

Track Changes

POLAND – IP, IT, TMT in 2019

What does H2 2019 hold for businesses in the IP, IT, TMT sectors and what legal and regulatory trends should catch their attention?

CHANGES TO THE POLISH INDUSTRIAL PROPERTY LAW



ENTRY INTO FORCE

On 16 March 2019, an amendment to the Polish Industrial Property Law („**IPL**“) entered into force.



MAIN GOAL

Implementation into Polish law of the provisions of the Directive (EU) 2015/2436 of the European Parliament and of the Council of 16 December 2015 to approximate the laws of the Member States relating to trade marks.



MAIN AMENDMENTS

The new definition of a trade mark opens the field for registering more unconventional characters (e.g., taste, smell, sound and color);

CHANGES TO THE POLISH INDUSTRIAL PROPERTY LAW



MAIN AMENDMENTS

- 1 Simplifying the procedure for registration renewal** - instead of filing a new motion accompanied by a renewal decision of the Polish Patent Office („PPO”) every 10 years, it will now suffice for the trade mark owner to pay a renewal fee. The PPO will send a reminder of the upcoming expiration of a registration to owner;
- 2 Increasing a licensee's rights to defend against an infringer of a licensed trade mark** - If a licensee has not been authorized to enforce a trade mark in its own name in the license agreement or a separate declaration from the rights holder, it will still be able to act against an infringement. According to the new Article 163 section 1² of the IPL, a licensee is authorised to join trade mark infringement proceedings instigated by the rights holder to obtain compensation;
- 3 Additional claims in favor of the right holder in case of trade mark infringement** – The IPL addresses the issue of counterfeiting goods and additional claims protecting a right holder against infringement of their rights. The IPL regulates the issues of packaging, labels, tags, the elements of a product, its protection or authenticity verification, if the trade mark is placed on them and where they could be used in relation to goods in a way that violates the trade mark protection rights.

SPECIALIZED IP COURTS

Work is under way on a draft amendment to the Polish Code of Civil Procedure

WHICH COURTS BE ESTABLISHED?

It is planned to create four departments for intellectual property matters at the District Courts in Gdańsk, Katowice, Poznań and Warsaw, as well as two specialized departments in the Courts of Appeal in Warsaw and Katowice. All newly created bodies will also have the competence to adjudicate on matters relating to community marks and designs, which until now had been decided on an exclusive basis by the faculty of the 22nd District Court in Warsaw. The department in Warsaw will be exclusively competent in all intellectual matters of a "technical" nature (matters of advanced complexity, e.g., regarding computer programs).



MAIN GOAL

The number of cases in the field of intellectual property reaching Polish courts is growing from year to year. Sometimes the matters are very complicated.

The draft amendment provides for the introduction of a whole new chapter on proceedings before intellectual property courts in the Code of Civil Procedure.

Particularly noteworthy is the appearance of three new procedural institutions: protection of evidence, disclosure or the release of evidence and a request to provide information. It is intended to be a package of three mutually complementary legal measures.



ENTRY INTO FORCE

Work on the amendment is proceeding at an extremely fast pace - the proposed date of entry into force is 1 January 2020.

IP BOX



ENTRY INTO FORCE

The amendment of tax bills containing a CIT and PIT tax relief for innovations, i.e., IP box, entered into force on 1 January 2019.



INNOVATION BOX

Innovation Box (known as Patent Box, Intellectual Property Box or IP Box) is a tax incentive for Polish and foreign enterprises to carry out research and development („R&D”) work in Poland and commercialize their results.



MAIN AMENDMENT

The innovation box introduced a reduced tax rate for qualified income of 5%. Qualified income is specifically defined as adjusted income from the commercialization of IP rights or royalties and the sale of these rights.



MAIN PURPOSES OF THE POLISH IP BOX REGIME

- retaining and increasing the attractiveness of conducting R&D activity by Polish and foreign entrepreneurs,
- encouraging new/potential entrepreneurs to undertake R&D activity in Poland,
- changing the economic model into a knowledge-based economy, and
- creating high-quality jobs in innovative/R&D sectors in Poland



On 15 July 2019, The Ministry of Finance published tax explanations regarding the IP BOX:
<https://www.gov.pl/web/finanse/objasnienia-podatkowe-dot-preferencyjnego-opodatkowania-dochodow-wytwarzanych-przez-prawa-wlasnosc-intelektualnej-ip-box>

NEW LEGISLATION REGARDING DATA PROTECTION



ENTRY INTO FORCE

In April, the President of Poland signed the Act of 21 February 2019 on amending certain acts in connection with ensuring the application of the Regulation (EU) 2016/679 („**Amending Act**“). This act entered into force on 4 May 2019.



MAIN GOAL

By implementing this act, a number of changes have been introduced to the Polish legal system with the aim to ensure a more complete and more efficient application of the provisions of the Regulation (EU) 2016/679 („**GDPR**“).



MAIN AMENDMENTS

- In addition to the Act of 10 May 2018 on the protection of personal data, it has become necessary to make numerous changes to other laws. Due to the number and nature of changes necessary to introduce, and in the interest of ensuring a consistent approach, the Polish Parliament decided to make them under a separate Amending Act. The purpose of the act was to adapt the Polish legal system to GDPR, including by deleting provisions that are contrary to GDPR or that reproduce GDPR solutions.
- This Act has introduced special changes to over 160 existing sectoral acts, including the Labor Act, Tax Ordinance, the Public Procurement Law, the Investment Funds Act, the Payment Services Act and the Telecommunications Law.

ANNOUNCEMENT OF THE PRESIDENT OF THE PERSONAL DATA PROTECTION OFFICE



On July 8, 2019, the Announcement of the President of the Personal Data Protection Office („**UODO**“) of June 17, 2019 on the list of types of personal data processing operations requiring assessment of the effects of processing for their protection was published in Monitor Polski.



PLEASE NOTE

- According to art. 35 para. 4 of GDPR, the supervisory body establishes and publishes a list of types of processing operations subject to the requirement for an impact assessment on data protection.
- The published list contains 12 categories of types of processing operations with examples of operations in which there is a high risk of violation of rights or freedoms and examples of potential areas covering these operations may occur.
- This list has been updated taking into account the opinion issued by the European Data Protection Board and also covers processing operations related to offering goods or services to data subjects or monitoring their behavior in several Member States or which could significantly affect the free flow of personal data within the European Union.



LINK

http://monitorpolski.gov.pl/MP/2019/666?fbclid=IwAR0fh3NIXR5YZFhjERPLtTYRcigdV1_ieHJk0g-yiStjFt3gayVYApsmbB0

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