Chapter 1. Law and Sources of Law

I. Introduction to Law and Business Law

The term "business law" can be broken down into two individual words: "law" and "business." The word "law" is difficult to define and can be used in many different ways for instance as a concept of rules and regulations established by government and applied to our society. In attempting to define "law" it is also helpful to look at its purpose. For instance, criminal law consists of statutes that forbid certain conduct and impose responsibility if one person violates their legal duties to another person or his/her property by a wrongful act. Administrative law is concerned with relationships between governmental agencies, legislative bodies, municipalities, voivodships etc. along with their rights, powers and duties towards citizens. Private law is that body of law that pertains to the relationships between individuals in our society and this law encompasses in particular the subjects of contracts and property. Business law may be regarded as a part of private law as it concerns itself with businesspersons (entrepreneurs) and their activities. Business law includes all of the laws that govern how to start up, buy, manage and close or sell any type of business. Business laws establish the rules that all businesses should follow and determines what sanctions are to be imposed if its requirements are not met. Consequently, knowledge of the law as it relates to business is an indispensable ingredient in any successful business venture.

II. Sources of Law

1. Civil Law System Versus Common Law System

Polish law is based on the **civil law system** which has developed on the European continent over many years. Poland, among other European countries such as France, Spain or Germany has codified its laws, so the main source of law in Poland is given in the Constitution, statutes, ratified international treaties as well as ordinances (Article 87(1) of the Polish Constitution). This legislation is an im-

portant source of law as throughout Polish history, the importance of legislation in regulating business activities has increased, however, since Poland joined the European Union in 2004, European law including European treaties, directives and regulations as well as international treaties concluded by the European Union became a vital source of law in Poland.[1]

Polish law belonging to the civil law system must be distinguished from law in these countries which follow the common law system which has its main source in precedents. The case law or common law is based on the concept of precedent and the doctrine of "*stare decisis*" which means that once a case has established a precedent, it should be followed in subsequent cases involving the same matter. When a court decides a case, then the court writes an opinion setting forth the reasons for its decision. From these written opinions rules of law can be deduced and these make up the body of case law or common law. The concept of precedents as a source of law comes from England and this system is also predominant in the United States, however, in Louisiana and to some extent in Texas and California, civil law has influenced the legal systems because of the French and Spanish heritage in these states.

2. Constitution

Poland has a framed written constitution forming the fundamental and paramount law of the Polish nation and the Polish constitution provides the basis of the legal system in Poland and Polish supreme law (Article 8.1 of the Constitution). All other laws must be consistent with the Constitution or be deemed void. The Constitution is the basis for action of all state authorities and also it prevails over the law of the European Union. It should be stressed that Poland has a long and rich tradition and history with regard to constitutional law as the first Polish constitution was introduced in Poland by the government statute of 3 May 1791 which was the first national written constitution in Europe and only the second constitution in the world after the adoption of the constitution of the United States of America on 17 September 1787. The current text of the Polish Constitution was passed by the National Assembly on 2 April 1997 and was finally adopted by the entire nation entering into force on 16 October 1997.

Article 10.1 of the Constitution states that the Polish legal system is divided into three main powers: the legislative, the executive and the judicial powers. The legislative power is exercised by Parliament, and the executive power by the President and ministers and the judicial power by courts and tribunals.

[1] Provisions of European law applicable in Poland will not be discussed in this chapter.

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3. Legislation

The most important part of Polish law can be found within the legislation and the legislative bodies exist at all levels of government. Legislation is created by Parliament which is comprised of two chambers: the "*Sejm*" and Senate. The main source of creation of law in Poland is the Sejm which is deemed to be also a representative body in Poland comprising of 460 members elected every four years during the election of the Parliament. The Senate is the second chamber of the Polish Parliament which is comprised of 100 senators and its function is to participate in the legislative process, however, the voice of the Senate is binding. Legislation created by Parliament is usually referred to as a statute and laws passed by ministers and local government bodies (so-called "voivode") as province governors are frequently called ordinances.

