

***Factual analysis of Member States  
Investors' Schemes granting  
citizenship or residence to third-  
country nationals investing in the  
said Member State***

***Deliverable B.II Investors' Residence  
Schemes in Poland***

*JUST/2016/RCIT/FW/RIGH/0152 (2017/06)*



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The views expressed herein are those of the consultants alone and do not necessarily represent the official views of the European Commission.

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## I. GENERAL BACKGROUND

### ■ *Legal background*

The system of foreigners' admission to Poland **does not** provide for any **special programme** addressing foreigners arriving to the country for business purposes and does not include any targeted legal regulation in this respect.<sup>1</sup> The legal basis for admitting foreigners to Poland for business purposes is the **Act on Aliens of 12 December 2013** (as amended),<sup>2</sup> and, specifically, **Article 142** of the said act, which provides for the **temporary residence permit for conducting a business activity**.

According to Article 142(1) of the Act on Aliens, in order to obtain this permit, the entity through which the foreigner is going to conduct a business activity in Poland should generate a certain income or create jobs or have appropriate means or activities to meet these conditions in the future, contributing to the growth of investment, technology transfer, innovations or creation of work positions. The legislation does not specify the type of investment that is required in order to receive the permit – each application is assessed and evaluated by the competent authority on a case-by-case basis, taking into account the specific circumstances of the application. In addition, the foreigner should also have the appropriate health insurance, a source of stable income, the consent of the competent authority to occupy a specific position or to pursue a profession (if the obligation to obtain it results from separate provisions) and a dwelling-place in the territory of the Republic of Poland.

Article 142 of the Act on Aliens was introduced into the Polish legal system in December 2013 (i.e. with the adoption of the Act on Aliens of 12 December 2013) and entered into force on 1 May 2014. According to the preparatory documents for the new Act on Aliens, “the assumptions for the new Act were to simplify the existing regulations and to de-formalize certain procedures, especially for foreigners already staying in Poland who do not violate Polish law, do not pose a threat to State security and public order, and their stay does not involve burdens for the social assistance system, as well as to facilitate the use of provisions of the Act on Aliens applying for the right to stay on the territory of Poland and improving the course of legalization procedures for foreigners”.<sup>3</sup> Therefore, the new Article 142 revoked the preceding Article 53 of the previous Act on Aliens of 13 June 2003 to introduce more objective and flexible admission criteria. Article 53, unlike the current Article 142 of the Act on Aliens, provided for a temporary residence permit for conducting business activity, however the criteria set out therein were more restrictive when compared to the current wording of Article 142. In specific, the revoked provision, contrary to the current text of Article 142 of the Act on Aliens, required the business activity carried out by the foreigner to be ‘beneficial to the national economy’. This requirement used to be interpreted subjectively and restrictively by the competent authorities and as such was often difficult to be met by the applicants, consequently negatively affecting the number of foreigners admitted to Poland for business purposes.<sup>4</sup> This fact was also confirmed in October 2011 during an administrative control of activities carried out by the voivode of the Masovia voivodeship.

The final conclusions of the control pointed out that “the difficulty imposed by Article 53 paragraph 1 point 2 of the Act of 13 June 2003 on Aliens was the obligation to assess the beneficial character for the national economy of the economic activity conducted by foreigners. As a result, foreigners were

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<sup>1</sup> ‘Business-related immigration - Admitting third-country nationals to Poland for business purposes’, Report produced by the National Contact Point to the European Migration Network in Poland, Warsaw 2015, p. 8, available at: <https://emn.gov.pl/download/74/20941/BiznesowyEN.pdf>.

<sup>2</sup> Act of 12 December 2013 on Aliens (*Ustawa z dnia 12 grudnia 2013 r. o cudzoziemcach*), O.J. 2013 item 1650, available at: <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20130001650>.

<sup>3</sup> Opinion of the Office of Parliamentary analysis, available at <http://orka.sejm.gov.pl/rexdomk7.nsf/Opdodr?OpenPage&nr=1526>

<sup>4</sup> Business-related immigration - Admitting third-country nationals to Poland for business purposes’, Report produced by the National Contact Point to the European Migration Network in Poland, Warsaw 2015, p. 25, available at: <https://emn.gov.pl/download/74/20941/BiznesowyEN.pdf>.

called to provide new or update documents, which together with the lack of enforcement of previous calls, resulted in a significant prolongation of proceedings, in extreme cases even up to 5 years and 8 months. According to the judgements of administrative courts, when assessing whether an activity brings benefits referred to in Article 53 paragraph 1 point 2 of the Act on Aliens, the benefits resulting from this activity should be taken into consideration at the moment of the submission of an application for a temporary residence permit for conducting a business activity, and one should not assess hypothetical benefits that this activity may bring in the future (e.g. the Administrative Supreme Court's judgments of 19 April 2006, II OSK 575/06 LEX No. 337823, dated 29 June 2006, II OSK 69/06 ONSAiWSA 2007/2/49, LEX 244389). The Administrative Supreme Court rulings showed that the condition of the "benefit" should be met, in principle, on the day of submitting the application for a temporary residence permit (at the latest on the day of issuing the decision)".<sup>5</sup>

Independently of the lack of special programme aimed to facilitate the admission of foreign investors to Poland, there are various **measures and tools which aim to encourage business migrants to run their business in Poland**. They include:

- Promotional activities - in the countries of origin of the migrants, consisting in the promotion of Poland as an attractive economic partner in the international market and creating positive image of the country, e.g. through national marketing (organisation and participation in seminars/conferences, exhibitions, foreign fairs, etc.);
  - Economic missions (at different levels) - to the countries of migrants' origin and lobbying from the government institutions and state agencies during official foreign visits or other foreign contacts;
  - Investment incentives such as government grants for employment and investment, investment loans, special economic zones, technological and industrial parks, exemptions from taxes and local fees, including real estate tax, agricultural and forest tax;
  - Grants provided from structural funds of the European Union the beneficiary of which may be at first small and middle companies;
  - Procedural facilitations e.g. facilitations during visa application procedure;
  - Special rights arising from bilateral agreements concluded between Poland and other countries (e.g. in case of the citizens of the USA).
  - Information and counselling support (e.g. practical factual support, direct contacts with the environment of investors and foreign companies interested in business activity in Poland) and incubation services including the ones rendered by specialised centres working within the national system of services.<sup>6</sup>
- **Competent authorities**

The following public institutions participate in both indirect and direct creation of policy connected with admitting migrants arriving to Poland for business purposes:

- **Ministry of Investments and Development** – elaborates the policy in the scope of innovativeness and for the benefit of the development of companies (i.e. introducing facilitations to set up and run business activities); designs and creates investment incentives, and, via the Trade and Investment Promotion Sections,<sup>7</sup> it promotes Poland and the Polish economy, undertakes activities to encourage foreign companies to invest in Poland and provides assistance in establishing commercial relations between Polish and foreign companies,
- **Polish Investment and Trade Agency**<sup>8</sup> – it deals with widely-understood handling of foreign investors, it supports entities that are already active in Poland, it also helps new investors in

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<sup>5</sup> Office for Foreigners, Order of 21 October 2011, available at [http://www.poznan.uw.gov.pl/system/files/kontrola/3\\_11\\_wystapienie.pdf](http://www.poznan.uw.gov.pl/system/files/kontrola/3_11_wystapienie.pdf).

<sup>6</sup> Business-related immigration - Admitting third-country nationals to Poland for business purposes', Report produced by the National Contact Point to the European Migration Network in Poland, Warsaw 2015, p. 28-29, available at: <https://emn.gov.pl/download/74/20941/BiznesowyEN.pdf>.

<sup>7</sup> Foreign units of the Minister of Development operating at the Embassies and Consulates of the Republic of Poland.

<sup>8</sup> Polish Investment and Trade Agency website, available at <https://www.paih.gov.pl/en>

entering into the Polish market and to take best advantage of the opportunities (e.g. assistance in completing required administrative and legal procedures, assistance in finding relevant partners and suppliers as well as locations). The Agency is also involved in creating a positive image of Poland abroad and promoting the country as a convenient place for foreign investments (inter alia via marketing campaigns, investment seminars, workshops, study visits and cooperation with Polish embassies);

- **Foreign Trade Offices of the Polish Trade Agency**<sup>9</sup> - are responsible for attracting foreign investors and assist them in entering the Polish market. Currently there are 29 such offices around the world.
- **Regional Investor Service Centres** – their activity is aimed at increasing the level of foreign investments in Poland via ensuring access to information on the conditions for running business activity in Poland, investment incentives, the most recent investment offers and regional microeconomic data;
- **Ministry of Foreign Affairs along with the network of Polish consular units and embassies** – it develops the policy on issuing visas to foreigners arriving in Poland for business purposes, and through economic sections and trade and investment sections of Polish diplomatic facilities, it promotes Poland as an attractive place to implement direct foreign investments within the EU, it provides economic information regarding Poland's economic growth;
- **Ministry of the Interior and Administration** – is responsible for coordinating the measures intended to implement national migration policy and has a deciding influence on relevant legislative solutions.<sup>10</sup>

The specific authorities involved in processing applications for temporary residence permits for conducting a business activity are described in Section II.1.2. of this Report.

