

Book Reviews

Zdzisław Brodecki, ed., *Polish Business Law* (The Hague/London/New York, Kluwer Law International 2003) cxiii + 591 pp., ISBN 90-411-1992-2
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The idea of presenting a general overview of a country's system of business law to a foreign audience is not a new one. There are various books and series covering a wide range of aspects of 'doing business abroad', among them those explaining the legal *status quo* in Poland. In some aspects, however, the case of Poland is somewhat exceptional. Substantial reforms undertaken after the fall of Communism, which led to the introduction of a market economy, as well as the large effort to implement European law within a short period of time are likely to make Polish law more unfamiliar to foreign investors than the long-established Western European legal systems. Therefore, every book of this kind should be welcomed, even if it is addressed to practitioners rather than academics.

The book is divided into three major parts: *Legal Environment of Business, Firm and Its Law* and *Protective Policy*. The criteria used for this division are quite straightforward. A general presentation of the Polish legal system is followed by an analysis of various aspects of conducting business and a discussion of major restrictions on carrying out economic activity. The sequence in which certain chapters are presented is somewhat problematic. Public trading in securities, bankruptcy law and banking and insurance laws should be closely linked to company law. The reader might thus be confused to find a chapter on international trade and shipping between chapters on tax law and bankruptcy law.

The book begins with tables of conventions ratified by Poland, statutes and court cases. However, the names of the conventions are provided in Polish rather than English. Moreover, the table of conventions is probably too extensive (about 80 pages) for the actual needs of foreign readers interested in business law. For example, it contains conventions on family law and cultural cooperation between Poland and other countries.

Within a concise review, it is impossible to comment on all the areas of Polish business law presented in the book. This review will therefore touch upon the general themes included in the first part of the book and the chapter on company law that appears in the second part.

Part I of the book, entitled *Legal Environment of Business*, contains a systematic introduction to the Polish legal system, explaining its historic, cultural, political and constitutional background. Although presenting Polish history from the early Slav tribes in the tenth century to the Solidarity movement in relatively few pages

is a challenging task – and not necessarily an indispensable one for understanding Poland's contemporary legal system – it gives the reader basic information about a new EU Member State within an historical context. Readers interested in Poland's business environment will be particularly drawn to the commentary on changes following the fall of Communism and the 'Europeanisation' of Polish law. Part I includes welcome comments on the Polish court system and legal professions. Separate remarks are dedicated to conducting arbitration in Poland (in particular proceedings before the Arbitration Court at the Warsaw Domestic Chamber of Commerce, which is the most frequently chosen arbitration forum in Poland) and the enforcement of foreign judgments and arbitration awards. A Polish arbitration court may adjudicate on the grounds of equity (*ex aequo at bono*). Contrary to what is stated (p. 54), however, the court is not bound by any rules on conflict of laws, either Polish or foreign, in such cases.

Surprisingly, the chapter on conflict of laws does not include a basic presentation of Polish rules on the law applicable to companies, despite the importance of this issue for foreign investors and their legal counsel. On the basis of a short statement (p. 78), the reader is unable to determine whether Polish private international law is based on the 'incorporation theory' or the 'seat theory' (real or statutory seat). Instead, he or she finds comments on the law applicable to marriage, family and guardianship relations.

Polish Business Law contains an extensive chapter on company law (almost 80 pages). Since it is a subject of vital interest for every foreign investor in Poland, the authors cover a number of aspects of company operation in detail and describe the general restrictions on conducting economic activity (e.g. licences, permits, etc.). The process of company formation is presented thoroughly, but the comparison of the basic features of limited liability companies and joint stock companies (which is important for choosing the appropriate legal form at the stage of incorporation) should have been more extensive. A particularly well-drafted section concerns company financing (debt and equity) and distributions from company assets (dividends, redemptions and acquisitions of a company's own shares). Traditionally, Polish law follows the German share capital model, in respect to both joint stock companies (which is a requirement of European law) and limited liability companies.

Polish joint stock companies are based on the rarely used two-tier structure, consisting of a management board and a supervisory board as strictly separate corporate bodies, which is another direct result of the German impact on Polish law. In limited liability companies, supervisory boards are optional. They are only mandatory in larger companies that exceed certain thresholds relating to both capital and the number of members. A single member's right of information may be limited or excluded if a supervisory board is appointed. However, the authors omit the issue of the shareholders' right of information at the general meeting of

joint stock companies (p. 138). From the standpoint of a foreign investor, moreover, it would have been worth devoting more attention to Polish proportional voting rules in more detail, which allow a minority shareholder to elect a member to the supervisory board, since such rules seldom appear in foreign legal systems (p. 117).

