Legal due diligence is a standard expected by investors. Yet, running a due diligence is an organizational and legal challenge for the company in the offing as well as for the investor. Good preparation by both parties greatly facilitates the process.

Due diligence typically covers financial, tax and legal aspects. In the video game industry, key areas include issues of corporate law, intellectual property, and employment law.

Due diligence is also useful in determining the list of activities that should be addressed or which the parties must remember about before the final closing of the transaction. They may include the obtaining of the necessary corporate approvals on the part of the buyer and seller. An example would be the need for the seller to obtain approval from the shareholders' meeting to sell the enterprise, as provided in the Commercial Companies Code. Or if the transaction involves shares, it should be determined whether the articles of association require the company's approval for the sale of shares. Failure to obtain such approval may render the sale contract ineffective against the company.

SPECIFIC FOCUS AREAS

Corporate due diligence of companies from the video game sector may differ depending on the type of company and the nature of the potential transaction. Apart from examining obvious issues, such as title to shares, review of financial documents, corporate resolutions, and others, issues driven by the nature and size of the entity will also be relevant. Different approaches need to be applied with large listed companies, privately held companies, and startups still seeking the optimum business model.

For instance, in transactions involving share rights in a company, it is vital to analyze the corporate documents, in particular the documents under which title to shares has been transferred. First, the existence of the shares must be confirmed, along with the rights incorporated into the shares. Second, the legal title to the shares held by the seller should be verified. Confirming that the seller has the right to dispose of the shares is particularly important because, as a rule, such shares cannot be acquired in good faith from an unauthorized person.

The form in which shares in a limited-liability company were acquired in the past should also be examined. Under Art. 180 of the Commercial Companies Code, this requires written form with notarized signatures. The absence of this form will render the prior transaction invalid if the contract was concluded on or after 1 January 2001—before that date, ordinary written form was sufficient.

In the case of shares in a joint-stock company, it should be examined if the shares that are the subject of the contemplated transaction were properly entered in the shareholders' register (for a privately held joint-stock company) or in a securities account (for a public company). Failure to enter the acquirer in the shareholders' register, or securities account, generally means with respect to the company, that the person is not regarded as a shareholder and can not vote at the general meeting or enforce rights to a dividend.

BUYING STARTUPS

Companies under startup mechanisms require a special approach during analysis of corporate aspects of legal due diligence. Startups are often financed not by the originators of the company contributing their knowhow, but by investors who wish to exit the company after it begins to generate a profit or beyond a specified investment horizon. In such companies, it is often the founders who are seeking a new investor willing to acquire shares or the entire enterprise.

In such situations, the party conducting due diligence must deal with articles of association structured in a manner typical for startups, and other documents governing relations between the shareholders, disposal of shares, and potential obligations arising under such agreements. The documents establishing entities of this type typically regulate comprehensively the relations between the shareholders. Sometimes it will not be possible for an investor to join such a company, if the articles of association contain provisions restricting the possibility of disposing of share rights or imposing a certain method for proceeding when taking decisions on ownership changes. This usually involves provisions on a right of preemption or priority, tagalong rights—which in certain situations may block an acquisition of shares in the company)—or other provisions that cannot be changed without first holding a certain percentage of the shares.

Another challenge is the financial leveraging of the newly created company's capital. In such situations, the lenders often secure their interests through encumbrances on the company's assets. This can generate numerous risks, for instance, when key intellectual property rights, which first sparked the prospective acquirer's interest in the target, have been pledged as collateral.

INTELLECTUAL PROPERTY

The development and production of a video game can be a venture spread out over multiple stages, taking several years and involving many different people. Yet, it is the end product that draws the investor and leads to the decision to enter negotiations with the target. It is thus vital to confirm that the company is fully entitled to the game it produces. This is not always obvious or unambiguous, particularly when work on the game may have begun informally.