4. Executive

The President is the head of the Polish nation and the main representative of Poland within international relationships and also the supreme commander of the armed forces. He/she oversees the obeying of the Constitution and is the guardian of the independence and security of Poland. The President is elected for a term of 5 years by General Election, which means directly by Polish nationals and not by the ruling party/coalition of the Parliament. The next important executive organ is the Council of Ministers which is deemed to be the governmental cabinet dealing day-to-day with internal and foreign affairs and supervising the entire government administration. It is important to know that the Prime Minister in Poland (so-called "Head of the Council of Ministers") is elected by the President and afterwards the Prime Minister chooses his/her own Cabinet comprising of many ministers responsible for a certain sector of public affairs, for instance foreign, internal, economic, health or justice matters. The representatives of the Council of Ministers in voivodships are voivodes.

5. Judicial Power and Case Law in Poland

Courts also play a significant role in the field of statutory law and judicial decisions are deemed to be an important source of law in Poland as well. Courts interpret legislation and apply it to specific facts and issue judgements in the name of the Republic of Poland. They interpret legislation by resolving ambiguities and filling the gaps in the statutes. The supreme body of the judicial power is the **Supreme Court of Poland** which supervises the functioning and judgements of all other ordinary and military courts. We have the following ordinary courts: lo-

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cal courts, district courts, courts of appeal and military courts. Local courts are the courts of the first instance dealing with rather small civil and criminal cases whereas district courts are appropriate for comprehensive cases with a higher dispute value and felonies.[2] Courts of appeal are courts at which objections against verdicts of the courts of the first instances are launched and currently there are 242 local courts, 45 district courts and 11 courts of appeal in Poland.

Finally, military courts are special courts dealing with military related matters (in particular offences committed by soldiers). A specific kind of body exercising judicial power is the State Tribunal in Poland, created to judge over the responsibility of high level officials towards the Constitution (for instance the President, Prime Minister, ministers etc.). Last but not least, the Constitutional Tribunal supervises the compliance of all legal acts in Poland within the Constitution.

[2] See Subchapter 9.2 with regard to classification of crimes.

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Chapter 2. An Entrepreneur, an Enterprise and Auxiliary Figures to the Entrepreneur

I. Introduction

Fundamental to understanding Polish commercial law is the definition of an entrepreneur and an enterprise. The Polish term "*przedsiębiorca,*" which I take to be an entrepreneur, corresponds to the terminology used in the Treaty of Rome (the basis of today's EU) and remains so with the creation of later European laws. Article 43 of the Treaty states that "Freedom of establishment shall include the right to take up and pursue activities as self-employed persons and to set up and manage **undertakings** (…)." In light of the principle of right of establishment, the term entrepreneur has since increased in importance, to the extent that Italy (*Imprenditore*) and the Netherlands (*Onderneming*), for example, have decided to incorporate the term into their legal systems.

In contrast to this growing uniformity stands Polish law, which is extremely inconsistent in its usage of the term entrepreneur. A variety of **definitions** exist in such legal acts as the Polish Civil Code, the Freedom of Business Activity Act, the Insolvency and Reconstruction Act, and the Polish Court Register Act. This is a recipe for confusion. The Insolvency and Reconstruction Act, for example, appropriates the term entrepreneur while, simultaneously, the Polish Court Register Act refrains from its use. Irritatingly, such discrepancies are often justified by the individual purpose of each act but this does not facilitate a greater understanding of the usage of the term in question.

Distinct from the term "entrepreneur," the Polish definition of an "enterprise" shows more consistency and clarity. An enterprise encompasses in general a set of tangible and intangible elements necessary for providing business activities.

In this chapter I hope to explain the meaning of the terms "entrepreneur" and "enterprise," present some essential background material to enhance understanding of these topics as well as to provide insight into the nature of persons acting in connection with operating an enterprise.

