DUE-DILIGENCE IN CONSTRUCTION

Andrzej Foremny
Ewa Karasińska
Arnab Mukherjee
Paweł O. Nowak
Piotr R. Nowak
Dariusz Okolski
Jerzy Rosłon
Jolanta Sobotka
Stanisław Więckowski

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DUE-DILIGENCE
IN CONSTRUCTION

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Reviewers of the monograph:
Prof. DSc. PhD. Eng. Aniela Glinicka
Prof. DSc. PhD. Eng. Włodzimierz Martinek
Prof. DSc. PhD. Eng. Waclaw Szcześniak
Prof. DSc. PhD. Eng. Artur Zbiciak

Editors of the monograph:
PhD. Eng. Mariola Książek,
MSc. Eng. Jerzy Rosłon

Cover design:
PhD. Eng. Paweł Nowak

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oficyna@wpw.pw.edu.pl
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This manual is part of the Construction Managers’ Library – a set of books related to the wide area of management in construction. The books were created within the Leonardo da Vinci (LdV) projects No: PL/06/B/F/PP/174014; 2009-1-PL1-LEO05-05016 and 2011-1-PL1-LEO05-19888, entitled: “COMMON LEARNING OUTCOME FOR EUROPEAN MANAGERS IN CONSTRUCTION, phases I, II and III – CLOEMC”). Warsaw University of Technology, Civil Engineering Faculty, Department of Construction Engineering and Management was the Promoter of the Projects.

The following organisations were Partners in the CLOEMC I Project:
- Association of Building Surveyors and Construction Experts (Belgium),
- Universidad Politécnica de Valencia (Spain),
- Chartered Institute of Building Ireland (Ireland),
- Polish Association of Building Managers (Poland),
- Polish British Construction Partnership Sp. z o.o. (Poland),
- University of Salford (Great Britain),
- Chartered Institute of Building (Great Britain).

The objective of this project was to create first, seven manuals conveying all the information necessary to develop civil engineering skills in the field of construction management.

The following manuals have been developed in CLOEMC I (in the brackets you will find an estimate of didactic hours necessary for mastering the contents of a given manual):
M1: PROJECT MANAGEMENT IN CONSTRUCTION (100),
M2: HUMAN RESOURCE MANAGEMENT IN CONSTRUCTION (100),
M3: PARTNERING IN CONSTRUCTION (100),
M4: BUSINESS MANAGEMENT IN CONSTRUCTION ENTERPRISE (100),
M5: REAL ESTATE MANAGEMENT (100),
M6: ECONOMY AND FINANCIAL MANAGEMENT IN CONSTRUCTION (240),
M7: CONSTRUCTION MANAGEMENT (100).

The manuals created for the purposes of the library are available in three languages: Polish, Spanish and English. The manuals may be used as didactic materials for students of postgraduate courses and regular studies in all three languages. Graduates from the courses will receive a certificate, which is recognized by all organisations – members of the AEEBC, association of construction managers from over a dozen European countries.
Polish representative in the AEEBC is the Polish Association of Building Managers, in Warsaw.

Partners of the CLOEMC II project were:
- Technische Universität Darmstadt (Germany),
- Universida de do Minho (Portugal),
- Chartered Institute of Building (Great Britain),
- Association of European Building Surveyors and Construction Experts (Belgium),
- Polish British Construction Partnership (Poland),

Within the second part of the project the following manuals were developed:
M8: RISK MANAGEMENT (130)
M9: PROCESS MANAGEMENT – LEAN CONSTRUCTION (90),
M10: COMPUTER METHODS IN CONSTRUCTION (80),
M11: PPP PROJECTS IN CONSTRUCTION (80),
M12: VALUE MANAGEMENT IN CONSTRUCTION (130),
M13: CONSTRUCTION PROJECTS – GOOD PRACTICE (80),

The manuals were prepared in four languages: Polish, Portuguese, German and English.

Partners of the CLOEMC III project were:
- Technische Universität Darmstadt (Germany),
- Universida de do Minho (Portugal),
- Chartered Institute of Building (Great Britain),
- Thomas More Kempen University (Belgium),
- Association of European Building Surveyors and Construction Experts (Belgium),
- Polish Association of Building Managers (Poland),

Within the third part of the project the following manuals were developed:
M14: DUE-DILIGENCE IN CONSTRUCTION (100),
M15: MOTIVATION AND PSYCHOLOGY ASPECTS IN CONSTRUCTION INDUSTRY (100),
M16: PROFESSIONALISM AND ETHICS IN CONSTRUCTION (100),
M17: SUSTAINABILITY IN CONSTRUCTION (100),
M18: HEALTH AND SAFETY IN CONSTRUCTION (100),
M19: MANAGING BUILDING PATHOLOGY AND MAINTENANCE (100).
The manuals were prepared in five languages: Polish, Portuguese, German, French and English.

The scope of knowledge presented in the manuals is necessary in activities of managers - construction engineers, managing undertakings in the conditions of the modern market economy. The manuals are approved by the European AEEBC association as a basis for recognising manager qualifications. Modern knowledge in the field of management in construction, presented in the manuals, is one of prerequisites to obtain EurBE (European Building Expert) cards, a professional certificate documenting the qualification level of a construction manager in EU. The manuals are designated for managers - construction engineers, students completing postgraduate studies “Management in construction” and students completing construction studies. Postgraduate studies are a recognised program, and graduates receive certificates recognised by 17 national organisations, members of AEEBC.

More information:
- about the project: www.leonardo.il.pw.edu.pl
- about the EURBE CARD: www.aeebc.org
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CHAPTER 1

INTRODUCTION - LEARNING OUTCOMES

(P. O. NOWAK, S. WIĘCKOWSKI)

This manual presents chosen aspects of due diligence, as the process of checking the status of construction company in terms of its purchase, acquisition or planned possible partnership.

Chapter 2 presents basic information about construction companies, on the basis of one of the oldest legal and industrial system – the British one. Types of businesses are presented, with special attention given to the most popular type in construction industry – limited liability company. Ways of setting up the company (documents and responsibilities), as well as running a limited company with legal, social and financial responsibilities are described.

Chapter 3 is related to governance and control of the company by different types of authorities, who gather information about the company, information which in many cases become publicly available (important in case of running the due diligence process).

Chapter 4 shows methods, which could be used for assessment of construction company not only for purpose of purchase/acquisition or merger, but also in case of proper company for partnership choice. Chapter 4 presents and discusses prequalification criteria and shows several mathematical models for impartial, quantitative assessment (like methods based on PERT or ANP models). Second part of the chapter 4 is related to technical due diligence (how to check material resources of the company, with examples based on Polish law). Third part of chapter 4 is related to human resources analysis in construction company (what issues related to the company staff should be considered during due diligence, like remuneration systems, accidents at work, etc.). Final part of chapter 4 is related to legal due diligence of construction company (i.e. checking the contracts, intellectual property rights).

Chapter 5 is related increasingly important issues of checking the status and policies of the construction company in terms of environment protection and sustainability (with examples from British construction industry, but related to legal regulations in majority of EU countries).
Chapter 6 discusses elements of company development prognoses, especially in terms of fixed assets assessment, which are a property of construction company, being the subject of due diligence (properties like warehouses, office building, lands, etc.). Risks related to the purchase and then ownership of such properties is presented.

Chapter 7 presents case study related to environmental due diligence. Finally, in this chapter, the reader will find so called “corporate tax glossary” with explanation of terms, usually used during the due diligence process.
CHAPTER 2

BASIC INFORMATION ABOUT CONSTRUCTION COMPANY

(A. MUKHERJEE, P. R. NOWAK)

2.1 LEGAL STRUCTURE FOR A NEW BUSINESS IN THE UNITED KINGDOM

2.1.1 Overview

You must choose a business structure when you start a business. The structure you choose will define your legal responsibilities, like:

- the paperwork you must fill in to get started
- the taxes you’ll have to manage and pay
- how you can personally take the profit your business makes
- your personal responsibilities if your business makes a loss

2.1.2 Types of business

Most businesses in the UK are:

- sole traders
- limited companies
- business partnerships

If you’re setting up a small organisation like a sports club or a voluntary group and don’t plan to make a profit, you can form an ‘unincorporated association’.

There are also social enterprises – legal structures which are specific to businesses that help people or communities.

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1 Information distilled from various regulatory authorities – see references at the end of the chapter.
Sole trader
You’re a sole trader if you’re running your own business as an individual. You can keep all your business’ profits after you’ve paid tax on them.

You can take on staff - ‘sole trader’ means you’re responsible for the business, not that you have to work alone.

Legal responsibilities
You’re personally responsible for:

• any losses your business makes
• bills for things you buy for your business, like stock or equipment
• keeping records of your business’ sales and spending

How to set up as sole trader
You must register with HM Revenue & Customs (HMRC) as soon as you can after starting your business.

If you register later than 5 October in your business’ second tax year, you could be charged a penalty.

Example
If you start up as a sole trader during tax year 2013 to 2014, you must register before 5 October 2014.

Sole traders’ tax responsibilities
You must:

• send a Self Assessment tax return every year
• pay Income Tax on the profits your business makes
• pay National Insurance

You must also register for VAT if you expect your business’ takings to be more than £77,000 a year.

Limited company
A limited company is an organisation that you can set up to run your business.

It’s responsible in its own right for everything it does and its finances are separate to your personal finances.

Any profit it makes is owned by the company, after it pays Corporation Tax. The company can then share its profits.
Ownership
Every limited company has ‘members’ - people or organisations who own shares in the company.

Directors are responsible for running the company. Directors often own shares, but they don’t have to.

Legal responsibilities
There are many legal responsibilities involved with being a director and running a limited company.

Most limited companies are ‘limited by shares’.

This means that the shareholders’ responsibilities for the company’s financial liabilities are limited to the value of shares that they own but haven’t paid for.

Example
A company limited by shares issues 100 shares valued at £1 each when it’s set up. Its 2 shareholders own 50 shares each and have both paid in full for 25 of these.

If the company goes bust, the maximum the shareholders have to pay towards its outstanding bills is £50 - the value of the remaining 25 shares that they’ve each not paid for.

Company directors aren’t personally responsible for debts the business can’t pay if it goes wrong, as long as they haven’t broken the law.

Other types of company
Most companies are private companies limited by shares. There are 3 other types.

Private company limited by guarantee
Directors or shareholders financially back the organisation up to a specific amount if things go wrong.

Private unlimited company
Directors or shareholders are liable for all debts if things go wrong.

Public limited company
A Public Limited Company differs from the much more common Private Limited Company primarily in that it can offer its shares to the public, although many PLCs are effectively privately owned until they become listed on either the London Stock Exchange or the Alternative Investments Market AIM.
There is no obligation for a PLC to offer its shares to the public nor indeed to become a listed company. It is also possible to convert a Private Company to a Public Company and vice versa. Many companies that have become listed PLCs started life as Private Limited Companies.

Key Points:

- A PLC is the only type of company that can offer its shares to the public
- Can be listed on the Stock Exchange
- Can undertake any nature of business
- Can operate anywhere in the world
- Shareholders have limited liability
- Can be incorporated in most circumstances within hours
- Own choice of name
- High initial capital commitment

Special Conditions:

- A PLC must have a minimum issued capital of £50,000
- At least 25% (£12,500) of this minimum must be fully paid up before the Registrar of Companies can issue a Certificate for Commencement of Trading. This Certificate must be issued before the company commences any business transactions.
- A PLC must have at least two directors
- A PLC must have a Company Secretary who has the necessary professional qualification

2.1.3 How to set up a limited company

You must set up the company with Companies House and let HM Revenue & Customs (HMRC) know when the company starts business activities.

Every financial year, the company must:

- put together statutory accounts
- send Companies House an annual return
- send HMRC a Company Tax Return

The company must register for VAT if you expect its takings to be more than £77,000 a year.
If you’re a director of a limited company, you must:

- fill in a Self Assessment tax return every year
- pay tax and National Insurance through the PAYE system if the company pays you a salary

'Ordinary' business partnership

In a business partnership, you and your business partner (or partners) personally share responsibility for your business.

You can share all your business’ profits between the partners. Each partner pays tax on their share of the profits.

Partnerships in Scotland (known as ‘firms’) are different, and have a ‘legal personality’ separate from the individual partners.

Legal responsibilities

You’re personally responsible for your share of:

- any losses your business makes
- bills for things you buy for your business, like stock or equipment

If you don’t want to be personally responsible for a business’ losses, you can set up a limited partnership or limited liability partnership.

A partner doesn’t have to be an actual person. For example, a limited company counts as a ‘legal person’, and can also be a partner in a partnership.

2.1.4 How to set up as a business partnership

You must choose a ‘nominated partner’. This is the partner who will be responsible for keeping business records and managing tax returns.

Registration for the nominated partner

The nominated partner must register the partnership with HM Revenue & Customs. When they do this, they will automatically register personally for Self Assessment.

Registration for other partners

You must register for Self Assessment to pay your personal tax and National Insurance on your share of the partnership’s profit as soon as possible after you start trading.
If you register the partnership or individual partners later than 5 October in your business’ second tax year, you could be charged a penalty.

**Example**
If you start a partnership or become a partner during tax year 2012 to 2013, you must register before 5 October 2013.

**Partnerships’ tax responsibilities**
The nominated partner must:
- send a partnership Self Assessment tax return every year

All the partners must:
- send a personal Self Assessment tax return every year
- pay Income Tax on their share of the partnership’s profits
- pay National Insurance

The partnership will also have to register for VAT if you expect its takings to be more than £77,000 a year.

**Limited partnership and limited liability partnership**

**Limited liability partnerships**
The partners in a limited liability partnership aren’t personally liable for debts the business can’t pay. Their liability is limited to the amount of money they invest in the business.

Limited liability partnerships are most often set up by professional services firms, like solicitors or accountants.

The Companies House website has information about how to set up a limited liability partnership.

**Limited partnerships**
The liability for debts that can’t be paid in limited partnerships is unequally shared by its partners. This means:
- ‘general’ partners can be personally liable for all the partnerships’ debts
- ‘limited’ partners are only liable up to the amount they initially invest in the business

The Companies House website has information about how to set up a limited partnership.
Tax for limited liability and limited partnerships

Every year, the partnership must send a partnership Self Assessment tax return to HM Revenue & Customs (HMRC).

All the partners must:

- send a personal Self Assessment tax return every year
- pay Income Tax on their share of the partnership’s profits
- pay National Insurance

You must also register the partnership for VAT if you expect your business’ takings to be more than £77,000 a year.

Unincorporated association

An ‘unincorporated association’ is an organisation set up through an agreement between a group of people who come together for a reason other than to make a profit, e.g. a voluntary group or a sports club.

You don’t need to register an unincorporated association, and it doesn’t cost anything to set one up.

This isn’t a legal structure, so the association won’t be recognised by the law. Individual members are personally responsible for any debts and contractual obligations.

Employing staff for the first time

There are 6 things to do when employing staff for the first time.

1. Decide how much you need to pay someone - you must pay your employee at least the National Minimum Wage (NMW).
2. Check if someone has the legal right to work in the UK. You may have to do other employment checks as well.
3. Get employment insurance - you need employers’ liability insurance as soon as you become an employer. It must cover you for at least £5 million and come from an ‘authorised insurer’ - you can find one online.
4. Send details of the job (including terms and conditions) in writing to your employee. If you’re employing someone for more than 1 month, you need to give them a written statement of employment within their first 2 months.
5. Tell HM Revenue & Customs (HMRC) by registering as an employer - you can do this up to 4 weeks before you pay your new staff.
6. Give staff a pay statement showing deductions you have made for things like tax, National Insurance and student loan repayments.

2.2 STARTING A COMPANY OR ORGANISATION AND CORPORATION TAX

When you set up a new company or organisation you must tell HM Revenue & Customs (HMRC) if it's liable for Corporation Tax, pay any Corporation Tax due and file a Company Tax Return on time. HMRC Corporation Tax requirements are separate to what your company needs to do for Companies House.

2.2.1 New companies and organisations and Corporation Tax

When you set up a new company or organisation that's liable for Corporation Tax you must:

- tell HMRC your company or organisation is 'active' within three months of starting business activity
- pay any Corporation Tax that's due on time and electronically
- file a Company Tax Return online for each Corporation Tax accounting period

2.2.2 Registering your new company at Companies House

A limited company comes into existence when it is incorporated or 'registered' at Companies House. Limited companies must file certain documents with Companies House when they are first set up and on an ongoing (normally annual) basis. These Companies House requirements are separate to what your company needs to do for HMRC for Corporation Tax purposes.

Companies House tells HMRC when any limited company is formed and registered with them. But if you use the Companies House Web Incorporation Service and your company is 'active' at the time you incorporate it, for example it has started trading or receiving income, you can choose
to supply the statutory information you need to give HMRC when you become active at the same time.

HMRC uses the information they receive from Companies House to set up a computer record for your company and allocates it a reference number known as a Unique Taxpayer Reference (UTR). They then send form CT41G (Corporation Tax - Information for New Companies) to your company's registered office. This form includes your company's UTR so please keep it safe as you will need it to contact HMRC. It also tells you what you need to do if your company has become 'active' and suggests other tax implications your company may need to consider.

It's important that you read form CT41G carefully and take any action that's needed promptly. The following sections cover the main things you need to do and when.

2.2.3 Telling HMRC your new limited company is active

You must tell HMRC that your company is active for Corporation Tax purposes within three months of starting business activity. The easiest way to tell HMRC that your limited company is active and has started its first accounting period is online using either of the following:

- the joint registration facility contained within the Companies House Web Incorporation Service
- HMRC's online registration service

Please note: You must have a separate Government Gateway account (User ID and Password) for each company that you want to register with HMRC for Corporation Tax. This will allow HMRC to automatically enrol the company for CT Online once your registration application has been processed.

You can also use the HMRC online service to:

- supply the statutory information you need to give HMRC when your company became active, if you were unable to or chose not to supply it using the Companies House service
- register your company for PAYE (Pay As You Earn) or VAT at the same time (see the following section)
- change your company's abbreviated name - HMRC computer records can't store names longer than 56 characters (letters and spaces) and you may prefer a different one to what HMRC has chosen
What happens next?
HMRC will update their computer records to reflect the additional information you have provided. They will then write to you to confirm your company's deadline dates for paying Corporation Tax electronically and submitting Company Tax Returns online.

If you used HMRC's online service, your company will be automatically enrolled for Corporation Tax Online. You will receive an Activation Code (or PIN) by post - within seven days of your registration being verified. Please keep this code secure so that no one else can access your online services. When you receive this code you must activate the online service immediately.

If you used the Companies House registration service, or chose to provide information about your company to HMRC in writing, you need to enrol for and activate Corporation Tax Online separately. You won't be able to submit your Company Tax Return online, or use any other features of the online service, until you do this.

If you used the Companies House registration service, you still need to set up and activate Corporation Tax Online. You won't be able to submit your Company Tax Return online, or use any other features of the online service until you do this.

2.2.4 Registering for other HMRC taxes
You company may also need to register for other taxes such as PAYE as an employer and VAT.

Your company is an employer for its directors and staff. As an employer, you must deduct PAYE tax and National Insurance contributions (NICs) from your directors/employees' pay each pay period and pay employer's Class 1 NICs if they earn above a certain threshold.

You may need to register the company for VAT if the annual turnover is more than the VAT threshold and submit a VAT Return. You can also choose to register it for VAT voluntarily.

If you're a company director, you will usually need to complete a Self Assessment tax return to tell HMRC about your own income and expenses.

New clubs, societies, associations and Corporation Tax
The various requirements to tell HMRC that a company is liable for Corporation Tax, pay any Corporation Tax due and file a Company Tax Return online
and on time also apply to members' clubs, Community Amateur Sports clubs, societies, associations and some other unincorporated bodies.

If your organisation is liable for Corporation Tax you must tell HMRC. HMRC need to know some information about your organisation and this is shown on form CT41G (Clubs) (see below). You must provide this to HMRC regardless of whether you have already given it to another HMRC tax area such as PAYE, or another body such as the Charity Commission.

After you tell HMRC your organisation is liable for Corporation Tax, they will send you a form CT41G (Clubs) which will contain your company's UTR. Please complete then return this form to your Corporation Tax Office.

But HMRC does not normally ask clubs and societies with 'very small tax liabilities' (known to HMRC as 'small' clubs) to file a Company Tax Return. Subject to certain conditions, HMRC may treat your organisation as dormant for Corporation Tax purposes. If you are unclear about your club or society's Corporation Tax position you should ask your Corporation Tax Office for advice.

Using an accountant to deal with HMRC

You can appoint an accountant or tax adviser - known to HMRC as an agent - to deal with HMRC on your behalf when you start a new company or organisation and for all your other Corporation Tax affairs. For example, your agent can tell HMRC your company is active on your behalf. Ask your agent about this if you wish to know more.

Record keeping for Corporation Tax

If your company or organisation is liable for Corporation Tax, you must keep and retain adequate business and accounting records to file an accurate Company Tax Return and calculate how much Corporation Tax you need to pay.

2.2.5 Who is liable for Corporation Tax

Limited companies and some organisations are liable for Corporation Tax.

If your company or organisation is liable for Corporation Tax, you have to do more than just pay the correct amount of Corporation Tax each year. What you need to do depends on whether your company or organisation is 'active' (for example, carrying on business, trading, or receiving income) or 'dormant' (for example, not active, not carrying on business, or not trading).
Who is subject to Corporation Tax requirements?
The following limited companies and unincorporated organisations are subject to Corporation Tax requirements:

- limited companies incorporated in the UK
- foreign-based companies with a permanent place of business in the UK
- members' clubs, such as social clubs, sports clubs and holiday clubs
- societies, such as friendly societies and provident societies
- associations, such as housing associations and trade associations
- co-operatives
- other unincorporated associations
- groups of individuals carrying on a business that is not a partnership
- charities, or companies that are subsidiaries of - or wholly owned by - a charity
- NHS foundation trusts if they are carrying out significant commercial activities that are not part of core health care delivery, such as running a commercial laundry

The taxable profits or surpluses of these businesses and organisations are subject to Corporation Tax requirements.

A company or organisation subject to Corporation Tax requirements is known to HMRC for Corporation Tax purposes as being 'within the charge to Corporation Tax', 'chargeable to tax' or in 'the charge to tax'.

Who is not subject to Corporation Tax requirements?
Businesses and organisations that are not subject to Corporation Tax requirements include:

- sole traders - one-person businesses that are not operating through a limited company
- traditional partnerships
- limited liability partnerships (LLPs)
- local authorities
- local authority associations
- investment clubs
- allotment and garden societies
- health service bodies
- London Organising Committee of the Olympic Games Ltd and the International Olympic Committee
If your business or organisation is not subject to Corporation Tax, you don't need to meet Corporation Tax deadlines and requirements. This doesn't mean your business is exempt from all taxes as you may have to complete a Self Assessment return.

What activities are exempt from Corporation Tax?
HMRC uses the term 'exempt' to refer to certain activities carried out by organisations that are otherwise subject to Corporation Tax requirements. These include:

- trading profits generated by charities where those profits arise from, and are applied to, charitable purposes
- profits from any fundraising events run by charities or voluntary organisations provided that those profits are applied to charitable purposes

HMRC defines charitable purposes as carrying out the primary purpose of the charity and/or directly serving the beneficiaries of the charity.

Other activities exempt from Corporation Tax include:

- agricultural exhibitions or shows if the agricultural society that's running them uses any profits solely for the purposes of the society
- the sale of permanent health insurance or sickness insurance by a friendly society
- non-commercial activities connected with core health care delivery undertaken by NHS foundation trusts

2.2.6 Deadlines and requirements for Corporation Tax
If your company or organisation is liable for Corporation Tax, you must tell HM Revenue & Customs (HMRC) that it's liable, pay any Corporation Tax that's due and file a Company Tax Return on time. You may have to do this even if your company or organisation is not active or is dormant or has no Corporation Tax to pay. If you don't, your company or organisation may have to pay a penalty or may be charged interest.
Deadlines for telling HMRC your company or organisation is active

Limited companies

Starting up a new limited company that's active

HMRC sends a newly formed limited company form CT41G (Corporation Tax - Information for New Companies) within a few days of the company being registered at Companies House. This form is usually sent by post to your company's registered office. However, even if you don't receive this form you must still tell HMRC within three months of your company becoming active, for example by starting business activity or starting to trade. The best way to do this is to use HMRC's online service.

Starting up a new limited company that's not yet active

If your new limited company is dormant - in other words, it's not yet active, carrying on business activity, or trading - you'll need to tell HMRC if your company becomes active within three months of it happening. The best way to do this is to use HMRC's online service.

When an existing limited company becomes dormant

If your company stops trading or is not active, you need to tell your Corporation Tax Office, as soon as possible, in writing, that your company is dormant. HMRC will send your company a 'Notice to deliver a Company Tax Return' for the period up to the date your company became dormant. From the date your company becomes dormant, HMRC will stop treating your company as active and you won't receive unnecessary correspondence.

Starting up an organisation that's active

Organisations that are not registered at Companies House - for example members' clubs, Community Amateur Sports clubs or associations - must also tell HMRC that they are active but there are some exceptions.

When a dormant company or organisation becomes active

If your limited company or organisation was dormant and is now active, you must tell HMRC. The best way to do this is to use HMRC's online service.

Alternatively you can provide the information about your company to HMRC in writing.
Your Corporation Tax payment is due before your Company Tax Return

Unlike Income Tax Self Assessment or VAT, where the dates for filing returns and making payments are usually the same, the deadline for paying Corporation Tax is **before** the deadline for filing your Company Tax Return.

**Deadlines for paying Corporation Tax**

Your Corporation Tax payment deadline is known as the 'normal due date'. Your actual payment deadline can vary depending on how much taxable profit your company or organisation makes.

All companies and organisations must pay their Corporation Tax electronically.

**Payment deadlines if your company or organisation's taxable profits are £1.5 million or less**

If your company or organisation has taxable profits of up to £1.5 million, you must pay your Corporation Tax by the normal due date, which is **nine months and one day** after the end of your Corporation Tax accounting period. For example, if your company's accounting period ends on 31 May, your Corporation Tax payment is due on or before 1 March the following year.

**Payment deadlines if your company or organisation's taxable profits are more than £1.5 million**

If your company's profits for an accounting period are at an annual rate of more than £1.5 million, you must normally pay your Corporation Tax for that period in instalments.

**Payment deadlines for groups of companies**

If you operate a group of companies, you can nominate one of them to pay Corporation Tax on behalf of all of them.

**What happens if you don't pay your Corporation Tax on time?**

If you pay late your company or organisation will be charged interest on what you owe. You may want to manage your cash flow and file your Company Tax Return early taking this into account.

**Deadlines for filing your Company Tax Return**

You must normally file your company or organisation's Company Tax Return - which includes a Company Tax Return form and other supporting documentation - **within 12 months** of the end of your company or organisation's Corporation Tax accounting period. Your Company Tax Return filing deadline is known as your 'statutory filing date'.
If you file your return late your company or organisation will be charged an automatic penalty, even if it does not owe any Corporation Tax.

Virtually all companies and organisations must submit their Company Tax Returns **online. Additionally** your tax computations and, with very few exceptions, the accounts that form part of your Company Tax Return, must be submitted in Inline eXtensible Business Reporting Language (iXBRL) format.

### 2.2.7 VAT Overview

You must register for VAT with HM Revenue & Customs (HMRC) if your business turnover is more than £77,000. You can register voluntarily if it’s below this.

When you register, you’ll be sent a VAT registration certificate. This confirms:

- your VAT number
- your ‘effective date of registration’ - the official date you’re registered for VAT
- when to send your first VAT Return and payment to HMRC

**Your VAT responsibilities**

From the effective date of registration you:

- must charge the right amount of VAT
- can reclaim the VAT you’ve paid on your purchases
- must pay any VAT due to HMRC
- must send VAT Returns
- must keep VAT records and a VAT account

You should also keep your VAT registration details up to date - eg if the goods or services you supply change, bank details change or business address changes.

You can’t charge or show VAT on your invoices until you get a VAT number.

**VAT registration thresholds**

The thresholds for registering for VAT or joining a VAT accounting scheme.
VAT thresholds

<table>
<thead>
<tr>
<th>Circumstance</th>
<th>Threshold</th>
</tr>
</thead>
<tbody>
<tr>
<td>VAT registration</td>
<td>£77,000 or more</td>
</tr>
<tr>
<td>Registration for distance selling into the UK</td>
<td>£70,000 or more</td>
</tr>
<tr>
<td>Registration for bringing goods into the UK from the EU (known as ‘acquisitions’)</td>
<td>£77,000 or more</td>
</tr>
<tr>
<td>Completing simplified EC Sales List*</td>
<td>£72,500 or less and supplies to EU countries £11,000 or less</td>
</tr>
</tbody>
</table>

*All VAT-registered businesses in the UK must provide HMRC with details of goods and certain services supplied to a VAT-registered customer in another EU country. You submit the details on what's known as an ESL.

This contains details of:
- your customer
- the relevant country code
- the value of the goods and/or services

VAT accounting scheme thresholds

Flat Rate Scheme

Usually, how much VAT a business pays or claims back from HM Revenue & Customs (HMRC) is the difference between the VAT they charge customers and pay on their purchases.

With the Flat Rate Scheme:
- you pay a fixed rate of VAT over to HMRC
- you keep the difference between what you charge your customers and pay over to HMRC
- you can’t reclaim the VAT on your purchases - except for certain capital assets over £2,000

Cash Accounting Scheme

Usually, the amount of VAT you pay HM Revenue & Customs (HMRC) is the difference between your sales invoices and purchase invoices. You have
to report these figures and pay any money to HMRC even if the invoices haven’t been paid.