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<sup>9</sup> Polish Investment and Trade Agency website, available at [https://www.paih.gov.pl/about\\_us/Foreign\\_Trade\\_Offices](https://www.paih.gov.pl/about_us/Foreign_Trade_Offices)

<sup>10</sup> Business-related immigration - Admitting third-country nationals to Poland for business purposes', Report produced by the National Contact Point to the European Migration Network in Poland, Warsaw 2015, p. 17-18, available at: <https://emn.gov.pl/download/74/20941/BiznesowyEN.pdf>.

## II. PROCEDURES, COMPETENT AUTHORITIES AND APPLICABLE CRITERIA

### 1 APPLICATION PHASE

#### 1.1 PROCEDURES

The standard procedure for a third-country national who arrives to Poland for the first time for business purposes requires, in the first step, to apply for and receive an entry **visa (national or Schengen) for the purpose of conducting business activity** (Article 60(1) point 4 of the Act on Aliens). The applicant may choose the type of visa (national or Schengen) he/she wants to apply for.

The term ‘business activity’ is defined in Article 2 of the Act on the Freedom of Running Business Activity<sup>11</sup> and means ‘the commercial activity involving production, construction, trade and providing services as well as exploration, identification and extraction of minerals from deposits, as well as professional activities, carried out in an organised and continuous manner.’

According to Article 77 of the Act on Aliens, the main conditions that must be met when applying for the entry visa are the following:

- Visa **application** which has to be **electronically registered** (via the platform e-Konsulat)<sup>12</sup>, filled in, printed, signed and supplemented by a **photograph**,
- **Payment of the visa fee**, if required (national visas are issued free of charge, the issuance of Schengen visas is either 35 EUR - for the citizens of Ukraine and Russia, or 65 EUR – for other nationalities),<sup>13</sup>
- Submitting documents confirming:
  - (i) the possession of an appropriate **valid medical insurance** for the amount of at least EUR 30,000 or, in case of the national visa, another medical insurance issued by the appropriate institution in Poland (e.g. the proof of payment of the voluntary health insurance in the National Health Fund)<sup>14</sup>,
  - (ii) the **aim and conditions of the planned stay** (e.g. articles of the company confirmed to be a true copy by the public notary, invitation/reference letter from the company operating in Poland with which the applicant cooperates, proof to run business with Polish companies or entities from EU Member States in the past, financial capital which the foreigner wants to invest in Poland<sup>15</sup>),
  - (iii) possessing the **sufficient means** to cover the foreigners’ **maintenance costs** throughout the entry, planned stay and return (minimum 75 PLN – approximately 18 EUR- per one day of stay<sup>16</sup>),
  - (iv) **readiness to leave the territory of Poland** after the expiry of the validity term of visa,
  - (v) other data and information necessary for the visa application (there is no exhaustive list of such data, it will depend on the individual situation of each applicant and may include e.g. birth

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<sup>11</sup> Act of 2 July 2004 on the Freedom of Running Business Activity (*ustawa z dnia 2 lipca 2004 r. o swobodzie działalności gospodarczej*), available at: <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20041731807>.

<sup>12</sup> E-Konsulat website, available at <https://www.e-konsulat.gov.pl/>.

<sup>13</sup> Website of the Ministry of Foreign Affairs, available at [http://lwow.msz.gov.pl/pl/informacje\\_konsularne/wizy/oplaty\\_wizowe/](http://lwow.msz.gov.pl/pl/informacje_konsularne/wizy/oplaty_wizowe/). Investors will have to pay EUR 65, unless they come from Russia or Ukraine. In those cases, they pay EUR 35.

<sup>14</sup> Business-related immigration - Admitting third-country nationals to Poland for business purposes’, Report produced by the National Contact Point to the European Migration Network in Poland, Warsaw 2015, p. 19, available at: <https://emn.gov.pl/download/74/20941/BiznesowyEN.pdf>.

<sup>15</sup> Business-related immigration - Admitting third-country nationals to Poland for business purposes’, Report produced by the National Contact Point to the European Migration Network in Poland, Warsaw 2015, p. 20, available at: <https://emn.gov.pl/download/74/20941/BiznesowyEN.pdf>.

<sup>16</sup> International Organization for Migration, Polish contact point website, available at <http://www.migrant.info.pl/id-36-minimalne-kwoty-na-powrot-i-pobyty.html>.



- certificate or marriage certificate)<sup>17, 18</sup>;
- Possession of a **valid travel document** satisfying the criteria<sup>19</sup> listed in Article 77(5) of the Act on Aliens.

**National entry visas are issued by consuls, while Schengen visas by Commanders of Border Guard posts** (Article 66 of the Act on Aliens). According to the general rule of administrative law, an administrative decision (thus, also that on a visa) shall be taken within one month from the submission of a correct and complete application and, in more complicated cases, within two months from that date (Article 35 of the Code of Administrative Procedure).

Once the visa is issued, the foreigner who wishes to stay in Poland for business purposes must apply, before the validity of the visa expires, for a **temporary residence permit for conducting a business activity**. In accordance with Article 105 of the Act on Aliens, **the application must be submitted by the foreigner in person**, on the form referred to in Article 106 of the Act on Aliens. Polish legislation does not explicitly specify **who can apply** for this permit. However, according to Article 142(1) of the Act on Aliens, in order to obtain this permit, the entity through which the foreigner is going to conduct a business activity in Poland should **generate a certain income or create jobs or have appropriate means or activities to meet these conditions in the future, contributing to the growth of investment, technology transfer, innovations or creation of work positions**. The legislation does not require any specific investments in order to receive the permit – each application is assessed and evaluated by the competent authority on a case-by-case basis, taking into account specific circumstances of the application (see Section II.2 below for more details).

Article 142(1) of the Act on Aliens provides that the temporary residence permit<sup>20</sup> for conducting a business activity shall be issued to a foreigner if the **purpose of their stay** in the territory of the Republic of Poland is to **conduct a business activity** under the regulations in force in that territory and the following **conditions** are met cumulatively:

- the **foreigner** has:
  - 1) **health insurance** financed from public funds or confirmation by the insurer of coverage of treatment costs on the territory of the Republic of Poland,
  - 2) a **source of stable and regular income** sufficient to cover the costs of living for the foreigner and their dependent family members (according to Article 142(4) of the Act on Aliens, ‘sufficient income’ means an income that is higher than the amount of income entitling to cash benefits from social assistance with regards to both - the foreigner and each dependent member of the family. In practice this means: (i) for a single person - the amount of at least PLN 634 (approx. 160 EUR) net a month, (ii) for a person in a family - the amount of at least PLN 514 (approx. 130 EUR) net a month<sup>21</sup>),
  - 3) the **consent of the competent authority** to occupy a specific position or to pursue a profession, if the obligation to obtain it results from separate provisions;
  - 4) a **dwelling-place in the territory of the Republic of Poland**;
- the **entity** through which the foreigner is going to conduct a business activity proves to have

<sup>17</sup> Business-related immigration - Admitting third-country nationals to Poland for business purposes’, Report produced by the National Contact Point to the European Migration Network in Poland, Warsaw 2015, p. 20, available at: <https://emn.gov.pl/download/74/20941/BiznesowyEN.pdf>.

<sup>18</sup> Application forms for national and Schengen visas are available (in English) at [http://www.lwow.msz.gov.pl/pl/informacje\\_konsularne/wizy/formularze\\_wnioskow\\_wizowych/](http://www.lwow.msz.gov.pl/pl/informacje_konsularne/wizy/formularze_wnioskow_wizowych/).

<sup>19</sup> The criteria for a valid travel document are: 1) the period of validity of the passport shall expire no earlier than after 3 months from the expiration of the validity of the visa applied for; 2) passport contains at least two free pages; 3) passport has been released in the last 10 years.

<sup>20</sup> There is no legal definition of the term ‘temporary residence permit’. In accordance with Art. 98 of the Act on Aliens, a temporary residence permit for a foreigner is granted at his / her request if he / she meets the requirements specified for the declared purpose of the stay and the circumstances which constitute the basis for applying for the permit justify the stay of the foreigner in the territory of the Republic of Poland for a period longer than 3 months and shorter than three years.

<sup>21</sup> Office for Foreigners website, available at <https://udsc.gov.pl/cudzoziemcy/obywatele-panstw-trzecich/chce-przedluzyc-swoj-pobyt-w-polsce/zezwozenie-na-pobyt-czasowy/dzialalnosc-gospodarcza/>.

