

**Polska**



# Securing business: property rights

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On 22nd August 2001, a new Industrial Property Law came into force.

This replaced the four previous items of legislation (Laws on Inventive Activity, Trade Marks, Integrated Circuit Patents and on the Patent Office). The new legislation does not significantly change the regulations applied to industrial and commercial intellectual property rights.



### Patent legislation

**Poland is a member of the Stockholm Text of the Paris Convention on the Protection of Industrial Property.** Since 1990 Poland has also been a signatory to the Patent Cooperation Treaty. The Industrial Property Law regulates the protection of inventions by patents and utility models. Applications are filed with the Polish Patent Office. Polish patent attorneys must represent foreign applicants.

**Registered patents are valid for 20 years from the date of filing.** The protection right of a utility model is valid for 10 years. To keep a patent or protection right in force annuities are to be paid. Patents were granted after an examination as to whether an invention is new, involves original research and is commercially viable.

**Important amendments to the Industrial Property Law came into force** on November 30, December 1, 2015 and April 15, 2016. The most significant issue of the inspection system applied when gaining protection before the Patent Office. According to the new appeal system, the Patent Office will only conduct formal and legal examination and exclusive check of the absolutely indispensable premise for providing protection. Therefore, it will not refuse ex officio to grant protection law with respect to a registered trademark on account of a conflict with prior laws, including conflict with trademarks not being in use in Poland. Business entities whose rights use protection must therefore monitor new registrations so as to verify whether the registered right does not contravene theirs, and - if need be - timely submit an appeal against registration of the right by another entity.

**Furthermore, also important is the introduction of the so-called letters of consent.** So far, the Patent Office of the Republic of Poland has been refusing protection right for trademarks identical or similar to ones existing before (registered or filed for) even in the event of consent on the part of the entity entitled to the prior right. The amendment enables registration of a trademark similar to one issued before on condition that the entity that owns the rights to the trademark issued earlier concedes in writing that the subsequent trademark can be registered.

**As far as inventions are concerned, the amendment introduces the so-called grace period, ensuring protection of an invention against its lawless disclosure.** In the previous state of law, the absolute premise for granting a patent for an invention is, among others, the solution meeting the criterion of novelty, meaning that patent protection for an invention that was revealed before the date of its being filed is impossible. Thanks to the “grace period”, the filing party will be able to receive their patent despite prior disclosure of the invention by third parties, up to 6 month within its disclosure.

A utility model is to be new and useful and to relate to the shape, construction, or arrangement of an object that has a durable form. Applications are published 18 months from the priority date.

**The patent or protection right of a utility model gives the owner the exclusive right to exploit the invention on the territory of Poland while it is valid.** This exclusive right cannot, however, be abused specifically by applying prohibited monopolistic practices. In particular, patent rights will not apply where its exploitation by a third party is necessary to satisfy a domestic market need. Also specifically, when the public interest requires so and supply and/ or quality of the product concerned is insufficient, and/or its price is unduly inflated. This provision, however, does not apply in the first three years following patent registration.

**Abusing patent rights as well as preventing or eliminating a state of national emergency may be reason enough to apply for a compulsory license.** There are no special terms on licenses for this. The owner of a patent or exclusive license has the right to sue for an injunction on account of profits and/or damages. Criminal penalties are foreseen for false marking and infringement. Marking products with a patent number are commonly used but not obligatory.



## Trademarks

**Poland is a member of the Madrid Agreement** (Madrid Agreement Concerning the International Registration of Marks) on the registration of trademarks and the prevention of false or deceptive indications of a source of goods. Since 1991 Poland has also been a member of the Madrid Agreement on the international registration of trademarks. It became a member of the Protocol for this Agreement in the spring of 1997. The following kinds of mark may be registered:

- trademark,

- service mark,
- collective mark,
- mutual quality assurance trademark.

**A registered trademark is valid for 10-years from the date of filing unless it is proved that the mark has not been used for five consecutive years.** The registration may be renewed for the next 10-years period. In the case of infringement, the proprietor or licensee can take legal steps. Protection is extended to names of geographical places and regions, where the name refers to a specific locality or area associated with a particular product and where there is a particular characteristic of the product associated with the name. Foreign applicants have to be represented by a local patent agent in Poland.



### Copyrights

**Copyrights in Poland are protected by the Law on Copyrights and Rights** in relation to 4th February 1994, which was substantially revised in June 2000. The new law meets contemporary international standards and corresponds to the principles of free trade in intellectual property.

**The scope of copyright protection has been considerably broadened of late.** The new law covers not only the protection of traditionally understood author's rights, but also related rights. The law provides for new rights and new owners of those rights. They are now able to decide how the outcome of their work is to be used and are able to derive financial benefits from this outcome. The new owners include producers of sound and video recordings, TV channels, radio stations and artistperformers. The new law provides the protection of intellectual property in the area of science, technology and manufacturing, including computer programs and industrial designs, etc. The protection mechanism of computer software is similar to that used in EU countries.

**The law also provides for a general compensation mechanism of losses incurred by authors, performers, and producers due to uncontrolled mass reproduction for personal use** (at home). Producers and importers of VCRs, tape recorders, other audio and video equipment, as well as clean tapes, CDs, etc., must pay a surcharge to the artists, performers and manufacturers.

**The new law gives ground for more efficient procedures for enforcing copyright protection.** Illegally obtained benefits may be confiscated and returned to the true owner. The law also envisages penalties for infringement of intellectual property rights by fines and even prison sentences for up to five years.

**The new legislation has considerably strengthened copyright protection in Poland.** It has also contributed to curtailing piracy. Meeting international standards in intellectual rights protection creates appropriate conditions for foreign investments making use of property rights.

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Source: Polish Investment and Trade Agency, *Poland your business Partner. Invest in Poland, 2016.*



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