With the Cash Accounting Scheme you:
- pay VAT on your sales when your customers pay you
- reclaim VAT on your purchases when you have paid your supplier

**Annual Accounting Scheme**

Usually, VAT-registered businesses send their VAT Returns and payments to HM Revenue & Customs 4 times a year.

With the Annual Accounting Scheme you:
- make advance VAT payments towards your VAT bill - based on your last return (or estimated if you’re new to VAT)
- send 1 VAT Return a year

When you send your VAT Return you either:
- make a final payment - the difference between your advance payments and actual VAT bill
- apply for a refund - if you’ve overpaid your VAT bill

The scheme wouldn’t suit your business if you regularly reclaim VAT because you’ll only be able to get 1 refund a year (when you send the VAT Return).

<table>
<thead>
<tr>
<th>VAT accounting scheme</th>
<th>Threshold to join scheme</th>
<th>Threshold to leave scheme</th>
</tr>
</thead>
<tbody>
<tr>
<td>Flat Rate Scheme</td>
<td>£150,000 or less</td>
<td>More than £230,000</td>
</tr>
<tr>
<td>Cash Accounting Scheme</td>
<td>£1.35 million or less</td>
<td>More than £1.6 million</td>
</tr>
<tr>
<td>Annual Accounting Scheme</td>
<td>£1.35 million or less</td>
<td>More than £1.6 million</td>
</tr>
</tbody>
</table>

There are different thresholds for other schemes like the VAT Retail schemes. The threshold is based on your VAT taxable turnover - the total of everything sold that isn’t VAT exempt.
2.3 RUNNING A LIMITED COMPANY

2.3.1 Directors' responsibilities

As a director of a limited company, the law says you must:

- try to make the company a success, using your skills, experience and judgment
- follow the company’s rules, shown in its articles of association
- make decisions for the benefit of the company, not yourself
- tell other shareholders if you might personally benefit from a transaction the company makes
- keep company records and report changes to Companies House and HM Revenue & Customs
- make sure the company’s accounts are a ‘true and fair view’ of the business’ finances
- register for Self Assessment and send a personal Self Assessment tax return every year

You can ask other people to manage some of these things day-to-day. For example, an accountant can manage your accounts for you - but you’re still legally responsible for them.

Your company has extra responsibilities if it employs people or its turnover goes above £77,000.

2.3.2 Taking money out of a limited company

As a director of a limited company, you can take money from the company in 3 ways.

Salary, expenses and benefits

If you want the company to pay you a salary, expenses or benefits, you must register the company as an employer with HM Revenue & Customs (HMRC).

The company must take Income Tax and National Insurance contributions from your salary payments and pay these to HMRC, along with employers’ National Insurance contributions.

Dividends

A dividend is a payment a company can make to shareholders if it has made enough profit.
You can’t count dividends as business costs when you work out your Corporation Tax.

Your company mustn’t pay out more in dividends than its available profits from current and previous financial years.

You must usually pay dividends to all shareholders.

To pay a dividend, you must:

- hold a directors’ meeting to ‘declare’ the dividend
- keep minutes of the meeting, even if you’re the only director

**Dividend paperwork**

For each dividend payment the company makes, you must write up a dividend voucher showing the:

- date
- company name
- names of the shareholders being paid a dividend
- amount of the dividend
- the amount of the ‘dividend tax credit’

**Dividend tax credits**

The tax credit means your company and shareholders don’t need to pay tax when the dividend is paid. But shareholders may have to pay tax on it.
Working out the dividend tax credit

To work out the dividend tax credit, divide the dividend amount by 9.

Example

You want to pay a dividend of £900. Divide £900 by 9, which gives you a dividend tax credit of £100. Pay £900 to the shareholder - but add the £100 tax credit and record a total of £1,000 on the dividend voucher.

You must give a copy of the voucher to recipients of the dividend and keep a copy for your company’s records.

Directors’ loans

If you take more money out of a company than you’ve put in - and it isn’t salary or dividend - it’s called a ‘directors’ loan.’

If your company makes directors’ loans, you must keep records of them. There are also some detailed tax rules about how directors’ loans are handled.

2.3.3 Company changes you must report

Changing your company’s registered office address

You must tell Companies House if you want to change your company’s registered office address. If the change is approved, they will tell HM Revenue & Customs (HMRC).

Your company’s new registered office address must be in the same part of the UK that the company was registered (incorporated).

For example, if your company was registered in England and Wales, the new registered office address must be in England or Wales.

Your registered office address won’t officially change until Companies House has confirmed it with you.

Other changes you must report

You must tell Companies House within 14 days if you make changes to:

- where company records are kept
- directors or their personal details, like their address
- company secretaries (appointing a new one or ending an existing one’s appointment)
You must tell Companies House within a month if you issue more shares in your company.

**How to report changes to Companies House**

You can:

- use the Companies House online service
- fill in and send paper forms

**Changes that shareholders must approve**

You may need to get shareholders to vote on the decision if you want to:

- change the company name
- remove a director
- change the company’s articles of association

This is called ‘passing a resolution’. Most resolutions will need a majority to agree (called an ‘ordinary resolution’). Some might require a 75% majority (called a ‘special resolution’).

Companies House has more details about the types of changes and resolutions you must report to them.

Your new company name won’t take effect until it’s registered by Companies House - they’ll tell you when this happens.

**Shareholder voting**

When you’re working out whether you have a majority, count the number of shares that give the owner the right to vote, rather than the number of shareholders.

You don’t necessarily need to have a meeting of shareholders to pass a resolution. If the right amount of shareholders have told you they agree, you can confirm the resolution in writing. But you must write to all shareholders letting them know about the decision.

**Reporting changes to HM Revenue & Customs**

You must tell HMRC if your business’ contact details change.

If you want to get an accountant or adviser to manage your company’s Corporation Tax, you must tell HMRC. You do this on form 64-8, or using Corporation Tax Online.
2.3.4 Company and accounting records

You must keep:

- records about the company itself
- financial and accounting records

Records about the company

You must keep details of:

- directors, shareholders and company secretaries
- the results of any shareholder votes and resolutions
- promises for the company to repay loans at a specific date in the future (‘debentures’) and who they must be paid back to
- promises the company makes for payments if something goes wrong and it’s the company’s fault (‘indemnities’)
- transactions when someone buys shares in the company
- loans or mortgages secured against the company’s assets

You must tell Companies House if you keep the records somewhere other than the company’s registered office address.

Accounting records you must keep

You must keep accounting records that include:

- all money received and spent by the company
- details of assets owned by the company
- debts the company owes or is owed
- stock the company owns at the end of the financial year
- the stocktakings you used to work out the stock figure
- all goods bought and sold
- who you bought and sold them to and from (unless you run a retail business)

You must also keep any other financial records, information and calculations you need to complete your Company Tax Return.

If you don’t keep accounting records, you can be fined £3,000 by HM Revenue & Customs (HMRC) or disqualified as a company director.

How long to keep records

You must normally keep records for at least 6 years from the end of the last company financial year they relate to.
You may need to keep records longer if:

- they show a transaction that covers more than 1 of the company’s accounting period
- the company has bought something that it expects to last more than 6 years, like equipment or machinery
- you sent your Company Tax Return late
- HMRC have started a compliance check into your Company Tax Return

2.3.5 Company annual return

You must send Companies House a company annual return every year, within 28 days of the anniversary of the company’s incorporation.

You can send the company annual return online. It costs £13 to send online.

You can also fill in and send the company annual return on paper using form AR01. It costs £40 if you want to send paper forms.

If you miss the deadline, Companies House can close down your company or prosecute you. You could also be disqualified from being a company director.

What the company annual return includes

It must include details of:

- the company’s registered office address
- what type of business the company runs (e.g. retail, accountancy, catering)
- the address where the company’s list of shareholders is kept
- the type of limited company (e.g. limited by shares, limited by guarantee)
- name and address of all company directors (and company secretary if you have one)
- the number and value of shares issued by the company and who owns them
- where details of ‘debentures’ (a type of loan the company has taken out with a promise to repay at a specific time in the future) are kept
2.3.6 Signs, stationery and promotional material

Signs
You must display a sign showing your company name at your registered company address and wherever your business operates. If you’re running your business from home, you don’t need to display a sign there.

Example
If you’re running 3 shops and an office that’s not at your home, you must display a sign at each of them.

The sign must be easy to read and to see at any time, not just when you’re open.

Stationery and promotional material
You must include your company’s name on all company documents, publicity and letters.

On business letters, order forms, invoices and websites, you must show:

- the company’s registered number
- its registered office address
- where the company is registered (England and Wales, Scotland or Northern Ireland)
- the fact that it’s a limited company (usually by spelling out the company’s full name including ‘Limited’ or ‘Ltd’)

If you want to include directors’ names, you must list all of them.

If you want to show your company’s share capital (how much the shares were worth when you issued them), you must say how much is ‘paid up’ (owned by shareholders).

Company director disqualification
You can be banned (‘disqualified’) from being a company director if you don’t meet your legal responsibilities. You can report someone if you think they should be banned from being a director, or if they’re breaking the conditions of a ban.

You can be disqualified from being a director of a company if an insolvency practitioner or a member of the public reports your conduct as being ‘unfit’.

‘Unfit conduct’ includes:

- allowing a company to continue trading when it can’t pay its debts
- not keeping proper company accounting records
• not sending accounts and returns to Companies House
• not paying tax owed by the company
• using company money or assets for personal benefit

How disqualification works

The Insolvency Service may investigate your company (or you personally as a director of your company) if it’s involved in insolvency proceedings or if there’s been a complaint.

If they think you haven’t followed your legal responsibilities as a director, they’ll tell you in writing:
• what they think you have done that makes you unfit to be a director
• they intend to start the disqualification process
• how you can respond

You can either:
• wait for the Insolvency Service to take you to court to disqualify you - you can defend the case in court if you disagree with the Insolvency Service
• give the Insolvency Service a ‘disqualification undertaking’ - this means you voluntarily disqualify yourself and ends court action against you

You may want to get legal advice if you get a letter about disqualification from the Insolvency Service.

Apart from the Insolvency Service, other bodies can apply to have you disqualified under certain circumstances, for example:
• Companies House
• the Office of Fair Trading
• the Courts
• a company insolvency practitioner

You’re automatically disqualified from being a company director if you’re declared bankrupt or are given a Debt Relief Order.

If you’re disqualified
You will be disqualified for up to 15 years.
You can’t:

- be a director of any company registered in the UK or an overseas company that has connections with the UK
- be involved in forming, marketing or running a company

You could be fined or sent to prison for up to 2 years if you break the terms of the disqualification.

Your details will be kept on Companies House’s database of disqualified directors. Your details will automatically be removed from the database when your disqualification ends.

You must ask a court for permission if you want to be a company director while you’re disqualified. You can get help from a legal adviser.

**Other restrictions**

There are other restrictions if you’re disqualified. For example, you can’t:

- sit on the board of a charity, school or police authority
- be a pension trustee
- become a registered social landlord
- sit on a health board or social care body
- become a solicitor, barrister or accountant

**Report a director or disqualified director**

Contact the Insolvency Service to:

- complain about a director’s conduct
- report a disqualified director if you think they’re breaching the terms of their disqualification

You can be prosecuted and become personally liable for the company’s debts if you carry out company business on the instructions of someone who’s disqualified.

### 2.4 EMPLOYMENT CONTRACTS

#### 2.4.1 Overview

All employees have an employment contract with their employer. A contract is an agreement that sets out an employee’s:

- employment conditions

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• rights
• responsibilities
• duties

These are called the ‘terms’ of the contract.

Employees and employers must stick to a contract until it ends (eg by an employer or employee giving notice or an employee being dismissed) or until the terms are changed (usually by agreement between the employee and employer).

If a person has an agreement to do some work for someone (like paint their house), this isn’t an employment contract but a ‘contract to provide services’.

Accepting a contract

As soon as someone accepts a job offer they have a contract with their employer. An employment contract doesn’t have to be written down.

2.4.2 Contract terms

The legal parts of a contract are known as ‘terms’. An employer should make clear which parts of a contract are legally binding.

Contract terms could be:
• in a written contract, or similar document like a written statement of employment
• verbally agreed
• in an employee handbook or on a company notice board
• in an offer letter from the employer
• required by law (eg an employer must pay employees at least the National Minimum Wage)
• in collective agreements - negotiated agreements between employers and trade unions or staff associations
• implied terms - automatically part of a contract even if they’re not written down

Implied terms

Examples of an implied term include:
• employees not stealing from their employer
• your employer providing a safe and secure working environment
• a legal requirement like the right to a minimum of 5.6 weeks’ paid holidays
• something necessary to do the job like a driver having a valid licence
• something that’s been done regularly in a company over a long time like paying a Christmas bonus

If there’s nothing clearly agreed between you and your employer about a particular issue, it may be covered by an implied term.

2.4.3 Collective agreements
An employer may have an agreement with employees’ representatives (from trade unions or staff associations) that allows negotiations of terms and conditions like pay or working hours. This is called a collective agreement.

The terms of the agreement could include:
• how negotiations will be organised
• who will represent employees
• which employees are covered by the agreement
• which terms and conditions the agreement will cover

2.4.4 Written statement of employment particulars
An employer must give employees a ‘written statement of employment particulars’ if their employment contract lasts at least a month or more. This isn't an employment contract but will include the main conditions of employment.

The employer must provide the written statement within 2 months of the start of employment.

If an employee works abroad for more than a month during their first 2 months’ employment, the employer must give them the written statement before they leave.

What a written statement must include
A written statement can be made up of more than one document (if the employer gives employees different sections of their statement at different times). If this does happen, one of the documents (called the ‘principal statement’) must include as a minimum:
• the business’s name
• the employee’s name, job title or a description of work and start date
• if a previous job counts towards a period of continuous employment, the date the period started
• how much and how often an employee will get paid
• hours of work (and if employees will have to work Sundays, nights or overtime
• holiday entitlement (and if that includes public holidays)
• where an employee will be working and whether they might have to relocate
• if an employee works in different places, where these will be and what the employer’s address is

As well as the principal statement, a written statement must also contain information about:
• how long a temporary job is expected to last
• the end date of a fixed-term contract
• notice periods
• collective agreements
• pensions
• who to go to with a grievance
• how to complain about how a grievance is handled
• how to complain about a disciplinary or dismissal decision

What a written statement doesn’t need to include
The written statement doesn’t need to cover the following (but it must say where the information can be found):
• sick pay and procedures
• disciplinary and dismissal procedures
• grievance procedures

In Northern Ireland, a written statement must explain what the disciplinary rules and procedures are.

Employers can download a template of a written statement of particulars to fill out.

Working abroad
If an employee has to work abroad for more than a month, an employer must state:
• how long they’ll be abroad
what currency they’ll be paid in  
what additional pay or benefits they’ll get  
terms relating to their return to the UK

This information can be given to the employee in a separate document.

An employer may send an employee to another country in the European Economic Area (EEA). In this situation employees must get the terms and conditions that are the legal minimum in that country for:

- working hours and rest breaks
- holiday entitlement
- minimum pay (including overtime)

### 2.4.5 Problems with a written statement

If an employee has a problem receiving their written statement, they could:

1. Try to solve the problem with their employer informally.
2. If this doesn’t work, take out a grievance against their employer (employers can also get advice about handling grievances).
3. Take a case to an employment tribunal as a last resort. In Northern Ireland, a case would be taken to an industrial tribunal.

The tribunal will decide what the employment particulars in the statement should have been.

**Compensation**

If an employee wins a case about another issue (eg unfair dismissal), the tribunal may award compensation if there’s been a problem with their written statement as well.

Compensation can be 2 or 4 week’s pay although there’s a limit on how much a tribunal will award for a week’s pay.
2.5 WORKPLACE BULLYING AND HARASSMENT

Bullying and harassment is behaviour that makes someone feel intimidated or offended - harassment is unlawful under the Equality Act 2010.

Examples of bullying or harassing behaviour could include:

- spreading malicious rumours
- unfair treatment
- picking on someone
- regularly undermining a competent worker
- denying someone’s training or promotion opportunities

Bullying and harassment can happen:

- face-to-face
- by letter
- by email
- by phone

2.5.1 The law

Bullying itself isn’t against the law, but harassment is. This is when the unwanted behaviour is related to one of the following:

- age
- sex
- disability
- gender (including gender reassignment)
- marriage and civil partnership
- pregnancy and maternity
- race
- religion or belief
- sexual orientation
2.5.2 What employees should do if they’re bullied or harassed

Employees should see if they can sort out the problem informally first. If they can’t, they should talk to their:

- manager
- human resources (HR) department
- trade union representative

If this doesn’t work, they can make a formal complaint using their employer’s grievance procedure. If this doesn’t work and they’re still being harassed, they can take legal action at an employment tribunal.

They could also call the Acas (Advisory, Conciliation and Arbitration Service) helpline for advice:

**Acas helpline**
Telephone: 08457 47 47 47
Minicom: 08456 06 16 00

Acas has also produced a guidance leaflet on bullying and harassment.

2.5.3 Employers’ responsibilities

Employers are responsible for preventing bullying and harassment - they’re liable for any harassment suffered by their employees.

Having anti-bullying and harassment policies can help prevent problems. Acas has produced a booklet for employers, including advice on setting up a policy as well as how to recognise, deal with and prevent bullying and harassment.

2.6 BUSINESS TRANSFERS, TAKEOVERS AND TUPE

2.6.1 Overview

When a business changes owner, its employees may be protected under the Transfer of Undertakings (Protection of Employment) regulations (TUPE).
TUPE protection

TUPE applies to employees of businesses in the UK. The business could have its head office in another country, but the part of the business that’s transferring ownership must be in the UK. The size of the business doesn’t matter.

In a transfer where TUPE applies, the employees’:

- jobs transfer over to the new company (unless they’re made redundant or in some cases where the business is insolvent)
- employment terms and conditions transfer
- continuity of employment is maintained

When TUPE applies

There are 2 types of transfer protected under TUPE regulations:

- business transfers
- service provision changes

Public sector transfers aren’t usually covered by TUPE - unless transferring into the private sector. However, public-sector employees get similar protection. Read the guidelines below to find out more.

Business transfers

This is where a business or part of a business moves from one employer to another. This can include mergers where 2 companies close and combine to form a new one.

To be protected under TUPE during a business transfer the identity of the employer must change.

Service provision changes

This is when:

- a service provided in-house (e.g. cleaning, workplace catering) is awarded to a contractor
- a contract ends and is given to a new contractor
- a contract ends and the work is transferred in-house by the former customer

Employees aren’t protected under TUPE if the contract is:

- for the supply of goods for the company’s use (e.g. a restaurant changing food suppliers)
• for a single event or short-term task (e.g. a catering company being used for a large corporate event)

Only the employees who can be clearly identified as providing the service being transferred are protected.

Example

A courier collects and delivers for a business, but the packages are picked up or delivered by a number of different couriers on an ad hoc basis. The courier isn’t protected under TUPE.

A cleaner is employed by a company that decides to use an outside cleaning company instead. They’re likely to be protected under TUPE.

2.6.2 Consulting and informing

Before a transfer of ownership happens, employers must tell the trade union or employee representatives:

• that the transfer is happening, when it’s happening and why
• how the transfer will affect them
• whether there’ll be any reorganisation
• how many agency workers they’re using and what types of work those workers are doing

If employers don’t do this, they can be penalised.

Employers must consult employee representatives about anything to do with the transfer that would affect the employees (e.g. reorganisation). They should try to gain agreement about these changes.

Trade union representatives

If there’s a trade union in the workplace, the employer must inform and consult with the representatives from the union.

Employee representatives

If there’s no trade union the employer must inform and consult other employee representatives. There might already be representatives, or new ones can be specially elected.

If this happens the employer should:

• make sure the election is fair
• decide how many people are needed to represent the interests of everyone affected
• decide if affected employees should be represented as one workforce or in groups
• decide how long the representatives need to be in place

They should also make sure that:
• the employee representatives are people who are affected by the transfer
• no affected employee is unreasonably excluded from standing for election
• all affected employees at the time of the election are entitled to vote
• employees can vote for as many candidates as there are positions to be filled
• if possible, voting is done in secret
• votes are accurately counted

If you’re an employee representative you have the same rights as a trade union representative to help you carry out your role.

### 2.6.3 Transfers of employment contracts

Under TUPE, the new employer takes over employees’ employment contracts, including:

• all the previous terms and conditions of employment
• any failures of the previous employer to observe employees’ rights (so employees could make a claim for discrimination against the new employer, even if it took place before the transfer)
• holiday entitlement
• period of continuous employment - an employee’s start date is the same as before the transfer, so continuous employment isn’t broken
• any collective agreements previously made

If the new employer doesn’t meet the terms of the employment contract, it’s a breach of contract.

**If an employee doesn’t want to work for the new employer**

Employees can refuse to work for the new employer. This is the same as resigning - they won’t normally be able to claim unfair dismissal or redundancy pay.
Notice isn’t required. The employee simply tells the employer, or the new employer, before the transfer happens. Employment then ends at the time of transfer.

If an employee’s working conditions are significantly worse because of the transfer, they can object to the transfer, or resign and claim unfair dismissal.

**Changing an employment contract**

TUPE regulations mean employees shouldn’t lose their existing employment rights.

**Before the transfer**

If the employer knows an employee is transferring to another company, they can’t normally change the employee’s terms and conditions to make them the same as those of the other company - even if the employee agrees to the change.

**After the transfer**

The new employer can’t change an employee’s terms and conditions if the reason is:

- the transfer itself
- connected with the transfer and not an ‘economic, technical or organisational reason’ involving changes in the workforce (eg as a result of redundancies or a move from a managerial to a non-managerial position)

‘Economic’ reasons are to do with how the company is performing.

‘Technical’ reasons are to do with the equipment or processes the company uses.

‘Organisational’ reasons are to do with the structure of the company.

An employer can change an employee’s terms and conditions if the reason isn’t connected to the transfer.

**Positive changes**

Employers can improve employees’ terms and conditions if they agree. For example, they might want to increase the amount of holiday so that it’s the same for everyone.
An employer can’t normally impose changes - they have to be agreed by the employees or their representatives.

**Pension rights**

Employees’ company pension rights earned up to the time of a transfer are protected, but the new employer doesn’t have to continue an identical pension.

**After the transfer**

When the transfer is complete, employees should make sure they get an up-to-date written statement of employment, giving the name of the new employer and saying that their terms and conditions haven’t changed.

Employees might get a P45 if their tax records are being updated.

### 2.6.4 Redundancy

The new employer can’t make employees redundant just because they were transferred from another employer.

If an employee is made redundant for an ‘economic, organisational or technical’ reason involving changes to the workforce, they may be entitled to a redundancy payment.

**Example**

After a transfer, a new employer has to close down part of a company because it’s not performing. This means the business doesn’t need people with a certain specialist skill, and therefore makes an employee redundant. The employee could be entitled to a redundancy payment.

### 2.6.5 Information about employees during transfers

An employer must provide the new employer with information about employees. This normally includes:

- name
- age
- main details of employment
- disciplinary action taken against employees in the last 2 years
- grievances raised by employees in the last 2 years
- legal action taken by employees against the employer in the last 2 years
• potential legal action the employer thinks employees might raise

This information has to be provided at least 2 weeks before the transfer and should help the new employer understand employees’ rights and their duties.

2.6.6 Insolvent businesses

If the employer is insolvent and the business is being transferred or taken over by another company, the protection employees get is different from in a normal transfer.

The employees are unlikely to be protected under TUPE if the business is closing down. However, if it’s being rescued and taken over or transferred, TUPE regulations will normally apply.

If employees are owed money

Employees have rights if their employer is insolvent and owes them money. Employees can claim for this whether they’re protected under TUPE or not.

In a TUPE-protected transfer, the new employer must pay any amount left over after employees have been paid from the government’s National Insurance fund.

Changes to employees’ terms and conditions

Employees’ pay can be reduced or their other terms and conditions changed after the transfer. This is allowed if it will prevent job losses.

Any changes must be agreed with employee or trade union representatives.

Any agreement can’t break statutory employment rights.

For example, employees can’t be paid below the National Minimum Wage.

2.6.7 Employees working abroad

Employees of a UK business who are based outside the UK could still be protected by TUPE.

In business transfers, if a business has an ‘undertaking’ in the UK (eg building, assets, fixtures and fittings, employees) but an employee spends most of the working week outside the UK, it’s likely they’re protected.
In service provision changes, there must be an organised group of employees in England, Scotland or Wales to qualify for TUPE protection.

Example

A team is doing website maintenance under a contract that’s coming to an end and someone else is taking it over:

- if the contract is performed in the UK, but one team member works from home in a country other than England, Scotland and Wales, it’s likely they’re protected
- if the whole team works from home in a country other than England, Scotland or Wales, the members wouldn’t be protected as there’s no organised group of employees in one of those countries

2.6.8 Help and advice

Both employers and employees can get confidential help and advice on employment rights from Acas (the Advisory, Conciliation and Arbitration Service).

Employees can also talk to Citizens Advice or their trade union representative.

For more detailed information, read ‘Employment rights on the transfer of an undertaking’.

Employment tribunals

If an employee feels they have been dismissed unfairly, or feel forced to resign, they may be able to complain to an employment tribunal.

Informing and consulting employees: the law

If an organisation has 50 or more employees, they have a legal right to request that their employer makes arrangements to inform and consult them about issues at work.

The Information and Consultation of Employees (ICE) regulations, mean employees can request a formal agreement if there isn’t one already.

The request must be made by at least 15 employees or 10% of the workforce - whichever number is smaller.

Even if employers don’t have an agreement in place, they still have to consult if they’re planning:

- 20 or more redundancies in a 90-day period
- to sell their business or buy a new one
• certain changes to an occupational or personal pension scheme

**Negotiating an agreement**

Negotiations must start no later than 3 months after a valid request has been made. They can last for up to 6 months, and can only be extended if both the employer and employee representatives agree.

It’s up to the employer and employee representatives to decide what issues will be covered by the agreement. However, it must cover all the employees in the organisation, including new and future employees.

Even if there’s no agreement, the employer must still:

• inform employees about the business’ economic situation
• inform and consult about employment prospects
• inform and consult about substantial changes in work organisation or contracts

**Pre-existing agreements**

If there’s already an agreement in place but 40% or more of the workforce requests a new one, employers must negotiate a new agreement. If more than 10% but less than 40% make the request, employers can hold a ballot for a new agreement.

There’s more information about the regulations on the Acas website (http://www.acas.org.uk) and in the guidance leaflet below.

**European Works Councils (EWCs)**

These are forums for consulting and informing employees about international issues affecting their employer. They apply to businesses that are part of a multinational organisation which operates in at least 2 countries in the European Economic Area (EEA).

The EEA includes:

• all countries in the European Union (EU)
• Norway, Iceland and Liechtenstein

Employees can request a EWC if the organisation has both:

• 1,000 or more employees in total
• at least 150 employees in each of 2 or more EEA states
There are rules about how the requests have to be made, how EWCs should operate and be set up and what EWC agreements should cover in the guidance leaflet below.

2.7 REFERENCES

http://www.hmrc.gov.uk
https://www.gov.uk/
http://www.companyregistrations.co.uk/
CHAPTER 3
GOVERNANCE AND CONTROL
BY AUTHORITIES
(A. MUKHERJEE, P.R. NOWAK)

3.1 CONTEXTUAL ISSUES
A recent report\(^2\) in UK construction highlighted that the industry output contributes some 7% of GDP - more if the whole-life contribution through planning, design, construction, maintenance, decommissioning and reuse, is taken into account. The sector is worth about £110 billion per annum. This comprises three main sub-sectors:

- commercial and social, £49 billion (£20bn public, £29bn private);
- residential, £42 billion (£14bn public, £28bn private); and
- infrastructure, £18 billion (£7bn public, £11bn private).

Refurbishing and improving the existing built stock accounts for about half of this total.

There are, however, significant differences between sectors:

- for commercial and social infrastructure, projects are typically traditional construction with a mix of new build and refurbishment, with most of the public sector spend (on schools, for example) being funded through central Government departments although delivered locally;
- in residential, the public sector has a relatively small new build programme (£4bn) compared to repairs and maintenance (£10bn) – the residential construction markets have different dynamics to other construction markets and most of the public sector delivery is through local authorities; and
- infrastructure is typified by civil engineering works, long overall project durations and major programmes of renewal/maintenance – with 60% of projects costing over £100m

\(^2\)Government Construction Strategy – May 2011, UK Cabinet Office
commissioned by the private sector and a large proportion of the public sector spending being through central Government departments.

The industry is highly fragmented, with over 300,000 businesses (of which 99.7% are SMEs) and over 2 million workers.

In this context, the governance and control exerted by the Authorities remain a subject of much deliberation and discussion.

### 3.2 ORGANISATIONAL STRUCTURE

The organisational structure of the construction sector has some long-standing characteristics as well as an interesting recent history. In response to increasing globalisation and progressive technological change witnessed, organisational forms evolved to cope with new environmental conditions. During this period, major construction companies began to re-engineer their typically diverse portfolio of commercial interests. Many large general construction contractors began to restructure primarily as service and management providers. As the practice of sub-contracting and employment of casual labour became more pronounced, the traditional management of supply networks arguably became dated.