**sufficient financial means** to meet in the future or is taking efforts to meet the following conditions, in particular the ones contributing to the growth of investment, technology transfer, innovations or creation of work positions:

- 1) to generate **income** in an amount **not lower than 12-fold of the average monthly wage in the voivodeship in which this entity is established or domiciled** (wage in the third quarter of the year preceding the submission of the application, announced by the President of the Central Statistical Office), or
- 2) to **employ** for an indefinite time and on a full-time basis a **minimum of two employees** who are **Polish nationals or foreigners who are entitled to take up employment in Poland** without the need to obtain work permit, or

The Polish legislation does not explicitly indicate which business types (e.g. sole proprietorship, limited company, joint-stock company, etc.) foreigners may set up. Article 142(2) and (3) of the Act on Aliens states that the temporary residence permit for conducting a business activity can **also** be issued to foreigners conducting the business activity in one of the following legal forms:

- limited partnership,
- limited-stock partnership,
- joint stock company,
- limited liability company,

as well as to those foreigners joining such companies or purchasing shares or stocks in them.

From this wording, it can be concluded that no other legal forms, different from those listed above, are available to foreigners who obtained a temporary residence permit for conducting business activity, namely unlimited company, partnership and individual business activity (self-employment). This is also confirmed by the wording of Article 4(3) of the Act of 6 March 2018 on the Rules for the Participation of Foreign Entrepreneurs and other Foreign Entities in the Course of Trade on the territory of the Republic of Poland<sup>22</sup> (see Section VI of this Report for details)<sup>23</sup>.

In the case of purchasing shares in the limited liability company or stocks in the joint stock company, there are no specific rules applicable to foreigners, hence the general rules set out in the Code of Commercial Companies<sup>24</sup> apply.<sup>25</sup> It should be noted in this context that, in accordance with Article 3e of the Act on the Purchase of Real Estate by Foreigners,<sup>26</sup> an authorization of the Minister for Internal Affairs is required for the purchase by a foreigner of shares or stocks in a company if the company is the owner or a perpetual user of a real estate property on the territory of Poland and by the purchase of the shares or stocks the company will become a controlled company (i.e. foreigners will have more than 50% of votes at the shareholders' meeting or at the general meeting).

In addition, in light of Article 142(3) of the Act on Aliens, the temporary residence permit can also be issued to foreigners whose purpose of stay in Poland is to perform work by:

- **holding a position in the management board** of a limited liability company or a joint stock company that the foreigner created or whose shares or stocks acquired,

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<sup>22</sup> Act of 6 March 2018 on the rules for the participation of foreign entrepreneurs and other foreign entities in the course of trade on the territory of the Republic of Poland (*Ustawa z dnia 6 marca 2018 r. o zasadach uczestnictwa przedsiębiorców zagranicznych i innych osób zagranicznych w obrocie gospodarczym na terytorium Rzeczypospolitej Polskiej*), Official Gazette of 30 March 2018, available at <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20180000649>.

<sup>23</sup> Information gathered through consultation with national stakeholder (Ministry of Interior Affairs and Administration, Statement of 23 May 2018 no DAiPM-WSNPA-052-34/2018).

<sup>24</sup> Act of 15 September 2000 the Code of Commercial Companies (*Ustawa z dnia 15 września 2000 r. Kodeks spółek handlowych*), State Gazette Dz.U. 2000 r. Nr 94, poz. 1037, available at: <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20000941037>.

<sup>25</sup> For the limited liability company, Art. 151 to Art. 300, for the joint stock company Art. 301- Art. 490.

<sup>26</sup> Act of 24 March 1920 on the Purchase of Real Estate by Foreigners (*Ustawa z dnia 24 marca 1920 r. o nabywaniu nieruchomości przez cudzoziemców*), State Gazette Dz.I 1920, Nr. 31, poz. 178, available at <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19200310178> (last amended in December 2016).

- by running activities of a limited partnership or a limited-stock partnership through a **general partner**, or
- by acting as a **proxy**.

The temporary residence permit for conducting a business activity is **issued by a voivode** (head of voivodeship) appropriate for the place of stay of the foreigner (Article 104 of the Act on Aliens). It is **issued for the period necessary to achieve the purpose of the foreigner's stay** on the territory of the Republic of Poland, **longer than 3 months and for a maximum of three years** (Article 98(2) of the Act on Aliens). According to the general rule of administrative law, an administrative **decision** (thus, also that on a temporary residence permit for conducting a business activity) shall be taken one month from the date of submission of the correct and complete application and, in more complicated cases, within two months from that date (Article 35 of the Code of Administrative Procedure). The application fee and the fee for receiving the temporary residence card amount in total to PLN 390 (approx. EUR 100).

The **reasons for turning-down applications** for all types of temporary residence permits, including those for conducting business activity, are set out in Article 100 of the Act on Aliens. They are the following:

- the **applicant does not meet the requirements** to be granted a temporary residence permit because of the **declared purpose** of the stay, **or the circumstances** that are the basis for applying for the permit **do not justify his/her stay in the territory** of the Republic of Poland for more than 3 months,
- the applicant is **included in a list of foreigners whose stay is undesirable**<sup>27</sup> in the territory of the Republic of Poland,
- the foreigner's data is **included in the Schengen Information System** for the purposes of refusing entry,
- it is **required for reasons of national defence or security or for the protection of public safety and order**,
- in the proceedings for granting a temporary residence permit: (i) the foreigner submitted an **application containing false personal data or false information**, or has attached documents containing such data or information, (ii) the foreigner **testified untruthfully or forged or modified a document** for use as authentic or used as authentic,
- the **foreigner is in arrears with taxes**, except for cases where he obtained legally required exemption or postponement,
- the **foreigner did not refund the costs related to the issuance and implementation of the decision on the foreigner's obligation to return**, when they were covered by the State budget,
- subject to the treatment obligation pursuant to Article 40 paragraph 1 of the Act of 5 December 2008 on Preventing and Combating **Infections and Infectious Diseases** in Humans, **the foreigner does not consent to this treatment**, or
- the **foreigner filed the application during an illegal stay** on the territory of the Republic of Poland or **stays** in this territory **illegally**.

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<sup>27</sup> According to Art. 435 of the Act on Aliens, the following persons are considered as foreigner whose stay is undesired on the Polish territory: 1) a decision about foreigner's return has been issued with an ordered entry ban on the territory of the Republic of Poland or/and other countries of the Schengen area; 2) the foreigner has been sentenced by a valid sentence in: a) the Republic of Poland - for intentional offense or fiscal offense; or b) a state other than the state of the Schengen area - for a crime constituting a crime within the meaning of Polish law, or c) the Republic of Poland or another country in the Schengen area - for offenses for imprisonment of more than one year; 3) entry or stay of the foreigner on the territory of the Republic of Poland is undesirable due to obligations resulting from the provisions of ratified international agreements binding for the Republic of Poland; 4) it is required for reasons of national defence or security or for the protection of public safety and order or the interests of the Republic of Poland; 5) the foreigner, after having been arrested in connection with crossing the border in violation of the law, was transferred to a third country on the basis of an international agreement on the transfer and reception of persons; 6) the foreigner has been transferred to another Member State of the European Union, a member state of the European Free Trade Association (EFTA) or the Swiss Confederation under an international agreement on the transfer and admission of persons.

According to Article 22(1)(a) of the Act on Aliens, **in the case of refusal of the temporary residence permit, the applicant may appeal the decision to the Head of the Office for Foreigners**. According to Article 127 of the Code of Administrative Procedure,<sup>28</sup> an appeal of an administrative decision can be only brought by **a party to the proceedings**. The term party is defined as ‘everyone whose legal interest or obligation is involved in the proceedings or who asks for the action of the authority due to their legal interest or obligation’ (Article 27 of the Code of Administrative Procedure). Hence, only persons whose legal interests or obligations are involved in a case may bring an appeal. **The decision of the Head of the Office for Foreigners may be appealed to the administrative court** in accordance with the provisions of the Law of 30 August 2002 on Proceedings before Administrative Courts.<sup>29</sup>

In the case of refusal of a Schengen visa, an appeal can be brought **Chief of the Border Guard post**, while refusal issued by a consul is re-assessed by the same consul (Article 76 of the Act on Aliens).

## 1.2 COMPETENT AUTHORITIES AND NON-PUBLIC BODIES

An entry **visa for the purpose of conducting a business activity** is issued by:

- **a consul** – in the case of a national visa,
- **a Commander of the Border Guard post** – in the case of a Schengen visa (Article 66 of the Act on Aliens).

The **Chief of the Border Guard Post** is competent to solve any appeals against a decision refusing to issue a Schengen visa, while appeals against decisions on a national visa are dealt with by the same consul who issued them in the first instance (Article 76 of the Act on Aliens)

A **temporary residence permit for conducting a business activity** is issued by a **voivode** (head of voivodeship, there are currently 16 voivodships in Poland) appropriate for the place of stay of the foreigner (Article 104 of the Act on Aliens). Before issuing a decision on granting a temporary residence permit to a foreigner, the voivode shall consult the following public authorities: **the Commander of the Border Guard post, the provincial police Commander, the head of the Internal Security Agency** and, if necessary, the **consul competent for the foreigner's last residence abroad or other authorities**.<sup>30</sup> The purpose of this consultation is providing information whether the entry of a foreigner into the territory of the Republic of Poland and their stay in that territory may pose a threat to the defence or security of the state or the protection of public safety and order. The **Head of the Office for Foreigners** is competent to control and monitor activities of the voivodes in the execution of the Act on Aliens and to deal with appeals against the decisions refusing a temporary residence permit (Article 22 of the Act on Aliens).