The overall impression of the chapter is positive. However, the authors focus excessively on the provisions of the Companies Code instead of presenting the Polish particularities of concepts that are familiar to foreign readers (e.g. shareholders' rights and obligations, shareholders' meetings, the duty of care and the duty of loyalty of the members of corporate bodies, etc.) in simplified form. In some cases, this approach leads the authors to erroneous conclusions. For instance, one cannot agree with the statement that financial assistance rules simply do not apply to limited liability companies, as opposed to joint stock companies, because there is no direct provision on this issue in the Code (p. 128).

Two years after its publication, a major shortcoming of the book arises, not surprisingly, from the fact that some of its sections are now outdated. Since it was drafted at the time that Poland entered the final stage of its EU accession negotiations, the authors did not predict or address the legal consequences of accession. For example, there is no indication that, following accession, the Lugano Convention on Jurisdiction and the Enforcement of Judgments of 1988 would only remain relevant in relation to Denmark and some non-EU States and that it would be 'replaced' by a Council Regulation. In many instances, legislation that is currently in force was not available at the time of writing (e.g. the important Freedom of Economic Activity Act of July 2004, which, *inter alia*, confirmed the equal-treatment rule in relation to EU undertakings). In other cases, however, the reader could have expected a more extensive presentation of fresh legislative proposals rather than the present concentration on old law. This includes, in particular, the new Bankruptcy and Corporate Recovery Act, which entered into force in late 2003 and significantly changed the system of Polish bankruptcy law (cf. pp. 433-435). The lack of more extensive comments on the international aspects of bankruptcy is particularly striking.

Another general shortcoming of the book is that it presents 'law in statutes' rather than 'law in action', although the latter is of course much more difficult to describe briefly to foreigners. This is partly due to the relative youth of the contributors, many of whom were legal trainees at the time of writing. In some cases, the language used contains direct translations from Polish, for example 'commercial capital companies' instead of simply 'companies' (p. 94), the Polish 'firma' for the business name of an entity (p. 96) and the mysterious term 'commercial personality' for the legal capacity of partnerships (p. 148).

The main value of *Polish Business Law* arises from the variety of subjects that it covers. The book provides the reader with a systematic analysis of a substantial

number of fields of law related to business activity. The authors do not only present basic subjects, such as company law, contract law, real estate law and tax law, but also comment on issues such as the protection of the environment and social insurance. It is therefore worth thinking about an updated edition of *Polish Business Law*, covering the *lex lata* after 1 May 2004. There is no doubt that despite a number of shortcomings, some of which are discussed above, the book offers a sound basis for the above-mentioned purpose. *Polish Business Law* has certainly achieved the objective of providing both comprehensive and concise information on the business laws of Poland.

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Deborah Leipziger, *The Corporate Responsibility Code Book* (Sheffield, UK, Greenleaf Publishing 2003) 512 pp., ISBN 1874719780
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Corporate social responsibility (CSR),¹ or simply corporate responsibility (CR), as used in the title of the book that is reviewed here, is the internationally used term for entrepreneurial practices and business methods that explicitly take societal responsibility into account. In this respect, CSR is a specific – some might say ethical – application of the stakeholder theory. This theory, geared towards external responsibility, clearly distinguishes itself from the more internally oriented *corporate governance*, which in essence deals with professionally made and properly executed decisions of companies with regard to their departments, business units and subsidiary companies.

The Corporate Responsibility Code Book deals with instruments and tools in the field of CSR: ‘documents that guide behaviour’ (p. 35). The term ‘code’ refers to codes of conduct, and the book deals with a selection of thirty-two of these codes. However, in a rather striking oversight, the author has neglected to specify her selection criteria. One assumes that she has simply attempted to offer a wide variety of codes that can be used as a frame of reference. Any changes in these codes will be tracked and documented on the publisher’s website, which also offers the complete table of contents and other information regarding the book.²

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¹ The author of this review prefers the term ‘societal corporate responsibility’, because of its broader context and connection with society as a whole.

² See <<http://www.greenleaf-publishing.com/catalogue/crcbpd.htm>>.

The actual treatise on the codes is preceded by several introductory observations, and the book concludes with a preview of future developments. As the central issue in this sandwich structure, the codes are divided into nine distinct categories: global (OECD, UN), human rights (e.g. Universal Declaration of Human Rights), labour rights (e.g. ILO), environment and sustainability (Rio Declaration), combating corruption (OECD), corporate governance (OECD), company codes of conduct (Shell, Johnson&Johnson), framework, sectoral and regional agreements and, finally, implementation (AccountAbility, ISO 14001). The title of this book may suggest a rather strong emphasis on corporate codes of conduct. However, only two of these have been included. Most codes have categorical or sectoral relevance and offer material for informational or associative purposes. One of the strengths of the book is the well-defined format according to which the thirty-two codes are analysed and explained. First, the source of the code, quite often a website, is identified and some background information is presented, including a summary of its strong and weak points and some bibliographical data. This is followed by the actual text of the code *in extenso*. This elaborate explanation is preceded by an executive summary, which offers an alphabetical listing of the codes that appear in the book for the purpose of quick orientation or preliminary selection by the reader.