The pressing challenge for newly formed ‘hollowed-out’ construction organisations was to vertically integrate the diverse and complex arrangement of construction service and product providers. Even for the simplest construction projects, project delivery and ultimately corporate success became intertwined with the actions, interaction and commercial transaction of third party participants. In response to this transformation, the spectre of supply chain management in construction became increasingly relevant.

### 3.3 CORPORATE GOVERNANCE

The Building and Construction industry, like every industry, is exposed to investment capital competition, globalisation, investor activism and risk.

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4. The Corporate Governance of Australian Listed Construction Companies: Patrick Tait and Martin Loosemore (Faculty of the Built Environment, University of New South
This means that sound corporate governance is of central importance to its economic, social and environmental performance. More broadly, sound governance in the construction industry is important to society because construction is a key developmental industry with widespread social economic and environmental responsibilities. The industry is charged with creating and maintaining the built environment, which consists of homes, workplaces, schools, hospitals and other public amenities as well as essential infrastructure such as roads, water and electricity and telecommunications essential for our day to day living. In particular, the increasing trend for procurement of public services via public-private partnerships that place the delivery and management of critical public infrastructure and services in private company hands, has brought issues of sound corporate governance to the forefront. PPP projects demonstrate the public significance of the projects being undertaken and the potential implications of poor governance. Chang et al. (2006) investigated the relative compliance of UK listed construction companies with the disclosure requirements of the UK Combined Code compared with the top 50 companies listed in the UK. Their research determined that UK listed construction companies: (1) demonstrated lower levels of disclosure of corporate governance information than the top 50 group, (2) had lower levels of board independence based on the separation of the CEO and chairperson position and independence of directors, and (3) made less use of external consulting services for advice. They noted that the disparity between the construction group and the top 50 group was a concern which could potentially lead to adverse effects on the construction companies’ performance.

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Table below highlights examples of principles that can form core theme of good corporate governance:

<table>
<thead>
<tr>
<th>Lay solid foundations for management and oversight</th>
<th>• Formalise and disclose the functions reserved to the board and those delegated to management</th>
</tr>
</thead>
</table>
| Structure the board to add value | • A majority of the board should be independent directors  
• The chairperson should be an independent director  
• The roles of chairperson and chief executive officer should not be exercised by the same individual  
• The board should establish a nomination which should have a minimum of 3 (majority independent) directors, chaired by the board chairperson or an independent director  
• Provide details of the directors and their other appointments and reasons for non-compliance with any of the recommendations |
| Promote ethical and responsible decision making | • Establish a code of conduct to guide the directors, the chief executive officer (or equivalent), the chief financial officer (or equivalent) and any other key executives as to:  
• the practices necessary to maintain confidence in the company’s integrity  
• the responsibility and accountability of individuals for reporting and investigating reports of unethical practices.  
• Disclose the policy concerning trading in company securities by directors, officers and employees  
• Provide information relating to the company’s ethical requirements |
| Safeguard integrity | • Require the chief executive officer (or equivalent) |

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| in financial reporting | and the chief financial officer (or equivalent) to state in writing to the board that the company’s financial reports present a true and fair view, in all material respects, of the company’s financial condition and operational results and are in accordance with relevant accounting standards  
- The board should establish an audit committee  
- Structure the audit committee so that it consists of: only non-executive directors, a majority of independent directors, and an independent chairperson, who is not chairperson of the board, at least three members. (Best practice would be only independent directors who are all financially literate, with at least one director with financial experience and one with industry knowledge)  
- The audit committee should have a formal charter  
- Provide information about the company’s financial control systems to shareholders and the public |
| --- | --- |
| Make timely and balance disclosure | Establish written policies and procedures designed to ensure compliance with disclosure requirements and to ensure accountability at a senior management level for that compliance  
Provide information required by disclosure rules |
| Respect the rights of shareholders | Design and disclose a communications strategy to promote effective communication with shareholders and encourage effective participation at general meetings  
Request the external auditor to attend the annual general meeting and be available to answer shareholder questions about the conduct of the audit and the preparation and content of the auditor’s report |
| Recognise and manage risk | - The board or appropriate board committee should establish policies on risk oversight and management.  
- The chief executive officer (or equivalent) and the chief financial officer (or equivalent) should state to the board in writing that: |
<table>
<thead>
<tr>
<th>Encourage enhanced performance</th>
<th>Disclose the process for performance evaluation of the board, its committees and individual directors, and key executives</th>
</tr>
</thead>
<tbody>
<tr>
<td>Remunerate fairly and responsibly</td>
<td>Provide disclosure in relation to the company’s remuneration policies</td>
</tr>
<tr>
<td>Remunerate fairly and responsibly</td>
<td>The board should establish a remuneration Committee consisting of a minimum of 3 (majority independent) directors and be chaired by an independent director.</td>
</tr>
<tr>
<td>Remunerate fairly and responsibly</td>
<td>Clearly distinguish the structure of non-executive directors’ remuneration from that of executives; non-executives should not be offered retirement packages or performance bonuses.</td>
</tr>
<tr>
<td>Remunerate fairly and responsibly</td>
<td>Ensure that payment of equity-based executive remuneration is made in accordance with thresholds set in plans approved by shareholders</td>
</tr>
<tr>
<td>Remunerate fairly and responsibly</td>
<td>Provide information about the remuneration of executive and non-executive directors</td>
</tr>
<tr>
<td>Recognise the legitimate interests of shareholders</td>
<td>Establish and disclose a code of conduct to guide compliance with legal and other obligations to legitimate stakeholders such as clients/customers and the community in which it operates</td>
</tr>
</tbody>
</table>

- the statement given in accordance with best practice recommendation (the integrity of financial statements) is founded on a sound system of risk control which implements the policies adopted by the board.
- the company’s risk management and internal compliance and control system is operating efficiently and effectively in all material respects
- Provide information about risk management policies and systems

- Provide information about risk management policies and systems
- Disclose the process for performance evaluation of the board, its committees and individual directors, and key executives

- Provide disclosure in relation to the company’s remuneration policies
- The board should establish a remuneration Committee consisting of a minimum of 3 (majority independent) directors and be chaired by an independent director.
- Clearly distinguish the structure of non-executive directors’ remuneration from that of executives; non-executives should not be offered retirement packages or performance bonuses.
- Ensure that payment of equity-based executive remuneration is made in accordance with thresholds set in plans approved by shareholders
- Provide information about the remuneration of executive and non-executive directors
- Establish and disclose a code of conduct to guide compliance with legal and other obligations to legitimate stakeholders such as clients/customers and the community in which it operates
3.4 CONTROL MECHANISMS FOR COMPANIES

For UK construction companies, the regulatory controls are encountered broadly in the following categories:

- The set up and structure of the company – as outlined previously, there are legal obligations to companies specific to the way they are set up i.e. sole trader, partnerships or public limited companies etc.
- Tax including value added tax: For the companies operating within the Construction industry, as stated previously, there is a specific scheme (CIS) which regulates the way taxation obligations are managed.
- Professional obligations: The regulatory environment in terms of professional obligations contain various Government departments such as Health & Safety Executive (HSE), Local Planning Authority (LPA), Environmental Agency (EA), Building Control Officers (BCO) and many more, who operate under a number of Regulations and Statutes. Most organisations in their performance have to comply with Construction (Design & Management) 2007 Regulations which underpins the roles and responsibilities of clients, consultants & designers and contractors.

3.5 ACCREDITATION SCHEMES

In UK there are specific company accreditation schemes which grants membership to companies that meet the criteria set out by the regulatory authorities. For example, the Chartered Institute of Building (CIOB) administers Chartered Building Company (CBC) scheme, which identifies those businesses that are committed to quality of service, integrity of conduct and concern for clients' needs. To become a member of the scheme, a company must qualify by meeting certain criteria. The principal requirement for the scheme is that a proportion of the company’s executive board is professionally qualified (MCIOB or FCIOB). Only businesses that are led by Chartered Professionals are eligible to become Chartered Building Companies. For clients, membership of the Scheme becomes instantly synonymous with professionalism, leadership and a commitment to excellent performance. Employing a Chartered Building Company is an assurance that the client will be working with recognised professionals. In order to qualify for the Chartered Building Company scheme a business must:
• Have its principal activity relating to the built environment.
• Have the requisite number of Board members who are Chartered professionals
• Ensure that all staff holds a CSCS card appropriate to their role and responsibilities (in those regions where CSCS cards or equivalent apply).
• Ensure that all other staff have achieved, or are working towards, appropriate qualifications in accordance with CIOB or national standards.
• Ensure that all staff keep themselves informed of current thinking and developments appropriate to the type and level of their responsibility and are able to provide evidence that they have undertaken sufficient study and personal development to fulfil their professional obligations.
• When asked, provide adequate information to establish compliance with the two previous points.
• Sign an undertaking that it will abide by these Rules and the current Code of Professional Conduct of the Scheme.

Similarly, Chartered Building Consultancy Scheme identifies those businesses that are respected and responsible, managed by professionally qualified well-trained staff, and that offer a very expert and economic service. Membership of the Scheme requires the highest qualifications and training criteria for all employees engaged in any aspect of construction management and surveying, ensuring a professional approach at every level in the organisation. The Chartered Building Consultancy Scheme was established to provide industry customers and clients with an easy way to identify those who can give them a professional service.

In order to qualify for the Chartered Building Consultancy scheme a business must:

• Have its principal activity relating to the built environment.
• Have the requisite number of it executive directors / partners as Chartered members of a built environment related Chartered Institute.
• Ensure that all staff have achieved, or are working towards appropriate qualifications in accordance with the Institute's or national standards
• Undertake to ensure that all staff keep themselves informed of current thinking and developments appropriate to the type and level of their responsibility and are able to provide evidence that they have
undertaken sufficient study and personal development to fulfil their professional obligations
• When asked, provide adequate information to establish compliance with c) and d) above.
• Sign an undertaking that it will abide by these Rules and the current Code of Professional Conduct of the Scheme.
• Be able to demonstrate appropriate PI insurance cover.

Some of the other major trade schemes are:
• Building Services Research and Information Association www.bsria.co.uk/
• Business Services Association (BSA) www.bsa-org.com/
• The Civil Engineering Contractors Association (CECA) www.ceca.co.uk
• Confederation of British Industry (CBI) www.cbi.org.uk/home.html
• Construction Confederation www.thecc.org.uk/
   The Construction Confederation comprises six organisations:
   • National Federation of Builders
   • Civil Engineering Contractors Association
   • Major Contractors Group
   • National Contractors Federation
   • British Woodworking Federation
   • Scottish Building
• Construction Industry Council www.cic.org.uk/
• The Export Group for the Constructional Industries (EGCI) www.egci.co.uk
• Institution of Civil Engineers (ICE) www.ice.org.uk
• The Major Contractors Group (MCG)
• Strategic Forum for Construction www.strategicforum.org.uk/report.html
• Architects Registration Board www.arb.org.uk
• Thermal Insulation Contractors Association & Asbestos Control & Abatement Division & IETA Insulation & Environmental Training Agency www.tica-acad.co.uk
• British Institute of Architectural Technologists www.biatt.org.uk
• Builders Merchants Federation www.bmf.org.uk
• Confederation of Roofing Contractors www.corc.co.uk
• Considerate Constructors Scheme www.ccscheme.org.uk
• Construction online www.constructiononline.co.uk
Accreditation schemes are operated by almost every single trade and professions within the industry, with the aim of self-regulation in addition to the regulatory and legislative controls.
CHAPTER 4
APPLICATION OF DUE-DILIGENCE

4.1 DUE-DILIGENCE
IN PRE-QUALIFICATION
AND QUALIFICATION
OF CONTRACTORS
IN CONSTRUCTION PROJECTS

(J. ROSŁON)

Until recently, due diligence analysis was used only for examination of enterprises facing the perspective of a potential merger or takeover. Great advantages of this approach include not only complex analysis of the issue, but also the fact that it takes into account areas which are often considered irrelevant or even disregarded [3]. At present, increasingly often, it is being used for other purposes, including selection of a potential contractor for a construction project (qualification) or selection of a group of companies which are to be admitted to participate in a tender (preliminary qualification).

4.1.1 Definition of pre-qualification

Preliminary qualification, referred to above, is also called pre-qualification. Hatush and Skitmore [4] define pre-qualification as the process preceding the tender, used to examine and assess the contractor from the perspective of their capability to perform the contract successfully. This procedure is carried out on the basis of a set of preliminary qualification criteria.

Thus, pre-qualification can be referred to as selection of building contractors by the investor (or their proxy) on the basis of a subjective set of criteria, aimed at assessment of predispositions of the company to properly implement the construction project. In practice, it means that any contractor wishing to participate in the tender must first undergo the pre-qualification process.
Two types of pre-qualification can be distinguished, which can also be applied as two stages of pre-qualification [7]:

**Standing list**

Creation of a list of contractors able to perform specific types of projects (e.g. contractors having specialist equipment or specializing in performance of a given type of construction works). Such lists are created by public and private (large and small) investors. Only companies included on the appropriate standing list are invited to participate in tenders for performance of specific types of works. A list of this kind should be updated at regular time intervals, for instance, once a year or once every two years.

**Per project pre-qualification**

In other words, selection of a group of contractors most suitable for a given construction project; this form of qualification is more precise than the standing list, described above, and it is performed as necessary for a specific project. As a result, a short list of companies invited to tender is established.

Fig. 4.1., 4.2 and 4.3 present three simplified algorithms for selection of the contractor using the above types of preliminary qualification.
Figure 4.1
Simplified algorithm for selection of a contractor using the pre-qualification list [own study]
Figure 4.2
Simplified algorithm for selection of a contractor using the pre-qualification list and a short list of contractors [own study]
Identification of detailed project criteria

Does the contractor satisfy the criteria?

YES

Short list of contractors — „per project”

Selection of the best bid

Signing of a contract

NO

Rejection of the contractor

Figure 4.3
Simplified algorithm for selection of a contractor using the short list of contractors [own study]
4.1.2 Advantages of pre-qualification

Application of pre-qualification allows to invite to tender only those companies which have the appropriate means and capabilities to ensure the best completion of a construction project.

In addition, thanks to pre-qualification, the investor may save a lot of time and unnecessary work associated with assessment of bids received from inappropriate contractors. This is of particular significance in the case of those tenders where there is a high number of contractors interested. In particular, an investor who has a pre-qualification list does not need to assess contractors for every project separately, as the so-called standing list is prepared at regular time intervals (e.g. once a year).

Pre-qualification reduces the so-called inflation effect [9], which can be observed, when many companies bear non-productive costs of processing of a huge number of bids despite knowing that most of these would be rejected. Thanks to preliminary qualification, contractors may avoid a situation in which they dedicate resources to preparation of bids for inappropriate projects.

Use of a standing list is often associated with tender invitations, sent to contractor companies. This allows the investor to acquire contractors who would not have delivered bids otherwise, for instance, due to lack of information.

4.1.3 Pre-qualification from the global perspective

According to research conducted among contractors in Great Britain, in 54% of all tenders, companies were subjected to preliminary qualification; in 63% cases, this was per-project pre-qualification [7].

On the other hand, research conducted among investors in the same country shows that 62% of the clients apply the algorithm for selection of the contractor, presented in figure 3.1. They invite companies from the standing lists to tender, and instead of analysing their competences, they select the cheapest bid. 70% public and 55% private investors admitted they use this method [7].

A group of scientists – Russell, Hancher and Skibniewski – conducted a survey on pre-qualification among 173 public and private investors in the United States. Only 10% of respondents admitted they did not use preliminary qualification – these were public investors. At the same time, all respondents representing the private sector answered they applied pre-qualification every time when selecting contractors [7].
FIDIC

Fédération Internationale Des Ingénieurs-Conseils (FIDIC), or the International Federation of Consulting Engineers, established in 1913, is a respected organisation in the construction trade, dedicated to defining and popularization of technical standards.

Pre-qualification is promoted by FIDIC, particularly for large-scale projects and those which require international tenders [9].

The International Federation of Consulting Engineers has even developed a standard pre-qualification form [10] to assist both investors and contractors during the tender procedure.

4.1.4 The qualification criteria

Due to the fact that qualification of contractors is largely based on subjective assessment, scientists and researchers throughout the world are doing their best to determine the most effective criteria, which are of key significant for the investors.

An American scientist, Jeffrey S. Russell, distinguished three groups of preliminary qualification criteria in his study of 1992 [7]:

- The preliminary assessment criteria – such as references, reputation, history of earlier projects
- Means of the contractor – e.g. financial, technical means, investment projects in progress
- Other – project-specific criteria.

On the other hand, the International Federation of Consulting Engineers, referred to above, proposes to assess the following criteria during pre-qualification [9]:

- Structure and organisation
- Experience – in a given type of work, on a given market
- Resources held – managerial capabilities, technical staff, building equipment
- Number of sub-contracted works
- Financial stability and available reserves
- Overall usability – taking into account the potential language barriers.
Hatush and Skitmore [9], on the basis of scientific publications of the recent years, have stated that the qualification criteria which do not take into account the bid amount can be divided into the following categories:

- Financial stability
- Technical capabilities
- Managerial skills
- Occupational safety procedures
- Reputation.

Different groups of criteria have been proposed by Palaneeswaran and Kumaraswamy [7]:

- Readiness to act – involvement of the contractor, the quality of the documentation delivered
- Responsibility – the system for management of quality and safety, compliance with the law and applicable regulations, history of previous investment projects
- Competences – human resources, financial means and equipment, experience, organisation.

The qualification criteria depend on the circumstances and most often are adapted to the reality of a given construction market. A list of these can be developed depending on the investor’s needs. Upon planning of significant investment projects, the level of detail applied should reflect that of a due diligence assessment. This means including such information as:

- Basic information on the construction company:
  o Consultants, directors, economists, lawyers, management, history of the company, experience, timeliness, competitiveness, changes in the recent years, articles of association, profits, losses, competition and clients
- Company audits conducted
  o Revenue office
  o Insurance institutions
  o Occupational health and safety
  o Fire protection
  o Technical inspections of equipment
  o Environmental inspections
- Activity on the domestic and foreign markets
  o Portfolio of projects
  o Development capabilities
  o Modern technologies
• Tenders won/ bids placed
• Sub-contractors

• Human and material resources
  • Real estate, fixed assets designated for production purposes, specialist equipment, transport vehicles, structure of employment, detailed content of employment contracts, work regulations, salaries, obligations and rights of employees

• Activity of the company and environmental protection
  • Penalties for negative impact on the environment
  • Expenditures for environmental protection
  • ISO 14000 series certificates

• Market trends, company development forecasts
  • Determination of the market position and perspectives for development of the company

4.1.5 Significance of individual criteria

It should be underlined, however, that not all criteria are of the same significance for the investor. Therefore, upon selection, appropriate weights should be ascribed to each of these.

In a study on pre-qualification, Plebankiewicz [7] states that public investors pay particular attention to financial conditions, and private investors – to experience. At the same time, he publishes results of research conducted in the United States (Russell, Hancher, Skibniewski), Great Britain (Jennings, Holt) and Poland (Dziadosz), indicating that the key characteristics of a good contractor include:

• In the United States of America:
  1. Financial stability
  2. Failures during previous projects
  3. Experiences
  4. Successes during previous projects

• In Great Britain:
  1. Experience in implementation of similar projects
  2. Reputation
  3. Financial condition

• In Poland:
  1. Reputation and opinion on the market
  2. References provided by former clients
  3. Insurance
4. History of investment projects performed

As it can be seen, the clients attach particular importance to the experience and the history of achievements of potential contractors. They are willing to assign the highest weights to these criteria.

It should also be noted here that the investor assesses the contractor not only in terms of fulfilment of the criteria, but also of the degree of such fulfilment.

### 4.1.6 Models of collection of information

According to the International Federation of Consulting Engineers [9], assessment of potential contractors should be based on answers provided by them in the pre-qualification questionnaire [10]. However, it should be complemented by confidential collecting of information among trade organisations, on lists and in registers of companies. FIDIC also suggests to contact former clients who hired a given contractor subject to qualification.

A significant role in the information collecting process plays knowledge of the market and experience of the client. Therefore, the investor often hires companies or persons qualified in these fields of knowledge (experts, lawyers, tax advisors).

### 4.1.7 Methods of preliminary assessment of contractors

In this chapter, the author presents selected methods that can be applied to selection, as well as preliminary qualification of contractors in construction projects.

Appropriate selection of a company to implement the project is of particular importance for successful completion of the construction project.

It should be noted here that preliminary qualification is not aimed at bid assessment, but at selection of contractors who will be allowed to place their bids.

*The weight-based model – Jaselskis, Russell (1991)*

In the weight-based model, the client specifies the criteria and assigns weights to them. The contractors are evaluated on the basis of these, and the final score is the total of products of scores received for individual criteria and their respective weights [7].
The final score $OK$ for $n$ contractors and $k$ criteria can thus be illustrated by the following formula:

$$OK_n = \sum_{i=1}^{k} W_i \cdot O_{in}$$

(4.1)

where: $OK_n$ – the final score of the contractor $n$, $W_i$ – weight of criterion $i$, $O_{in}$ – score assigned to contractor $n$ for criterion $i$.

An advantage of this model is its simplicity and the fact that it is easy to use.

**The two-stage weight-based model – Jaselskis, Russell (1991)**

This model is a modified version of the weight-based model. It consists of repeated application of the weight-based model: during the first stage, the score is based on the preliminary criteria. Contractors who qualify for the second stage are evaluated on the basis of more detailed criteria [7].

An advantage of this model is its simplicity and the fact that it is easy to use. The two stages can be useful if many companies are subjected to pre-qualification, and the investor wants to narrow down the number of contractors undergoing preliminary qualification.


Like in the weight-based model, the client specifies the criteria and assigns weights to them. Afterwards, the contractors are assessed with regard to individual criteria (from the most to the least significant); if they fail to satisfy any of these, they are automatically removed from the pre-qualification process. Further assessment of companies takes place in the same manner as in the case of the simple weight-based model [7].

An advantage of this model is its simplicity and the fact that it is easy to use. Additionally, it allows for quick rejection of those contractors who do not meet the detailed requirements of the investor. This model can be useful in particular in the case of construction projects characterized by special requirements.

**The linear model – Russell (1992)**

The linear model is similar to the weight-based model; however, it assumes that sub-criteria are applied apart from the principal criteria [8].
The final score $OK$ for $n$ contractors, $k$ criteria and $l$ sub criteria can be illustrated by the formula:

$$OK_n = \sum_{i=1}^{k} W_i \sum_{j=1}^{l} W_{ij} \cdot O_{ijn}$$

(4.2)

where: $OK_n$ – final score of contractor $n$, $W_i$ – weight of criterion $i$, $W_{ij}$ – weight of sub-criterion $j$, assigned to criterion $i$, $O_{ijn}$ – score awarded to contractor $n$ with regard to sub-criterion $j$, assigned to criterion $i$.

An advantage of this model is its simplicity and the fact that it is easy to use. It can be particularly useful in situations in which the investor wants to apply more detailed preliminary qualification criteria and decides to use sub criteria in the contractor assessment process.

**The weight-based model taking into account random variables – Russell (1992)**

This model is based on assessment of contractors according to formula 4.1 as in the weight-based model; however, it is also assumed that $O_{in}$ – score awarded to contractor $n$ with regard to criterion $i$ – is a random variable with assigned probability [8].

Russell proposed two different probability distributions in his study:

- Normal distribution
- $\beta$-PERT distribution

**Normal distribution**

In this case:

$$O_{in} = \sum_{j=1}^{m} P_{jin} \cdot O_{ijn}$$

(4.3)

where: $m$ – number of scores with regard to criterion $i$, $P_{jm}$ – probability of score $j$ of contractor $n$ with regard to criterion $i$ (total probability values for all scores with regard to a given criterion is equal to 1), $O_{ijn}$ – score $j$ of contractor $n$ according to criterion $i$. 

β-PERT distribution
In this case, three possible scores are taken into account for each criterion: optimistic, most probable and pessimistic.

\[ O_{in} = \frac{a + 4m + b}{6} \]  

(4.4)

where: \( a \) – optimistic score, \( m \) – most probable score, \( b \) – pessimistic score.

An advantage of this model is its simplicity, a disadvantage – the necessity to conduct a greater number of assessments/collect more data.

The linear model based on PERT method – Hatush, Skitmore (1997)
In their study of 1997 [5], Hatush and Skitmore examined the impact of twenty prequalification criteria (characteristics of contractors) on three factors of success for construction projects: time, cost and quality. They conducted a survey among the construction trade professionals.

The respondents were to assess the impact of a „good” and „poor” contractor upon these factors, using three values: pessimistic (P), averaged (A) and optimistic (O) for each of the twenty criteria. These values were expressed as percentages, where 100% was equivalent to the desirable level of quality (the greater the percentage, the better the result), and time and cost (the lower the percentage, the better the result). For instance, value 108% for the cost meant exceeding of the planned costs by 8%, while 108% for quality meant increasing of quality by 8% with respect to the expected level.

The data collected was then analysed and checked carefully. This allowed for determination of expected values, variances and standard deviations for all three factors of success, as well as a linear coefficient of correlation between the pre-qualification criteria and the success factors. Hatush and Skitmore used the PERT method for this purpose⁷. On the basis of results of their surveys and analyses, taking into account the function β, they assumed that:

\[ E_t = \frac{P + 4A + O}{6} \]  

(4.5)

\[ E_c = \frac{P + 4A + O}{6} \]  

(4.6)

\[ E_q = \frac{P + 4A + O}{6} \]  

(4.7)

⁷ Program Evaluation and Review Technique – a technique developed in the United States during the construction project of Polaris ballistic missiles in 1958. This probabilistic method is based on the distribution density function β [16].
Standard deviation \( \sigma = \frac{\text{max}(P \cup A \cup O) - \text{min}(P \cup A \cup O)}{6} \)  \( (4.8) \)

Variance \( D^2 = \sigma^2 \)  \( (4.9) \)

Where \( P \), \( A \) and \( O \) are the values referred to above: pessimistic, average and optimistic.

An example for financial stability (contractors assessed negatively and positively) [5]:

Table 4.1. Linear model using the PERT method - example [5]

<table>
<thead>
<tr>
<th>Value</th>
<th>Financially unstable contractor</th>
<th>Financially stable contractor</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>P</td>
<td>A</td>
</tr>
<tr>
<td>Time</td>
<td>118</td>
<td>107</td>
</tr>
<tr>
<td>Cost</td>
<td>118</td>
<td>108</td>
</tr>
<tr>
<td>Quality</td>
<td>87</td>
<td>93</td>
</tr>
</tbody>
</table>

According to formulas 4.5 - 4.9:

For a financially unstable contractor:

\( E_t = (118 + 4 \cdot 107 + 102/6) = 108, \quad \sigma (E_t) = (118-102/6) = 2.67, \)
\( V (E_t) = \sigma^2 = 7.12; \)

\( E_c = (118 + 4 \cdot 108 + 100/6) = 108, \quad \sigma (E_c) = (118-100/6) = 3.00, \)
\( V (E_c) = \sigma^2 = 9.00; \)

\( E_q = (87 + 4 \cdot 93 + 100/6) = 93, \quad \sigma (E_q) = (100-87/6) = 2.17, \)
\( V (E_q) = \sigma^2 = 4.70; \)

For a financially stable contractor:

\( E_t = (105 + 4 \cdot 100 + 95/6) = 100, \quad \sigma (E_t) = (105-95/6) = 1.67, \)
\( V (E_t) = \sigma^2 = 2.78; \)

\( E_c = (105 + 4 \cdot 100 + 97/6) = 100, \quad \sigma (E_c) = (105-97/6) = 1.33, \)
\( V (E_c) = \sigma^2 = 1.77; \)
where: $AE_t$, $AE_c$, $AE_q$ – general expected values (time, cost, quality), $E_{it}$, $E_{ic}$, $E_{iq}$ – expected values for criterion $i$ (time, cost, quality), $V[AE_t]$, $V[AE_c]$, $V[AE_q]$ – variances of general expected values (time, cost, quality), $\sigma_i[AE_t]$, $\sigma_i[AE_c]$, $\sigma_i[AE_q]$ – general standard deviation values (time, cost, quality), $\sigma_{it}$, $\sigma_{ic}$, $\sigma_{iq}$ – standard deviation values for criterion $i$ (time, cost, quality), $W_i$ – weight of criterion $i$.
The authors of this method recommend to compare contractors using the risk analysis method. It is necessary to determine the probability of exceeding of the planned time and cost and reduction of quality by each of the contractors, and compare the probability values. Additionally, Hatush and Skitmore propose to introduce limits for these probability values.

Advantages of this method include the possibility of forecasting the impact of selection of the contractors analysed on individual success factors of the construction project. On the other hand, the method is based on many assumptions, it is rather complicated and it has not been tested thoroughly in practice.

The model using the analytic hierarchy process (AHP) – Al-Harbi (1999)

The analytic hierarchy process is a mathematical method applied to solving of multi-criteria decision-making problems. It was developed in 1980 by Thomas L. Saaty. The method is based on comparison of pairs of decision variants with regard to all criteria. Special matrices and decision trees are used for these comparisons.

In his study, Al-Harbi proposed the following subsequent stages of AHP [1]:

- Defining of problems and objectives
- Building of a hierarchy-based model
- Determination of dominance of key factors. Comparison of pairs, based on assessment of dominance of one factor over the other. Development of a set of comparison matrices
- Determination of dominance of criteria. Development of a comparison matrix
- Synthesizing of the matrix
- Determination of priority vectors
- Calculation of maximum eigenvalue \( \lambda_{\text{max}} \)
- Calculation of consistency index CI
- Selection of the appropriate random consistency index RI
- Calculation of the consistency ratio CR
- Checking whether comparison of pairs was conducted in accordance with the consistency requirements – verification of condition: \( \text{CR} = \text{CI} / \text{RI} < 0.1 \)
- Comparison of results for all contractors – hierarchy determination.