According to Article 289 of the Act on Aliens, the following authorities can conduct **ex-post controls** of the **legality of stay** of foreigners on the territory of the Republic of Poland: **Border Guards, Police, voivodes, the Head of the Office for Foreigners and the head of the customs and tax office**.

**No non-public bodies** are involved in processing applications.

The table below summarises the competent authorities per stage of the procedure for the foreigner to enter and stay in Poland for the purposes of conducting a business activity.

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<sup>28</sup> Law of 14 June 1960 Code of Administrative Procedure (*Ustawa z dnia 14 czerwca 1960 r. Kodeks postępowania administracyjnego*), State Gazette Dz. U 1960, Nr. 30, poz. 168, available at <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19600300168>.

<sup>29</sup> Law of 30 August 2002 on Proceedings before Administrative Courts (*Ustawa z dnia 30 sierpnia 2002 r. Prawo o postępowaniu przed sądami administracyjnymi*), State Gazette Dz. U 2002, Nr. 153, poz. 1270, available at <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20021531270>.

<sup>30</sup> No exhaustive list of the ‘other authorities’ is provided; it will depend on the individual circumstances of each case.

Stage of the procedure	Competent authority to issue	Authorities consulted	Competent authority for appeals
Entry – visa (national or Schengen) for conducting a business activity	<ul style="list-style-type: none"> <li>■ a consul – in the case of a national visa,</li> <li>■ a Commander of the Border Guard post – in the case of a Schengen visa</li> </ul>	The authorities to be consulted are those specified in Article 22 of the Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas <sup>31</sup>	A Consul or Chief of the Border Guard Post
Stay - Temporary residence permit for conducting a business activity	Voivode	Consultation with: <ul style="list-style-type: none"> <li>■ Commander of the Border Guard post,</li> <li>■ Provincial police Commander,</li> <li>■ Head of the Internal Security Agency and,</li> <li>■ If necessary, the consul competent for the foreigner's last residence abroad or other authorities.</li> </ul>	Head of the Office for Foreigners (also competent to monitor activity of voivodes in application of the Act on Aliens)
Ex-post checks	N/A	Competent authorities to check the legality of stay of foreigners in Poland: <ul style="list-style-type: none"> <li>■ Border Guards, Police,</li> <li>■ Voivodes,</li> <li>■ Head of the Office for Foreigners,</li> <li>■ Head of the customs and tax office</li> </ul>	N/A

### 1.3 MONITORING OF THE PROCEEDINGS AND THE AUTHORITIES INVOLVED

Currently, there is **no cap** for issuing temporary residence permits for conducting a business activity. However, **as of 1 January 2019**, a new Article 142a of the Act on Aliens will enter into force whereby the Minister competent for internal affairs in agreement with the Minister competent for labour and the Minister competent for economy may specify, by regulation, the **limits of temporary residence permits for conducting a business activity granted in a given calendar year to foreigners whose purpose of stay in Poland is to perform work** by: (i) holding a position in the management board of a limited liability company or a joint stock company that the foreigner created or whose shares or stocks acquired, or (ii) by running activities of a limited partnership or a limited-stock partnership through a general partner, or (iii) by acting as a proxy. Those limits may cover individual voivodeships, types of profession or contracts under which the foreigner may be entrusted with work, or types of activity of an

<sup>31</sup> Regulation(EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code), OJ L 243, 15 September 2009, p.1-58, available at <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32009R0810>. Art. 22 refers to the consultation with the central authorities of other Member States.

entity entrusting work to the foreigner. In the Regulation, the Minister competent for internal affairs shall take into account the needs of the labour market, considerations of state security and public order, and the principle of complementarity of employment of foreigners in relation to Polish citizens (Article 142a(2) of the Act on Aliens).<sup>32</sup> The reaching of the limits will be announced in the Official Journal of Laws (Article 142a(3) of the Act on Aliens).

**Voivodes and the Head of Office for Foreigners are obliged to collect and register information about all applications**, relevant documents and **decisions taken** with regards to temporary residence permits (Article 429(1) point 2) of the Act on Aliens). However, no targeted scrutiny mechanism by the Office for Foreigners or any other public body on the number of applications for temporary residence permits for conducting business activity exists at the moment. It is expected that such a mechanism could be established when the new Article 142a of the Act on Aliens will enter into force<sup>33</sup>.

#### 1.4 INFORMATION ON APPLICATIONS

**The Polish legislation does not require public disclosure of information about successful applicants for temporary residence permits for conducting a business activity.** The **information about applications, relevant documents and decisions taken** with regards to temporary residence permits in general (without specifying their purpose) must be registered by the competent voivodes and the Head of the Office for Foreigners (Article 429(1) point 2 of the Act on Aliens). This data is **also entered in the National Register of Foreigners** (Article 449(2) point 1 of the Act on Aliens) and may be disclosed only to a limited number of public institutions or persons executing public tasks (Article 450 of the Act on Aliens).

There is no statistical information concerning the number of applications filed for residence permits for conducting a business activity, the number/percentage of applications that are successful and the number/percentage of applications which are turned down. **The only statistics that are available (on the website of the Office for Foreigners)**<sup>34</sup> **concern temporary residence permits in general, without the breakdown by different types of those permits** (there are currently 13 different types of temporary residence permits, depending on the intended purpose of stay of the applicant)<sup>35</sup>.

According to the statement issued by the Ministry of Interior Affairs and Administration dated 6<sup>th</sup> June 2018, in 2016, 1745 Third country foreigners applied for a temporary residence permit for the purpose of conducting a business activity and the permit was issued in 770 cases. In 2017, the number of such applications increased to 1843 and the permits were issued in 1600 cases. In 2018, 619 Third country foreigners applied for a temporary residence permit for the purpose of conducting a business activity and the permit was issued for 536 persons.<sup>36</sup>

#### 1.5 INFORMATION ON APPLICATIONS BY FAMILY MEMBERS

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<sup>32</sup> This amendment was introduced by Act of 24 November 2017 amending the Act on Aliens and certain other Acts (*Ustawa z dnia 24 listopada 2017 r. o zmianie ustawy o cudzoziemcach oraz niektórych innych ustaw*), State Gazette Dz.U. 2018 poz. 107, available at <http://dziennikustaw.gov.pl/du/2018/107/1>.

<sup>33</sup> Information gathered through consultation with national stakeholder (Ministry of Interior Affairs and Administration, Statement of 23 May 2018 no DAiPM-WSNPA-052-34/2018).

<sup>34</sup> Office for Foreigners website, available at <https://udsc.gov.pl/statystyki/raporty-okresowe/zestawienia-roczne/>.

<sup>35</sup> Types of permits: Permanent residence and work permit, Temporary residence permit for highly qualified employment, Temporary residence permit for work within the framework of an intra-corporate transfer, Temporary residence permit for foreigners on the territory of the Republic of Poland for the purpose of using mobility, Temporary residence permit for the purpose of work by a foreigner delegated by a foreign employer on the territory of the Republic of Poland, Temporary residence permit for conducting business activity, Temporary residence permit for the purpose of studying, Temporary residence permit for conducting research, Temporary residence permit for members of families of citizens of the Republic of Poland.

<sup>36</sup> Information gathered through consultation with national stakeholder (Ministry of Interior Affairs and Administration, Statement of 6 June 2018 no DAiPM-WSNPA-052-34/2018).

Article 159 of the Act on Aliens provides the **conditions for issuing a temporary residence permit for a family member of a foreigner that had obtained a temporary residence permit for conducting a business activity** in Poland (the sponsor). The **requirements** are the following:

- regarding the **sponsor**:
  - to have been granted the **temporary residence permit** for a period of stay no shorter than one year; and
  - to **have stayed for at least two years in Poland**, including immediately before submitting an application for the temporary residence permit of a family member;
- regarding the **family member**:
  - to have **health insurance** financed from public funds or confirmation by the insurer of coverage of treatment costs on the territory of the Republic of Poland (Article 159(1) point 1) of the Act on Aliens),
  - to have a **source of stable and regular income** sufficient to cover the costs of living for the family member and their dependent family members (Article 159(1) point 2) of the Act on Aliens),
  - to have **secured a place to stay** in the territory of the Republic of Poland (Article 159(1) point 3) of the Act on Aliens).

In accordance with Article 159(3) of the Act on Aliens, the following **persons** are **considered as family members**:

- a person married to a foreigner and the marriage is recognised by the law of the Republic of Poland;
- a minor child of a foreigner and his/her spouse, including an adopted child, or of either of the two when only one exercises the parental authority (or has custody).