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II. An Enterprise and an Entrepreneur

1. Overview

The main characteristic of Polish commercial law is the concept of an **entrepreneur** as formulated in the Freedom of Business Activity Act. According to this statute an entrepreneur is defined to include a natural person, legal person or unincorporated organizational unit but with a legal capacity granted by a special law and carrying out business activity on its own behalf. Furthermore, the Freedom of Business Activity Act describes business activity as any activity conducted for profit in the fields of production, construction, trade, services or manufacturing, surveying and exploring minerals from deposits, as well as professional activity carried out in a permanent or organized manner. In the course of this chapter, I will attempt to flesh out the details.

2. Business Activity

In order to qualify for the status of entrepreneur, one has to carry out the certain kinds of **business activity** referred to in the Freedom of Business Activity Act. Such activity covers manufacturing, construction, trade and services, as well as prospecting, recognising and extracting minerals from deposits. As can be seen, this definition is extremely broad in its scope. To add to the complexity, the Polish legislator has decided that the operation of activities on the basis of a "**profession**" should also be covered by the term business activity. In this sense, the term profession is intended to refer in particular to carrying out business on a freelance basis. As a result, lawyers, doctors, artists, writers, tax advisers, and auditors are seen to carry out business activity within the scope of their professions.

The decision to include freelance agents in the definition of persons carrying out business activities has been heavily criticized by numerous legal scholars. I believe this criticism to be partly justified. In its most basic form, "freelance" is a sociological term which developed in the time of early liberalism and whose most important figure was John Stuart Mill (1806–1873). However, the most important feature of exercising a profession on a freelance basis has always been providing a personal performance for clients. As such, it is rather difficult to be compatible with pure business activities carried out for profit. In these modern times of free market economies, the freelance profession has become ever more business and profit oriented. However, the Freedom of Business Activity Act includes a limitation on business activity, in that manufacturing activities in the

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field of agriculture with respect to crop and vegetable cultivation, breeding of animals, gardening, forestry and fishing are all excluded.

A further significant feature of business activity is the necessity of carrying out business **for profit**. As a consequence, non-profit activities do not fulfill the requirements of business activity. The Freedom of Business Activity Act only provides that business activity must be an activity for profit. The question now arises as to whether a certain activity carried out does in fact meet these requirements in the case of an operating business suffering only losses. To my mind, it seems that such activity must be considered business activity irrespective of whether profit has or has not been generated. This interpretation is firstly supported by the wording of the Freedom of Business Activity Act, which provides "*An entrepreneur (…) carries out (…) business activity*." This wording is predicated on the view of the entrepreneur. Secondly, the status of the entrepreneur would vary each time if the criterion "for profit" were dependent on its current economic situation and interpreted due to any loss or profit made. Consequently, the *intention* of the entrepreneur is relevant to the issue of whether its business is designated for profit or not for profit.

A further factor to consider is that business activity must be carried out continually (**permanently**). This means that the intention of the person is to conclude a number of similar transactions within a certain period of time and it is, therefore, not sufficient if a person carries out activities occasionally. The definition of business activity requires further that this activity is to be carried out in an **organized manner**, meaning that the activity must be carried out on a scheduled and not an ad-hoc basis.

It is an interesting conundrum as to whether business activity is allowed by law. The term **allowance** does not refer to permission such as licence or concession granted by local authorities under public law but means rather that a certain activity cannot be taken for business activity if it violates legal provisions. The Freedom of Business Activity Act does not set out such a requirement. As previously mentioned, this Act is supplemented by the Polish Civil Code, based on the principle of the freedom of contract. Following this rule, parties to a contract are free to negotiate contractual terms unless such terms violate the nature of the relationship, law or principal of social good. This limitation is also applicable to the nature of business activity under the Freedom of Business Activity Act. Someone carrying out activities which violate the law or interfere with the principal of social good does not, therefore, deserve to possess the status of an entrepreneur under the terms of the Act.