The model using the analytic hierarchy process seems to be complicated; however, it can be easily implemented in software. When the investor acquires
the appropriate software, preliminary qualification is limited to selection of criteria and their comparison in pairs with characteristics of the contractor. 

**The model using the analytic network process (ANP) – Cheng, Li (2004)**

The model proposed by Cheng i Li [2] was based on the so-called analytic network process. This method, like the analytic hierarchy process, mentioned above, was developed by professor Thomas L. Saaty. ANP is an advanced version of AHP. It includes mutual influences between groups of criteria, between groups and subgroups, as well as between the objective and subgroups (figure 4.8). The decision tree (figure 4.1) has been replaced with the decision network (figure 4.9). This model also includes introduction of a super matrix and a limited super matrix.

![Figure 4.4 A model using the analytic network process (developed internally on the basis of 4) Graphic representation of the ANP structure](image-url)
The model using the analytic network process allows for application of a non-standard approach towards criteria and correlations between them. However, the level of complexity of this model may be regarded as a disadvantage. Perhaps it could be applied more universally if the appropriate software was developed.

**Other models**

Presented above are short summaries of 8 models, which can be used for pre-qualification or qualification of companies for a construction project, using the due diligence analysis. However, the number of models available is much greater, and these include: a model based on fuzzy implications (Minasowicz, Kostrzewa - 2010), usability (Diekmann - 1981), fuzzy implications (Nguyen - 1985), statistical model (Jaselskis - 1988), financial model (Russell - 1992), using expert systems (Russell - 1990), hybrid (Russell - 1992), using AHP (Fong, Choi - 2000), using neural networks...
(Hhosrowshah - 1999, as well as Lam, Hu, Ng, Skitmore, Cheung - 2001), principal components analysis (Lam, Hu, Ng - 2005) [6][7]. Thus, the investors have at their disposal a broad spectrum of means to assess their contractors depending on their preferences, level of detail of the due diligence analysis, and the characteristics of the project planned.

4.1.8 Bibliography


[7] Plebankiewicz E., Podstawowe problemy wstępnej kwalifikacji wykonawców robót budowlanych, Scientific and technical conference on technology and management in construction, Wrocław, 2006, 139-146

[8] Plebankiewicz E., Simple prequalification models, Archives of Civil Engineering, LVI, 4, 2010


4.2 RESEARCH ON THE MATERIAL RESOURCES OF THE COMPANY

(J. SOBOTKA)

Companies that operate on the international scale, increasingly often perform the Technical Due Diligence prior to purchase of real estate. Subject to analyse is the technical condition of buildings and technical installations. The result of the analyses conducted is the assessment of usability of the construction facility under consideration for further use; faults observed in the building are specified, as well as the cost of elimination of these. Technical wear and tear of facilities and the technical infrastructure is determined, as well as functionality of the facilities (e.g. office facilities of class A, B in comparison with office facilities of the 70s and the 80s, warehouses, risk of finding of long-term lessees in the case of low functionality of facilities, as well as low rent amounts, competitiveness of high storage warehouses in comparison with facilities of the 60s or the 70s of low storage). In addition, renovation or modernization of facilities and the selected technical infrastructural networks can be recommended. In the case of Listed buildings, detailed analyses of all documents are conducted to verify whether all guidelines of regulations have been met, and whether, if reconstruction of the facility has been completed, all works have been conducted in accordance with the guidelines of the statutory requirements (e.g. the building elevation).

Technical Due Diligence includes analysis of the design documentation prepared for the facility under concern (building permit and trade-specific designs, land development designs, as-built designs, all decisions issued, building permits and occupancy permits, opinions, arrangements etc.) and the utilisation documentation, gathered during use of the building (a construction facility log). A Technical Due Diligence report presents the result of the control procedure conducted for the facility assessed with regard to the technical condition, quality of finishing and compliance with the technical and construction provisions in force. An assessment of threats associated with use of the building is conducted. A periodical inspection, legal and financial Due Diligence is also performed.

8 A periodical inspection,
8 A legal and financial Due Diligence is also performed.

9 The Technical Due Diligence is performed in accordance with the legal provisions in force, such as 1) the Building Law Act of July 7th, 1994 (Journal of Laws 06.156.1118 as amended), 2) Regulation of the Minister of Infrastructure of July 3rd, 2003 on the construction facility log (Journal of Laws 2003.120.1134 as amended) 3) Regulation of the Minister of Infrastructure of April 12th, 2002 on the technical conditions to be met by buildings and their location (Journal of Laws 2002.75.690 as amended)
referred to in art. 62 item 1 clause 1 letter a) of the building law act\textsuperscript{10}, is conducted in relation to those components of the building, which are exposed to harmful atmospheric conditions and destructive action of factors that emerge during use, which may result in a threat to people, the environment and the building structure.

The periodical inspections, referred to in art. 62 item 1 clause 2 of the act\textsuperscript{11}, include checking of technical condition and usability of components of the building and all other building elements, as well as the appearance of the building and the surrounding area (every 5 years).

In order to minimize the costs of operation borne by the purchasers of real estate property, associated e.g. with the technical condition of buildings and structures, fire protection systems and ventilation and A/C installations are examined in detail to make sure they meet the current legal requirements and to not require modernization.

Other significant issues emerge as well, for instance, whether buildings have direct access to utilities or are included in the network inside a given plant, whether easement has been established for internal roads, whether internal roads that run through the real estate property are used by other entities, while the costs of maintenance are borne by all owners, whether the roads have been transferred to the Management Authority of Public Roads, the status of public roads: commune – level, district – level etc.

In the case of networks that run within the plant area, the analysis includes agreements concluded for use of utilities. In the case of temporary agreements for use of utilities – the costs to be borne by the owner in the case of connection of the municipal technical infrastructure networks (e.g. water supply and sewage, power supply, rainwater sewage, telecommunication, gas supply). It is necessary to make sure that there is a possibility of connecting to public networks and to consider the associated costs.

In the Technical Due Diligence, it is necessary to verify whether the design documentation analysed for the building, in many fragments, both with regard to the architecture and individual trades, reflects the actual condition of the building during analysis, whether all amendments to the arrangement of individual storeys of the building (additional windows etc.) have been reported to the appropriate authorities to make sure they were not unpermitted.

\textsuperscript{10} The Building Law Act as of July 7th, 1994 (Journal of Laws 06.156.1118 as amended)

\textsuperscript{11} Ibidem.
Documents required during the investment process are analysed, including the conditions of development, the building permits issued, arrangements with the Offices with regard to connection to networks, decisions allowing for performance of entrances and exits. Entries in the construction log are verified. It is checked, which and how many administrative decisions were issued during the process of approval of the design documentation (including replacement designs) to allow for issue of the occupancy permit and the occupancy itself (unless additional conditions have been imposed by the State Sanitary Inspection, the State Fire fighting Services, the State Labour Inspection and the State Environmental Protection Inspection. In the case of issue of these, it is verified whether these conditions have been met and the facilities are being used in accordance with the legal provisions in force). In the case of expiry of the decisions issued, e.g. the building permits issued for specific periods of time, it is necessary to conduct a legal analysis of the impact of this fact on the final occupancy permit (if, for instance, works at the facility have not been commenced and no appropriate entries have been made in the construction log).

According to clause 7 § 6.1. of the valid Regulation of the Minister of the Interior and Administration of June 7th, 2010 on fire protection of buildings, other construction facilities and land (Journal of Land of 2010 no. 109 item 719), it is required that the fire safety manual is updated regularly, at least once every 2 years (verification of whether the Fire Safety Manual for the facility has been updated and whether evacuation routes have been designed for individual storeys according to floor plans). In the case of buildings constructed in the 70s, modernization of the fire fighting system and its adaptation to the valid legal provisions may turn out to be necessary.

In the case of auditing of facilities that are under construction (e.g. suspended construction, where works have not been resumed for several years), it is necessary to make sure that all of the permits issued are still valid (e.g. analysis of the impact of invalidity of decisions on continuation of construction works, the conditions to be met for resuming of works, whether

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12 In modern office buildings, constructed in the recent years, increasingly frequently, there is a network allowing for remote control and monitoring of technical equipment of the building infrastructure – BMS, using a single central operator’s station. In some buildings, the automation controllers installed are limited to control and adjustment of ventilation and air/conditioning devices. It is recommended that a BMS communication bus is installed to enable connection of all adjusting devices to the central control unit to create an integrated control system. In buildings constructed in the 70s and the 80s, it may be recommended and required to modernize the HVAC system and to monitor other utilities as well. From the perspective of the owner, central control in the long-term perspective may lead to reduction of costs of utilisation of the building.
all construction works have been performed in accordance with the legal provisions in force etc.).

In the case of the plans of purchase of real estate property, where an investment project has been commenced, a full analysis of building permit and trade-specific designs is conducted in accordance with the legal provisions in force and other legislation\(^\text{13}\). This process includes several stages of analysis of compliance of the following documents:

- Architectural and building design with presentation of construction and installation solutions (the technical infrastructure networks), results of geological and engineering studies and establishment of the geotechnical conditions of location of buildings, e.g. in the case of tunnels running under the real estate property. If, during earthworks, it is found that the tunnel ceiling is in a poor technical condition, it may be necessary to reinforce it, to replace the insulation or to seal the expansion joints. Other risks include landslide processes, which may occur during implementation of the investment projects, the necessity to reinforce the ground and to ensure stability of the embankment slope and the static structure of buildings above the tunnel, which may result in a potential increase of the construction costs. Other expert opinions and studies based on the specific nature of the investment (e.g. office buildings, skyscrapers, analyses of impact of the new investment e.g. in relation to the subway line running under the land plot, reinforcement of the building foundation). Presentation of the functional and spatial structure of construction facilities and the structural and building solutions for the facility and its associations with the ground and the adjacent construction facilities is given.

- Analysis of replacement designs, if any, and all decisions and permits issued etc.

- The site development project with a descriptive and drawing part on the map for design purposes (taking into account, in particular, the technical infrastructure route)

\(^{13}\text{Regulation of the Minister of Transport, Construction and Maritime Economy of April 25th 2012 on the detailed scope and format of a building permit design, Journal of Laws 2012 462 as amended}\)
4.3 ANALYSIS OF HUMAN RESOURCES
OF THE ENTERPRISE

(E.KARASIŃSKA)

4.3.1 Audit of documentation of the enterprise

The basic source used for preparation of a due diligence report with regard to human resources of an enterprise are documents. The legal provisions, applicable in Poland, specify in much detail the scope of HR documentation to be kept by the employer; this pertains, in particular, to employee records, maintained for individual persons, as well as documents prepared collectively for all employees. Presented below is a list of documents to be delivered in connection with a due diligence assessment. It should be highlighted that if any compulsory documents are missing, the entrepreneur may be subjected to sanctions enforced by the appropriate inspection bodies; therefore, any such omissions should be indicated clearly during the audit. The author of the report should also make an attempt to clarify the cause of such omissions or faults found by addressing persons employed at the company on positions associated with maintenance of the documentation concerned.

A list of documents required, necessary for a legal audit of employee affairs is as below:

Copies of valid contracts of employment and contracts for services, executed with members of the management board of the Company, members of the supervisory board of the Company and other members of management of the Company. Copies of resolutions on appointment of members of Company bodies.

In business practice, various solutions are applied with regard to the nature of the legal relationship between members of bodies of companies functioning as limited liability or joint-stock companies and the company. Naturally, the basis for activity of members of the company’s bodies is always the act issued by the entity authorised to appoint them. In the case of members of the management board, unless the articles of association (statute) of the company state otherwise, this is a resolution of the meeting of partners of a limited liability company or a resolution of the supervisory board of a joint-stock company. Members of the supervisory board, unless the articles of association (statute) of the company state otherwise, are appointed by resolutions of the general meeting. In practice, apart from the corporate
relationship based on appointment, members of these bodies are also bound by a contractual relationship with the company.

In the case of members of the management board, a popular solution is the so-called managerial contract – a civil law agreement between the Company and a management board member. A managerial contract is not a contract of employment, it is ruled by civil law, in particular art. 750 of the Civil Code, and not by the Labour Code. Other solutions include execution of a mandate agreement or a contract of employment with the board member.

As for verification of contracts executed with members of the Management Board, it is particularly significant to verify whether these have been concluded in accordance with the provisions of the Code of Commercial Companies on representation of the company in agreements with a member of the management board (art. 210 § 1 CoCC 379 § 1 CoCC). A failure to fulfil the representation obligations results in invalidity of the contract, which, in turn, may result in serious consequences in terms of social insurance premiums and the corporate income tax rates if the remuneration in the amount based on an invalid contract of employment, was paid to a member of the management board.

It should be underlined that execution of a contract with a board member is not obligatory; in practice, board members are not bound by any contracts concluded with the Company, and the scope of their rights and duties is based solely on the provisions of the Code of Commercial Companies. In such a case, apart from a resolution on appointment, the authorised entity or body passes a resolution, specifying the remuneration (allowance) amount for performance of functions of a member of the body. If the remuneration received by members of the given body is based on resolutions, copies of these should also be made available to the auditor.

Copies of contracts of employment with other employees of the company and other job performance agreements.

Contract of employment – The most frequently encountered basis for job performance at construction companies are contracts of employment, which thus should be described in more detail. In the case of contracts executed with employees performing the same or similar jobs, the employer usually uses similar formats of agreements. In such a case, the auditor’s report may be limited to the collective description of characteristics of such agreements, in particular, following the scheme provided in clause 4.3.2, and specification of the number of employees hired on the basis of these.
Every contract of employment should specify at least the parties to the contract, the execution date, type and conditions of work and remuneration, in particular:

1) type of work,
2) place of performance of work,
3) remuneration for work according to type of work, with specification of remuneration components,
4) full-time or part-time employment,
5) date of commencement of work.

The contract should be executed in writing. However, in practice, construction companies sometimes execute oral agreements for employment with their workers; in such a case, the employee records should include a document, issued to the employee no later than on the date of commencement of work by the employee, confirming the arrangements made with regard to the parties to the agreement, type and conditions of the agreement. If, during analysis of the documents provided, any doubts arise with regard to the type of the contract of employment concluded, according to practice of the Supreme Court, it should be assumed that the contract has been concluded for an unlimited period of time.

In practice, the employers often fail to define in writing the scope of activities of individual employees. Such practice is wrong, as it may lead to disputes between the employer and the employee or employees.

The most significant features of the employment relationship is organisational subordination to the employer, the reporting lines, the time, place and mode of performance of work, availability of the employee and the duty to perform commands of the employer. Lack of the component of subordination may indicate that, in fact, we are dealing with a mandate agreement, an agency agreement or a contract of commission.

Employment relationship is subject to special protection based on the provisions of the labour law, which is indicated, among other things, by the special rules of termination of such a relationship. Moreover, the labour law provisions establish specific warranties for the benefit of the employee to protect their life and health, by granting benefits that are not applicable to other legal relationships, such as: severance pays, awards, remuneration for the time periods during which work was not performed, amounts payable in association with inability to work, right to leaves and social privileges.

During the audit, it is also necessary to pay attention to any provisions that are not consistent with legal provisions, such as waiver by the employee of the right to a vacation leave or agreeing to receive remuneration lower than
the minimum salary level. Such provisions, even if accepted by the employee, are invalid from the point of view of the applicable law, and they are subject to replacement by the appropriate provisions of the labour law.

A mandate agreement – such agreement is subject to civil law provisions, and the rights and obligations of the parties are specified in art. 734 – 751 of the Civil Code. In the strict sense of the term, a mandate agreement constitutes an obligation to perform a specific legal act; however, in business practice, agreements for performance of services are very popular; provisions concerning mandate agreements apply to these on the basis of art. 750 of the Civil Code. A mandate agreement or an agreement for performance of services constitutes a due diligence agreement, which means that a commitment can be considered to have been fulfilled in accordance with the agreement, if the contractor acted in a diligent manner, in accordance with the best practices, regardless of the result of these actions. The basic criterion which makes this type of agreement different from a contract of employment is lack of a reporting line, as the contractor does not report to the client. The contractor has more freedom as to the mode of performance of services subject to the agreement, although they should follow the instructions of the client. Due to a different legal regime applicable to agreements of this kind, the contractor is not subject to protection with regard to the issues described above as in the case of a contract of employment. In particular, unless the provisions of the agreement state otherwise, it can be terminated at any time by the client. Remuneration for the service performed is agreed upon between the parties as deemed proper by them, without the need to follow any regulations with regard to minimum remuneration.

A contract of commission – similar to a mandate agreement, a contract of commission is subject to civil law (art. 627 – 646 of the Civil Code), and therefore the contractor is not entitled to warranties and protection as in the case of a relationship of employment. Unlike a mandate agreement, a contract of commission is a result agreement, which means that performance of the contract is associated with creation of a specific work. The result should depend upon diligence and skills of the contractor and not upon any factors that are beyond their control.

An agreement similar to a contract of commission is a contract for construction works, regulated by the provisions of art. 647-658 of the Civil Code. A contract for construction works is based on commitment of the contractor to commission a facility specified in the contract, built in accordance with the design and the technical knowledge, while the investor commits to perform acts required by the appropriate legal provisions, associated with preparation
of the works. The characteristics of this agreement, however, remain beyond the scope of an analysis of human resources of an enterprise.

When examining the agreements, the auditor should in particular verify whether the content of contracts of commission, mandate agreements and other contracts executed by the company indicates that, in fact, these constitute contracts of employment. The above may be suggested primarily by the mode of specification of obligations of the partner, the obligation to perform work orders, as well as to perform work during specific time periods and in specific places, or the right to a holiday. If all provisions of the agreement indicate that we are dealing with a contract of employment, this fact should be mentioned in the report, as the above may result in serious financial consequences for the company, in particular, with regard to regulatory liabilities associated with social insurance or penalties imposed by competent authorities. In the end, it should be underlined that whether, in a given situation, we are dealing with a relationship of employment, is determined not only by the literal wording of the agreement, but the practice of performance of services by the hired person, who, after the termination of the legal relationship, as well as during such a relationship, may demand establishment by a Court that the given legal relationship was, in fact, a relationship of employment.

The report should contain a conclusion regarding the current costs of employment at the company, including the gross and net remuneration amounts divided into categories of employment according to the legal basis of the work performed.

A list presenting the structure of employment.

The structure of employment should be presented in accordance with the criteria which are significant from the perspective of the entity ordering preparation of the report. Exemplary criteria, which allow for presentation of employment structure, include:

Structure of employment according to the legal basis of the work performed, that is, persons performing work on the basis of a contract of employment, a mandate agreement and other documents, referred to above. In this regard, it may be reasonable to conduct an additional classification of persons hired on the basis of contracts of employment, depending on the contract type: for a limited period of time, for an unlimited period of time, for a trial period.

Structure of employment according to the type of work performed: e.g. the number of blue collar workers, number of managerial staff, administrative staff etc.
Structure of employment according to age, place of performance of work, separate field of activity of the company (division), education level.

Significant information regarding the structure of employment may be the number of employees hired and those whose employment was terminated in a given period, e.g. last year.

Depending on the preferences of the client and the purpose of due diligence analysis, it may be significant to present the above data on the structure of employment, that is, the classification according to separate criteria in historic view, over the period of several (e.g. three) years preceding preparation of the report. The above allows for identification of trends that take place in a company with regard to human resources policy, which may serve as a basis for drawing of conclusions that may be useful for the client.

The report should contain numerical data as listed above, which can be additionally illustrated by appropriate graphs.

Copies of agreements with temporary employment agencies

Temporary employees are hired on the basis of the Act on hiring of temporary employees dated July 9th, 2004 (Journal of Laws no. 166, item 1608 as amended).

Construction companies usually take advantage of this untypical form of employment during periods of increased demand for work. Parties engaged in temporary work are: a temporary work agency, a temporary employee, the employer and the user. A construction entrepreneur concludes an agreement for performance of services with a temporary work agency, and these agreements should also be subject to a due diligence audit.

Due to the fact that an agreement for performance of services between a temporary work agency and the employer – user is an innominate contract, the provisions of the Civil Code apply to it. While auditing the agreement between the parties, in the first place, it is necessary to check whether it was concluded with an authorised entity, which is, whether the temporary work agency, being a party to the agreement, has been entered in the National Register of Employment Agencies. For the purpose of verification of the above, it is possible to refer to the list of employment agencies on the website http://www.kraz.praca.gov.pl/StronaGlowna.aspx.
Copies of work regulations and remuneration regulations (the system of salaries)

The work regulations belong to the corporate law sources. An employer hiring more than 20 persons is obliged to introduce work regulations at the company. This obligation has been imposed upon employers on the basis of art. 104 § 2 of the Labour Code. The work regulations may include provisions concerning issues that are of significance for a given employer. However, art. 104 § 1 of the Labour Code includes a catalogue of issues, defined by the legislator, which specify the rights and obligations of employers and employees, associated with order at the company, which must be determined in the regulations.

The work regulations should, in particular, specify the following:

1) work organisation, conditions of presence at the company during work time and afterwards, providing the employees with tools and materials, as well as working clothes and shoes, personal protection equipment and personal hygiene items,

2) working time systems and schedules and the approved work time settlement periods,

3) night hours,

4) date, place, time and frequency of payment of salary,

5) lists of works prohibited to minors and women,

6) types of work and list of work positions available to minors for the purpose of professional training,

7) list of light tasks which can be performed by minors hired for purposes other than professional training,

8) obligations in terms of occupational health and safety and fire protection, including methods of informing employees of occupational risks associated with the work performed,

9) the mode of confirmation of arrival and presence of employees at work, and justification of absence from work, approved by a given employer.

10) information on penalties imposed in accordance with art. 108 of the Labour Code due to liability of employees in respect of order at work.

An employer, who hires less than 20 employees, is obliged to specify the issues associated with organisation and order of work in form of a written information
on the conditions of employment and employee rights, addressed to all employees.

During the audit, it is necessary to check whether, due to financial difficulties encountered by the employer, application of the regulations has not been suspended. It is acceptable for a period of up to 3 years after reaching agreement with the union organisation, representing employees, or in the case of absence of a union representing employees. If application of the work regulations has been suspended, it should be checked whether the files contain a document confirming delivery of the content of the agreement reached by the employer to the district labour inspector.

During audit of the remuneration regulations at the Company, it is absolutely necessary to check whether these have come into force, that is, whether they have been communicated to the employees as it is customary at the company and whether two weeks have passed since such communication.

**Remuneration regulations**

Just like the work regulations, the remuneration regulations belong to the corporate law sources. An employee hiring at least 20 employees is obliged to develop these regulations, unless the employees are subject to a company or supra-company collective agreement which allows for specification of individual conditions of contracts of employment and the applicable mode of such specification – see art. 772 §1 of the Labour Code. One of the indispensable parts of the remuneration regulations are provisions specifying the terms and conditions of determining remuneration for work. The regulations should contain:

- indication and discussion of the remuneration systems (time-based, piece-rate, commission-based, mixed),
- base pay rates for positions and works,
- other remuneration components applicable to employees on a constant basis and the conditions for awarding of these and their applicable amounts (e.g. work seniority benefit, functional allowance),
- rules of granting bonuses and their amounts,
- rules of granting awards.

It is necessary to analyse in detail the content of the remuneration regulations, since they may contain provisions which are more beneficial for the employees in comparison with the provisions of the Labour Code, e.g. higher bonuses for overtime work.
During analysis of the regulations, it is also necessary to check precisely whether they have come into force, that is, whether they have been announced in a manner accepted by a given employer. The remuneration regulations come into force 14 days from the date of their announcement. It should be underlined that validity of these regulations does not depend on whether the employees have confirmed with their signature that they acknowledge the content of the document (cf. ruling of the Supreme Court of August 4th, 2004, II PK 5/2005, LexPolonica no. 383940).

Other documents related to the remuneration system (e.g. bonus-awarding regulations)

There is no obligation to introduce bonus-awarding regulations at a company; however, it should be noted that if a construction entrepreneur decides to introduce such regulations, they are bound by the provisions introduced. The conditions of awarding bonuses to employees may be specified directly in the contract of employment, in the remuneration regulations or in the collective work agreement.

If an entrepreneur introduces provisions that automatically condition the right of an employee to a bonus, upon fulfilment of these conditions, an employee will be entitled to claim a bonus. The situation is different with regard to prizes; prizes are usually awarded as deemed proper by the employer, and the employee is not entitled to any claims against the employer for payment of a prize until it is granted.

On the basis of examination of documents concerning the remuneration system within the framework of a due diligence analysis, it is necessary to prepare a summary on bonuses, profit shares and progressive remuneration components for employees or persons cooperating with a given entrepreneur on the basis of civil law agreements.

Copies of the regulations of the social benefit fund at the Company

In principle, a social benefit fund must be established by employers hiring, as of January 1st of a given year, at least 20 employees (in full-time equivalents). Employees hiring less than 20 employees in full-time equivalents as of January 1st of each year do not need to establish the corporate benefits fund or issue decisions on payment of the vacation leave benefit. Only those employers who engage in activity as budgetary units and self-governing budgetary units, are obliged to establish the social benefits fund regardless of the number of employees. The legal basis for creation of a social benefit fund is the act of March 4th, 1994 on the corporate social benefits fund (Journal of Laws of 2012 item 592).
A social insurance payments clearance certificate

During a due diligence audit of employee affairs, the construction entrepreneur should provide a valid clearance certificate for social insurance premiums, healthcare insurance premiums, contributions to the Labour Fund and the Employment Fund (hereinafter referred to as a „clearance certificate”). The clearance certificate confirms that as of the date of issue, the employer has no overdue premiums. The Polish legislation does not provide for any minimum overdue amount, which would not prevent issue of a clearance certificate.

During analysis of the clearance certificate, it is necessary, in particular, to validate its authenticity. Certificates are issued on centrally printed, pre-numbered forms, equipped with appropriate security measures; above all, they contain a 2-digit serial number and a 7-digit number. A certificate issued to a payer is marked with an individual, 18-digit number and it should bear a seal with the emblem of Poland, a stamp of the Field Organisational Unit of the Social Insurance Office issuing the certificate and the official stamp containing the first name and surname of the issuing person, and it should be signed by an authorised official.

At the same time, according to information provided on the Web page of the e-inspectorate of the Social Insurance Office, which provides customer services on behalf of the Social Insurance Office, it is now possible to confirm authenticity of clearance certificates issued after April 3rd, 2009. The service is free of charge and available online at https://ssl.zus.pl/zn.

Information concerning liabilities towards persons who are not employees as of the date of the report, in particular, severance payments and benefits for members of the management board or employees of the Company, which have not been paid in full or will become mature in the future.

In principle, the audit includes the circumstances associated with the current state of employment at the company. However, for the purpose of complex assessment of the enterprise with regard to employee affairs, it is also significant to provide a description of obligations towards those persons, with whom the relationship of employment has expired or has not been established yet. As for the first of these two groups, liabilities towards persons, with whom the contract of employment has been terminated, may be due, for example, to severance payments, benefits, provisions that prohibit competition. These benefits are often paid periodically in instalments for a specific time after termination of the contract. The audit results should indicate the liabilities, resulting from contracts of employment, which have not come into force yet, if the employer has already committed to fulfil these on the basis of a preliminary contract of employment. In particular,
it is necessary to indicate the amount of liabilities based on the agreement, as well as the basic conditions of employment, referred to above.

**Copies of manuals and textbooks issued to employees**

Employee textbooks may pertain to many issues associated with the conditions of performance of work. Most often, construction companies prepare such textbooks in order to facilitate the process of training of new employees with regard to the structures and principles applicable at the company. Textbooks should serve as a source of practical knowledge for employees; for instance, they may contain provisions on the organisational structure of a construction company. There is no legal obligation which would enforce publishing of textbooks by construction companies. During analysis of textbooks, it is necessary to make sure that they do not contain provisions which would violate the rules of equal treatment or the unconditionally applicable provisions of the labour law.

Moreover, during analysis of the documentation defined in the labour law, the auditor may encounter documents associated with the corporate anti-mobbing policy. However, development of such a policy is not required by the Polish labour law.

During a due diligence audit of a construction company, particular attention should be paid to whether the company has introduced manuals for employees, required by legal provisions, in particular, concerning the occupational health and safety issues.

**A list and description of disputes on labour law, completed or pending within the last three years**

To the extent stated above, the report should, most of all, include information on the subject of the proceedings (what the dispute was about), on the final decision and whether it is binding. If the ruling states that the company is obliged to make a payment, it should also be established whether the decision has been executed in full. Requesting information for the last three years is justified, when it is necessary to clarify those areas in which most disputes with employees emerge. The above may indicate indirectly those areas of functioning of the company which require a change, if, for instance, on the basis of the above, it is determined that mobbing, discrimination etc. are problems frequently emerging at the company.

As for disputes which have not been settled, it is important to determine the subject of the claim, value of the subject of dispute and expectations with regard to the further proceedings. To this end, it may be helpful to address the litigation attorneys of the company.
A register of accidents at work

According to art. 234 § 3 of the Labour Code, the employer is obliged to maintain a register of accidents at work. Moreover, the employer is obliged to keep a report, stating the circumstances and causes of the accident at work along with the remaining documentation concerning the accident, for the period of 10 years. A register of accidents at work should contain the first name and surname of the victim, date and place of the accident, date of preparation of the accident report, information on the consequences of the accident for the victim, information whether this was an accident at work and a description of the circumstances of the accident, delivery date of the application for payment of benefits related to the accident to the Social Insurance Office, information on benefits paid by the construction company (a single-time compensation) or the reasons for non-payment of benefits to the victim and information on other circumstances of the accident which should be included in the register of accidents.