The **application is submitted** by a **foreigner residing in the territory** of the Republic of Poland (Article 168(1) of the Act on Aliens). The competent authorities to receive, verify the fulfilment of the requirements and issue the permit are the same as those in Section II.1.2 of this Report. In accordance with Article 105 of the Act on Aliens, **the application must be submitted by the foreigner in person**. Since one of the requirements is that the sponsor has already been for two years in Poland, the application cannot be submitted at the same time as when the foreigner applies for the temporary residence permit for conducting a business activity.

The temporary residence permit is issued for a family member **until the date on which the validity of the temporary residence permit granted to the sponsor expires** (Article 162(1a) point 1) of the Act on Aliens).

No statistical information on successful applications for residence permits for family members of foreigners that obtained a residence permit for conducting business activity is available. The Ministry of Interior Affairs and Administration informed, in its statement of 23 May 2018, that the lack of such statistical information is due to ‘systemic limitations’ and in specific is caused by the wording of Article 159 of the Act on Aliens which ‘applies to all legal basis for granting temporary residence permits and is not limited only to the purpose of conducting business activity’. In addition, the Ministry of Interior Affairs and Administration stated that ‘obtaining such data would require a manual analysis of the administrative files’<sup>37</sup>.

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<sup>37</sup> Information gathered through consultation with national stakeholder (Ministry of Interior Affairs and Administration, Statement of 23 May 2018 no DAiPM-WSNPA-052-34/2018).

## 2 TYPE OF INVESTMENT<sup>38</sup>

Polish legislation does not require an initial disbursement of money to apply for a temporary permit for conducting a business activity. However, Article 142(1) point (3) of the Act on Aliens does require that the entity in which the foreigner invests or through which the foreigner carries out the business activity in Poland must contribute to the growth of investment, technology transfer, innovations or creation of work positions. The Table below includes the information on these investments. The first row includes general information applicable to either type of investment. The information in rows A and B refers to the corresponding specific type of investment.

Type of investment required	Applicability of financial threshold	Procedure to verify the fulfilment of the investment criterion	Competent authorities and non-public bodies
Polish legislation does not require an initial disbursement of money	N/A	<p>The catalogue of the documents/evidence to be submitted by the foreigner is not legally prescribed and open, meaning that documents other than those listed in rows A and B below may be requested, depending on the specific circumstances of each case.</p> <p>The applicant should provide all necessary documentation together with the application form. However, in the course of administrative proceedings, the foreigner may be called to deliver other documents or to submit testimonies which confirm circumstances referred to in the application.<sup>39</sup></p>	<p>Voivodes are the only competent authorities involved in checking the fulfilment of the criteria in the procedure to issue or reject to issue a temporary residence permit for conducting a business activity (Article 104 of the Act on Aliens). Each Voivode Office has a dedicated department (Department of Foreigners' Affairs) that deals with applications for temporary residence permits and checks the fulfilment of the relevant criteria.<sup>40</sup></p> <p>According to Article 22(4) of the Act on Aliens, the Head of the Office for Foreigners is competent to control and monitor activities of the voivodes in the execution of the Act on Aliens. The legislation does not prescribe the frequency of checks –it is determined annually by the Office for Foreigners.<sup>41</sup> For example, in year 2018, three voivodes will be controlled in their execution of activities related to the Act on Aliens.<sup>42</sup></p>

<sup>38</sup> For the purposes of this Table, the term ‘investment’ covers any pecuniary disbursement required as part of the process for obtaining residence under the investors’ residence scheme.

<sup>39</sup> Business-related immigration - Admitting third-country nationals to Poland for business purposes’, Report produced by the National Contact Point to the European Migration Network in Poland, Warsaw 2015, p. 24, available at: <https://emn.gov.pl/download/74/20941/BiznesowyEN.pdf>; Office for Foreigners website, available at <https://udsc.gov.pl/cudzoziemcy/obywatele-panstw-trzecich/chce-przedluzyc-swoj-pobyt-w-polsce/zezwozenie-na-pobyt-czasowy/dzialalnosc-gospodarcza/>

<sup>40</sup> No information on how the checks are carried out was retrieved from the stakeholder consultation or the desk research.

<sup>41</sup> Office for Foreigners, Control plans, available at <http://bip.udsc.gov.pl/plany-kontroli>.

<sup>42</sup> Office for Foreigners, Control plan for 2018, available at <http://bip.udsc.gov.pl/plany-kontroli/plan-kontroli-na-2018-rok>.



Type of investment required	Applicability of financial threshold	Procedure to verify the fulfilment of the investment criterion	Competent authorities and non-public bodies
<p><b>A. Sufficient financial means</b> to generate in the future or taking efforts to generate <b>income</b> in an amount <b>not lower than 12-fold of the average monthly wage in the voivodeship in which this entity will be established or domiciled</b> (wage in the third quarter of the year preceding the submission of the application, announced by the President of the Central Statistical Office), <b>or</b></p>	<p><b>Income</b> in an amount <b>not lower than 12-fold of the average monthly wage<sup>43</sup> in the voivodeship in which this entity is established or domiciled</b> (wage in the third quarter of the year preceding the submission of the application, announced by the President of the Central Statistical Office),</p>	<p>Documents/evidence to prove that the conditions are fulfilled:<sup>44</sup></p> <ul style="list-style-type: none"> <li>■ deed of a company/ Articles of Association,</li> <li>■ tax statements together with confirmation of their submission in the fiscal office,</li> <li>■ accounting documents confirming the current financial performance of the company,</li> <li>■ balance sheet of the company together with the current profit and loss account,</li> <li>■ income certificate issued by the head of the fiscal office,</li> <li>■ agreements of bank accounts and turnover of funds at these accounts, invoices,</li> <li>■ financial statement of the company,</li> <li>■ employment agreements on the basis of which the workers are employed,</li> <li>■ employees' registering in the Social Insurance) and monthly reports to the Social Insurance,</li> <li>■ foreigner's statement about the employment status,</li> <li>■ employees' payrolls,</li> <li>■ no Dues Tax Office Certificate, no Dues Social Insurance Certificate.</li> </ul>	<p>Same as above.</p>

<sup>43</sup> Average gross monthly wage in Poland is currently (III 2018) PLN 4886.56 (approx. EUR 1220). Information of the Polish Statistical Office available at <https://stat.gov.pl/en/topics/labour-market/working-employed-wages-and-salaries-cost-of-labour/average-paid-employment-and-average-gross-wages-and-salaries-in-enterprise-sector-in-march-2018,3,84.html>.

<sup>44</sup> Business-related immigration - Admitting third-country nationals to Poland for business purposes', Report produced by the National Contact Point to the European Migration Network in Poland, Warsaw 2015, p. 24, available at: <https://emn.gov.pl/download/74/20941/BiznesowyEN.pdf>; Office for Foreigners website, available at <https://udsc.gov.pl/cudzoziemcy/obywatele-panstw-trzecich/chce-przedluzyc-swoj-pobyt-w-polsce/zezwozenie-na-pobyt-czasowy/dzialalnosc-gospodarcza/>

Type of investment required	Applicability of financial threshold	Procedure to verify the fulfilment of the investment criterion	Competent authorities and non-public bodies
<p><b>B. Sufficient financial means</b> to ensure in the future or taking efforts to ensure, <b>full-time, indefinite employment</b> of <b>minimum two employees</b> who are <b>Polish nationals or foreigners who are entitled to take up employment in Poland</b> without the need to obtain work permit</p>	N/A	<p>Documents/evidence to prove that the conditions are fulfilled:<sup>45</sup></p> <ul style="list-style-type: none"> <li>■ business plan,</li> <li>■ documents proving the planned investments: <ul style="list-style-type: none"> <li>- commercial contracts and cooperation contracts made that might cause an increase of revenues as time flows,</li> <li>- lease agreements for office space, warehouses, warehouse stock, machines and vehicles, halls, points of sale,</li> <li>- contracts for accounting services,</li> <li>- contracts for purchasing real property,</li> <li>- partial settlements with tax office,</li> <li>- balance sheets and profit and loss accounts,</li> <li>- employment contracts for the employees already hired and their ZUS registration,</li> <li>- bank agreements for bank loans,</li> <li>- documents confirming that a job offer has been submitted to the poviast employment office,</li> <li>- documents confirming that the share capital was paid or confirming that the company meets its contractual obligations towards partners, e.g. waybills, customs declarations, etc.</li> </ul> </li> </ul>	Same as above.

