

LAW

(Recitation 2)

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Economic freedom

- Basic rule of the national economy (altogether with a freedom of contract in civil law)
- **Freedom of Business Activity Act (2004)**: regulation of carrying out business by entrepreneurs (hereafter: FBAA)
- **Commercial Companies Code (2001)**
- **Civil Code (1964)**
- **Treaty on EU functioning (freedom of establishment)**



Business Activity (Economic Activity)

Definition



**Art. 2
FBAA**

Business Activity

Profitable

Permanent

On one's own behalf

Conducted in an organised
manner

Lawful

Business Activity

- Activity **for profit** (a key element is an intention to get a profit; it does not matter if an operating business suffers only losses)
- Activity carried out continually (**permanently**): an intention of an entrepreneur is to conclude a number of similar transactions within a certain period of time, occasional transactions not sufficient



Business Activity

- Activity carried out in an **organised manner** (on the basis of scheduled and not an *ad hoc* basis)
- Activity **allowed by law** (it cannot violate legal provisions)



Business Activity

- Activity carried out **on its own behalf**:
a concluded transaction must have an effect on the person operating the business



Business Activity (Economic Activity)

Scope &
exclusions



**Art. 2 & 3
FBAA**

Business Activity – scope

- Manufacturing, construction, trade and services, as well as prospecting, recognising and extracting minerals from deposits
- Professionals (carrying out activities on a free-lance-basis) are also carrying out business activity (lawyers, doctors, artists, writers, tax advisers, auditors)
- Limitation of business activity definition - excluded: manufacturing activities in agriculture with a respect to crop and vegetable cultivation, breeding of animals, gardening, forestry, fishing

Entrepreneur

Definition



**Art. 4
FBAA**

Entrepreneur

Prescribed legal form: natural person, legal person, unincorporated legal unit

Carrying out one's own business activity

On one's own behalf

Legal forms of business activity (1)

(1) Natural person: every citizen with a legal capacity.

- The operating of a business as a sole individual – the simplest organisational form in Poland (**proprietorship**)

(2) Legal person: State Treasury and other organisations with a legal capacity (a power to sue or to be sued in its own name, to dispose of property as well as to enter into contracts)



Legal forms of business activity (2)

Legal persons:

- State Treasury
- corporations (private limited liability companies, joint-stock companies)
- foundations
- associations



Legal forms of business activity (3)

(3) Other:

- **General Partnerships** (*spółka jawna*)
- **Limited Partnerships** (*spółka komandytowa*)
- **Professional Partnerships** (*spółka partnerska*): may be formed only by representatives of professions (doctors, lawyers, etc.)
- **Limited Joint-Stock Partnerships** (*spółka komandytowo-akcyjna*)



Legal forms of business activity (4)

(3) Other:

- **Limited Joint-Stock Partnerships** (*spółka komandytowo-akcyjna*): general partners are personally liable for its debts, and whose purpose is to operate a business under its own business name; at least one partner (the general partner) bears unlimited liability towards creditors for obligations of the partnership and at least one partner is a shareholder



Foreign Entities Doing Business in Poland: Legal aspects (Art. 13.1 FBAA)

- **foreign persons originating from the EU and EEA countries** may commence and conduct business activities in Poland under the same conditions as Polish entrepreneurs (freedom of establishment)



Foreign Entities Doing Business in Poland: Legal aspects (Art. 13.2&2a FBAA)

- nationals from other states who have obtained permission of a residence on the territory of Poland or are in possessions of so-called „tolerated residence” (*pobyt tolerowany*) or those with refugee status or under temporary protection
 - are entitled to start and conduct business activities in under the same conditions as Polish citizens



Foreign Entities Doing Business in Poland: Legal aspects (Art. 13.3 FBAA)

- **nationals from other states/not meeting conditions described above**
 - are entitled to start business activities in Poland only in the form of a limited partnership, a partnership limited by shares, a limited liability company or joint-stock company



Foreign Entities Doing Business in Poland: Legal aspects

- **Freedom of Business Activity Act** allows foreign entities to carry out business activity in Poland through:
 - a representative office (agency)
 - a branch
 - a subsidiary
- „portfolio investment” (investment in securities offered on the Polish Stock Exchange Market)



Agency (1)

- the simplest form of involvement in international business in Poland
- Representative office is only allowed to carry out activities in Poland regarding the promotion of a foreign entity.
- The providing of services or the selling of any goods is not permitted.
- Must be registered with the „Representative Office Register”.
- Must include in its business name the term „representative office” (*przedstawicielstwo*).



Agency (2)

- **An application for a registration must be filed with the Ministry for Economic Affairs.**
- **The stamp duty for the registration of the representative office amounts to 6,000 PLN.**



Branch

- May perform the same services, manufacture similar products or sell the same goods as the foreign entity.
- Must be entered into the Polish Court Register.
- The identity of a branch is not separate from the identity of a foreign enterprise (enterprise bound by contracts concluded by a branch).
- The branch is required to provide in its legal name in Poland the term branch (*oddział*) and a Polish translation of the legal form of the foreign entity.



Representative office/Branch

- Minister for Economic Affairs must be informed of all the changes to information presented in the application for registration and of a commencement of insolvency proceeding, the termination of business activities.
- Offices and branches are obliged to keep all accounts in accordance with the accounting principles provided in the Polish Accounting Act.