On the basis of the register of accidents at work, the person preparing the report may provide conclusions useful for the client with regard to specific threats associated with the functioning of the company, in particular, associated with handling of machines and other devices.

Information on inspections carried out by the District Labour Inspectorate and the State Sanitary Inspection for the last three years, including the scope and result of these

The State Labour Inspectorate is a body established on the basis of the act of April 13th, 2007 on the State Labour Inspectorate for the purpose of supervision and control of compliance with the labour law, in particular, the provisions and principles of occupational health and safety, as well as legislation on legal employment and other paid work to the extent stated in the act. Inspections are aimed at verification of the factual circumstances with regard to compliance with the labour law. They are concluded by a report in which the body indicates any irregularities that have been found.

The State Sanitary Inspection is a body established on the basis of the act of March 14th, 1985 on the State Sanitary Inspection (uniform text: Journal of Laws of 2011 no. 212, item 1263 as amended) for performance of public health tasks, including supervision of the conditions of occupational health and safety.
The findings specified in the reports of these institutions may provide the client with useful information on the status of compliance with the labour law legislation at the company.

**A list of agreements concluded with employees, other than contracts of employment.**

**Non-competition agreements** – according to art. 101 (2) of the Labour Code, the employer may conclude an agreement for non-competition upon expiry of the employment relationship with an employee who has access to particularly significant information the disclosure of which could be harmful to the employer. On the basis of this agreement, the employee undertakes not to engage in any activity competitive to the employer and not to provide work on the basis of a relationship of employment or on any other basis for the benefit of any entity engaged in such activity (non-competition clause), for the time period specified in the agreement after the expiry of the employment relationship. Agreements of this kind should be regarded as significant from the perspective of the audit, as they are always strictly associated with the obligation of the employer to bear the costs in form of a compensation for the employee due to withdrawal from competitive activity. According to art. 101 (2) § 3 of the Labour Code, such compensation must not be less than 25% of the remuneration received by the employee prior to expiry of the employment relationship for the period equivalent to the duration of the non-competition clause. If the non-competition agreement does not specify the remuneration amount, in judicial practice it is usually assumed that the employee is entitled to the minimum salary, specified in the act.

A non-competition agreement may also be concluded for the duration of the employment relationship. In such case, the employee is not entitled to additional remuneration for the agreement.

**Agreements with employees raising their professional qualifications** – on the basis of art. 103 (4) of the Labour Code, an employer planning to commit an employee to maintain the employment relationship after they finish raising their professional qualifications should conclude a written agreement with such an employee. The employee is entitled to an additional leave for the purpose of raising of their qualifications. In agreements of this kind, the employer usually undertakes to provide additional benefits for the employee, in particular, to cover the costs of education, travel, textbooks and accommodation. The report should include information on the scope of these benefits and the period of financing.
### 4.3.2 Model of analysis of a contract of employment

In principle, tasks performed by a construction entrepreneur go beyond the capacities of a single person; therefore, it is common in the structure of employment of companies of this kind to have several persons hired on the same or similar work positions. Usually, the contracts of employment applied by the entrepreneur are based on the adopted standard, in particular, in the case of front-line employees; in most cases, individual provisions are not subject to negotiations. Therefore, the scheme presented below may be valuable for the purpose of assessment of these agreements.

A contract of employment concluded on .......... with ........

| Type of contract of employment | - Contract concluded for a limited period  
|                              | - Contract concluded for an unlimited period  
|                              | - Contract for the period of performance of specific work  
|                              | - Contract concluded for a trial period  
| Type and place of work | - Work position occupied by the employee and the basic scope of duties  
|                              | - Place of performance of work, specified in the contract of employment  
| Remuneration | - remuneration  
|                              | - remuneration structure (basic remuneration, bonuses, prizes)  
|                              | - remuneration system (time-based, piece-rate, commission-based, mixed)  
| Full time/ part time work | - full time/ part time  
| Work time | - basic, equivalent work time, continuous, interrupted, task-oriented, shortened work week, „work on weekends”  
| Conditions of termination of the contract | - notice period: statutory or contractual, duration  
|                              | - acceptability of termination of the contract upon a notice – whether the employee is entitled to particular protection against notice of termination (e.g. art. 39 of the Labour Code, 41 of the Labour Code)  
| Special employer benefits due to termination of the contract | - severance pay  
|                              | - other special rights associated with termination of the contract of employment  
| Non-competition clause | - whether applicable to employee during term of employment or upon expiry of the employment relationship  
|                              | - liability of the employer due to validity of the non-competition clause  

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4.4 LEGAL DUE DILIGENCE
OF A CONSTRUCTION COMPANY

(D. OKOLSKI)

What makes a real value of a construction company? Certainly, contracts – contracts in progress and contracts in pipeline, a real estate owned by such company which can be developed or sold, people working for such company, patents and technology applied by such company, recommendations for projects already performed by such company and many other assets which shall be carefully checked before any acquisition or takeover of a construction company.

In order to properly check a construction company, lawyers and other consultants need to perform a legal due diligence. Below are the basic highlights of such a legal due diligence.

1. Legal Form and Organisation of the Company:

Legal form of a construction company has a basic importance for a proper acquisition or take over of such company. Under Polish law it can be either: sole proprietorship, partnership or a company/corporation which means that not always a construction business entity is a company (corporation). In case it cannot be treated as a company (corporation) purchaser can only take over assets or an enterprise of such a business entity. In case of a company it can be both – acquisition of shares or acquisition of assets. Proper determination of a legal form of the construction company is a condition precedent for any further legal actions.

Generally, companies have its authorities and organisation. This shall be precisely described in the company’s Articles of Association or its by-laws. Below is a detail list of documents which shall be reviewed and examined by a lawyer before acquisition of a construction company:

a) Articles of association with all amendments
b) copies of registration in the Court Register (KRS)
c) licences and permits for the Company’s business activity
d) current List of the Company’s Shareholders
e) composition of the Management Board and Supervisory Board
f) pledges or other encumbrances of the Company’s shares
g) any limitations or conditions for sale of the Company’s shares
h) By Laws of the Management Board and Supervisory Board
i) list of any shares or participation in other companies and/or business entities in Poland or abroad.

Unexplained lack of any above mentioned documents or any gaps in the company’s history of business activity shall be treated as a warning to any potential investor planning to acquire or take over such a company. It should be then examined properly why any document or records of the company’s business activity is missing.

2. Company’s Real Estate and Movables:

Quite often a construction company carries out a development activity, too. In such a case it is of utmost importance which particular real estate and in which localisation such company owns it. Furthermore, it is also very important to determine if such real estate is subject to any mortgage or rights of third parties. Due to the Polish law concept of open Land and Mortgage Books (rękojmia wiary ksiąg wieczystych), it is very easy to check (even by internet) and make an examination of the company’s legal title to the land, its encumbrances (mortgages etc.) and any other important legal information concerning real estate provided that we know a proper number of Land and Mortgage Book (księga wieczysta).

Polish civil code provides for various types of legal title to real estate. Not all real estate held by a construction company shall be owned. It may be leased or held under various legal titles (e.g. perpetual usufruct, lease, use, easement etc.). This needs to be properly examined by a lawyer in order to determine how particular real estate may be used or developed. Ownership and perpetual usufruct of land is both subject to compulsory registration in Land and Mortgage Book kept by district courts. The Land and Mortgage Books provide information on the current status of real estate including area of land, buildings located hereon, names of owners or perpetual users, third party rights and claims to such real estate and mortgages encumbering it.

Furthermore, what and how can be done with a particular real estate is determined in the Local Development Plan (zoning) or a Localisation Decision (issued for such a real estate in case of lack of the Local Development Plan).

Apart the real estate some movables can create a certain value of a construction company such as cement plants, cranes, construction machines etc. Depending on size of a construction company and its specialisation (roads and infrastructure or general construction) list of movables will be important. More often, companies do not own but lease such machinery and tools necessary for its construction activity.
Below is a detail list of documents which shall be reviewed and examined by lawyer before acquisition of a construction company:

a) list of all the Company’s real estate including description of the real estate,
b) current excerpts from Land and Mortgage Book
c) current excerpts from Land Register
d) real estate acquisition documentation such as notary deeds, court orders etc.
e) encumbrances of the real estate – mortgage, pre-emption right etc.
f) claims and disputes concerning Company’s real estate
g) Local Development Plan or Localisation Decision or Building Permit for the Company’s real estate
h) permits or consents for purchase of the real estate
i) access to the public road and media
j) lease agreements for the Company’s real estate
k) legal title to the Company’s movables (ownership, lease, leasing etc.).

3. Intellectual Property:
Some of construction companies, in particular these which apart the construction activity carry out a production activity may have some patents or technology know-how rights. Such intellectual property rights make create an additional value of such construction company. They shall be checked from at least two points of view – technical and legal. Legal check shall determine validity of such intellectual property rights, any limitation in time or by territory, third parties rights etc. Technical check shall be carried out by technical consultants.

Below is a detail list of documents which shall be reviewed and examined by lawyer and/or technical consultant before acquisition of a construction company:

a) list of any Company’s trademark, patent or licence rights
b) copies of registration of such rights
c) all software and other intellectual property agreements.

4. Financial Agreements:
Financial condition as well as financial obligations of a construction company shall be established by reviewing its financial documentation
(accounting books etc.) as well as its all loan agreements associated with agreements and documents securing loans taken by such company and any other financial agreements.

Reviewing such financial agreements may require advanced legal skills concerning not only pure legal issues but also many financial issues. Cooperation with other financial consultants in this respect shall be necessary.

Below is a detail list of documents which shall be reviewed and examined by lawyer and/or financial consultant before acquisition of a construction company:

a) copies of all shareholders’ loan and bank loan and other loan agreements with amendments
b) list of all encumbrances on the Company’s assets (other than mortgages on the Company’s real estate and pledges on the Company’s shares)
c) list of all payment guarantees issued or received by the Company
d) list of any factoring agreements, receivables assignment agreement etc.
e) copies of any promissory notes issued or received by the Company
f) list of any bonds issued or received by the Company.

5. Commercial Agreements:

Certainly the most important asset of a construction company are contracts – contracts in progress and contracts in pipeline. These shall be properly reviewed by lawyer but also by a technical consultant. Determined shall be a duration of such contracts, possibility of termination, contractual obligations and rights of the parties as well as financial conditions and consequences for late or improper performance of such contracts by the construction company (contractual penalties or liquidated damages).

Each and every contract shall be very carefully checked. This also applies to establishing the party acting as an investor – who is the other party to such contract, is such party financially stable?

In Poland, since 1991 and the collapse of the previous regime and of the socialist economic system, there are no standard general rules for construction contracts such as for example FIDIC or German VOB. In the construction contracts currently present on the Polish market,
all the risks and obligations are vested with the contractor and all the rights go only to the investor. Most of the construction contracts are signed in the formula Design and Build or only build based on the design provided by the investor. Risks such as title to the land, unexpected underground conditions, design errors, increase of labour and material prices are all shifted to the contractors. Many contractors, in order to win a tender accepted such risks without calculating necessary provisions for delay or/and price increase due to these risks.

If a construction contract does not provide or allow the change of the contract price, the general rule is that such a price cannot be changed (without the mutual consent of both parties of the construction contract).

Of course, sometimes there are some obvious grounds to change the contract price such as extra/additional works, faults on an investor side, design errors etc. Then, the issue of a contract price increase is less difficult but still not that easy.

Below is a detail list of documents which shall be reviewed and examined by lawyer and/or technical consultant before acquisition of a construction company:

- a) list of all current commercial agreements (construction contracts) in force
- b) list of all construction contracts with guarantee or warranty period in force
- c) list of all disputes or potential claims concerning construction agreements in force
- d) copy of the Company’s standard construction contract or subconstruction contract
- e) copies of the current commercial agreements (construction contracts) in force together with all amendments and attachments.
- f) insurance agreements in force
- g) copies of any other agreements material for the Company’s business activity

6. **Court and Arbitration Proceedings:**

There is quite serious slowdown – or even a beginning of crisis – in the construction industry in Poland after the Euro 2012. This concerns in particular the public procurement sector (motorways, infrastructure and other public investments). Major reasons of such a slowdown are:
a) substantial decrease in EU funds and subsidies for infrastructure development: Poland was a beneficiary of huge EU funds for motorways and infrastructure within the last years ending in 2012.

There are no or almost no new EU funds for 2013 and next years (except for funds dedicated to the railway sector), and

b) Polish and foreign construction companies present in Poland won the public procurement tenders based on sole criteria – the lowest price!

The above mentioned reasons caused an increase in litigation and arbitration proceedings concerning construction companies. Construction companies are seeking any potential additional remuneration which they can win in court. On the other side, investors try to decrease contractually agreed remuneration by imposing contractual penalties or liquidated damages on delays and improper performance of construction contracts.

At present, three or four large construction companies active in the construction industry are already in bankruptcy proceedings (Hydrobudowa SA, PBG SA and DSS SA) and two other are close to announcing it.

Below is a detail list of documents which shall be reviewed and examined by lawyer before acquisition of a construction company:

a) list of all the Company’s pending court and arbitration proceedings with a detail description of each case
b) list of any potential court and arbitration proceedings with a detail description of each case
c) list of any injunction relief or any other court decision in the Company’s court or arbitration proceedings
d) list of any bankruptcy or arrangement proceedings with the Company’s participation.

7. Environmental Law Issues:

Environmental issues are becoming of the utmost importance in particular when a construction project is run in areas of Natura 2000 or in any way affects the natural environment.

Reviewing such environmental documents may require advanced legal skills concerning not only pure legal issues but also many environmental and technical issues. Cooperation with other environmental technical consultants in this respect shall be necessary.
Below is a detail list of documents which shall be reviewed and examined by lawyer and/or technical consultant before acquisition of a construction company:

a) list of any environmental authorities decision imposing any penalty or fine on the Company
b) copy of documentation in any environmental proceedings pending against the Company
c) list of potential environmental claims against the Company

8. Final comment

I believe that Poland should introduce a standard general rules for construction contracts such as for example FIDIC or German VOB where all the rights and obligations between the parties are balanced. Indeed, currently, Polish “FIDIC” means that all the provisions concerning contract price change and contract time change are deleted and that the only privileged party of such a contract is the investor, not the contractor.

The Public Procurement Law in Poland should be also changed introducing a simple rule that the lowest and highest offer in a public tender are automatically rejected. These would force the bidders to make a realistic proposal instead of offering artificial dumping prices in their bids.

In the future, the tenders, design documentation and title to the land on which investment shall take place should be much better prepared by the public investor than it was done so far. Contractors took a very hard lesson of life so far. They do their homework now. The contractors have become quite reluctant to place their bids for reconstruction of Grota Roweckiego bridge in Warsaw due to many mistakes and errors in the design documentation. The tender was postponed again due to the poor quality of the tender documentation and objections raised by contractors.

The above changes may make business life less difficult and risky to the construction companies present on the Polish market.
CHAPTER 5
ENVIRONMENTAL AND SUSTAINABILITY POLICIES FOR CONSTRUCTION COMPANIES
(A. MUKHERJEE, P. NOWAK)

5.1 CONTEXTUAL ISSUES\textsuperscript{14}

- The construction sector uses over 420 million tonnes of material resources and converts 6,500 hectares of land from rural to urban use each year.
- Approximately 13 million tonnes of construction and demolition waste is material delivered to sites but never used.
- Annually, 90 million tonnes of construction and demolition waste is generated - the industry produces three times the waste produced by all UK households combined.
- Construction and demolition is responsible for creating 21% of the hazardous waste in the UK.
- About 10% of national energy consumption is used in the production and transport of construction products and materials, and the energy consumed in building services accounts for about half of the UK's emissions of carbon dioxide.
- Climate change is making flood management an increasingly important factor in deciding where to locate new development. Presently, 1.85 million houses and 185,000 commercial properties are at risk from flooding, figures that are likely to increase under planned future development.

Every year the Environmental Agency\textsuperscript{15} (EA) responds to 350 pollution incidents caused by construction. Individual builders, small/medium enterprises and larger companies are all responsible for the impact they have

\textsuperscript{14}Information distilled for various publications of the Environment Agency
\textsuperscript{15}See www.environment-agency.gov.uk/
on the environment. Pollution during construction can be prevented by careful planning and management of on-site activities. Around 20 million tonnes of construction, demolition and excavation (CD&E) waste was sent to landfill in 2010. At the end of 2011 CD&E waste was the largest contributing waste type in illegal waste sites.

Duty of Care is a legal requirement that applies to the use, treatment, disposal and transportation of waste. Failure to comply with the law risks penalties in court and can lead to serious impacts on the environment.

Good site management and well managed waste handling makes good business sense, reduces costs and enhances community relations. Sustainable construction is about the better management of resources, reusing waste materials where possible, and reducing carbon footprint. It includes how developments impact on and provide for the surrounding infrastructure and natural environment as well as the fabric of buildings. Good practice can help to achieve sustainability and reduce costs.

Local authorities consult the Environment Agency about planning applications. Evidence is used to assess the potential environmental risks associated with a particular development. Whilst EA provide evidence and comment on planning applications, they do not have the power to grant or refuse permission for a development. This role rests with the Local Planning Authority (LPA), however, it is unlikely that LPA will grant permission if EA has a valid objection to the proposed planning application.

To avoid the scenario where there is not enough information included in planning applications for EA to determine what impact the development will have on the environment, pre-application forms can be used to assess the information requirement and position of EA prior to submission of a planning application.

The construction industry plays a major role in improving the quality of the built environment, but it also impacts on the wider environment in a number of ways.

The construction business in the UK is responsible for nearly a third of all industry-related pollution incidents. Construction and demolition waste alone represent 19% of total UK waste. Too many buildings are environmentally inefficient and do not make best use of limited resources such as energy and water. The energy used in constructing, occupying and operating buildings represents approximately 50% of greenhouse gas emissions in the UK.

Sustainable construction techniques have been successfully used to deliver
many projects such as the Great Western Hospital in Swindon and the Millennium Village in Greenwich. Yet take up of sustainability principles varies significantly, with some leading firms following recognised good practice, but others still making little effort. The environmental efficiency of buildings in the UK remains lower than in many other European countries. An increase in the number of single person households, together with rising domestic waste production and water consumption, means that increases in environmental efficiency are needed just to limit the impact of existing buildings.

Promoting sustainable construction is difficult because of the industry’s size and fragmentation. The industry provides a tenth of the UK’s gross domestic product and employs 1.4 million people in many types of business.

The rate of construction in the UK is set to increase. The UK Government's Sustainable Communities Plan seeks to accelerate the current house-building programme and increase the house-building target by about 200,000 on top of the 900,000 new homes planned between 1996 and 2016 in the South East. This new emphasis on growth represents an opportunity to shift development towards delivering more sustainable homes and construction.

5.2 THE ENVIRONMENT AGENCY'S ROLE

As the principal environmental advisor to the Government, the Environment Agency has a broad interest in construction and would like to see its environmental impacts reduced. More specifically:

- As consultees on land use planning, EA advise on where buildings and infrastructure should be located to reduce environmental impacts and flood risk.
- As regulators of waste and discharges our role is to ensure construction waste is managed safely and to drive a reduction in construction pollution and waste volume.
- As the organisation with a statutory duty for strategic water resources planning, our role is to ensure homes and other buildings are built in places that have the capacity to support them, and to standards that encourage efficient water use.
- As a construction client EA’s projected spending on construction is in excess of £250 million and EA’s role is to lead by example
and demonstrate what sustainable construction means in practice. Government, industry and the Environment Agency all have a role to play in promoting environmental improvements and reducing the environmental impacts of the built environment, both in terms of construction and during the life of buildings.

5.3 DEVELOPMENT TO BE LOCATED IN THE RIGHT PLACE AND IN THE RIGHT WAY

- Local authorities should comply with Government planning policy and advice relating to development and flood risk (Planning Policy Statement 25: Development & Flood Risk in England, Planning Policy Wales and Technical Advice Note 15 in Wales) and consult the Environment Agency on planning applications where there is a risk from flooding.
- Local authorities should always consider the environmental capacity of an area, particularly its water resources and waste management options, to support new built development. These issues should be reflected in all strategic planning and individual development control decisions.
- The Government has a target to locate 60% of new development on previously developed 'brown field' land. This land is often potentially contaminated by previous use. The Agency will work with local authorities to encourage the redevelopment of such land to include appropriate site investigations and remediation to reduce risk to human health and the environment, especially controlled waters.
- Traditional methods of drainage tend to increase flooding and pollution risk. All new developments should incorporate appropriate sustainable drainage systems.
- EA will discourage development that harms habitats and species and encourage developments that include improvements to biodiversity.
5.4 REDUCED CONSTRUCTION POLLUTION AND WASTE

- EA will work with others to address pollution incidents caused by construction sites, construction waste and industry-related fly-tipping. Our broader work on waste reduction will contribute to reducing waste streams and better segregation for recovery from construction, particularly hazardous waste. EA will encourage more construction firms to actively manage their environmental impact, ideally through a recognised Environmental Management System.
- Large-scale developers should produce and implement a written 'site waste management plan'. This should identify the volume and type of construction and demolition waste, and demonstrate how off-site disposal of wastes will be minimised and managed.
- The Government should amend the Duty of Care provisions so that developers and others are not allowed to avoid responsibility for waste materials through simply using contracted waste carriers. The Government should also extend to building inspectors the powers to examine and enforce sustainability issues during their routine site checks.
- Targets on recycling construction waste should be increased and there should be a requirement to use a fixed percentage of reclaimed materials in construction. This would help make construction and demolition waste more valuable and hence less likely to be disposed of in a careless way.
- Government should continue to use revenue from the Landfill Tax to help industry improve its environmental performance.

5.5 IMPROVED ENVIRONMENTAL EFFICIENCY OF BUILDINGS

- Government should review the scope of the building regulations and expand them to cover water efficiency. In the longer term Government should introduce a sustainable development duty within building regulations so they apply to construction waste and the wiser use of materials, including packaging.
- Voluntary schemes such as the EcoHomes Standard should be improved over time and be increasingly used to guide higher construction
standards. Commercial house builders should be encouraged to follow the example of English Partnerships and the Housing Corporation and aim for a ‘very good’ or ‘excellent’ standard of EcoHomes.

• Government should explore how the town and country planning system can be used to drive forward environmental efficiencies during refurbishment and in new homes and buildings. This could include Section 106 agreements, planning conditions, Supplementary Planning Guidance and design briefs.

• Government should ensure home buyers are provided with a wide range of information on the environmental efficiency of homes through expanding the scope of the Home Information Pack.

5.6 INCREASED SKILLS DEVELOPMENT AND TRAINING

• EA believe that lack of relevant skills and knowledge is a hurdle to sustainable construction. EA will work with Government, professional institutions and both further and higher education to influence and support skills development and training in the industry. This will include work with sector bodies such as the Construction Industry Training Board.

5.7 THE AGENCY TO LEAD BY EXAMPLE

• EA have made progress as a public sector client adopting the principles of sustainable construction. But EA could do more. EA will identify sustainable construction targets when developing our capital projects, such as reducing waste and pollution incidents, setting targets for recycling aggregates or enhancing biodiversity. EA will acknowledge sustainable construction as a priority for the Agency when setting policy, and will adjust our appraisal framework and procurement practice so that sustainable construction objectives are taken into account. EA will promote the principles of sustainable construction through our procurement policy and chain of suppliers. EA will encourage other public sector clients and industry to achieve similar approaches to more sustainable construction.
5.8 ENVIRONMENTAL POLICY

Although there is currently no legal requirement for a company to operate an environmental policy (unlike a health and safety policy), Specialist Contractors are increasingly being required to do so by their clients as a condition of obtaining work.

An environmental policy is usually a short (no longer than one page of A4) unambiguous statement written in clear and simple language, which sets out the intentions and principles of a company or organisation to manage its environmental impact in a responsible way.

There are no firm rules about how an environmental policy should look or what it should refer to, but, to be effective, it should provide a framework for action and the setting of environmental objectives and targets.

A typical example of an environmental policy is set out below:

<table>
<thead>
<tr>
<th>Environmental Policy</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt;&lt;Insert company name&gt;&gt; is a specialist company which &lt;&lt;insert activity of company&gt;&gt;.</td>
</tr>
<tr>
<td>We recognise that our activities have an impact on the environment in terms of the use of raw materials, emissions to air and water, and waste generation, and seek to minimise this as far as is reasonably practicable.</td>
</tr>
<tr>
<td>&lt;&lt;Insert company name&gt;&gt; is committed to:</td>
</tr>
<tr>
<td>• Continual improvement in its environmental performance</td>
</tr>
<tr>
<td>• Preventing pollution</td>
</tr>
<tr>
<td>• Compliance with all environmental legislation, regulations and codes of practice relevant to the industry sector in which it operates.</td>
</tr>
<tr>
<td>It is the policy of &lt;&lt;insert company name&gt;&gt; to:</td>
</tr>
<tr>
<td>• Make efficient use of natural resources by conserving energy and water, minimising waste, and recycling where possible</td>
</tr>
<tr>
<td>• Meet its duty of care requirements in relation to waste by ensuring the safe keeping, transportation and subsequent recovery or disposal of waste</td>
</tr>
<tr>
<td>• Use recycled construction materials whenever these can be commercially justified</td>
</tr>
<tr>
<td>• Keep transport use to a minimum and regularly service vehicles to maintain their efficiency</td>
</tr>
</tbody>
</table>
• Work with suppliers to ensure they recognise and reduce the environmental impact of their products and transportation.

<<Insert company name>> will review this policy on annual basis, taking account of any changes within legislation and our organisation, and other factors.

We will communicate this policy to all our employees and ensure that they are given appropriate training to raise awareness of environmental issues.

<<Insert company name>> will make this policy available when requested to interested parties including members of the public

### 5.9 SUSTAINABILITY FOR CONSTRUCTION COMPANIES

The Strategy for Sustainable Construction is a joint industry and Government initiative intended to promote leadership and behavioural change, as well as delivering benefits to both the construction industry and the wider economy.

It aims to realise the shared vision of sustainable construction by:

- Providing clarity to business on the Government's position by bringing together diverse regulations and initiatives relating to sustainability;
- Setting and committing to higher standards to help achieve sustainability in specific areas;
- Making specific commitments by industry and Government to take the sustainable construction agenda forward.

### 5.10 WHY THIS STRATEGY IS NEEDED

The construction industry is significant; its output is worth over £100bn a year. It accounts for 8% of Gross Domestic Product (GDP) and provides employment for around 3 million workers. The public sector is a major client of the industry and is responsible for directly procuring about a third of all construction.

The output of the construction industry, be it public buildings, commercial buildings, homes or infrastructure such as our roads, harbours and sea defences, has a major impact on our ability to maintain a sustainable economy overall.
and has a major impact on our environment. Moreover, it is clear that we cannot meet our declared environmental targets without dramatically reducing the environmental impact of buildings and infrastructure construction; we have to change the way we design and build.

The business case for the sustainable construction agenda is based on:

- Increasing profitability by using resources more efficiently;
- Firms securing opportunities offered by sustainable products or ways of working;
- Enhancing company image and profile in the market place by addressing issues relating to Corporate and Social Responsibility.

This Strategy involves a shared recognition of the need to deliver a radical change in the sustainability of the construction industry.

**5.11 CONSIDERATIONS FOR CONSTRUCTION COMPANIES**

The construction industry can lead the way to better sustainability through a combination of:

- Low carbon, energy efficient buildings – buildings account for 50% of all emissions
- Reducing, reusing, recovering and recycling waste generated in the construction process - currently only around one third is reused or recycled
- Designing buildings to encourage people to be more environmentally friendly
- Developing supply chain excellence in all areas of environmental sustainability
- Construction clients, developers and contractors working together to keep social and economic sustainability high on the built environment agenda
- Sharing best practice to improve the industry’s green credentials, competitiveness and ability to win more business

A typical example of a sustainability policy for a construction company is outlined below.
Our sustainability policy is to:

- ensure sustainability is considered in the design, procurement and delivery of our services and products
- integrate a sustainable approach to our operations which will promote environmental, social and economic benefits
- improve the efficiency and effectiveness of our waste management systems, with the aim of reducing pollution and halving the amount of construction, demolition and excavation waste going to landfill by XXXX Company
- strive for continual improvement
- comply with or exceed all applicable legal requirements

This will be achieved by:

- incorporating the ethos of sustainability into the values of the company
- setting a target for reducing waste to landfill and embedding the target within corporate policy and processes
- setting corresponding requirements in project procurement and engaging with our supply chain
- measuring performance at a project level relative to a corporate baseline and reporting annually on overall corporate performance
- setting up a Sustainable Development Group to promote awareness of this policy via sector specific working groups
- continually monitoring performance and learning from the results reporting our progress, achievements and weaknesses
- communicating openly with our staff, clients, and suppliers and other stakeholders

The responsibility for the implementation of this policy lies with the Managing Director
5.12 ENVIRONMENTAL AND SUSTAINABILITY POLICY

Many companies operating in UK construction industry will often adopt a combined approach to environmental and sustainability issues in terms of policies & processes. A typical example is where a “triple bottom line” approach has been taken to formulate an integrated environmental and sustainability policy.