<sup>45</sup> Business-related immigration - Admitting third-country nationals to Poland for business purposes', Report produced by the National Contact Point to the European Migration Network in Poland, Warsaw 2015, p. 24, available at: <https://emn.gov.pl/download/74/20941/BiznesowyEN.pdf>; Office for Foreigners: <https://udsc.gov.pl/cudzoziemcy/obywatele-panstw-trzecich/chce-przedluzyc-swoj-pobyt-w-polsce/zezwozenie-na-pobyt-czasowy/dzialalnosc-gospodarcza/>

### 3 RESIDENCE PHASE

Residence permit	Procedure	Competent authorities and non-public bodies	Renewal of the residence permit
<p><b>Temporary residence permit</b> for conducting a business activity issued <b>for a minimum of three months and maximum of three years</b> (Article 98(2) and Article 104 of the Act on Aliens)</p>	<p>To be eligible as candidate for a temporary residence permit, the foreigner needs <b>to have a dwelling-place in</b> the territory of the Republic of Poland. The Polish legislation does not provide an exhaustive list of how this requirement is proven. However, documents that can be presented together with the application are e.g. a flat rental agreement, another agreement allowing for the possession of a dwelling, or a statement of a person authorised to manage a dwelling house to provide a foreigner with a place of residence.</p> <p>The applicant should <b>provide all necessary documentation together with the application</b> form. However, during the administrative proceedings for the issuance of the temporary residence permit, the foreigner may be called to deliver other documents or to <b>give testimonies</b> which confirm circumstances referred to in the application. In accordance with Article 105 of the Act on Aliens, <b>the application must be submitted by the foreigner in person</b>. Typically, also the supporting documents and testimonies are to be provided in person, unless otherwise requested by the competent authority.</p> <p>Once the permit has been issued, the Polish legislation <b>does not explicitly require the physical presence in Poland</b> of the foreigner during the duration of the residence permit, hence it can be interpreted that such presence is not mandatory.</p> <p>Section VIII, Chapter I of the Act on Aliens deals with the <b>ex-post control of the legality of stay of foreigners on the territory of the Republic of Poland</b></p>	<p><b>The Department of Foreigners' Affairs</b> of the voivode of the place of residence analyses the application form and <b>the documents provided by the foreigner to prove that he/she has a dwelling-place in the territory of the Republic of Poland</b>.</p> <p>To issue the temporary residence permit for conducting a business activity, the voivode may consult the following competent authorities (Article 109 Act on Aliens):</p> <ul style="list-style-type: none"> <li>■ the commander of the Border Guard unit,</li> <li>■ the provincial police chief,</li> <li>■ the head of the Internal Security Agency and, if necessary,</li> <li>■ the consul competent for the foreigner's last residence abroad or other authorities for providing information whether the entry of a foreigner into the territory of the Republic of Poland and his stay in that territory may pose a threat to the defence or security of the state or the protection of public safety and order.</li> </ul> <p>According to Article 289 of the Act on Aliens, the following authorities can conduct <b>ex-post controls</b> of the legality of stay of foreigners in the territory of the Republic of Poland: <b>Border Guards, Police, voivodes, the Head of the Office for Foreigners and the head of the customs and tax office</b>. These authorities check the documents qualifying as evidence in ex-post controls (see previous column).</p>	<p><b>No renewal procedure</b> is foreseen in the case of temporary residence permits for conducting a business activity. If a foreigner wishes to prolong his/her stay for the purposes of conducting a business activity, they have to <b>apply for a new permit</b> before the validity of the temporary residence permits for conducting a business activity expires (Article 102 and Article 105 of the Act on Aliens). The procedure is the same as for applying for a temporary residence permit for conducting a business activity for the first time.</p>

Residence permit	Procedure	Competent authorities and non-public bodies	Renewal of the residence permit
	<p>to ensure compliance with the conditions of entry and stay set in the law (Article 288(1) of the Act on Aliens). It applies to <b>all foreigners who stay in Poland</b>, hence including also those who obtained a temporary residence permit for conducting a business activity. In accordance with Article 288 of the Act on Aliens, <b>during the period of stay</b> in the territory of the Republic of Poland, <b>a foreigner is obliged to have a valid travel document and documents authorising him to stay</b> in the territory of the Republic of Poland.</p> <p><b>Evidence</b> that may be required by the competent authorities in <b>the ex-post controls</b> (Article 293 Act on Aliens):</p> <ul style="list-style-type: none"> <li>■ <b>travel document and documents entitling the foreigner to stay</b> in the territory of the Republic of Poland;</li> <li>■ <b>financial resources</b> intended to cover the <b>costs of stay</b> in Poland or documents confirming the possibility of obtaining the funds to cover the costs of stay, in accordance with the law;</li> <li>■ <b>documents entitling the foreigner to perform work</b>, do business or entrust work;</li> <li>■ <b>documents confirming the purpose and conditions of the foreigner's stay</b> in the territory of the Republic of Poland (Article 293 of the Act on Aliens).</li> </ul>	<p>As already explained, the Head of the Office for Foreigners is competent to control and monitor activities of the voivodes in the execution of the Act on Aliens (Article 22(4) of the Act on Aliens, see Table on Type of Investment above).</p>	

## 4 DUE DILIGENCE CRITERIA AND SECURITY CONSIDERATIONS

Due diligence and security considerations	Procedure to verify due diligence and security considerations	Competent authorities and non-public bodies	Ex-post checks
<p>Together with the application form for a temporary residence permit for conducting a business activity, the foreigner has to provide information about:</p> <ul style="list-style-type: none"> <li>his <b>detention</b>, placing him in a guarded centre or in custody for foreigners, prohibition from leaving the country or serving a penalty of imprisonment; or temporary arrest (Article 106 point 13 of the Act on Aliens)<sup>46</sup></li> <li>on the <b>foreigner's obligations arising from court judgements, court decisions and administrative decisions</b>, including maintenance obligations <b>in the territory of the Republic of Poland or outside that territory</b> (Article 106 point 14 of the Act on Aliens).</li> </ul> <p>As explained in Section II.2 of this Report (Type of Investment) the Polish law does not require an initial disbursement of money but, rather, the generation of income or employment in a future (i.e. after the temporary residence permit is granted). Consequently, <b>no checks on the origin of money are applicable</b>. However, it has to be noted that Polish</p>	<p>The due diligence and security checks are carried out <b>before the temporary residence permit is issued</b> (Article 109 of the Act on Aliens).</p> <p>Basically, these checks consist in verifying that the documentation listed in the first column has been provided together with the application and that such documentation is cross-checked against information that the competent authorities have in their own databases. The relevant information shall be provided <b>within 30 days</b> from the date of submission of the application and, in justified cases, within 60 days. If the information is <b>not provided</b> within the prescribed limit, the requirement to <b>consult other authorities</b> (see column on competent authorities) is deemed to be met (Article 109(2) and (3) of the Act on Aliens).</p> <p>The foreigner may <b>not apply</b> for a temporary residence permit for conducting a business activity if on the day of submission of the application:</p> <ul style="list-style-type: none"> <li>the foreigner is detained, placed in a guarded centre or in custody for foreigners or a preventive measure in the form of a prohibition on leaving the</li> </ul>	<p>Due diligence and security checks are carried out by the <b>voivode</b> in <b>consultation</b> with (Article 109(1) of the Act on Aliens):</p> <ul style="list-style-type: none"> <li>the commander of the Border Guard unit,</li> <li>the provincial police chief,</li> <li>the head of the Internal Security Agency and,</li> <li>if necessary, the consul competent for the foreigner's last residence abroad or other authorities for providing information whether the entry of a foreigner into the territory of the Republic of Poland and his stay in that territory may pose a threat to the defence or security of the state or the protection of public safety and order.</li> </ul>	<p>Section VIII, Chapter I of the Act on Aliens deals with the ex-post control of the legality of stay of foreigners in the territory of the Republic of Poland to ensure compliance with the legal conditions of entry and stay (Article 289(1) of the Act on Aliens).</p> <p>Ex-post controls may include requesting from the foreigner to present in the Office for Foreigners, the Voivode's Office or in other places (e.g. the place of dwelling of the foreigner), inter alia, <b>documents confirming the purpose and conditions of the foreigner's stay</b> in the territory of the</p>

<sup>46</sup> The Act on Aliens does not specify whether the detention, placement in a guarded centre or in custody for foreigners, prohibition from leaving the country or serving a penalty of imprisonment; or temporary arrest are in Poland and/or abroad. The national expert considers that the legislation covers both.

Due diligence and security considerations	Procedure to verify due diligence and security considerations	Competent authorities and non-public bodies	Ex-post checks
<p>legislation observes that the foreigner invests in an existing company (Article 142(2) and (3) of the Act on Aliens). In this case, the <b>general rules on due diligence applying to Polish investors</b> would also apply to the foreigner (in specific those set out in the Code of Commercial Companies<sup>47</sup>).</p>	<p>country is applied to the foreigner (Article 99(1) point (6) of the Aliens Act),</p> <ul style="list-style-type: none"> <li>■ the foreigner is imprisoned or temporarily arrested (Article 99(1) point (7) of the Aliens Act).</li> </ul> <p>In consideration of the due diligence and security criteria, an <b>application</b> for a temporary residence permit is <b>turned down</b> when:</p> <ul style="list-style-type: none"> <li>■ the foreigner is listed in a <b>list of foreigners</b> whose stay is <b>undesirable</b><sup>48</sup> in the territory of the Republic of Poland (Article 100(1) point (2) of the Act on Aliens),</li> <li>■ the foreigner's data is <b>included in the Schengen Information System</b> for the purposes of refusing entry (Article 100(1) point (3) of the Act on Aliens),</li> <li>■ it is required for reasons of <b>national defence or security or for the protection of public safety and order</b> (Article 100(1) point (4) of the Act on Aliens).</li> </ul>		<p>Republic of Poland (Article 293 of the Act on Aliens). This may also cover providing documents related to due diligence and security requirements.</p> <p>During such control the foreigner is requested to provide, typically <b>in person</b>, all requested documents (Article 291 - 293 of the Act on Aliens).</p>

<sup>47</sup> Act of 15 September 2000 the Code of Commercial Companies (*Ustawa z dnia 15 września 2000 r. Kodeks spółek handlowych*), State Gazette Dz.U. 2000 r. Nr 94, poz. 1037, available at: <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20000941037>.