Subsidiary

- An entity whose identity is separate from the foreign entity.
- A foreign entity may directly invest in Poland through acquiring a certain percentage of a subsidiary's stock.
- Foreign entity (having 51% of stock or more) is usually called a parent company.
- Contracts concluded by a subsidiary cannot be binding for a a foreign entity.

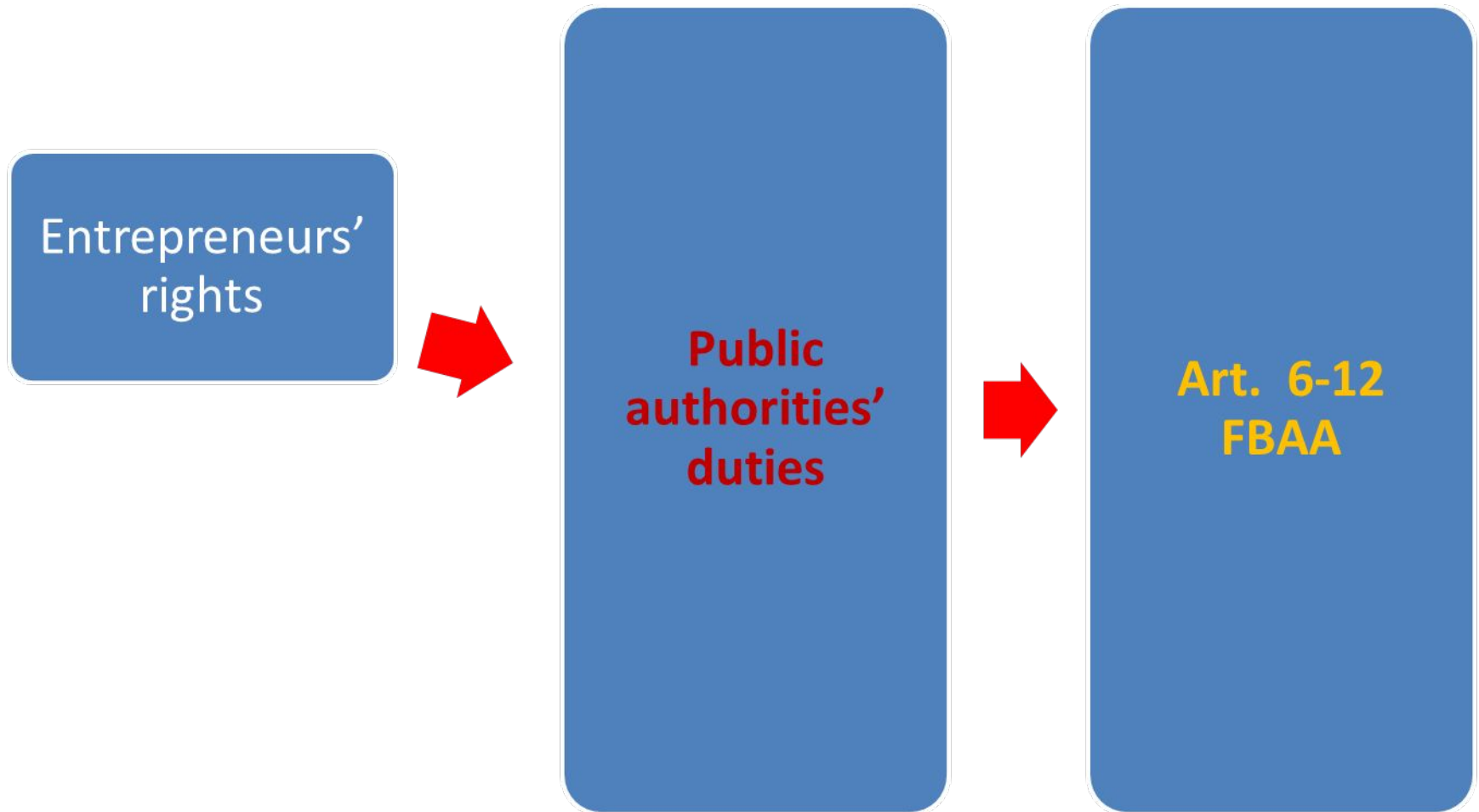


Enterprise

- (An **organised group of tangible and intangible elements** the purpose of which is to conduct business activity (Article 55¹ of Civil Code)
- Enterprise as a whole may be an **object of a legal transaction**.
- The purchase of the enterprise: required in **written form**, **signatures** of parties of the contract must be **authorised by public notary** (otherwise a transaction invalid).



Entrepreneurs' duties & rights



Business name (1)

- Name under which an entrepreneur operates business
- Principle of business name honesty: business name is not allowed to mislead other persons/entities as to the person of the entrepreneur, the objects of the entrepreneur, or its seat for carrying out its business.



Business name (2)

- Special requirements for business names:
 - joint-stock companies (*spółka akcyjna; SA*)
 - limited liability company (*spółka z ograniczoną odpowiedzialnością; sp. z o.o.*)
 - general partnership: name of one or more partners and the term *spółka jawna (sp.j.)*
 - professional partnership: name of at least one partner and the term *spółka partnerska (sp. p.)*



Business name (3)

- limited partnership: name of one or more partner and the term *spółka komandytowa (sp. k.)*
- limited joint-stock partnership: name of one or more partner and the term *spółka komandytowa-akcyjna (sp. k.a.)*
- proprietorship: the first and second name of the individual



Business name (4)

- Principle of steadiness of the business name
- Business name unity
- Exclusivity of business name
- Publicity principle of the business name (public register; seat)
- Inalienability of the business name
- Protection of business names