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3. Legal Forms

The status of an entrepreneur requires that the business shall be operated by certain legal forms. Under the Freedom of Business Activity Act only natural persons, legal entities, or unincorporated organizational units having a legal capacity granted by a special law may operate businesses and possess the status of an entrepreneur.

Every citizen born is automatically a **natural person** with a legal capacity. The operating of a business as a sole individual is the simplest organizational form in Poland (**proprietorship**).

As defined in the Polish Civil Code, **legal persons** are defined to include the state treasury along with organizations with legal capacity granted by special provisions. The term "legal capacity" means, in general, the power of the business to sue or be sued in its own name and to dispose of property, as well as to enter into contracts. These organizations encompass, among others, corporations such as private limited liability companies and joint-stock companies. A corporation comes into existence as a legal person upon completing the registration process under the Commercial Companies Code. A further corporation is the European Company (EC) which may now also be formed in Poland since its entry to the European Union in 2004. Moreover, foundations and associations also possess the status of a legal person under Polish law.

In addition to corporations, Polish law recognizes other forms of business entities which enjoy the status of a legal person but do not have a capacity to perform legal acts granted by special provisions. They are:

(i) General Partnerships (*spółka jawna*);
(ii) Limited Partnerships (*spółka komandytowa*) (similar to UK limited partnerships, Limited Partnerships Act 1907);
(iii) Professional Partnerships (*spółka partnerska*) (which may be formed by employed persons such as doctors, lawyers, accountants, or tax advisers);
(iv) Limited Joint-Stock Partnerships (*spółka komandytowo-akcyjna*), in which general partners are personally liable for its debts, and whose purpose is to operate a business under its own business name; at least one partner (the general partner) bears unlimited liability towards the creditors for obligations of the partnership and at least one partner is a shareholder (Art. 125 CCC) (British law does not recognize this kind of partnership);
(v) European Economic Interest Groupings (EEIG) – an EEIG with its seat in Poland has the legal status of a general partnership.

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4. The "On Its Own Behalf" Criterion

The Freedom of Business Activity Act states that business activity is to be carried out **on its own behalf**, meaning that transactions concluded must have an effect on the person operating the business. An administrator in bankruptcy proceedings acts in the name of the insolvency debtor but the legal consequences are concentrated on the insolvency assets and not on the administrator personally. In such a case, the status of the individual conducting business as an entrepreneur is revoked. Furthermore, entrepreneur status requires that this person is personally liable for obligations arising from any transactions carried out. Hence, a member of the management board or proxy (*prokurent)* acts in the name of their principals, and so are not entrepreneurs under the terms of the Freedom of Business Activity Act.

Since all transactions are concluded in the name of the entrepreneur, the entrepreneur must naturally possess the legal capacity to carry them out.

The Freedom of Business Activity Act does not refer to the status of a natural person, which is a matter for the Civil Code which distinguishes between legal capacity and the capacity to enter into a legal transaction. According to this differentiation, every natural person possesses a legal capacity. However, the capacity to enter into legal transactions depends on age. The law states that a child under the age of 13 is incapable of entering into legal transactions and that any transaction concluded by a person under this age is deemed null and void. Between the ages of 13 to 18 a person – a so-called 'minor' – has a restricted capacity to enter into legal transactions, which are dependent on the consent of parents or guardians. Moreover, every legal person (e.g. limited liability company or joint-stock company) possesses the required legal capacity to act in its own name. The same also applies to organizational entities which do not have the status of a legal person but which are vested with a capacity to enter into legal transactions (e.g. partnerships).

For reasons of clarity and magnanimity towards the reader, I have referred to a person/entity who meets the requirements of the definition of an entrepreneur under the Freedom of Business Activity Act as being a **commercial entrepreneur**.