Nearly everything that is created during the process of developing a game may be understood as intellectual property. This includes graphic designs, musical arrangements, game universes including characters and narrative, software, names and logos. With respect to the concept for the game, ideas as such are not protected, and thus are not the subject of intellectual property rights. Only in certain instances, protection may extend to a certain expression of the concept for a game. It may be protected if it has a creative, individual nature. When offered to investors, the company should hold the rights to the games it develops. If the game was created, for example, by the founders before the company was established, they should transfer the rights to the company, so that it can exploit, elaborate on and dispose of the game (through sale or license). Alternatively, the rights should be bought out by the originator who wishes to continue the work on the game.

Polish law requires a written agreement transferring economic copyright. Yet, transfer of economic copyright in the form of terms agreed through email correspondence, or by issuance of an invoice, will not be effective because the requirement for written form will not be fulfilled.

Without a contractual transfer of rights, the rights will remain with the creator, and the company may be treated at most as a non-exclusive licensee. It is also important to properly scrutinize for the company's situation to be properly secured with respect to acquiring intellectual property rights in relation to employees or freelancers with whom the company cooperates on the basis of civil contracts.

Industry pros are well aware of necessary to secure intellectual property rights, yet it is all too common to find improper provisions in contracts that make those contracts invalid or raise doubts as to the scope of rights acquired by the company.

Looking deep: Video game developing companies have special structures and require special attention during due diligence.

SENSITIVE ISSUES

Various employment issues are checked in due diligence, such as the use of external service providers, working time, and contracts with key employees, particularly in terms of non-competition and confidentiality clauses.

Outsourcing is very popular in the production of video games. Developers often use external entities, such as voice actors, script writers, musicians, graphic artists, and programmers. Considering how long it takes to develop a game, it can be difficult to determine the status of persons who have been providing services for a long time. Often the nature of the services they provide differs little from the work performed by staff hired under employment contracts. For this reason, grounds may arise for deeming the relations with such service providers to be employment, which is risky as it entails the possibility of reclassification of existing contracts and the need to pay social insurance contributions in arrears.

Another problem faced by the game development industry is the "crunch"—the period of intense effort in the run-up to the launch of a game. This phenomenon can have legal repercussions, but also can drive down staff morale or even result in the departure of key personnel.

It may also be necessary to review contracts with key employees and contractors cooperating with the company in terms of non-competition and confidentiality clauses. The period for which such clauses are in force requires particular attention, along with whether the clauses remain in force after the end of the parties' cooperation—this can be vital to protect the potential investor against the departure of key staff after the investor acquires the company.

BROAD PERSPECTIVE

Due diligence covers the entire company and all areas of its operations, and describing all of them is beyond the scope of this article. If the article were to address all areas and issues that deserve attention, the article could grow as long as a typical due diligence report, which could run to dozens of pages.

Apart from the issues mentioned above, companies seeking investors should verify the data protection rules they apply (including cybersecurity) and examine the contracts to which they are a party.

Publishing, licensing and other agreements related to the company's cooperation with contractors (suppliers and customers) may contain provisions commonly known as change-of-control clauses. These provisions address the parties' mutual rights and obligations in the event of a possible change in ownership structure. These clauses typically contain provisions under which a change in a party's ownership structure requires the consent of the other party or gives the other party a right to terminate the contract early. It is thus vitally important to be aware of such provisions, as they can block or greatly hinder the company from finding an investor and carrying out the transaction.

EXPERT Loan security

CREDITORS' DILEMMAS

By **Michał Kulig**, *Senior Associate, and* **Jan Gąsiorowski**, *Associate, Wolf Theiss Poland*

There are limits to enforcing a US law-governed security over assets in Poland.

Lenders' claims under loan agreements are often secured by collateral, which sometimes covers the entirety of debtor's assets. If the debtor operates in many countries, the collateral may include assets located outside its jurisdiction. These assets may include inventory, real estate, receivables from concluded agreements or movables such as vehicles or goods. A question arises as to whether a lender whose claims are secured by a US law-governed collateral covering all the debtor's assets can enforce its claims from assets located in Poland with priority based on the US law-governed collateral. And if not, what additional steps should a US-based investor, bank or alternative lender take in order to establish effective security over assets in Poland?