Business organisations can act upon a sense of morality in various ways. The factors that often lie at the base of this responsible behaviour are an attitude of responsiveness, combined with organisational or personal judgement. A systematic overview of mechanisms related to responsible behaviour is presented in literature.³ These mechanisms have four key processes in common: taking distance, analysing the situation, weighting values and attributing responsibility. CR instruments should enable users to carry out these processes as a prelude to a responsible reaction. In the first and at the same time most scholarly chapter of the book (pp. 35-50), several CR instruments are identified and analysed. This is also the chapter that will provide the reader with answers to most of the questions raised in the introduction (p. 21). Chapter 1 starts with a description of several instruments, ordered in a hierarchy of concreteness, which at the same time serves as a step-by-step guideline for implementing a particular CR instrument. The author states that there is a continuum of instruments in CR (p. 36), ranging from most intangible to very concrete: values, principles, codes of conduct, norms and standards, in that order. At the intangible side of this spectrum, little discussion is expected concerning the proper order of the key processes, i.e. analysing situations, weighting values, developing principles and coding behaviour.

³ O. Fisscher, A. Nijhof and H. Steensma, 'Dynamics in Responsible Behaviour – In Search of Mechanisms for Coping with Responsibility', 44 *Journal of Business Ethics* (2003) pp. 209-224.

Perhaps as a result of my background as a lawyer, I find the distinct concepts at the other end of the spectrum somewhat harder to grasp. Ethical norms and legal rules are closely related and often intertwined. Most of the time, a certain overlap between the fields of ethics and law is even quite desirable. To me, a code of conduct seems to be nothing more than a collection of relevant norms to guide (and judge) behaviour. Can standards be considered a distinct category in this context? The author does carry out an explicit comparison of codes and standards (pp. 36-37). According to this comparison, codes have a more specific nature and are predominantly internally oriented. Standards, on the other hand, are mainly based on international consensus and are focused on external accountability. However, creating clear definitions of these distinct CR instruments remains a very difficult task: differences are often subtle and sometimes even manifestly unclear. This point is illustrated quite well by the following quote from an expert on the subject of codes versus standards (see p. 37): '... the majority of the so-called CR standards are, in fact, a series of norms.'

The clues in this chapter on how to categorise codes of conduct into several types are very useful. The building blocks for this typology are purpose (process and/or performance), development (self-regulation or negotiated agreements), scope (field of coverage: child labour, natural environment, etc.) and focus (single stakeholder or multi-stakeholder). In fact, these are the very criteria used to arrange and categorise the codes presented in this book.

Next, a number of characteristics that can be used to assess the quality of codes (p. 46: 'The DNA of an outstanding code ...') are mentioned, albeit quite succinctly. One of these characteristics constitutes a logical introduction to the next – equally terse – section, which states that a code must be written with implementation in mind. My understanding is that a code should above all be practical in nature. I am under the impression that the author regards the drafting and implementation of codes as two separate activities. However, those members of an organisation who will deal with the application of a code should ideally be heavily involved in the early stages of its development as well. In addition, the extent to which a specific code of conduct is actually brought to life (p. 48), can be measured by a self-assessment method that has been presented in literature.⁴

A rather modest final chapter foresees developments that indicate a future convergence of several codes. The barely elaborated idea of independent verification to further the credibility and transparency of promises made by corporations is quite appealing. Some kind of system of verification or even certification is instrumental for preventing an increasingly cynical stakeholder attitude towards

⁴ A. Nijhof, S. Cludts, O. Fisscher and A. Laan, 'Measuring the Implementation of Codes of Conduct. An Assessment Method Based on a Process Approach of the Responsible Organisation', 45 *Journal of Business Ethics* (2003) pp. 65-78.

CSR. Another very interesting and related question concerns the legal aspect of a code of conduct once it has been adopted by an enterprise. Do any expectations generated within the general public and among stakeholders for reasons of public relations give rise to legal obligations to live up to these expectations? Preliminary results from my own research in this area seem to indicate that, under certain circumstances, codes of conduct are legally relevant to the extent that these may limit the number of options of conduct for enterprises.

In conclusion, I consider Ms Leipziger's book to be quite a valuable asset, not just for experts on the subject but also for beginners. Indeed, 'corporate responsibility is a journey for which there is no single map but hundreds of guides' (p. 19). All passengers should consider putting this book in their travelling case.

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