5. "Registered Entrepreneur" Status

The Polish Court Register Act provides a list of so-called registered entrepreneurs. This list includes but is not limited to the following entities:

1) General Partnerships;
2) European Economic Interest Groupings;
3) Limited Partnerships;

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4) Professional Partnerships;
5) Joint-Stock Partnerships;
6) Joint-Stock Companies;
7) Limited Liability Companies;
8) European Companies;
9) Co-operatives;
10) State-Owned Enterprises;
11) Research and Development Units;
12) Foreign Entrepreneurs;
13) Insurance Institutions;
14) Other Legal Entities (on condition that they carry out their business activity and are obliged to be registered, such as foundations and associations);
15) Branch offices of Foreign Enterprises conducting their activities in Poland;
16) Main Branches of Foreign Insurance Institutions.

This list does not comprise natural persons, which I regard as being natural persons who carry out business in Poland and are registered with Business Activity Register. The function and the characteristics of the Polish Court Register and the Business Activity Register will be looked at in Chapter 4.

6. Commercial Entrepreneur and Registered Entrepreneur: Relationships

I will now discuss the relationship between a commercial entrepreneur and a registered entrepreneur, taking into account the following example. It is a recognized fact that the purpose of the EEIG is not to make a profit for itself according to Council Regulation on the European Economic Interest Grouping (EEC) 2137/85 of 25 July 1985. In the simplest terms, two farmers from France and Great Britain cannot form an EEIG to buy and sell property in Paris or London. For this reason, an EEIG does not meet the requirements of the definition of a commercial entrepreneur under the terms of the Freedom of Business Activity Act, because the EEIG is not to be set up for profit for itself. However, the Polish Court Register Act provides that EEIG has the status of a registered entrepreneur and, therefore, must be registered with the Polish Court Register, wherever its seat is in Poland.

Another example of the link between a commercial and registered entrepreneur is provided below. The Commercial Companies Code states that a joint-stock company may be formed by one or more persons, and this definition does not limit the scope of the objects of this kind of company. As such, it is possible – and recognized by Polish legal scholars – that joint-stock companies may be

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set up to carry out "not-for-profit" activities. The example above shows that there is no correspondence between a 'commercial entrepreneur' and a 'registered entrepreneur' under Polish law. In most cases an entity – a company in particular – possesses both the status of a commercial entrepreneur and that of a registered entrepreneur but this is not the rule. I will discuss these inconsistencies in greater detail later in the book.

7. Definition of an Enterprise

Polish law belongs to the group of legal systems which provide a legal definition of an enterprise included in its Civil Code. According to Article 551 of the Polish Civil Code, an enterprise is an organized group of tangible and intangible elements the purpose of which is to conduct business activity. The current wording of this Article refers to the definition of carrying out business activities under the Freedom of Business Activity Act. The question arises as to whether an enterprise is to be operated solely for profit-making. As we shall see, this is not necessarily the case and that it is possible to run an enterprise without seeking profit.

Moreover, Polish law recognizes that an enterprise as a whole may be the object of a legal transaction. This means that, for example, an enterprise may be sold within one transaction and that it is, therefore, not necessary to transfer separately the ownership of all assets (tangible and intangible) to the buyer. However, the purchase (with the granting of usufruct) of the enterprise is required in the written form and the signatures of the parties involved must be authorized by a public notary, or such transactions are invalid.

III. Auxiliary Figures to the Entrepreneur

In the process of operating an enterprise, the entrepreneur makes use of the so-called auxiliary persons who assist in running business affairs. In general, these persons are divided into two groups: dependant and independent auxiliary persons. The group of dependant persons consists of a *prokurent* (a person acting upon the statutory power of attorney) or other persons acting in place of the enterprise under authority granted by a power of attorney. The institution of *prokura* does not exist in countries whose legal systems are based on common law and, as a result, is difficult to translate into English. I have decided to stick to the Polish terminology throughout this book. When it comes to so-called independent auxiliary persons, they establish a group of independent persons.