POLISH LAW PARAMETERS

As a rule, a judgement of a US court adjudicating a claim in favor of the lender should be recognized by a Polish court, after fulfilling procedural requirements. Similarly, the choice of US law and jurisdiction of US courts for a loan agreement should be recognized by Polish courts, in accordance with provisions of Polish law and respective international treaties, such as the Hague Convention of 30 June 2005 on Choice of Court Agreements. It does not mean, however, that security agreements governed by US law will be recognized as valid security over the debtor's Polish assets by Polish courts and bankruptcy or enforcement officials.

Under the Polish international private law, ownership and other rights *in rem,* which are effective towards third parties such as pledges and mortgages, shall fall under the law of the state in which the object of such rights is located. This may not be straightforward in the case of goods being transported between countries, for as a rule, rights *in rem* on goods in shipping shall fall under the law of the state from which the item was dispatched. Therefore, registering a pledge on the grounds of security instruments governed by US law may be possible only if all necessary criteria to establish them under Polish law are fulfilled, including providing all information required for registration of security by a court.

Moreover, security will not be effective on receivables that are non-transferable under Polish law, such as, among others, certain receivables in respect of public health care establishments or tax authorities.

From the practical perspective, a US law-governed security should be much less efficient to enforce in Poland than a Polish law-governed one, and less likely to enjoy priority of satisfaction in enforcement and other benefits arising from provisions of Polish law. In practice, a court bailiff, bankruptcy receiver or other Polish bankruptcy or enforcement official may have difficulties in applying US law and therefore would need to rely on the judgement of a Polish court confirming the validity of the US law-governed security interest, the issuance of which may be a lengthy and complex process which the debtor might try to prolong to delay the enforcement.

REMAINING RISK

If a US law-governed security agreement fulfills all the conditions required under Polish law, and therefore would be recognized as valid by a Polish bankruptcy or other enforcement official or court, there is still a risk that the lender's position would be the same as that of any other unsecured creditor of a debtor. Therefore, lender's claims would have lower priority of satisfaction—during the bankruptcy, restructuring or standard court enforcement proceedings—towards the creditors privileged by Polish law or having security over debtor's assets registered under agreements such as, *inter alia*, Polish law-governed pledges over movables and rights or Polish-law governed mortgage over a real estate.

In any case, real estate of a debtor located in Poland may only be subject to Polish law-governed security in the form of a mortgage. Therefore, any security established over Polish real estate pursuant to US law-governed security would not be effective under Polish law.

Accordingly, in order to secure lender's interests to enforce from debtor's assets located in Poland, establishing a security package governed by Polish law is highly recommended.

CONCLUSIONS

A US law-governed security over assets located in Poland is unlikely to be fully enforceable in Poland with respect to the Polish assets of the debtor, regardless of whether the debtor acts directly, through the branch, or in any other form. Some security interests, such as security over real estate located in Poland, would be deemed invalid under Polish law without leaving any room for interpretation.

Therefore, it is recommended that a standard security package governed by Polish law should be established over debtor's material Polish assets and receivables, such as security assignment of rights, pledges and mortgages. Such a security package governed by Polish law should allow for more efficient enforcement, and a higher effectiveness towards third parties and priority of satisfaction towards unsecured creditors.

It is recommended that a standard security package governed by Polish law should be established over debtor's material Polish assets and receivables, such as security assignment of rights, pledges and mortgages.

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COVER STORY

DRIVING GROWTH

Despite pandemic-related hurdles to the global economy, Poland continues to attract foreign investors and those from the US rank among the topmost future growth-oriented that build sustainable value chains across the Polish economy. But an investor-friendly and indiscriminate legal framework that Poland has had so far is a must-have for American companies so they can meet the long-term strategic goals of their investments , p 12

COMPANY PROFILES

FOCUS

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EXPERTS

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