

Will Poland continue to improve its relative position against the backdrop of the current economic crisis? Forecasts for 2009 with regard to GDP growth, employment, and investments, have been downward adjusted. Yet, basing itself on positive reports by the IMF, the Worldbank, and the European Commission, the Polish government is convinced Poland will continue to do (relatively) well. The government intends to continue to pursue the path of economic reform, also in order to pave the way for the introduction of the Euro. It may come as a surprise that Sławomir Skrzypek, the President of the National Bank of Poland – who himself appears to be no supporter of a speedy introduction of the Euro – in this respect fully concurs with the government. Also Skrzypek is convinced that Poland has to bring about more economic reform.

The successful implementation of reform will decide the 'hero' or 'villain' status of the Polish economy in the longer term, not only on scorecards, but also 'in real life'.

## New Publications

'Made in Holland' is a special publication of the EVD (Agency for International Business and Cooperation, part of the Ministry of Economic Affairs). In each 'Made in Holland's sector special' a different sector of the Dutch economy is presented.

The next 'sector special' to appear covers the energy sector and will be distributed by the Embassy in May 2009. The topics will include: state of technology and the way the Dutch share and coordinate knowledge for the sake of complete systems and solutions, division in wind, solar, bio, heat/cold storage, energy efficiency, geothermal energy, CCS (Carbon Capture and Storage) and North Sea as an energy source.

In August, another 'Made in Holland sector special' on water technology will be distributed and it will include three subsectors: industrial water, drinking water, and wastewater.

Copies of these publications can be obtained via the Embassy: Daria Idsardi, tel. 022-559 12 39, idsardi.daria@minbuza.nl

Please note that Interviews and news updates on sectors previously published in these magazines can be found on: <http://www.hollandtrade.com>.



## New appointments Embassy

This summer (July/August) there will be a number of personnel changes at the Embassy of the Kingdom of the Netherlands in Warsaw. First of all, Ambassador Marnix Krop has been appointed as Ambassador to Germany. He will be succeeded by dr. Marcel Kurpershoek, currently ambassador in Ankara (these appointments still have to be approved by the Ministries of Foreign Affairs of Germany and Poland prior to their arrivals). Furthermore, Mr. Frank ter Borg, Head of the Economic Department, will be succeeded by Mr. Bert van der Lingen who previously worked at the Embassy in Warsaw in the late 1980s to the early 1990s. Mr. Mauritz Verheijden (Deputy Head of the Political Department) will return to the Ministry of Foreign Affairs in The Hague and will be succeeded by Mr. Hein Knegt. Consul Richard Ambagtsheer will be posted at the Dutch embassy in Abuja (Nigeria) and will be succeeded by Mr. Leo van Gijn. Mrs. Erika Den Besten will be posted in Buenos Aires (she has already been replaced by Mr. Stephan Wijnhoff).

Advertisorial

# How to enforce your rights effectively in international trade

## First Things First: Choice of Law in International Commercial Disputes

Successful litigation with a foreign adversary requires a determination of the governing law at the outset, or there is a danger that the relief sought, allegations and evidentiary motions may be improperly formulated – thus turning a winning case into a loser.

Art. 47912 and 47914 of the Polish Civil Procedure Code streamlines commercial litigation by forcing the parties to state their complete litigation position in the initial pleadings (complaint or answer). Otherwise, they may be barred from making these assertions later. First they must determine which law (Polish or foreign) governs the transaction and what the substantive law provides. Only after this has been determined is it possible to formulate counts, allegations, and evidentiary motions effectively, in compliance with the procedures applicable in commercial cases.

The point is not so much to comply with the formal requirement that a party to the litigation has to indicate which country's law is applicable, but for the parties to the dispute – both the Polish party and the foreign party on the other side of the contract – to be aware that proper drafting of the complaint or the answer will depend to a large extent on the requirements imposed by the substantive law (Polish or foreign) which the court must ultimately apply when it decides the case.

Overlooking the choice of law issue at the start of litigation can cause incurable harm to a party if it gathers evidence and draft pleadings paying attention only to its own domestic law and thus formulates its litigation position only from that perspective. This error can be particularly harmful where the provisions of the applicable law (whether Polish law, EU law, or the law of another country); treaties or conventions set forth evidentiary requirements or grounds for relief differing from those found under the legal system of the party's home country.

If a company does not have an awareness of this often-complex situation and is not in a position to gather the relevant documents necessary to demonstrate the course of dealings with a foreign counterpart, it may be difficult to establish a winning position in court.



Andrzej Mikulski

## SETTING OF THE GOVERNING LAW FOR SALES AGREEMENTS IN INTERNATIONAL TRADE

After the enforcement in Poland on August 1, 2007 of the Rome Convention of 1980 on the Law Applicable to Contractual Obligations, the importance of the act of November 12, 1965 decreased.

The Rome Convention introduces the freedom of choice of law by the parties to a contract.

International sale of goods is regulated by the United Nations Convention on Contracts for the International Sale of Goods (CISG) made in Vienna on April 11, 1980. The question, therefore, appears about the relations between the Rome Convention and the Vienna Convention.

When searching for a law applicable to an international sales agreement subject to the Vienna Convention, a priority should go to the provisions of such Convention treated as material standards. The Vienna Convention causes that a sales agreement of goods shall be subject to conventional standardised norms, irrespective of whether the parties knew that the states where they are based are parties to the Convention.

In turn, searching for the governing law for a sales agreement subject to the Vienna Convention in states forming parties to the Rome Convention, on an auxiliary basis, should occur with observance of its provisions. The Rome Convention can apply to any dispute of entities based in EU member states. Also, the Rome Convention will apply to disputes between entrepreneurs based in the Community and the ones from outside. The Convention may also be applied to cases that are not related to the territory of the EU, if the case is resolved by a court of a state bound by the Convention.

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