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1. Dependant Auxiliary Persons

1.1. "Prokurent"

1.1.1. Nature, Capacity & Formal Requirements

The instrument of *prokura* has its roots in German law and has been adopted by the Polish legislature and incorporated into the Polish legal system. The *prokura* under Polish law must be distinguished from the term "**attorney in fact**" (*pełnomocnik*) as regulated in the Polish Civil Code. The "attorney in fact" is a person appointed by a principal acting on its behalf. The scope of this power of attorney is determined by the principal and may, for instance, include the authority to handle any and all matters arising, or may be reserved only for the closing of certain transactions or even a single transaction. In contrast, the scope of the *prokura* is defined by the legislature in the Polish Civil Code and cannot be amended by the principal in relation to third parties.

Polish law requires that the *prokura* be granted in written form only, and must be registered. A *prokurent* cannot be appointed orally. However, the registration of *prokura* only has a declaratory effect, with the result that the *prokura* only takes effect when granted by the principal.

Anyone seeking to act as the *prokurent* must be a natural person who has full legal capacity. As a result, a minor is not permitted to act through a *prokurent*. Furthermore, but with one exception, under Polish law a company or partnership cannot be authorized to act as a *prokurent*, the exception being a legal person appointed as a prokurent managing a fund in accordance with the National and Privatisation Investment Fund Act of 1993.

There are three types of *prokura* under Polish law. Firstly, **a single *prokura*** can be conferred on an individual or on many persons by an entrepreneur. If this kind of *prokura* will be given to many persons, then each of them is entitled to provide out-of-court and in-court activities in connection with the running of an enterprise (with some exceptions which will be discussed within the following paragraphs later). In other words, **a single *prokura*** grants a power exercised by one person only. Secondly, an entrepreneur may also grant a **collective *prokura*** and in such case all empowered persons must act alongside each other while representing the entrepreneur. Thirdly, an entrepreneur is also entitled to confer on somebody the so-called **"branch *prokura"*** *"prokura oddziałowa"* the scope of which is limited to matters which the branch of an enterprise is dealing with. Therefore, it is acknowledged according to Polish court precedents that an entrepreneur has no right to grant any other form of *prokura* departing from the aforementioned three *prokura* types. For instance, it is not allowed to limit the

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power of *prokura* according to which the *prokurent* should always act alongside a board member in a company (resolution of seven judges of the Polish Supreme Court of 30 January 2015, III CZP 34/14).

1.1.2. Scope

Within the Polish Civil Code, the power of attorney known as *prokura* has a very broad scope. This is the most significant feature of this instrument, since its scope is determined directly in Law and not by a principal. According to this, a *prokurent* is entitled to carry out on behalf of his principal all court and out-of-court activities connected with the operation of the enterprise. Naturally, the principal may limit the scope of the activities of the *prokurent* to, for instance, transactions not exceeding a certain sum of money. However, such limitations are only relevant internally and do not affect relationships with third parties. In other words, the principal (entrepreneur) cannot refer to these limitations in relation to his or her clients.

If the *prokurent* ignores the agreed limitations, an agreement entered by the *prokurent* on behalf of the principal is effective but the *prokurent* must recover damages incurred to the principal. The law provides some exemptions to this rule on the limitation of the scope of *prokura* not affecting relations to third parties. The sale of the enterprise, granting of (temporary) usufruct on the enterprise, the sale and creation of an encumbrance on the real estate property all require the granting of additional power of attorney by the principal, and such limitations are effective in relation to third parties. An example is that if a *prokurent* enters into a contract regarding the sale of a real property without having the additional power of attorney granted by a principal, then such a transaction would be ineffective and not binding on the principal.

1.1.3. Expiry of a *Prokura*

Furthermore, the Polish Civil Code provides numerous grounds on which the *prokura* expires. Firstly, the *prokura* may be withdrawn by the principal at any time. Secondly, the *prokura* expires upon cancellation from the register, the announcement of insolvency, the commencement of liquidation or the transformation of the entrepreneur (principal). Thirdly, *prokura* ends with the death of the holder of *prokura* and as a consequence is not assignable or transferable to third parties, particularly heirs. However, and importantly, the *prokura* does not expire in the event of the death of the entrepreneur itself.