<sup>48</sup> According to Art. 435 of the Act on Aliens, the following persons are considered as foreigner whose stay is undesired on the Polish territory: 1) a decision about foreigner's return has been issued with an ordered entry ban on the territory of the Republic of Poland or/and other countries of the Schengen area; 2) the foreigner has been sentenced by a valid sentence in: a) the Republic of Poland - for intentional offense or fiscal offense; or b) a state other than the state of the Schengen area - for a crime constituting a crime within the meaning of Polish law, or c) the Republic of Poland or another country in the Schengen area - for offenses for imprisonment of more than one year; 3) entry or stay of the foreigner on the territory of the Republic of Poland is undesirable due to obligations resulting from the provisions of ratified international agreements binding for the Republic of Poland; 4) it is required for reasons of national defence or security or for the protection of public safety and order or the interests of the Republic of Poland; 5) the foreigner, after having been arrested in connection with crossing the border in violation of the law, was transferred to a third country on the basis of an international agreement on the transfer and reception of persons; 6) the foreigner has been transferred to another Member State of the European Union, a member state of the European Free Trade Association (EFTA) or the Swiss Confederation under an international agreement on the transfer and admission of persons.

## 5 OTHER CRITERIA

Criterion	Applicable legal provision and implementing act (if applicable)	Procedure	Competent authorities and non-public bodies	Other comments
1) the foreigner has a <b>health insurance</b> financed from public funds or confirmation by the insurer (Polish or foreign) of coverage of treatment costs in the territory of the Republic of Poland),	Article 142(1) point 1) letter a) of the Act on Aliens	<p>This criterion is checked <b>before issuing</b> a temporary residence permit for conducting a business activity (Article 106 of the Act on Aliens).</p> <p><b>Ex-post checks</b> can also be carried out (Article. 293 of the Act on Aliens, for details, see Table in Section II.3 of this Report)</p> <p>The <b>evidence</b> proving that the applicant fulfils this criterion can be, for example, an appropriate certificate from the Social Insurance Institution (ZUS) or an insurance policy (can be Polish or foreign).<sup>49</sup></p> <p>This evidence must be <b>submitted in person</b> by the applicant (Article 105 of Act on Aliens) <b>together with the application form</b> (Article. 106 of the Act on Aliens).</p>	The competent authorities are the same as those explained in Section II.1.2 of this Report (Department of Foreigners' Affairs of the voivode of the place of stay of the applicant in consultation with other authorities and the Head of the Office for Foreigners to control the activities of the voivode in implementing the Aliens Act).	N/A

<sup>49</sup> Office for Foreigners website, available at <https://udsc.gov.pl/cudzoziemcy/obywatele-panstw-trzecich/chce-przedluzyc-swoj-pobyt-w-polsce/zezwolecie-na-pobyt-czasowy/dzialalnosc-gospodarcza/>

Criterion	Applicable legal provision and implementing act (if applicable)	Procedure	Competent authorities and non-public bodies	Other comments
2) a <b>source of stable and regular income</b> sufficient to cover the costs of living for the foreigner and their dependent family members	Article 142(1) point 1) letter b) of the Act on Aliens	The <b>evidence</b> proving that the applicant fulfils this criterion may be an act of appointment to be a member of the Management Board, working contract as a board member, tax declaration concerning the amount of income earned by a foreigner for the last tax year or appropriate certificate from the Social Insurance Institution <sup>50</sup> .  The other aspects of the procedure are as explained above.	As above	N/A
3) the <b>consent of the competent authority to occupy a specific position or to pursue a profession</b> , if the obligation to obtain it results from separate provisions; <sup>51</sup>	Article 142(1) point 1) letter c) of the Act on Aliens	The relevant document through which the consent is granted must be furnished as evidence. <sup>52</sup>  The other aspects of the procedure are as explained in the first row of this table.	As above	N/A

<sup>50</sup> Business-related immigration - Admitting third-country nationals to Poland for business purposes', Report produced by the National Contact Point to the European Migration Network in Poland, Warsaw 2015, p. 24, available at: <https://emn.gov.pl/download/74/20941/BiznesowyEN.pdf>; Office for Foreigners: <https://udsc.gov.pl/cudzoziemcy/obywatele-panstw-trzecich/chce-przedluzyc-swoj-pobyt-w-polsce/zezwozenie-na-pobyt-czasowy/dzialalnosc-gospodarcza/>

<sup>51</sup> Foreigners who apply for a temporary residence permit for conducting a business activity do not need to apply for a work permit. The temporary residence permit already includes the consent of the competent authority herein referred to.

<sup>52</sup> In the case of the temporary residence permit for conducting a business activity, the consent is evidenced by the fact that the permit is issued.



### III. RIGHTS GRANTED BY THE PERMITS

#### 1 RIGHTS GRANTED TO INVESTORS

In accordance with Article 240 of the Act on Aliens, a **residence card** is **issued** to a foreigner who obtained a temporary residence permit, regardless of the purpose of such residence. Thus, foreigners who obtain a temporary residence permit for conducting a business activity are granted a residence card. In light of Article 242 of the Act on Aliens ‘during the period of its validity, the residence card confirms the identity of the foreigner during his stay in the territory of the Republic of Poland and entitles him, together with the travel document, **to repeatedly cross the border** without the need to obtain a visa’.

In light of Article 142(1) and (2) of the Act on Aliens, foreigners who obtained a temporary residence permit for conducting business activity may **run business in selected legal forms**, namely limited partnership, limited-stock partnership, joint stock company, and limited liability company. In addition, they can perform work by: (i) holding a position in the management board of a limited liability company or a joint stock company that they created or whose shares or stocks acquired, (ii) by running activities of a limited partnership or a limited-stock partnership through a general partner and (iii) by acting as a proxy (Article 142(3) of the Act on Aliens).

In Poland, **all persons shall be equal before the law**, shall have the right to equal treatment by public authorities (Article 31 of the Polish Constitution) and the **right to education** (Article 70 of the Polish Constitution). These rules apply also to foreigners.

With regards to the **healthcare**, all persons conducting a business activity in Poland, including foreigners, are obliged to register themselves in the Polish National Health Fund (*Narodowy Fundusz Zdrowia*) and pay a monthly contribution (in 2018 approx. PLN 320, EUR 80)<sup>53</sup>. On these basis, the foreigners have the right to free-of-charge healthcare on the same terms as Polish citizens. The healthcare covers, among others, the following services: 1) basic health care; 2) outpatient specialist care; 3) hospital treatment; 4) psychiatric care and addiction treatment; 5) therapeutic rehabilitation; 6) nursing and caring services as part of long-term care; 7) dental treatment; 8) emergency medical services; 9) palliative and hospice care and 10) health programs (Art. 15 of the Act of 27 August 2004 on health care services financed from public funds<sup>54</sup>).

#### 2 RIGHTS GRANTED TO THE INVESTORS' FAMILY MEMBERS

In accordance with Article 240 of the Act on Aliens, a **residence card** is issued to a foreigner who obtained a temporary residence permit, regardless of the purpose of such residence. As explained above in Section II.1.5 of this report, family members of a foreigner who has obtained a temporary residence permit for conducting a business activity may apply and be granted a temporary residence permit too. Consequently, family members are also issued a residence card once they obtain the said permit. As explained above, with this card and during its term of validity, family members can stay in Poland but also exit and re-enter the Polish territory as many times as they wish (Article 242 of the Act on Aliens).

As explained above, under Article 31 of the Polish Constitution, **all people are equal before the law** and have the right to equal treatment by public authorities. The reference to ‘all people’ includes foreigners, as well as their family members.

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<sup>53</sup> Website of the Polish National Health Fund: <http://www.zus.pl/baza-wiedzy/skladki-wskazniki-odsetki/skladki/wysokosc-skladek-na-ubezpieczenia-spoleczne>

<sup>54</sup> <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20042102135>

With respect to the **right to education**, all children in the school age (including nursery school), who stay on the territory of the Republic of Poland and are foreigners are subject to compulsory public schooling on the terms applicable to Polish citizens (Article 165 of the Act on Education).<sup>55</sup> In case they do not speak Polish or know it at an insufficient level to benefit from education, they have the right to **additional, free-of-charge Polish language learning and preparatory classes** (Article 165 of the Act on Education). No requirement for participating in integration tests or integration courses has been identified.