<name of the company> has a responsibility to minimise our impact on society and the natural environment when we design, build and manage facilities.

We work closely with our employees, customers, suppliers and subcontractors on all aspects of sustainability. We strive to balance short and long term interests, and to make economic, environmental and social considerations integral to our decision-making. We engage in dialogue with our partners and those who are affected by our activities.

We are committed to being a responsible business. This means conducting our activities according to rigorous ethical, professional and legal standards. We will not condone corruption, bribery or unfair competition.

People: adding value to customers, employees, business partners and the community

1. Customers: We strive to exceed client expectations

We work in partnership with our customers to deliver quality projects on time, safely and with due regard to the environment. We develop low carbon options whenever possible for our customers and encourage them to choose sustainable design, materials and construction methods. We aim to be the preferred supplier of low carbon solutions.

2. Community: We promote good community relations

By its very nature, our construction and refurbishment activities have an impact upon the local environment, end users and the wider community. We take a proactive stance in minimising disruption to our neighbours, and seek to make a positive contribution to the local community.

16 Sustainability – From Principle To Practice : Goethe-Institute, March 2008  see http://www.goethe.de/ges/umw/dos/nac/den/en3106180.htm
3. Employees: We are committed towards our employees

We create a safe and inspiring environment for our employees enabling them to develop their skills, and contribute to the growth of our business.

The commitments to our people are as follows:

• Health and safety – Health and safety is our top priority. We are committed to continually improving the health and safety of our employees, subcontractors and those affected by our activities, including members of the public.

• Equality and diversity – We provide an inclusive working environment where everyone feels valued and respected. We are committed to equal opportunities, and ensuring that we do not discriminate against anyone on the grounds of gender, marital status, race, colour, ethnicity, religion, sexual orientation, disability or age.

• Learning and development – We promote a learning culture and provide opportunities to equip our employees with the skills and knowledge they need to run our business successfully and to extend their personal development.

4. Supply chain: We procure responsibly

We treat our supply chain partners fairly and responsibly. We work with our subcontractors and suppliers to ensure they operate in a safe and environmentally responsible way. Together with our preferred partners we promote and develop sustainable solutions and best practice across the sector.

**Planet: we recognise our responsibility to future generations**

5. Energy: We strive to reduce our climate change impact

We will improve our energy efficiency, reduce our CO2 emissions and work with our clients to provide low carbon solutions.

6. Resources: We will improve resource efficiency.

We believe in reducing the supply of natural resources used in our products. We collaborate with our clients and supply chain to use alternative materials and methods to optimise the use of raw materials. We also promote measures to recycle and minimise waste.

7. Environment: We will limit our environmental impact.
We take all reasonable measures to ensure that our activities are conducted in a way that minimises our impact on the local environment. We promote good environmental practice and seek opportunities to enhance biodiversity on our construction sites.

**Profit: creating economic value**

8. Innovation: We innovate to identify balanced sustainable solutions

Innovation is essential for our company’s success. Together with our partners in the value chain we will provide sustainable solutions that balance economic, environmental and social interests. This approach ensures that we use materials efficiently and deliver value to our customers.

9. Prosperity: We believe that sustainability leads to economic prosperity

We aim to create value for our shareholders and society by operating both profitably and sustainably. We believe that by applying these principles we create value for our shareholders, customers, employees and the public.

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**5.13 SUSTAINABILITY RESPONSIBILITY POLICY AND ACTION PLAN**

This Action Plan is made up of a tiered set of objectives, which support <insert company name> Management Policy and Integrated Management System.

It describes <insert company name>‘s sustainable construction / business objectives and approach to achieving them.

We have developed an overall sustainable construction / business action plan, and subsidiary action plans for each of the sustainable business ‘triple bottom-line’ disciplines of: Environment; Society; & Economy.

Each of the four action plans consists of an objective, which has a set of goals designed to achieve the objective related to it.

The goals of the overall sustainable construction / business action plan form the objectives of the subsidiary statements.

For each statement, one or more strategies have been assigned to each goal. These are the practical methods, which will move us closer to our goals.
A measure applies to every strategy. This is the item that will tell us how successful we are in what we set out to accomplish.

Company Director’s are overseeing the action plans and their implementation. Individual strategies and measures are the responsibility of named individuals in the <insert company name> team.

This plan will be reviewed on an annual basis, as a minimum, where progress towards the targets / strategies shall be recorded.

Sustainable Development Action Plan

<table>
<thead>
<tr>
<th>Objective</th>
<th>Goal</th>
</tr>
</thead>
</table>
| To improve <insert company name>’s performance in terms of sustainable construction / business, minimising negative impacts and providing positive benefits to the environments, communities and economies which the company works in and with. | 1. To reduce negative environmental impacts  
2. To enhance the environments which <insert company name> works in  
3. To benefit the communities which <insert company name> works in and with  
4. To generate value for all stakeholders, including shareholders, clients, staff and suppliers |

Similar to above, separate individual action plans can be developed for environmental sustainability, social sustainability and economical sustainability.
CHAPTER 6
PROGNOSES FOR THE COMPANY DEVELOPMENT
(J. SOBOTKA)

6.1 „RISKS OF ENTREPRENEURS INVESTING ON THE REAL ESTATE MARKET”

6.1.1 Changes in the business cycle on the real estate market and risks in investment project

In the recent years, globalization of economy, the economic recession, as well as recession on the commercial real estate market in the countries of Western Europe has led to more intensified investing on the commercial real estate market in the Central and Eastern European countries. Companies that operate on the international market, such as investment funds and insurance companies compare the rates of return on the international scale, searching for the most competitive real estate property (e.g. the most prestigious shopping centres and class A office buildings in central parts of the cities, logistic centres with access to motorways) or products on the capital market (stocks, bonds etc.). Before the final decision is made, they analyse the local conditions and compare the possibilities and investment potential of cities in different countries of the European Union.

Analyses of the changes taking place on the local real estate markets, in association with the general conditions of business operation may lead to minimization of investor risk and exert impact on the crises of financing of investment projects by the banking sector.
At present, the business cycle in economy and on the real estate market is characterized by a phase of high (2-3 years) and a phase of low business activity (up to 2 years)\textsuperscript{17}.

The turning points have become more moderate, the frequency is high, and the upturn phase amplitude is higher than the downturn amplitude\textsuperscript{18}, and the business cycles are influenced mostly by investments on the capital market and on the real estate market and by development of the innovative sectors of economy. Particularly significant are the changes in the GDP, in the employment rates, increase and decrease in the value of the capital market indicators, changes in prices and levels of inflation, import and export values, as well as profits and turnovers of enterprises in various sectors of economy, income and expenditures of the population.\textsuperscript{19} In cities, development of the sector of services, which is less responsible to economic downturns, is supported.

Globalization of capital market and real estate markets and interference of the public authorities (e.g. strategies for development of cities, working out of new plans of spatial development, which enable construction of e.g. new commercial and office facilities, apartment buildings, exhibition centres, application of tax reliefs for new investment projects on the real estate market and creation of new jobs) to some extent influence the modern cycles, where recession effects are moderated by slowing down of economic growth.

The objective of activities undertaken by the public authorities is, in the first place, to slow down the outflow of enterprises and active acquisition of investors and developers, enterprises that represent the innovative sectors of economy, in particular, services, financial institutions and the banking sector and other entities (such as public tenders for investment land e.g. for commercial developments or apartment buildings, new spatial development plans).

Four phases of the business cycle have been described: recession, depression, revival and peak shifting to recession.

\textsuperscript{17} Barczyk R., Kowalczyk Z., \textit{Metody badania koniunktury gospodarczej}, PWN, Warszawa-Poznań, 1993, pp. 28-30

\textsuperscript{18} Barczyk R., Kowalczyk Z., \textit{Metody badania koniunktury gospodarczej}, PWN, Warszawa-Poznań, 1993, pp. 28-30

The table below presents the characteristics of these.

<table>
<thead>
<tr>
<th>Cycle phase</th>
<th>Real estate market</th>
<th>Characteristics of rates of return</th>
<th>Financing of investments by the banking sector loans</th>
<th>Changes in unemployment rate</th>
<th>Production</th>
<th>Investments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recession</td>
<td>Lowering of the number of new investments, lowering of rental prices, increase in vacancy rates, decrease in value of real estate. Supply is higher than demand in various segments of the real estate market.</td>
<td>Decrease of the rates of return (as a result of lowered prices while maintaining fixed costs)</td>
<td>Drop in the number of loans, increase in interest rates for loans. More restrictive conditions of granting loans.</td>
<td>Increase of the unemployment rate and a decrease in the salary levels.</td>
<td>Decrease.</td>
<td>Decrease</td>
</tr>
<tr>
<td>Depression</td>
<td>Further decrease in the number of transactions. Oversupply of real estate property in various market segments. At the final stage, first transactions on the real estate market emerge, revival of demand takes place. Prices and values of real estate start to grow.</td>
<td>Further decrease of rates of return</td>
<td>Further decrease of the number of loans granted</td>
<td>Further increase of the unemployment rate.</td>
<td>Maintenance of lower production levels</td>
<td>Further decrease. More significant decrease in the prices of investment goods in comparison with consumer goods</td>
</tr>
<tr>
<td>Revival</td>
<td>Increase in demand for real estate. Supply is delayed in relation to signals from the market. Lowering of commercial and industrial vacancy rates. Increased sales of apartments. Increase in rent values, prices and market value of real estate property. In the final phase, professional investors give up new investments on the market, often selling their real estate.</td>
<td>Increase of rates of return in economy (as a result of increase in prices while costs are fixed)</td>
<td>Increase in the number of loans, lowering of interest rates.</td>
<td>Increase in the number of workplaces created.</td>
<td>Production plants engage in production in order to satisfy the demand. Increased production and prices.</td>
<td>Increase in the level of investments in various sectors of economy. Increased turnover on the market of securities (stocks, bonds)</td>
</tr>
<tr>
<td>Cycle phase</td>
<td>Real estate market</td>
<td>Characteristics of rates of return</td>
<td>Financing of investments by the banking sector loans</td>
<td>Changes in unemployment rate</td>
<td>Production</td>
<td>Investments</td>
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</tr>
<tr>
<td>Peak shifting to recession</td>
<td>The supply of real estate slowly exceeds the demand, leading to a decrease in the prices of sale or rental of commercial space, increase in the number of competitive projects on the local real estate markets. The supply exceeds the demand in various segments of the market.</td>
<td>High rates of return in the early period, lowering during the initial period of recession</td>
<td>Increased number of loans granted, the risk of a failure to foresee the recession and granting too many loans. The banks limit their loan-granting activity.</td>
<td>Creation of new workplaces.</td>
<td>High level of production. Supply and demand for goods and prices reach equal levels. Increase in production costs. Income increases; at the same time, savings increase and consumption levels go down.</td>
<td>New investments in various sectors of economy. The highest level of investment is reached to slow down in the recession period. Increase in the level of reserves in production and trade (increased product prices).</td>
</tr>
</tbody>
</table>


During the revival period, investors engage in new projects in various sectors of economy. During the peak phase, the rates of return are higher; in the recession and depression periods, they slow down. Investments on the real estate market, initiated during the peak/ early recession phase, due to the long period of construction and obtaining of all permissions in accordance with the building law, may result in a failure to obtain the expected rates of return. Difficulties with rental or sale of the property may be encountered, which, in turn, may lead to a difficulty in repayment of loans contracted for construction.

The business cycle is influenced – that is, the individual phases are shortened, deepened, lengthened or mitigated by many factors, such as: export\(^2\), interventions of the public authorities, the policy of change in interest rates

\(^2\) The economic policy has proven that during economic revival, the pace of increase of import is higher than the dynamics of the gross domestic product and export. In the recession phase, import decreases faster than the gross domestic product and export. Orłowska R., Pangsy-Kania S., Cykle koniunkturalne-teoria, analiza i praktyka, Fundacja Rozwoju Uniwersytetu Gdańskiego, Gdańsk, 2003, p. 53
for loans and deposits for the population. In order to revive economy, a relatively small increase in investment demand, governmental expenditures or net export is required; on the other hand, a relatively small decrease in the investment level may lead to a much deeper recession.

Phases of the cycle on the real estate market may be shifted in time in comparison with the business cycle. The phases on the market of commercial and industrial real estate are consistent with changes in economy; therefore, for investors, analyses of changes in the condition of the real estate market are of key significance when planning new projects.

The residential real estate market depends on access to the capital and loan conditions for entities on the real estate market (e.g. tax reliefs for households). It is often characterized by the opposite direction.

When the real estate market is undergoing a downturn, the banks slow down financing of new investment projects to a minimum, which leads to low availability of capital for the potential investors.

In the process of decision-making by enterprises with regard to purchase of land for investment in cities or districts, analyses of forward indicators in the business cycle are also of significance, as well as analyses of the local markets, such as:

- new building permits for commercial real estate (whether the investors commence construction upon issue of these permits or, in the case of oversupply of e.g. office, shopping, warehouse, production space, they withdraw from commencement or they suspend the construction works, what buildings are under construction, whether in buildings that have been commissioned the entire office has been rented – e.g. office, shopping etc., analysis of the number of permits issued on the scale of the district, the city, for the selected sectors of the real estate market;

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21 Kucharska-Stasiak E., Inwestowanie w nieruchomości, Valor, 1999,

22 Intercurrent business indexes are also analysed, such as: production of investment goods, sale of machines and equipment, production of consumer goods, production and turnover in the trading network, share of the cities in the gross domestic product, industrial production in total, increase or decrease in employment, the unemployment rate, increase in demands for unemployment benefits, rates of return on investment and total profits of companies, new investments of foreign investors in various sectors of economy. In the local market, it is also possible to analyse the number of companies: investors, developers and other entities engaging in new investment projects on the local real estate markets, migrations of companies representing various sectors of economy, including companies that represent the innovative sectors of economy. Competitive projects in a given segment of the real estate market, costs of construction on the local markets and labor resources and salaries in construction, as well as possibilities of lowering of construction costs.
- the building permits issued and commenced construction projects in the field of apartment buildings (percentage sale of apartments in buildings under construction or commissioned, which districts and locations are regarded to be the most attractive in the city)

- investment projects planned (analysis of the spatial development plans or studies of conditions and directions of spatial development with particular emphasis on investment lands designated in the local plans e.g. for apartment buildings, office and shopping facilities, exhibition centres, hotels, production plans, logistic centres, motorways or expressways,

- the planned tenders for investment land by municipal offices in attractive locations,

- the number of newly established companies and increase in employment (inflow of capital, increase in the city budget levels, increased investment in industry and services, estimation of demand for office, service, shopping space)

- number of companies dropping out of the market and a decrease in employment (analysis of companies, taking into account division into sectors of economy)

- rates of return for investments in various sectors and total profits of companies with particular emphasis on construction.

**Four phases of the cycle are listed on the real estate market, which are characterized by**\(^\text{23}\):

First phase of the cycle: excessive supply, lack of new investments, a drop in vacancy rates; Demand for real estate increases slowly; A slow increase in the prices and market values of real estate.

Second phase of the cycle: increase in demand, while the supply is insufficient, which results in increase of the rent levels. At a certain point, the cycle peak is reached, when supply is equal to demand.

Third phase of the cycle: supply is higher than demand, and the vacancy rate increases. Subsequent investment projects are completed, which results in further oversupply.; Lowering of prices for rental of commercial real estate by the owners.

\(^{23}\) G. Mueller "Understanding real estate’s physical and financial market cycles", Real Estate Finance, 1995 Vol. 12 p. 3
Fourth phase of the cycle: high increase in supply while the demand grows slowly. The rents are lowered to the level of fixed costs. The real estate cycle reaches the bottom.

The safest period for initiation of new investments on the local markets of commercial or housing real estate by investors and for obtaining loans from the banking sector is the end of the first and the beginning of the second phase of the cycle on the real estate market.

The table below illustrates the risks of enterprises in the phases of implementation of the investment project. Risk management includes identification and assessment of impact of the risk on the project, specification of the procedures of responding to risks and control of responses to risks, aimed at risk management.

The table below presents various types of risks that may emerge at the stage of negotiations with the real estate owner for the purpose of purchase, during the phase of development of the building permit and trade-specific designs, obtaining of building permits, in the phase of construction (obtaining of the occupancy permit) and commercialization of the facility.

<table>
<thead>
<tr>
<th>Risk type</th>
<th>Characteristics</th>
<th>Risk management</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-regulated legal status</td>
<td>No access to public road, a land plot separating the area from a public road (e.g. non-mortgage, owned by the City, court proceedings aimed at restoring of ownership by successors of the owners)</td>
<td>Verification of the legal status, purchase of real estate upon regulation of the legal status Risk of no possibility of commencing construction works (no possibility of establishment of easement of right of way and of delivery of utilities through the land plot with non-regulated legal status until such regulation, extension, even to several years, of the period preceding commencement of investment works (e.g. in the case of court proceedings, if there is more than one successor)</td>
</tr>
<tr>
<td>Development of building permit and trade-specific designs</td>
<td>Legal amendments that prevent obtaining of the building permit decision, e.g. amendment of the</td>
<td>Verification of entries in the existing and new local spatial development plans.</td>
</tr>
<tr>
<td>Risk type</td>
<td>Characteristics</td>
<td>Risk management</td>
</tr>
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<td>--------------------------------------------------------------------------</td>
<td>--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Risks of the phase of project development, implementation and commercialization</td>
<td>Risk of additional costs associated with environmental protection, archaeological works, facilities under protection of the Conservator of Monuments or adjacent to facilities under protection of the Conservator of Monuments</td>
<td>Extension of the phase of development of the project, risk of e.g. higher construction costs, if guidelines of the Conservator of Monuments are issued with regard to the materials use or e.g. reconstruction of the building according to the previous architectural designs.</td>
</tr>
<tr>
<td>Limitations in development of the real estate</td>
<td>Monuments of nature at the real estate property. Analysis of whether any monuments of nature are present at the land plot, along the boundaries of the study on the adjacent land plots, whether the existing trees and bushes are subject to protection or not.</td>
<td>Verification of the conditions of development or of the building permit issued, analysis of existing limitations and their impact on the building permit designs prepared.</td>
</tr>
<tr>
<td>Risk of the phase of development, construction and commercialization of the project</td>
<td>Changes in the condition of the local market in association with the business cycle</td>
<td>Planning of completion of the project depending on the business cycle, with particular emphasis on the trends on the local market of real estate and analysis of forward and present business indexes.</td>
</tr>
<tr>
<td>Risk type</td>
<td>Characteristics</td>
<td>Risk management</td>
</tr>
<tr>
<td>-----------</td>
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</tr>
<tr>
<td><strong>Stage of construction and obtaining of an occupancy permit</strong></td>
<td>Risk of increase in the costs of construction or further use of the facility as e.g. at the time of obtaining of the building permit, the interest rates for mortgages increased or the conditions of granting loans changed (e.g. became more restrictive), due to difficulties with obtaining a loan, changes in exchange rates and increase in the cost of purchase of materials and performance of investment works, the risk of a failure to complete the project as planned due to e.g. delays by the contractors</td>
<td>Analysis of the existing trends in the business cycle and condition on the real estate market, consideration of obtaining of financing from various sources (e.g. shareholders, subordinate loans) unless the project warrants commercialization and obtaining the expected net profit in the pessimistic variant. Consideration of shifting of the deadline for commencement of construction, if completion is to take place during the recession period, when the prices and value of the investment increase, the number of competitive projects increases, when supply is higher than demand in various segments of the real estate market. During the phase of development of the project, selection of a renowned general contractor to warrant completion of the investment works in accordance with the schedule and the cost estimate for the construction project.</td>
</tr>
<tr>
<td><strong>Stage of construction and commercialization of the project</strong></td>
<td>Risk of failure to obtain the required effectiveness level (rental or sale of various types of real estate) associated with demand and supply of real estate on the local or regional market</td>
<td>During the project development – analysis of a given market segment, analysis of transaction prices, analysis of supply and demand for real estate, valuation of the future value of the real estate property upon construction, analyses of financial flows, analyses of the costs of credits and construction, reserve for additional costs, specification of different variants (optimistic, pessimistic) of the attainable net profit.</td>
</tr>
</tbody>
</table>
6.1.2 Supply and demand in selected segments of the real estate market

Characteristics of office building investment projects

Warsaw still has no competitors among the Polish cities in terms of attractiveness for investors. In 2013, on the market of commercial real estate, the forecasts indicate that the demand will remain stable for office space in Warsaw, Krakow, Wroclaw and the Tri-City (Gdansk, Gdynia, Sopot), as well as in other key urban agglomerations.

In Warsaw, the total resources with regard to modern office space amounted to more than 3.7 million square meters at the end of year 2012, and the forecasts indicate that in 2013, the supply of space will exceed 4 million square meters. It should be expected that in downtown Warsaw, the rental prices for class A office space will be on the average level of EUR 24-27 per m²/month, which is the highest rental rate in Poland. The average rental rates in the strict downtown area are at the level of EUR 18-22 per m²/month, while outside downtown – only at EUR 12-16 euro per m²/month (comparable with rents in major cities of individual regions). In the upcoming years, the vacancy rates in Warsaw are expected to increase. The capitalisation rates for the best office facilities of class A in the strict downtown area (mainly the district of Śródmieście) are to reach about 6,2-6,5%. In key cities of the regions, the capitalisation rates for the best class A, A+ facilities will depend on the city size, location of the real estate at the level about 1.5-2.5% higher in relation to the best facilities in Warsaw.

Risks associated with investing in shopping centres

In year 2012, the total supply reached the level of about 7.94 million square meters. The key commercial markets in Poland are Warsaw, Katowice, the Tri-City. Analysing the level of saturation of commercial space per 1000 inhabitants, the highest level in the country can be currently observed in Wroclaw, Poznan, the Tri-City (a high risk in the case of construction of new shopping facilities; however, there is still demand for rental space in the most prestigious and biggest shopping centres). In the sector of commercial real estate, further expansion of global brands is expected – these generate the demand for space in the best facilities of the biggest cities (the polarization phenomenon). At present, the trends observed include construction of the largest and medium-sized shopping centres in the biggest agglomerations and development of the existing facilities. New discount centres are being opened, as well as convenience shopping centres; new shopping centres are being established at railway stations as well.
The rent amounts for the best space are very diversified. In Warsaw, the rents reach about EUR 80-100 per m²/month; in the biggest agglomerations – EUR 40 to 55 per m²/month, in cities of 100 to 300 thousand – EUR 21 to 40 per m²/month, and in cities of 70 to 100 thousand inhabitants – about EUR 21-27 per m²/month.

The capitalisation rates for the best commercial facilities (with very good lessees, representing international shopping networks) are at the level of about 5.8-6.2%.

**Development of the market of warehouse facilities**

The total area of warehouses in Poland is now more than 7.28 million square meters. In 2012, about 430 thousand square meters of space was commissioned (an increase by 10% in relation to year 2011). The vacancy rate on the annual scale amounted to about 9.2%.

In 2013, about 250 thousand square meters of space are to be commissioned, mainly in western Poland, near the motorways, where more than 88% of usable space has been rented. A further decrease in the vacancy rate is expected; however, there is a high risk of speculative projects and the demand may drop at the end of year 2013.

The rents have been stable, and the highest level was observed in the biggest agglomerations, and the lowest – in the suburban areas.

In 2013, it is expected that the capitalisation rates for the best logistic centres (with long-term rental agreements and reliable lessees) will be at the level of 8.2-8.5%.

<table>
<thead>
<tr>
<th>Location</th>
<th>Supply of modern warehouse space</th>
<th>Demand for modern warehouse space</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Warsaw</td>
<td>The most important market in the country. In three zones of Warsaw, about 2.59 million m² are located – 1,98 million m²</td>
<td>The highest demand in Poland of about 570 thousand m², where new agreements constitute about 57%. Construction of facilities to respond to demand and for speculative purposes. Rents diversified: from</td>
<td>The most significant market in the country, the lowest investor risk, also for speculative purposes. Investments outside Warsaw are risky – e.g. in Błonie, the vacancy rate is about 25%.</td>
</tr>
<tr>
<td>Location</td>
<td>Supply of modern warehouse space</td>
<td>Demand for modern warehouse space</td>
<td>Remarks</td>
</tr>
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<td>--------------------------------------------------------------------------------------------------</td>
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<td>------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Poznan</td>
<td>Total supply of about 895 thousand m2, about 20 thousand m2 under construction.</td>
<td>About 175 thousand m2 rented, new agreements constitute about 33.7%.</td>
<td>Low level of investments in progress</td>
</tr>
<tr>
<td>Central Poland</td>
<td>Total supply of around 1 million m2.</td>
<td>About 290 thousand m2 rented (increase by 30% in comparison with 2011), new agreements constituting about 31%. Rent of about 2.1 to more than EUR 2.7 /m2/month.</td>
<td>Mostly renegotiation of rental agreements, high risk of speculative projects.</td>
</tr>
<tr>
<td>Upper Silesia</td>
<td>Second largest market in Poland, more than 1.37 million m2.</td>
<td>About 250 thousand m2 rented (a decrease by about 30% in comparison with 2011), where new agreements represent about 50%. Rent of 2.5 to above EUR 3.4 /m2/month.</td>
<td>Risk of new investments.</td>
</tr>
<tr>
<td>Krakow</td>
<td>Total supply of about 136 thousand m2.</td>
<td>About 18.9 thousand m2 rented (a decrease by about 30% in comparison with 2011). Rent of 3.3 to above EUR 4/m2/month.</td>
<td>Very high risk of speculative projects.</td>
</tr>
<tr>
<td>Location</td>
<td>Supply of modern warehouse space</td>
<td>Demand for modern warehouse space</td>
<td>Remarks</td>
</tr>
<tr>
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</tr>
<tr>
<td>Wrocław</td>
<td>Total supply of about 717 thousand m², under construction: about 67 thousand m².</td>
<td>About 200 thousand m² rented (similar as in 2011), where new agreements constitute about 63%.</td>
<td>Mostly BTS projects, high risk of speculative projects.</td>
</tr>
<tr>
<td>Gdańsk</td>
<td>Total supply of about 170 thousand m², under construction: about 14 thousand m².</td>
<td>About 67 thousand m² rented (increase by about 18% in comparison with 2011), new agreements constitute about 63%.</td>
<td>High percentage of new agreements on the market. High risk of speculative projects.</td>
</tr>
<tr>
<td>Szczecin</td>
<td>The smallest market; total supply of about 42 thousand m², under construction: 6,9 thousand m².</td>
<td>Double increase in the number of transactions in comparison with 2011 to the level of 23 thousand m². Rent from 2,8 to above EUR 3.4 /m²/month.</td>
<td>Due to low total supply, high risk for speculative projects. The greatest decrease in non-rented space – to 20% from 50% in 2011)</td>
</tr>
</tbody>
</table>

Source: developed on the basis of Reports for year 2012, provided by Jones Lang Lasalle and Colliers International, 22.02.2013

6.1.3 Risks of the enterprise and location of the real estate property

Warsaw is perceived as one of the most competitive markets for planned investments, as well as transactions of purchase of commercial facilities. The ranking of the most attractive cities also includes Wrocław, Katowice, the Tri-City, Poznań.
In Warsaw, as well as in the biggest agglomerations, in their downtown areas, the supply of undeveloped land for commercial real estate purposes is increasingly limited (e.g. the district of Śródmieście and Wola in the capital city). This has resulted in increased interest of the investors in land plots that have been partially developed, with buildings designated for demolition (including post-industrial areas, e.g. at ul. Jana Kazimierza, the area of ul. Grzybowska), where the local spatial development plans or the studies of conditions and directions of spatial development allow for construction of apartment buildings, office buildings, high-volume shopping and office centres (such as demolition of the Mercure hotel at Al. Jana Pawła II and ul. Grzybowska).

Other facilities in the district of Śródmieście will face demolition as well, including e.g. the Jewish Theater at pl. Grzybowski, Hoffmanowa Secondary School at ul. Emilii Plater, Holiday Inn Orbis hotel at al. Jana Pawła and ul. Złota, the Ilmet office building at Rondo ONZ. Appendix1 presents a breakdown of real estate property items developed in years 2011-2012, which were under construction or have obtained the permits or the conditions for development of apartment buildings with services, such as the investment areas in Wola: at ul. Grzybowska, Siedmiogrodzka, Powązkowska, areas at ul. Jana Kazimierza. In the district of Żoliborz, these included the land plots for investment purposes, e.g. at ul. Rydygiera.

Another trend observed is development or reconstruction of the existing buildings in several stages. Agreements with the former lessees are terminated, the facilities are rearranged to increase their standard (change of the class of office buildings from C to B or higher) or the function of the buildings is changed from office to services-shopping-offices. Such reconstruction or development applied to buildings at: Marszałkowska, Nowy Świat, Krakowskie Przedmieście. According to analysis of sale transactions for undeveloped land in the district of Śródmieście in Warsaw in the period of 2011-2012, the supply of undeveloped land was very limited, while the demand was high. This resulted in the prices being higher than in any other segment of the real estate market in Śródmieście.

In the vicinity of the Marriot hotel, as many as six office buildings may be constructed (of the height of 262 m, 235 m, 180 m), in Wola – in the area

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Cf appendix 1: Selected transactions on the market of commercial real estate, Warsaw, years 2011-2012, developed on the basis of data from the Department of Geodesy of the Office for the Capital City of Warsaw and appendix 2: selected transactions on the market of undeveloped real estate property in the district of Śródmieście, years 2011-2012, developed on the basis of data from the Department of Geodesy of the Office for the Capital City of Warsaw.
of ul. Towarowa, Grzybowska, more skyscrapers can be constructed. The risk of commercialization of facilities of this kind should be underlined.