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1.2. Persons Acting on the Premises of an Enterprise

The Polish Civil Code includes only one provision (Article 97 of the Civil Code) which refers to persons providing services on the premises/place of an enterprise and which protects third parties entering into contracts with such persons. These persons, such as sales assistants or cashiers, are usually employed by the principal and their role is to offer services to the public (clients of the entrepreneur). The law does not define the scope of their power of attorney and includes only a reference to a fictitious power of attorney for such persons. In the event of any doubts, such a person is deemed to be empowered to perform acts usually conducted in relation to third parties in favor of whom such acts are offered. It must be emphasized that this regulation refers to each individual acting in the place of the enterprise, irrespective of the entrepreneur's knowledge of their activities. As a result, the entrepreneur is bound to the contract concluded by such a person in the place of his enterprise.

The purpose of the aforementioned regulation is designated to protect customers concluding contracts at the place of business of the entrepreneur. This protection is not given in cases in which it can be proven that the customer had knowledge of the absence of the power of the person to represent the entrepreneur.

2. Independent Auxiliary Persons

2.1. Agent

2.1.1. Introduction

The term "agent" under the Polish Civil Code differs in meaning to an "agent" as defined by common law. The law of agency under common law has developed many principles, including several aspects of the law of torts. Interestingly, the relationship between the agent and principal is here based on, to some, rather old-fashioned notions of trust and confidence. Despite these differences, there are some common features. The "agent" under the Polish Civil Code and "agent" under common law are both persons acting for another (principal) and enter into contracts on their behalf. Moreover, the Polish Civil Code requires some duties from the agent similar to those of a common law agent. Below, I will present the most important rules of the Polish law of agency.

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2.1.2. Definition

It must be stressed at the outset that an agent is a person who performs services for his/her principal (entrepreneur) but who is not included in the business organization as an employee. In addition, the agent acts on behalf of his/her principal within the scope of its own enterprise and, as a consequence, possesses the status of the entrepreneur itself. This acting in the name of a principal requires a **permanent** character, and so a person only occasionally authorized to act on behalf of an entrepreneur cannot be treated as an agent.

2.1.3. Requirements for Creation of Principal – Agent Relationships

The new agency law was introduced into the Polish Civil Code (hereinafter "CC") at the end of 2001 and is currently subject to Articles 758–764[9]. Terms of the Agency Agreement between an agent and his/her principal are provided in Article 758 stating that *an agent undertakes within the scope of his/her enterprise to be an intermediary on a regular basis in return for a remuneration within conclusion of contracts with customers on behalf of his/her principal or to conclude such contracts on his/her behalf.*

In General, Polish law does not stipulate any formal requirements (similar to UK law) for the conclusion of an agency agreement. That means that an agency agreement may also be concluded orally and the agency can be implied. Agents generally insist on a written form of the agreement to ease the burden of proof required to establish when a commission is due. Similar to UK regulations, an agent may also be empowered to create contracts or to sign contracts on behalf of his/her principal.

However, there are some exemptions to this rule:

The written form of an agency agreement is required in particular in the following cases:

(1) Establishing del credere duties of the agent;
(2) Competitive constraints for the agent.

In addition, should an agent also be authorized by his/her principle to sign real estate contracts or share deal agreement on his/her behalf, then the agency agreement must be made in the first case in the form of a notary deed and in the latter in written form along with signatures authenticated by a notary.

Pursuant to Article 758 CC, an agent must have the status of an (self-employed) entrepreneur and it is also recognized that individuals and also entities such as a company or partnership may also take up this position.

Under Polish law the definition of commercial agent is not limited to the sale or purchase of goods.

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