The investor's family members who obtained a residence card do not receive the **right to work** automatically. To obtain this right, they have to apply for a relevant permit in accordance with general rules set out in Act on Aliens (Articles 114-127 of the Act on Aliens).

The following family members of the foreigners who is registered in the Polish National Health Fund and pays the required contribution have the right to the free-of-charge **healthcare** on the same terms as Polish citizens:

- a child (own child, spouse's child, adopted child, grandson, child whose sponsor is a legal guardian or foster parent) - until they reach 18 years of age or, if they continue their education, until the age of 26; if the child has a decree of a significant degree of disability - without age limit;
- spouse;
- parents, grandparents - if they stay with the sponsor in a shared household.

To make the healthcare services effective for family members, the sponsor must register them in the Polish National Health Fund. The registration of family members does not result in increasing the monthly contribution payed by the sponsor to the Polish National Health Fund.

### 3 OTHER BENEFITS

The Ministry of Interior Affairs and Administration informed, in its statement of 23 May 2018, that **no specific tax or social support systems exist for foreigners who obtained a temporary residence permit for conducting business activity** 'above those implemented in accordance with general rules'.

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<sup>55</sup> Witold, K., 2017, 'The right of foreigners to education in Poland' (*Prawo cudzoziemców do edukacji w Polsce*), available at <https://interwencjaprawna.pl/docs/prawo-do-edukacji-05-2010.pdf>; and Announcement of the Marshal of the SEJM of the Republic of Poland of 10 May 2018 (*Obwieszczenie Marszałka Sejmu Rzeczypospolitej Polskiej*), State Gazette Dz. U. 2017 poz. 59, tj. Dz.U. 2018 poz. 996, available at <http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU20170000059/U/D20170059Lj.pdf>.

#### IV. INTERACTION BETWEEN RESIDENCE AND CITIZENSHIP SCHEMES

According to Article 102 of the Act on Aliens, all temporary residence permits (including those for conducting a business activity) expire ex officio as of the day the foreigner obtains another permit for a temporary residence, a permanent residence permit<sup>56</sup>, a long-term EU residence permit or the citizenship of the Republic of Poland. There is **no specific path for obtaining citizenship** by foreigners who hold a temporary residence permit for conducting a business activity, hence general rules apply established in the Act of 2 April 2009 on Polish citizenship.<sup>57</sup> A **person who has a temporary residence permit cannot directly apply for the Polish citizenship**, as the citizenship can only be granted to persons who have a permanent residence permit, a long term EU residence permit or a right to permanent stay (the latter is applicable only to EU citizens) and reside in Poland for a prescribed period of time (between two and ten years, depending on circumstances) (Article 30 of the Act on Polish Citizenship<sup>58</sup>). Therefore, in order to apply for Polish citizenship, a third-country foreigner who has a temporary residence permit for conducting a business activity must previously obtain a permanent residence permit or a long-term EU residence permit.

Statistical data on the number or percentage of third country nationals who obtained citizenship on the basis of temporary residence permits for conducting a business activity is not available. Only aggregated data on the persons granted citizenship is available, without further distinction on the grounds for granting citizenship.

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<sup>56</sup> Third-country nationals can apply for permanent residence after an uninterrupted stay of 10 years in Poland under a residence permit. This period of 10 years is reduced to three if the third-country national marries a Polish citizen. ‘Uninterrupted stay’ means that the foreigner must physically be present in Poland and that, if there are any periods of absence, none of them sums up to more than six months and that the sum of all periods of absence does not exceed ten months in total, save for exceptional cases. The permanent residence permit grants the holder the right to live in Poland for an indefinite period of time. Source: International Organization for Migration, Polish contact point website, available at <http://www.migrant.info.pl/permanent-residence-permit.html> and <http://www.migrant.info.pl/uninterrupted-stay-constituting-the-basis-for-granting-a-foreigner-a-permanent-residence-permit.html>.

<sup>57</sup> Act of 2 April 2009 on Polish citizenship (*Ustawa z dnia 2 kwietnia 2009 r. o obywatelstwie polskim*), State Gazette Dz. U. 2012 poz. 161, available at <http://prawo.sejm.gov.pl/isap.nsf/download.xsp/WDU20120000161/U/D20120161Lj.pdf>.

<sup>58</sup> *Ibid.*

## V. ECONOMIC AND FINANCIAL EFFICIENCY OF RESIDENCE PERMITS FOR FOREIGN INVESTORS

**Polish law does not establish any mechanism to monitor the economic impact and financial revenues** of investors who have been granted residence under temporary residence permits for conducting a business activity.

There is **no publicly available information** that would allow a determination of whether the residence scheme has met the expectations for which it was created. There are no studies assessing the economic and financial efficiency of the residence scheme. The only studies that have been identified concern foreign investments in Poland in general, without specifying investments by those foreigners who obtained a temporary residence permit.<sup>59</sup>

Furthermore, the lack of disaggregated statistical data on the number of applications for temporary residence permits for conducting a business activity submitted, granted or refused impedes measuring the impact that such permits have had in the Polish economy. No other measurements on job creation or income generated have been retrieved, thus, further hindering an assessment of the economic and financial efficiency of residence permits for foreign investors.

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<sup>59</sup> Polish Statistical Office website, available at <http://stat.gov.pl/obszary-tematyczne/podmioty-gospodarcze-wyniki-finansowe/przedsiębiorstwa-niefinansowe/dzialalnosc-gospodarcza-podmiotow-z-kapitałem-zagranicznym-w-2015-r-4.11.html>; and Polish Investment and Trade Agency website, available at [https://www.paih.gov.pl/polska\\_w\\_liczbach/inwestycje\\_zagraniczne](https://www.paih.gov.pl/polska_w_liczbach/inwestycje_zagraniczne).

## VI. OTHER COMMENTS

The **Act of 6 March 2018 on the Rules for the Participation of Foreign Entrepreneurs and other Foreign Entities** in the Course of Trade on the territory of the Republic of Poland<sup>60</sup>, which entered into force on 30 April 2018, provides that third country nationals who fulfil certain conditions (specified in Article 4(2) of the Act) can take-up and carry out business activity on the same basis as Polish citizens. However, this regulation is considered to be **outside the scope of this report**, as the basis on which those third country nationals can conduct the economic activity are not directly related to the investments they carried out/will carry out in Poland, but to pre-existing conditions they have to fulfil, which concern the already existing links of the foreigners with Poland (e.g. having a permanent residence permit) or a specific status the foreigners must have (e.g. refugee status).

In accordance with Article 4(2) of the above mentioned Act, the following third country nationals can take up and carry out economic activity on the same basis as Polish citizens:

1. they have in the Republic of Poland:
  - a. a permanent residence permit,
  - b. a long-term EU residence permit,
  - c. a temporary residence permit granted for pursuing university studies or in order to connect with the family,
  - d. refugee status,
  - e. subsidiary protection,
  - f. permission to stay on humanitarian grounds or a tolerated stay permit,
  - g. a temporary residence permit and are married to a Polish citizen residing in the territory of the Republic of Poland,
  - h. a temporary residence permit for the purpose of carrying out a business activity, granted due to the continuation of an already established business activity on the basis of an entry in the Central Register and Information on Economic Activity;
2. use temporary protection in the Republic of Poland,
3. have a valid Polish Card (a document confirming belonging to the Polish nation given to individuals who do not have the Polish citizenship or a permission to reside in Poland),
4. are family members joining the citizens who hold a status referred to in point (1) above or staying with them.

In accordance with Article 4(3) of the Act, other foreigners, not listed above, have the right to take up and pursue business only in the form of a limited partnership, limited joint-stock partnership, limited liability company and joint stock company, as well as to join such companies and acquire their shares or stocks, unless international agreements provide otherwise. This regulation is in line with Article 142(2) and (3) of the Act on Aliens (see Section II 1.1. of the report for more details).

The Act of 6 March 2018 on the Rules for the Participation of Foreign Entrepreneurs and other Foreign Entities in the Course of Trade on the territory of the Republic of Poland was adopted in order to merge in one legal act the rules for conducting a business activity by foreigners in Poland, so far regulated in two separate acts, namely the Act of 2 July 2004 on the freedom of economic activity<sup>61</sup>, and the Act of 4 March 2010 on the provision of services on the territory of the Republic of Poland<sup>62</sup>.

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<sup>60</sup> Act of 6 March 2018 on the rules for the participation of foreign entrepreneurs and other foreign entities in the course of trade on the territory of the Republic of Poland (*Ustawa z dnia 6 marca 2018 r. o zasadach uczestnictwa przedsiębiorców zagranicznych i innych osób zagranicznych w obrocie gospodarczym na terytorium Rzeczypospolitej Polskiej*), Official Gazette of 30 March 2018, available at <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20180000649>.

<sup>61</sup> <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20041731807>

<sup>62</sup> <http://prawo.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20100470278>