Prior to acquisition of land for investment, the investors analyse its legal status (analysis of land and mortgage registers at the appropriate courts, in particular, with regard to easement, the lease or rental agreements concluded in form of notarial deeds, easement for right of way, construction of utilities or other claims or liabilities charged against the land under concern, issue of expert opinions, investment limitations specified in agreements for perpetual usufruct of land, such as prohibition of development or construction of new facilities on a land plot).

Other investment limitations may emerge as well, which prevent development or construction of new facilities (e.g. a nearby gas station). The designation of the land property and of the adjacent plots is also analysed in the local spatial development plan or the study of conditions and directions of spatial development (such as the planned public roads, running through or near a given land plot).

In addition, it is crucial to analyse the utility supply routes, such as heating pipelines, gas supply lines etc., which may limit the investment potential of the property. In analysis of the location of the real estate, it is necessary to underline the significance of the access to a public road (e.g. the on-going court proceedings for recovery of land plots developed with roads by their owners, who lost their rights as a result of administrative decisions, and use of land plots designated for roads without regulation of their legal status). In Warsaw and other cities, a significant problem is existence of developed land plots, where parts of buildings or underground garages are located beyond the land plot boundaries. This requires regulation of their legal status by establishing of easement (e.g. easement for a part of underground parking lots located under the neighbouring buildings or land plots along the roads). Increasingly often, the investors attempt e.g. to obtain a permit for location in the road area of the neighbouring streets of an overhang of a strictly specified length, located at a certain height above the land level, of a specified area of the floor plan.

Thanks to this solution, it is possible to increase the usable space of buildings in the case of small land plots, often located in the strict downtown. Most often, land easement is established for overhangs of the buildings designed above the neighbouring developed land plots; the Road Management Authority must give its consent for some of the buildings above roads and traffic lanes.25

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25 Verification of whether payments are made for this; in case of any doubts, setting out is conducted.
In the case of investment lands located in areas subject to legal protection and adjacent to buildings entered in the register of monuments, worth underlining is the risk of implementation of the investment projects planned due to the necessity of conducting e.g. archaeological works within the land plot area, which may require additional financial expenditures and lengthen the investment period 26. This often applies to land plots in the attractive central districts of Warsaw and other key cities.

The process of obtaining of permission for commencement of investment works at the land plot and the adjacent plots (the technical infrastructure) may be lengthened due to the fact that the infrastructural components that collide with the planned development must be removed (demolished or moved) from the investment area.

The table below presents the risks that may emerge in the process of obtaining of the conditions of development or a building permit depending on the location of the property, the neighbouring areas, geotechnical conditions of land (e.g. land plots neighbouring the mining areas).

<table>
<thead>
<tr>
<th>Risks</th>
<th>Description</th>
<th>Recommended activities to mitigate the investor’s risk</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land property location</td>
<td>Real estate in direct vicinity or under protection of the Conservator of Monuments</td>
<td>Obtaining of all permits required by the law.</td>
</tr>
<tr>
<td>Entrances and exits from the real estate property</td>
<td>The property is adjacent to a public road, but a decision on entrance and exit location has not been obtained</td>
<td>Obtaining of all permits required by the law concerning location of entrance and exit, entering the traffic flow, e.g. lights. If the decision on entrance and exit is not obtained for the land plot, such as easement for the right of way using a strip of land located on the adjacent land plot having the entrance and exit from the land plot, or through court proceedings to establish the necessary</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Risks</th>
<th>Description</th>
<th>Recommended activities to mitigate the investor’s risk</th>
</tr>
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<tbody>
<tr>
<td></td>
<td></td>
<td>route via the neighbouring land plots; however, this will lengthen the construction process and obtaining of an occupancy permit.</td>
</tr>
<tr>
<td></td>
<td>a) Land plots containing connections under protection of the Conservator of Monuments and under legal protection as monuments of history</td>
<td>a) The land plot under concern is located within e.g. an area subject to legal protection as a recognized monument of history and is adjacent to objects entered in the register of monuments / Act of July 23rd, 2003 on protection and care of monuments (Journal of Laws of 2003, no. 162, item 1568 as amended)/</td>
</tr>
<tr>
<td></td>
<td>b) Land plots containing network connections are not subject to protection by the Conservator of Monuments.</td>
<td>Removal of the remnants of the previous land development (trees); it has been assumed that no additional permits and decisions would be required (apart from the procedure specified in the provisions, stating that an appendix to an application for permission for removal of trees and bushes is a document on management of trees; an application for removal of trees and bushes should be preceded by a permission for works in the vicinity of a monument. It is necessary to obtain the consent of the Conservator of Monuments to conduct the requested construction works in the urban area entered in the register of monuments and to obtain permission for excavation-based archaeological research, where it may be necessary to conduct such research prior to the investment planned in order to discover the remnants of historic...</td>
</tr>
<tr>
<td>Risks</td>
<td>Description</td>
<td>Recommended activities to mitigate the investor’s risk</td>
</tr>
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<tr>
<td></td>
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<td>developments. It may be recommended, if, during the survey of land, monuments have been discovered, to continue the archaeological research by ensuring the constant presence of an archaeologist, recognition of monuments and archaeological items and preparation of the proper documentation. According to art. 36 of the act on protection of monuments, archaeological research requires the consent of the appropriate conservator of monuments. Additionally, it is necessary to obtain the proper permissions for individual connections of the technical infrastructure at the Offices. Ensuring of access to utilities for all components of the municipal technical infrastructure</td>
</tr>
<tr>
<td></td>
<td></td>
<td>b) Obtaining of appropriate permissions for individual connections of the technical infrastructure at the Offices.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Speciﬁcation of conditions for location of a new building</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Obtaining of a decision to conﬁrm the project of geological works for development of the survey and engineering documentation to establish the geotechnical conditions for location of buildings. Obtaining of approval of this documentation.</td>
</tr>
<tr>
<td></td>
<td>Landslides, building wall cracks</td>
<td>In the case of landslides, the following may be necessary: e.g. expert opinions on the technical condition of neighbouring buildings, analysis of</td>
</tr>
<tr>
<td>Risks</td>
<td>Description</td>
<td>Recommended activities to mitigate the investor’s risk</td>
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<td>-------------------------------</td>
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</tr>
<tr>
<td>partially under the land property</td>
<td>possibility of emergence of landslides during the investment works, development of structures preventing the emergence of landslides. In the case of tunnels, the following may be required: e.g. expert’s opinion on the technical condition of the tunnel, taking into account the acceptable loading of the tunnel roof by the building planned. Expert’s opinion on the impact of the planned project on security of the tunnel structure and the neighbouring buildings.</td>
<td></td>
</tr>
<tr>
<td>Mining land</td>
<td>Impact of mining activity on the design, e.g. shallow mining may result in non-continuous deformations on the surface in form of cavities.</td>
<td>Recommended are expert opinions on whether mining activity may pose a risk to the investment; geotechnical survey of land. Obtaining of opinion from the District Mining Office. Recommendations: examining of the formation to examine the possibility of emergence of the deformations mentioned and modification of the formation if it has been found to be significantly devastated. Performance of preliminary tests using the geophysical-seismic method or drills.</td>
</tr>
<tr>
<td>Vicinity of landscape parks</td>
<td>Analysis of local spatial development plans and spatial development directions, analysis of possible limitations.</td>
<td></td>
</tr>
</tbody>
</table>
In the process of decision-making, concerning purchase of undeveloped land or buildings to be developed (e.g. new parts of shopping centres), extension (e.g. second or third storey, change of function of facilities – e.g. lofts), reconstruction (transforming an industrial facility into a shopping centre), a legal audit is conducted.

The following are analysed during the audit:
- Issued building and occupancy permits, other permits and decisions issued according to the building law, allowing for proper functioning of facilities
- Land and mortgage registers and files (e.g. easement for right of way, mortgage entries, easement, endowment mortgage)
- Functions in the spatial development plan or entries in the study or issue of the conditions of development
- Agreements for lease or rental of real estate (rents, duration, special conditions, possibility of termination).

A legal audit allows for mitigation of the transaction risk in the case of transactions financed by enterprises from their own funds and external funds (e.g. loans, subordinate loans, credits). Investment decisions depend on the credit costs for the enterprise, where the main parameter analysed is the forecasted level of profit, compared with other investment opportunities (e.g. the market of stocks, bonds, other regional real estate markets). Economic analyses for obtaining of the required rate of return and net income from investment are performed, as well as of new buildings to be rented or sold to provide means for repayment of the principal amount and interest of the credit.

For entrepreneurs, an excessively high ratio of the value of credits granted to the value of the real estate property (LTV) may be risky in the case of lowering of the market value of the real estate (e.g. lower rent rates for office and shopping space, withdrawal of lessees from preliminary agreements, higher vacancy rates) in the case of commissioning of the building in the phase of peak shifting to recession of the business cycle (e.g. lengthening of the construction period).
6.1.4 Summary

On the scale of Poland, Warsaw is the most attractive market in all segments of the commercial real estate market. Within the area of the district of Śródmieście, the rent rates for the highest class A office space reach the highest level (almost twice higher in comparison with other large cities, as well as other districts of Warsaw); it is similar in the case of shopping space (higher by about 40-50%). In the case of logistic centres, the rent rates are also the highest (about 20-40% higher in comparison with other cities and locations). The investors are also attracted by commercial real estate in such cities as Wrocław, Katowice, Poznań and the Tri-City.

In 2012, investors operating on the international scale purchased real estate characterized by high potential for development (e.g. office facilities of the highest class, such as WFC, IBC, Złote Tarasy, Platinum BP, Marynarska BP), the most attractive shopping centres, such as Manufaktura Shopping Centre, Złote Tarasy and Renowa and logistics centres (e.g. the warehouse real estate package of Prologi and Panattoni).

In the long-term perspective, it can be expected that the present trends will be maintained; prior to purchase of real estate, analyses of changes on the local real estate markets are conducted, as well as legal and financial audits, Technical Due Diligence of buildings and structures in order to minimize the investors’ risks.
CHAPTER 7
CASE STUDIES

7.1 CASE STUDY 1: CORPORATION TAX GLOSSARY

(A. MUKHERJEE, P. R. NOWAK)

Here are definitions of key terms used by HM Revenue & Customs (HMRC) for Corporation Tax purposes. These are not necessarily the same definitions used by:

- other HMRC tax areas such as VAT or Income Tax
- other government agencies such as Companies House
- various accounting conventions used to prepare audited accounts

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>abbreviated accounts</td>
<td>the accounts that some smaller and medium-sized companies may prepare and file for Companies House; if your company files abbreviated accounts at Companies House, you must still file full statutory accounts as part of your Company Tax Return</td>
</tr>
<tr>
<td>accounting period</td>
<td>the period of time used to determine your company or organisation's taxable profit for Corporation Tax; normally matches your company or organisation's financial year</td>
</tr>
<tr>
<td>accounting reference date</td>
<td>the term used by Companies House to refer to the last day of your company's financial year; see annual report and accounts</td>
</tr>
<tr>
<td>accounts</td>
<td>see annual report and accounts</td>
</tr>
<tr>
<td>active</td>
<td>an active company or organisation is liable for Corporation Tax; generally your company or organisation is active for Corporation Tax purposes when it is, for example, carrying on a business activity, trade or profession, buying and selling goods with a view to making a profit or surplus, providing services, earning interest, managing investments or receiving any other income; compare dormant</td>
</tr>
<tr>
<td>agent</td>
<td>an accountant, tax adviser or other professional that you appoint to deal with HMRC on your behalf for your tax affairs including Corporation Tax</td>
</tr>
<tr>
<td>amendment</td>
<td>you make an amendment to your Company Tax Return when you make a change to (amend) your return form or supporting documentation that you've already filed; HMRC can also make an amendment to your return</td>
</tr>
<tr>
<td>Annual Investment Allowance (AIA)</td>
<td>a type of capital allowance: for accounting periods that end after 31 March 2008; most companies and organisations can claim an AIA; see capital allowances</td>
</tr>
<tr>
<td>annual report and accounts</td>
<td>also known as statutory accounts, financial accounts or audited accounts - the accounts that limited companies must provide to their members under the Companies Act and file at Companies House; you must also submit your company's annual report and accounts to HMRC as part of your Company Tax Return; if you choose to file abbreviated accounts at Companies House you must still submit the full statutory accounts to HMRC</td>
</tr>
<tr>
<td>apportion</td>
<td>if your Corporation Tax accounting period doesn't fall wholly within a single financial year (in other words it starts before and ends after 1 April) and different Corporation Tax rates applied in each, you'll need to divide or apportion your company or organisation's chargeable profits between the two financial years on a time basis (in days not months)</td>
</tr>
<tr>
<td><strong>assessment</strong></td>
<td>if HMRC finds that your company or organisation hasn't paid enough Corporation Tax because, for example, you understated your taxable income or overstated your deductions or reliefs, they can make an assessment of the additional Corporation Tax you must pay</td>
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</tr>
<tr>
<td><strong>associated company</strong></td>
<td>A company is associated with another company if one is under the control of the other, or if both are under the control of the same person or persons; control is usually defined by reference to ownership of share capital, or voting power; a company may be an associated company no matter where it is resident for tax purposes</td>
</tr>
<tr>
<td><strong>audited accounts</strong></td>
<td>See annual report and accounts</td>
</tr>
<tr>
<td><strong>authorised person</strong></td>
<td>Someone authorised by a company to sign the declaration on a Company Tax Return such as the company secretary, a director, or other officer of the company, an authorised agent, a liquidator or an administrator if one is acting</td>
</tr>
<tr>
<td><strong>balancing charge</strong></td>
<td>May arise when you sell, give away or stop using a capital item in your business; balancing charges increase your taxable profits</td>
</tr>
<tr>
<td><strong>best estimate</strong></td>
<td>An estimated figure you use in your Company Tax Return based on all information available at the time you completed your return</td>
</tr>
<tr>
<td><strong>business activity</strong></td>
<td>See active</td>
</tr>
<tr>
<td><strong>Business Asset Roll-Over Relief</strong></td>
<td>When your company or organisation sells or disposes of some types of business asset, such as land and buildings, but intends to buy a new asset to replace it, it may be possible to defer the payment of any tax that would normally be due on any chargeable gain; see chargeable gain</td>
</tr>
<tr>
<td><strong>calculation</strong></td>
<td>See tax calculation</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
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</tr>
<tr>
<td>capital allowances</td>
<td>enable you to deduct (write off) the cost of your company or organisation's capital assets - such as machinery, computers, equipment or vehicles - against your taxable profits for Corporation Tax; instead of deducting the full cost of the item as an expense from your taxable profits in the year you bought it, you deduct a portion of that cost over a period of years; compare balancing charge</td>
</tr>
<tr>
<td>Capital Gains Tax</td>
<td>see chargeable gain</td>
</tr>
<tr>
<td>carry on business</td>
<td>a company or organisation that is active</td>
</tr>
<tr>
<td>charge to tax, the</td>
<td>companies and organisations that are subject to Corporation Tax deadlines and requirements are known to HMRC for Corporation Tax purposes as being within the charge to Corporation Tax, chargeable to tax or in the charge to tax. HMRC also refers to these companies and organisations as active or trading or engaging in business activity; also known as being liable for Corporation Tax</td>
</tr>
<tr>
<td>chargeable gain</td>
<td>if your company or organisation is liable for Corporation Tax, you do not pay Capital Gains Tax separately on your capital gains (in contrast to individuals, self-employed, sole traders or partners in partnerships); instead, you pay tax on your chargeable gains as part of your Corporation Tax profits</td>
</tr>
<tr>
<td>chargeable to tax</td>
<td>see charge to tax</td>
</tr>
<tr>
<td>charitable purposes</td>
<td>carrying out the primary purpose of the charity and/or directly serving the beneficiaries of the charity</td>
</tr>
<tr>
<td>claim</td>
<td>an amount that reduces your taxable profit or tax payable; you generally make a claim as part of your Company Tax Return form; see deduction, relief, tax</td>
</tr>
<tr>
<td>close company</td>
<td>a company that is controlled directly or indirectly by five or fewer participators or any number of participators if they are all directors</td>
</tr>
<tr>
<td>Term</td>
<td>Description</td>
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<tr>
<td>close investment-holding company</td>
<td>a company that does not exist wholly or mainly to produce goods or offer services itself, but instead acts as a holding company by owning shares of other companies</td>
</tr>
<tr>
<td>closure notice</td>
<td>the notice HMRC sends you to complete an enquiry into the Corporation Tax affairs of your company or organisation</td>
</tr>
<tr>
<td>club</td>
<td>an unincorporated members' club such as a sports or social club that may be liable for Corporation Tax; sometimes HMRC uses 'clubs' to also refer to societies, voluntary associations and other unincorporated bodies; see Community Amateur Sports Club (CASC), unincorporated organisation</td>
</tr>
<tr>
<td>Community Amateur Sports Club (CASC)</td>
<td>a sports club that's registered with HMRC; some CASCs activities are 'exempt' from Corporation Tax</td>
</tr>
<tr>
<td>Companies House</td>
<td>the government agency that registers limited companies and receives accounts and other company information delivered under the Companies Acts and related legislation</td>
</tr>
<tr>
<td>company</td>
<td>a limited company that is registered in the UK or trades in the UK is liable for Corporation Tax; HMRC also uses company to refer to members' clubs, associations, societies or other unincorporated bodies that are subject to Corporation Tax deadlines and requirements</td>
</tr>
<tr>
<td>Company Tax Return</td>
<td>you account for your company or organisation's Corporation Tax by delivering a Company Tax Return; a Company Tax Return includes a Company Tax Return form CT600, (or CT600 (Short) if appropriate) and any relevant supplementary pages (CT600A-CT600J), accounts, computations and other supporting documentation as appropriate</td>
</tr>
<tr>
<td>Company Tax Return form</td>
<td>the form you submit as part of your Company Tax Return; there are two paper Company Tax Return forms - the CT600 and the CT600 (Short) - and an online form</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
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<tr>
<td>computation</td>
<td>the maths which show how entries on your Company Tax Return form have been calculated from the figures in your company accounts - you attach these computations to your return if, for example, you're claiming marginal rate relief you need to attach a computation showing how you calculated those figures; compare tax calculation</td>
</tr>
<tr>
<td>Corporation Tax</td>
<td>a tax on the taxable profits of limited companies and some organisations including charities, clubs, societies, associations, cooperatives and other unincorporated bodies</td>
</tr>
<tr>
<td>Corporation Tax Self-Assessment</td>
<td>a term used to indicate that it's up to you (rather than HMRC) to work out how much Corporation Tax your company or organisation needs to pay for each accounting period; you self-assess your own Corporation Tax by filing a Company Tax Return</td>
</tr>
<tr>
<td>credit, tax</td>
<td>tax credits reduce the amount of Corporation Tax you pay by deducting an amount (the credit) directly from the amount of Corporation Tax you would have paid; if you don't have any Corporation Tax to pay, sometimes you can get a cash repayment</td>
</tr>
<tr>
<td>CT603</td>
<td>see Notice to deliver a Company Tax Return</td>
</tr>
<tr>
<td>declaration</td>
<td>the section at the end of your Company Tax Return form which you or an authorised person must read, sign and date to verify that the information in your return is correct and complete to the best of your knowledge and belief</td>
</tr>
<tr>
<td>deduction</td>
<td>an amount you deduct from your taxable profit for Corporation Tax purposes; HMRC uses deductions and reliefs to refer to various expenses, losses or allowances that you subtract from your profits before you calculate how much Corporation Tax to pay; this is in contrast to credits or other types of relief that are deducted directly from the amount of Corporation Tax payable</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
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</tr>
<tr>
<td>depreciating assets</td>
<td>any fixed plant or machinery, not forming part of a building, or any asset that will have a life of 60 years or less from when it was acquired by your company or organisation</td>
</tr>
<tr>
<td>determination</td>
<td>if you don't file a Company Tax Return, your company or organisation will be charged a penalty and HMRC will tell you how much Corporation Tax you must pay by making a determination of tax payable and issuing you with a notice to pay</td>
</tr>
<tr>
<td>director's loan</td>
<td>a director, shareholder or other participator in a close company may loan their company money or borrow money from their company through a directors' loan account; overdrawn directors' loan accounts are taxable; interest paid to a director on a director's loan account in credit is taxable</td>
</tr>
<tr>
<td>discovery assessment</td>
<td>an assessment issued by HMRC when it finds out that your Company Tax Return is wrong but it's too late to amend it; HMRC makes an assessment to collect the extra Corporation Tax your company should have paid</td>
</tr>
<tr>
<td>discovery determination</td>
<td>a determination made by HMRC when it finds out that your Company Tax Return is wrong but it's too late to amend it for an amount (such as a loss) that may affect the tax payable for another accounting period</td>
</tr>
<tr>
<td>dormant</td>
<td>a dormant company or organisation is not liable for Corporation Tax; generally your company or organisation is dormant for Corporation Tax purposes when it is not active, that is, not carrying on any business activity, such as trading</td>
</tr>
<tr>
<td>due date</td>
<td>the deadline to pay your Corporation Tax, normally nine months and one day after the end of your accounting period; also known as normal due date</td>
</tr>
<tr>
<td>election</td>
<td>when your company or organisation has a choice (to elect) to do one thing and not to do something else for Corporation Tax purposes</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
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</tr>
<tr>
<td>enquiry</td>
<td>HMRC uses this term to denote when it is looking into - making an enquiry into - your Corporation Tax affairs; see notice of enquiry</td>
</tr>
<tr>
<td>exempt</td>
<td>organisations or activities that aren't subject to Corporation Tax requirements</td>
</tr>
<tr>
<td>filing date</td>
<td>the deadline by which your Company Tax Return must be delivered to HMRC; normally 12 months after the end of your accounting period; also known as statutory filing date</td>
</tr>
<tr>
<td>financial accounts</td>
<td>see annual report and accounts</td>
</tr>
<tr>
<td>financial year for Companies Act purposes</td>
<td>your company's financial year begins and ends with the dates covered by your company's annual report and accounts as submitted to Companies House; usually but not always matches your Corporation Tax accounting period</td>
</tr>
<tr>
<td>financial year for Corporation Tax purposes</td>
<td>the tax year is called the financial year or fiscal year and runs from 1 April to 31 March</td>
</tr>
<tr>
<td>First-Year Allowance</td>
<td>a type of capital allowance: you may be able to claim this allowance in the year in which you incurred the expenditure</td>
</tr>
<tr>
<td>fiscal year</td>
<td>a financial year for Corporation Tax purposes</td>
</tr>
<tr>
<td>Franked Investment Income (FII)</td>
<td>arises where a company receives a distribution and is entitled to a tax credit in respect of that distribution; the amount of the FII is equal to the aggregate of the value or amount of a distribution together with the amount of the tax credit</td>
</tr>
<tr>
<td>full rate</td>
<td>see main rate</td>
</tr>
<tr>
<td>Group Payment Arrangement</td>
<td>this allows groups of companies to make joint payments of Corporation Tax</td>
</tr>
<tr>
<td>income</td>
<td>see taxable income</td>
</tr>
<tr>
<td><strong>Indexation Allowance</strong></td>
<td>allows for the effects of inflation when calculating chargeable gains on companies. You apply it to both the cost of the asset itself and any allowable costs of acquisition</td>
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<tr>
<td><strong>individual:</strong></td>
<td>a person, sole trader, self-employed or a partner in a partnership; individuals are not liable for Corporation Tax</td>
</tr>
<tr>
<td><strong>Inline eXtensible Business Reporting Language (iXBRL)</strong></td>
<td>a way of embedding and displaying accounting/financial information in an HTML document, the universal language for web browsers. It allows data to be presented in a readable form, either on screen or in printed output; see XBRL</td>
</tr>
<tr>
<td><strong>instalment payments</strong></td>
<td>the instalments (normally four) by which a large company must pay Corporation Tax</td>
</tr>
<tr>
<td><strong>intangible assets</strong></td>
<td>include, subject to some exceptions, goodwill and intellectual property such as patents, trademarks, registered designs, and copyright together with licences to exploit such assets and other intangible assets, such as agricultural and fishing quotas</td>
</tr>
<tr>
<td><strong>large company rate</strong></td>
<td>see main rate</td>
</tr>
<tr>
<td><strong>liable to (or for) Corporation Tax</strong></td>
<td>a company or organisation liable to Corporation Tax is subject to Corporation Tax deadlines and requirements</td>
</tr>
<tr>
<td><strong>limited company</strong></td>
<td>see company</td>
</tr>
<tr>
<td><strong>lower rate</strong></td>
<td>see small profits rate</td>
</tr>
<tr>
<td><strong>lower relevant maximum amount</strong></td>
<td>see Marginal Relief lower limit</td>
</tr>
<tr>
<td><strong>main rate</strong></td>
<td>Marginal Relief upper limit; also known as upper rate, full rate or large company rate; see also rates Corporation Tax, small profits rate, Marginal Relief</td>
</tr>
<tr>
<td><strong>marginal rate fraction</strong></td>
<td>see standard fraction</td>
</tr>
<tr>
<td><strong>Marginal Rate Relief</strong></td>
<td>see Marginal Relief</td>
</tr>
<tr>
<td>Term</td>
<td>Description</td>
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<tr>
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</tr>
<tr>
<td>Marginal Relief</td>
<td>Marginal Relief is the amount you deduct from the Corporation Tax that you would have paid at the main rate had your company's taxable profits been over £1.5 million. You get less Marginal Relief if your profits are near to the Marginal Relief upper limit and more if your profits are smaller and closer to the Marginal Relief lower limit - see also standard fraction, ring fence fraction small profits rate, main rate</td>
</tr>
<tr>
<td>Marginal Relief lower limit</td>
<td>the maximum amount of profits on which your company or organisation is able to pay Corporation Tax at the lower rate; currently £300,000</td>
</tr>
<tr>
<td>Marginal Relief upper limit</td>
<td>the maximum amount of profits on which your company or organisation is able to pay Corporation Tax taking into account the effective Marginal Relief; also known as upper profit limit; currently £1.5 million; if your profits are over the Marginal Relief upper limit, you pay Corporation Tax at the main rate</td>
</tr>
<tr>
<td>Marginal Small Companies Relief (MSCR)</td>
<td>see Marginal Relief</td>
</tr>
<tr>
<td>members' club</td>
<td>see club</td>
</tr>
<tr>
<td>nominated company</td>
<td>companies in a Group Payment Arrangement nominate one of the members to make the payments on behalf of all the companies within the arrangement; see Group Payment Arrangement</td>
</tr>
<tr>
<td>normal due date</td>
<td>see due date</td>
</tr>
<tr>
<td>notice of enquiry</td>
<td>the letter HMRC sends you to tell you they are making an enquiry into your company or organisation's Corporation Tax affairs</td>
</tr>
<tr>
<td><strong>notice to deliver a Company Tax Return</strong></td>
<td>the letter HMRC usually sends to your company or organisation soon after the end of your accounting period requiring you to file a Company Tax Return; comes with a payslip; also known as form CT603; can't be downloaded or ordered online</td>
</tr>
<tr>
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</tr>
<tr>
<td><strong>notice to file</strong></td>
<td>see notice to deliver a Company Tax Return</td>
</tr>
<tr>
<td><strong>notice to pay</strong></td>
<td>the notice HMRC sends you to tell you how much Corporation Tax to pay</td>
</tr>
<tr>
<td><strong>off-the-shelf company</strong></td>
<td>a company created by a company-formation agent and held as dormant pending onward sale to a new business or to a sole proprietor or partnership wishing to become a limited company; see shell company</td>
</tr>
<tr>
<td><strong>organisation</strong></td>
<td>a charity, club, association, society or other unincorporated body that may be subject to Corporation Tax deadlines and requirements</td>
</tr>
<tr>
<td><strong>participator</strong></td>
<td>a person who has a share or interest in the capital or income of a company such as a director or shareholder; see director's loan</td>
</tr>
<tr>
<td><strong>payment date</strong></td>
<td>see due date</td>
</tr>
<tr>
<td><strong>permanent establishment</strong></td>
<td>a company that is not resident in the UK but carries on trade in the UK from a fixed place of business (a permanent establishment) is liable for Corporation Tax on that activity</td>
</tr>
<tr>
<td><strong>postponement application</strong></td>
<td>if you're appealing against a Corporation Tax assessment or amendment, you can ask HMRC for all or part of your payment to be postponed until your appeal is settled by making a postponement application</td>
</tr>
<tr>
<td><strong>profit</strong></td>
<td>see taxable profit, taxable income</td>
</tr>
<tr>
<td><strong>profits chargeable to Corporation Tax</strong></td>
<td>see taxable profit</td>
</tr>
<tr>
<td><strong>qualifying purposes</strong></td>
<td>for Community Amateur Sports Clubs (CASCs) the purposes of providing facilities for, and promoting participation in, one or more eligible sports</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
</tr>
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</tr>
<tr>
<td>Quarterly Instalment Payments (QIPs)</td>
<td>see instalment payments</td>
</tr>
<tr>
<td>rates, Corporation Tax</td>
<td>there are currently two rates of Corporation Tax, depending on the company or organisation's taxable profits: the lower rate - also known as the small profits rate, and the upper rate - known as the full rate or main rate; there is also a sliding scale between the lower and upper rates known as Marginal Relief</td>
</tr>
<tr>
<td>relief, tax</td>
<td>an amount you deduct from your taxable profit for Corporation Tax purposes; HMRC uses reliefs and deductions to refer to various expenses, losses or allowances that you subtract from your profits before you calculate how much Corporation Tax to pay; this is in contrast to credits or other types of relief that are deducted directly from the amount of Corporation Tax payable</td>
</tr>
<tr>
<td>Research and Development (R&amp;D) Relief</td>
<td>a Corporation Tax relief that may reduce your company or organisation's tax bill by more than your actual expenditure on allowable R&amp;D costs</td>
</tr>
<tr>
<td>revenue determination</td>
<td>see determination</td>
</tr>
<tr>
<td>ring fence activities</td>
<td>income and gains from extraction activities or oil rights in the UK and the UK Continental Shelf.</td>
</tr>
<tr>
<td>ring fence companies</td>
<td>companies engaged in ring fence activities</td>
</tr>
<tr>
<td>ring fence fraction</td>
<td>the fraction companies with ring-fence profits use to calculate Marginal Relief - see also Marginal Relief</td>
</tr>
<tr>
<td>S419 ICTA 1988</td>
<td>see tax payable under S419 ICTA 1988</td>
</tr>
<tr>
<td>Self-Assessment</td>
<td>see Corporation Tax Self-Assessment</td>
</tr>
<tr>
<td>shell company</td>
<td>a company bought off the shelf with nominee directors standing in front of whoever really benefits</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
</tr>
<tr>
<td>-------------------------------------------</td>
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</tr>
<tr>
<td>small companies rate</td>
<td>see small profits rate</td>
</tr>
<tr>
<td>small profits rate</td>
<td>the rate of Corporation Tax that a company pays if its taxable profits are no more than the Marginal Relief lower limit - see also rates, Corporation Tax, Marginal Relief</td>
</tr>
<tr>
<td>standard fraction</td>
<td>the fraction you use to calculate your Marginal Relief - companies with ring fence profits should see ring fence fraction - see also Marginal Relief</td>
</tr>
<tr>
<td>statutory accounts</td>
<td>see annual report and accounts</td>
</tr>
<tr>
<td>statutory filing date</td>
<td>see filing date</td>
</tr>
<tr>
<td>straightforward tax affairs</td>
<td>the term HMRC uses to refer to small companies and unincorporated organisations who are able to use the short Company Tax Return form CT600 (Short)</td>
</tr>
<tr>
<td>Substantial Shareholding Exemption</td>
<td>there's no Corporation Tax to pay on any chargeable gain made when trading companies (or holding companies of trading groups) sell or otherwise dispose of shares, interests in shares and certain assets related to shares in other trading companies. However, you can't offset losses against gains on the disposal of shareholdings outside of the substantial shareholdings exemption or any other assets</td>
</tr>
<tr>
<td>supplementary forms</td>
<td>see supplementary page(s)</td>
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<td>supplementary page(s)</td>
<td>additional form(s) you may need to file as part of your Company Tax Return depending on your company or organisation's circumstances; there are supplementary pages for directors' loans, controlled foreign companies, groups and consortia, insurance, charities, tonnage tax, corporate venturing, cross-border royalties, ring fence trades and disclosure of tax avoidance schemes</td>
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<tr>
<td>Term</td>
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<tr>
<td>tax calculation</td>
<td>the maths you show directly in your Company Tax Return when calculating how much Corporation Tax you need to pay; compare computation</td>
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<td>tax credit</td>
<td>see credit, tax</td>
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<td>tax exempt</td>
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<tr>
<td>tax liability</td>
<td>how much Corporation Tax your company or organisation owes</td>
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<td>tax payable under S419 ICTA 1988</td>
<td>refers to the legislation that covers Corporation Tax on directors' loans (S419 Income and Corporation Taxes Act 1988)</td>
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<td>tax rates</td>
<td>see rates, Corporation Tax</td>
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<td>tax relief</td>
<td>see relief, tax</td>
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<tr>
<td>taxable income</td>
<td>income generated by a company or organisation that is liable to Corporation Tax; see taxable profit</td>
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<tr>
<td>taxable profit</td>
<td>the profits on which the amount of Corporation Tax your company or organisation pays is calculated; taxable profit includes profits from all types of taxable income such as trading profits and investment profits; also known as profits chargeable to Corporation Tax</td>
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<tr>
<td>trading</td>
<td>see active</td>
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<tr>
<td>unincorporated organisation</td>
<td>a business or other body such as a members' club, society or co-operative that's not incorporated as a limited company but not sole traders, partnerships, a local authority or a local authority association</td>
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<td>upper profit limit</td>
<td>see Marginal Relief upper limit</td>
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<td>upper rate</td>
<td>see main rate</td>
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<td>upper relevant maximum amount</td>
<td>see Marginal Relief upper limit</td>
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<td>within the charge to Corporation Tax</td>
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Writing Down Allowance

a type of capital allowance, when your company or organisation buys an asset you can deduct a certain amount from your trading profits in this and future accounting periods until the asset is accounted for (or written down) completely: see capital allowances

7.2 CASE STUDY 2: ENVIRONMENTAL DUE DILIGENCE

(A. FOREMNY)

7.2.1 Introduction

The Environmental Due Diligence process (EDD) requires the evaluation of the environmental condition of real property prior to transfer to allow to take the appropriate steps to eliminate or minimize potential or actual environmental risk or liability associated with that real property. According to EPA – the process includes three phases:

- Phase I – Qualitatively characterize the site and identify any suspected areas of contamination that may require further investigation or remediation
- Phase II – Confirm the presence or absence of suspected contamination identified in the Phase I EDD by conducting confirmatory sampling of areas of concern
- Phase III – Characterize site contaminants, develop remedial approaches and cost estimates, and perform remediation of contaminated areas.

A Phase I EDD shall be conducted for all real considering acquiring and it shall include a thorough and detailed records review and site investigation. The site investigation includes general observations and an evaluation of the presence of underground and aboveground tanks, waste handling practices, radioactive materials, PCBs, asbestos, lead-based paint, pesticides, radon, and sensitive environmental areas.

Phase II EDD activities may be needed to properly characterize the environmental condition of the property. However, if a Phase II EDD
is needed, land buyer must evaluate its options on whether to move forward with the acquisition process or pursue other parcels of land.

A Phase III EDDP is unlikely, since the potential land buyer generally would not acquire property found to be contaminated unless it was prepared to pay for cleanup, or able to negotiate a reduced sale price adjusted for cleanup costs.

### 7.2.2 Phase I Environmental Due Diligence

#### 7.2.2.1 Background

In this part basic information concerning existing site situation should be described:

- details of the companies that participate in the Investment
- owner of the site
- address of the site
- existing buildings on site
- area of the site
- tenants

#### 7.2.2.2 Purpose and Objectives

The objective of the EDD is to acquire an understanding of the current environmental situation at the site and to determine material environmental liabilities and regulatory non-compliance issues by document review and a site inspection.

The main objective for EDD is to acquire an understanding of the current situation and liabilities with regard to:

- site layout
- actual and previous site use / site history
- general environmental and hydrogeological setting of the site
- surrounding land use and potential impacts on the site
- environmental components such as: water, wastewater, air emissions, wastes and noise
- hazardous materials
- known and/or potential soil and groundwater contamination.

#### 7.2.2.3 Scope of Work

The Phase I of the Environmental Due Diligence (EDD) should be based upon the following activities:

- review of existing reports and documentation related to the site
• meeting the relevant authorities responsible for the site
• acquisition and review of the current zoning plan and building development plan
• acquisition of all relevant information regarding environmental and developmental issues crucial for the site by means of verbal communication and data review
• site visit
• identification of potential environmental liabilities

The Scope of Due Diligence Phase is presented in ASTM E 1527-05 Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessments Process.

The data presented in the EDD Report should be gathered from the local authorities, administration bodies, other institutions, interviews with the above named site representatives and observations made during the site inspection. Also, publicly available data sources should be analysed.

The site visit should consist of:

• Interview with technical representatives of facility management/technical maintenance company
• Review of documents provided by the site
• Review of the documentation referring to the environmental issues being owned by the site administrator
• General inspection of the site
• Description of the site on the spot and photographic attestation
• Review of documents provided by Property Manager
• Review of documents provided by the site on the day of site visit
• Review of documents provided by the site in a virtual data room.

The relevant authorities should be contacted during the assessment:

• Voivodeship Environment Protection Inspector
• Chief Inspectorate for Environmental Protection
• Regional Water Management Authority
• The Municipal Council
• The Command of the National Fire Service
• The provincial Board of land reclamation and Water Equipment
• Regional Director for Environmental Protection
7.2.2.4 Limitations

This chapter should cover references i.e. “general accordance with the ASTM E 1527-05 Standard Practice for Environmental Site Assessments : Phase I Environmental Site Assessments Process, subject to country limitations.”

There should be specified period of any facts and information that were received or researched. Any other documents which have been supplied/made available after mentioned dates have not been considered in the EDD report.

EDD performer/provider cannot warrant the actual site conditions described in the report beyond matters amenable to visual confirmation within the limits of the site inspection program or verbal confirmation by the site management.

During the site visit in the EDD phase I, neither measurements are conducted nor soil and/or water samples are collected for laboratory examination. The site visit conditions should also be described (air temperature, cloud cover of thick cloud cover).

Should additional information become available which may affect the opinions expressed in the report, such information should by reviewed and, if warranted, the opinions modified accordingly.

Where no site inspection is undertaken (for example a Desk Study Assessment or due to restricted site access), EDD performer cannot comment on the potential for environmental concerns associated with the current use or structure including for example the presence of asbestos.

7.2.2.5 Site Description

7.2.2.5.1 Site location

Owner of the site should be described. The site location should include the address (country, voivodeship, city, district part, economic zone etc. The description should cover possible connection (railway, bus, car), distance to other important cities and site access.

7.2.2.5.2 Site layout

Site layout should include description of shape (dimensions, proportions), occupied area, plot of land numbers, geodesic precinct, existing structures (type, dimensions, floor numbers, construction type, tenants). Also all the other structures should be mentioned:

- pumping station building
- fire water tanks
- guard’s buildings

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• gas reducing station
• power switchgear stations
• parking space for cars
• roads
• pavements
• dock ramps
• fire roads
• oil separators
• green areas
• service roads
• power generators

7.2.2.5.3 Surroundings

Description of the surrounding areas should be presented: green areas, rivers, lakes, structures, roads, power plants, factories, cemeteries with the distance and possible effect on the analysed site.

7.2.2.5.4 Current site activities, utilities

This section should cover list and description of the tenants that are located on the site, buildings’ purpose (packing, warehousing, production) and utilities from municipal mains (water, wastewater, electrical power, telecommunication, gas) and buildings’ equipment:

• installation of cold water (hot water is from onsite heaters)
• electrical installation and transformers
• gas boiler room
• sanitary and storm water drainage
• containers for separate waste collection
• mechanical ventilation and air conditioning
• installation of gas
• fire water (sprinkler system)

7.2.2.5.5 Site history

The objective of consulting historical sources is to develop a history of the previous uses of the property and surrounding area, in order to help identify the likelihood of past uses having led to recognized environmental conditions in connection with the property.

All obvious uses of the property shall be identified from the present, back to the first developed use, or back to 1940 whichever is earlier. This task requires reviewing only as many of the standard historical sources
(aerial photographs, fire insurance maps, property tax files, recorded land title records, topographic maps, local street directories, building department records, zoning/land use records, prior assessment usage).

7.2.2.5.6 \textit{Spatial Planning}

This part should cover spatial planning in terms of Local Land Use Plan. Detailed conditions for the area should include:

- type of allowed activities (production, warehousing, wholesale trading, communication, small business manufacturing, commercial services etc.)
- provision of access through/along the site
- impact of manufacturing operations and its impact exceeding the boundaries of the property
- storey number and buildings’ dimension limitations
- provision of car parking
- relation of combined hardened and built area to the plot area limitation
- the building line distance limitation from streets and other buildings
- a designated area for waste collection

The LLUP can also specify allowances and exceptions concerning the zone. Those could be for example:

- minimal land plot area
- creation of a designated transformer switch station on site
- new access road construction, with the road zone of specified width. In such instance, a specific distance between the road and the building line must be obeyed
- construction of an open structure fence not exceeding specified height
- increasing the height of production halls if the technology requires implementation of such solution
- decreasing distance between the roads and small servicing buildings such as guard houses
- construction of utilities and technical infrastructure outside the roads
- placing a designated waste collection areas inside ventilated buildings

The LLUP can also specify prohibitions:

- to construct prefabricated solid concrete fencing
- to construct residential settings.
7.2.2.6 Environmental Settings

7.2.2.6.1 Geomorphology

Scope of this chapter should cover the study of landforms present at the site. Name of the geomorphological area should be specified with the description of the existing landforms (berms, mounds, hills, ridges, cliffs, valleys, rivers, peninsulas and numerous other structural and size-scaled (i.e. ponds vs. lakes, hills vs. mountains) elements including various kinds of inland and oceanic water bodies and sub-surface features. Also other geomorphological information should be included: elevation, slope, orientation, stratification, rock exposure, soil type etc.

7.2.2.6.2 Geology

The report should describe the geology of the site and potential geologic and seismic processes that could impact the site and its suitability for the proposed use. This geologic evaluation should include pertinent existing geologic information and data, results of field assessment and exploration, laboratory testing of rock, soil, water to characterize the site conditions to the level of detail appropriate to meet the project objectives. The scope of field exploration, methods and laboratory procedures used should be described. Documentation and characterization of the site geology and geomorphic processes should include existing reports analysis with appropriate maps, figures, cross-sections, and appendices. Geologic features and data that were directly observed and measured should be clearly distinguished from existing information and inferences and interpretations. Illustrations typically included in a report are: maps, annotated photographs, cross-sections.

7.2.2.6.3 Hydrogeology

Hydrogeological conditions of the site and surrounding areas should be described. The report should precise ground water depths in different parts, ground water direction. Aquifer cross sections should be included.

7.2.2.6.4 Hydrology

This part should cover information, maps concerning the nearest surface water elements (streams, rivers). The possibility of hydrological risks must be described for example flood hazard.

7.2.2.6.5 Earthquakes

The risk for earthquakes at the subject area must be described.

7.2.2.6.6 Nature protected area
The vicinity of the site should be analysed and answer given if there is no area or natural object protected under the Nature Conservation Act such as:

- nature reserves
- national parks
- wetlands
- groundwater protection areas.

Location and distance to the Protected Landscape Areas should be described with studies of the reports concerning potential changes in the future. The purpose of the protection of among others is permanent preservation of valuable natural habitats of natural characteristics.

7.2.2.6.7 Monument conservation

The nearest monuments of nature distance and direction (for example individual trees, caves etc.) should be specified.

7.2.2.6.8 Site Sensitivity

The site sensitivity regarding water, air and subsoil should be assessed.

Factors increasing the sensitivity of the site:

- location on the post-industrial areas
- proposed nature protected areas on the direct vicinity of the site,
- vicinity of heat and power plants
- the location in the industrial district
- other potential sources of airborne pollutions
- uppermost aquifer protection from surface spillage

Factors decreasing the sensitivity of the site:

- industrial destination of the site in a spatial planning
- far location of residential areas
- current operations at the site do not pose significant impact on the environment.

7.2.2.7 Environmental Site Assessment

7.2.2.7.1 Water

The report should describe water supply details:

- Source of water supply (for example from the municipal public water system) and its intended use at the site: consumption, sanitary purposes, cleaning purposes and watering. Existing contract information should
also be included: number, period of time definition, dates and payment conditions.

- Source of water for fire fighting purposes (storage tanks, sprinkling water and pumping stations description – capacity, location, distance from the site).
- Water consumption metering – by means of the main water meter installed at the site. Water consumption by tenants based on readings from the counters.
- The average annual water consumption during past years with the reasons of raisings – for example because of the accident which on the site - lorry hit the fire hydrant and destroyed it. During the corrective action one of the valves was opened and forgotten. As a result, there has been a loss of a substantial amount of water.

7.2.2.7.2 Wastewater and storm water

The site generation of the following streams of wastewater must be specified:

- domestic wastewater
- rainwater run-off from roofs and paved areas on site
- industrial wastewater

Place of discharge for different streams must be specified (for example domestic wastewater and rainwater run-off from roofs and paved areas discharge - municipal sewage system based on water supply and wastewater contract for an indefinite period of time). Rainwater collected from the roofs and paved areas (internal roads, car parks and loading yards) should pass through oil/water separators prior to discharge to the sewer system (capacity, quantity, date of cleaning and company name information with documentation should be included)

7.2.2.7.3 Air Emissions

Air emission part should cover:

- Source of gas supply (for example municipal gas system) – name of the company, contract numbers for different uses (gas-fired radiant heaters, gas-fired boilers etc.)
- The annual gas consumption
- Gas heating system description for different structures (power, type of heaters, number of heaters)
- Boiler rooms data- dates of modernization, upgrades (for example pressure-maintaining station)
• Information if the site is not a subject of air emission permit. Environmental Department of the City Council should be informed about its operations. This obligation is fulfilled by sending a notification to the authorities.

• Every 6 six months the site should submit reports to the Marshal’s Office that would include the type and amount of gases and substances emitted into the atmosphere. Does the site fulfils this obligations according to Atkins annual environmental report.

• According to the Polish regulation, the site operator should apply for the individual account in the national database on emissions of greenhouse gases and other substances (online application). The national database is maintained by The National Centre of Emissions Management. The entities are obliged to submit report of greenhouse gases and other substances for the previous year by the end of February the following year.

Recommendations:
Applying for the individual account in the national database on emissions of greenhouse gases and other substances and submitting report of greenhouse gases and other substances for the previous year by the end of February the following year.

7.2.2.7.4 Wastes

Site management meetings and site visits should be made to know:

• the type of the waste (household, industrial etc.)

• Waste collection type (containers in a dedicated location outside the building or other) and the use of selective waste containers

• recipient of the waste

• tenants waste collection information: do they have their own contracts for their individually generated waste, which of them collect their waste selectively?

• company details that maintain and clean green areas and pavement areas

• Hazardous waste generated on the site and its disposal for example: fluorescent lamps, air filters or sludge from cleaning of oil separator. Worn out fluorescent lamps and air filters are disposed on an on-going basis by Company ABC ; wastes from separator – Company XYZ.
According to the new Waste Management Act (Register of Legal Records 2012, Item 21) there are following requirements concerning waste management:

- The site administrator is obliged to produce summary information which includes types and quantities of generated wastes (except general household waste). Such information for the previous calendar should be sent to Marshal Office by 15 March each year;
- In case the waste generated by an installation (investment) contains more than 1 ton of hazardous waste per year or over 5,000 tons of other waste per year the investor should obtain a waste generating permit;
- The holder of the waste is required to keep records of waste in accordance with the waste catalogue.

7.2.2.7.5 **Bulk material storage**

The report should include information concerning all the storage elements (tanks, reservoirs, pile etc.) – location, type of stored material, capacity, condition (corrosion, deformation etc.) Outside places of material storage should be examined in terms of storage condition (temperature, humidity, pressure etc.) and its impact. As an example: 2 aboveground storage tanks of capacity 452l for diesel oil for sprinkle pump, located in a pumping station, the composition of road salt located in the eastern part of the site. Salt packed in water permeable bags on wooden pallets and covered only by a plastic sheet, it is not a sufficient protection against heavy rain. Additionally some salt bins located at the entrances to the storage facilities are in poor condition and there is a risk of contamination of soil and/or groundwater; In warehouse I, paints, solvents and thinners are stored. In front of the warehouse auditors noticed a stain of paint spilled on the driveway.

If there was no possibility of getting some information it should be noted.

Recommendations should be made concerning material storage for example: repair or replacement of salt bins located at the entrances to the storage facilities because of their poor condition and ensuring of safe storage of stocks of salt. Also removal of the paint stains from the driveway in front of warehouse I and ensuring that tenants’ internal procedure prevents spillage and leakage of paints, solvents and thinners in a future.

7.2.2.7.6 **Noise**

The study should explain:

- what are the sources of the noise on site (ventilation fans, road/air traffic, industry, motors, tools, machines etc.)
• does the site require a noise generation permit
• records on noise measurement
• noise level limits exceeding

7.2.2.7.7 Emergency situations

This chapter should present all available records concerning emergency situations (fire, flood, explosion, mechanical damage, accidents etc.). The report should cover dates, description, reasons, number of victims and damage scale. As an example: there was a fire in one of the warehouses. It was a spontaneous combustion of chemical substances (paints, solvents, thinners). Nobody got hurt during this accident, except one of the security employees who was poisoned by the smoke and had got a hand burn. After staying a few days in the hospital he got well. Due to the fire, a part of the roof and part of the interior of the hall has been destroyed. Everything was repaired shortly after the accident. In 2012, there was an accident at the site. A lorry hit the fire hydrant and destroyed it. During the corrective action one of the valves was opened and forgotten. As a result, there has been a loss of a substantial amount of water.

7.2.2.7.8 Hazardous materials

Hazardous materials presence must be specified: asbestos containing materials (ACM), Polychlorinated Biphenyls (PCB), Ozone Depleting Substances (ODS), radioactive materials etc.

7.2.2.7.9 Known soil and/or groundwater contamination

Research should be made (for example contacting to Voivodeship Environment Protection Inspector) for known soil and/or groundwater contamination on site. Emergency situations or accidents on the neighbour which may pollute soil and groundwater must be assessed.

7.2.2.7.10 Potential soil and/or groundwater contamination

This chapter is very important because it should show the potential impact of the elements existing onsite and in the neighbourhood for the planned investment. Different types of possible contamination (airborne, ground, water) must be analysed taking into consideration data gained in the previous reports, tests etc. with existing regulations. The report must compare existing and predicted contamination levels with existing regulation limits. In order to show it clearly, complex case study is presented below:

From the North the area is adjacent to the heat and power plant which was established in the '70s. The operation of a heat and power plant
is a potential source of airborne pollution of heavy metals on the neighbouring areas. However, the soil and groundwater study carried on in 1998 and 1994 did not confirm contamination.

According to soil and groundwater study from the year 1998 performed on neighbouring site located approximately 250 m on north-west from the site border, there is no soil nor groundwater contamination in the direct vicinity of heat and power plant.

According to “Environmental Assessment in the area from June 1994, the ambient air purity is very good:

- annual dust fall is ca. 100 g/m² – it is almost half the allowable limit
- metal fall (lead, cadmium) together with dust is also by several times lower than the standard limits
- SO₂ is several times lower than the standard limits
- good air purity in the site area is stable.

It needs to be stressed that the power station though emits pollution to the air, it only has a very limited impact on the concentration field on the identified contaminants. It results from:

- Very high emitters
- High efficiency of electro-filters (more than 99%)
- The use of low emission burners which reduce nitrogen oxides emission
- The use of boilers that guarantee optimum coal combustion conditions
- High efficiency of power generation processes (more than 90%)

In the geological part of the above mentioned Environmental Assessment, the results of chemical analyses of ground water and surface soil layer confirm that these environmental elements are not contaminated and the difference between measured and allowable values of indicators is substantial. Some substances, such as oils, products of oil origin, petrol are found neither in the soil nor in groundwater.

Background air pollution from Report of the environmental impact of the proposed manufacturing facility of plastic components for the construction project of the replacement” 2003 shows that air purity at this part of city is very good.

The current site activity is not a source of soil and groundwater contamination. The car parking area is built of bricks, however the storm water run-off is directed to the parking lot drainage system via oil separator, washing off and spreading the potential contaminations into the soil is unlikely during
regular operation. The direct seepage down the soil profile through the cracks between the brick however is still possible during emergence situation.

In front of warehouse I (the place of the storage) auditors noticed a stain of paint spilled on the driveway.

The composition of road salt, is located in the eastern part of the site. Salt packed in water permeable bags lies on wooden pallets and is covered only by a plastic sheet, it is not a sufficient protection against heavy rain. Additionally some of salt bins located at the entrances to the storage facilities are in poor condition and there is a risk of contamination of soil and/or groundwater.

Recommendations:

Repair or replacement of salt bins located at the entrances to the storage facilities because of their poor condition and ensuring safe storage of stocks of salt.

Removal of the paint stains from the driveway in front of warehouse I and paying more attention in transportation of paints, solvents and thinners.

7.2.2.8 Information from local authorities

During performing EDD local authorities/regulators should be contacted (inquiry letters, formal meetings):

- Voivodeship Environment Protection Inspector
- Chief Inspectorate for Environmental Protection
- Regional Water Management
- The Municipal Council
- The provincial command of the national fire service
- The provincial Board of land reclamation and Water Equipment
- Regional Director for Environmental Protection

7.2.2.9 Conclusions and recommendations

Conclusions of the phase I EDD should sum up effects of site reconnaissance’s, the interviews and review of documents. It should describe general condition of the site and its parts, level of maintenance, information about fines that were imposed to the site (and those in relation to environmental issues such as water, wastewater, air emissions, noise and wastes). It should also include report on complaints reported for site’s operation from neighbouring properties, negative impact on soil and groundwater quality caused by neighbourhood, air purity, past emergency situations, accidents which may have polluted soil and groundwater.
The recommendations can include repairing or replacement of tanks, cleaning, waste removal, further studies etc. It should include possible environmental problems in the future, their predicted impact and suggestions of avoiding. II EDD is recommended to confirm contaminants or if there was a long time since the last soil and groundwater study was done.

7.2.2.10 References

The most important documentation that should be analysed during performing EDD are listed below:

- Hydrogeological maps
- Geological maps
- Geochemical maps
- Information from “data rooms”
- Information from site visits
- Annual environmental Reports performed in the past
- Environmental assessment in the area performed in the past
- Regional Environmental Authority documents
- Report of the environmental impact of the proposed facilities for the construction project
- Set of construction permits
- Set of occupancy permits

7.2.3 Phase II Environmental Due Diligence

7.2.3.1 Introduction

Phase II environmental site assessments are primarily employed after evaluation of the Phase I audit results to acquire and measure contaminant levels at the site and to help define the cost and extent of possible future clean-up. Assessment may also be used as baseline studies to confirm contaminant background levels prior to construction or purchase of a facility.

7.2.3.2 Scope of work

The scope of work for any individual site assessment must be custom adjusted to the type of installation and most probable types of chemicals and materials which may be of concern.

The following types of investigations may be warranted:
7.2.3.2.1 Soil vapour study

Soil vapour studies provide a rapid and cost effective method of mapping the horizontal distribution of volatile petroleum and chemical vapours in subsurface soils and waters. Soil vapour studies can be used to explore petroleum refining, storage and distribution facilities and other installations which have used or stored fuels, solvents or other petroleum based chemicals. Soil vapour studies include collecting a grid of samples over the area of interest and analysis for methane through butane light hydrocarbons, C5+ gasoline range hydrocarbons, chlorinated solvents and other compounds of concern. Results can be used to select boring and monitor well locations which may be necessary to map the vertical distribution of contaminants in soils and ground waters.

7.2.3.2.2 Soil Sampling

Conventional drilling and soil sampling programs can be employed to obtain representative soil samples for laboratory analysis of petroleum constituents, trace metals and other compounds of concern. Soil sampling programs should be planned after a soil vapour study or other screening tool is employed so that borings are placed to fully define the horizontal extent of contaminants.

7.2.3.2.3 Monitor well Installation and ground water sampling

The horizontal extent of ground water contamination can be mapped with an appropriate number of ground water monitoring wells. Wells are typically sampled for benzene, toluene, ethylbenzene, xylene (BTEX), total petroleum hydrocarbons (TPH), trace metals and other water quality parameters.

7.2.3.3 Interpretive Report

The final interpretive report provides a comprehensive assessment of the type, composition, vertical and horizontal distribution of potential contaminants of soil, ground waters and effluents of the site. Results can be used for planning more extensive site investigations to further define pollutants or as confirmation of levels prior to site purchase or development.

7.2.3.4 Phase III Environmental Due Diligence

If the project assumes the site remediation then Phase III of EDD should be prepared. It should cover the design and implementation of a plan of remediation for a contaminated site, together with all necessary reports demonstrating successful remediation.
7.2.4 References


[5] EDD case studies from Poland.
**Affiliations of the Monograph Authors:**

<table>
<thead>
<tr>
<th>Name</th>
<th>Affiliation</th>
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<tbody>
<tr>
<td>Andrzej FOREMNY</td>
<td>MSc. Eng., Warsaw University of Technology, Faculty of Civil Engineering</td>
</tr>
<tr>
<td>Ewa KARASIŃSKA</td>
<td>Attorney at law, Okolski Law Office</td>
</tr>
<tr>
<td>Arnab MUKHERJEE</td>
<td>MSc. Eng., MBA, Chartered Institute of Building</td>
</tr>
<tr>
<td>Paweł O. NOWAK</td>
<td>PhD. Eng., FCIOB, PSMB, EurBE, Warsaw University of Technology, Faculty of Civil Engineering</td>
</tr>
<tr>
<td>Piotr R. NOWAK</td>
<td>MSc. Eng., Chartered Institute of Building</td>
</tr>
<tr>
<td>Dariusz OKOLSKI</td>
<td>Attorney at law, Okolski Law Office</td>
</tr>
<tr>
<td>Jerzy ROSŁON</td>
<td>MSc. Eng., Warsaw University of Technology, Faculty of Civil Engineering</td>
</tr>
<tr>
<td>Jolanta SOBOTKA</td>
<td>MSc. of Economy</td>
</tr>
<tr>
<td>Stanisław WIECKOWSKI</td>
<td>MSc. of Economy</td>
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