

Maria Slazak

Chairperson of Foreign Affairs Committee
National Council of Legal Advisers, Poland
Vice-President of the European Association of Lawyers AEA-EAL

Financing of law firms and bars in Poland

There are two legal professions in Poland – advocates and legal advisers. Their competences and deontology rules are similar (members of both professions can render legal advices, draft legal opinions and other documents and may represent clients in a court. Legal advisers are not allowed to represent clients in criminal cases. Advocates are not allowed to provide legal services as employee). Report is prepared on a basis of rules on legal advisers (Act on legal advisers, 1982 and ethical principles of legal adviser, 2007).

I. Financing of the law firms

1. What structures are permitted in your country for the legal profession?

Act on legal advisers permits following structures to exercise legal profession by legal advisers:

- employment contract
- civil law agreement
- in a legal adviser's office
- private, general, professional partnership with exclusive participation of legal advisers, advocates or foreign lawyers and limited partnership with exclusive participation of lawyers as general partners

*Article 8. 1. A legal adviser may exercise his or her profession within the framework of **an employment contract, on the basis of a civil law agreement, in a legal adviser's office as well as in a private, general, professional or limited partnership, while only legal advisers and advocates and foreign lawyers performing regular practice pursuant to the Act dated 5 July 2002 on the Provision of Legal Assistance by Foreign Lawyers in the Republic of Poland (Journal of Laws No 126 item 1069) may be partners in a private, general or professional partnership or general partners in a limited partnership, and the sole area of activity of such partnerships shall be limited to providing legal assistance.***

2. Are commercial companies, limited companies, LL.P.'s etc) permitted?

Commercial companies are not permitted as a structure for the legal profession.

Private, general, professional partnership are permitted, however with participation of advocates, legal advisers and foreign lawyers only, and in limited partnership only advocates and legal advisers may be general partners.

3. Are external investments in law firms from investors (employees of the firm, other lawyers, former lawyers who have worked in the law firm, shareholders, etc.) permitted?

Only partners or owners of the law firms are allowed to make investments in law firms, which means that only advocates and legal advisers, with the exception of limited partnership, in which also non-lawyers may invest.

4. Do the ethical rules in your country allow law firms to enter into partnership with members of other professions (legal or not legal, such as accountants, auditors, multi-disciplinary practices (MDP's), etc.)?

Article 8.1 of Act of Parliament on legal advisers allows only advocates and legal advisers (and foreign lawyers) enter into common partnership. No other professions are allowed to do it. The exception is limited partnership in which non-lawyers may also participate but this limited partnership may provide exclusively the legal assistance.

5. What are the rules regarding the control of law firms in your country (control exclusively by lawyers or is there a possibility that also other persons may have control of the law firm, necessity of a majority of lawyers, ...)?

In general only lawyers can control law firms, but in limited partnership also non-lawyers may participate. However, due to the fact that within such limited partnership only legal activity may be run, these partnerships are controlled by lawyers

6. In your country, is it allowed to quote law firms on the Stock Exchange?

Only joint-stock company can be quoted on the Stock Exchange, so it is not allowed to quote law firms on the Stock Exchange.

7. Which ethical rules apply to law firms in your country: the independence of lawyers, avoidance of conflict of interest? Others?

There are 3 basic principles which apply to legal firms – independence, professional secrecy and avoiding conflict of interests.

Independence – means that exercising his or her profession, legal adviser must protect his or her independence. It is prohibited to agree for any instruction or orders given by any other person, which may cause conflict with the provisions of law. And the independence means not only freedom from an external influence, but also prohibition of acting in line with personal interests of a lawyer.

Professional secrecy – lawyer must keep in secret all information gathered during his or her professional activities. It includes not only information received from the client, but also all other knowledge obtained from third parties or any other source, if such information is connected with his or her professional work. The professional secrecy means also prohibition of using such data in lawyer's personal interests or interests of any third party.

Lawyer is also obliged to protect received information during its processing, in correspondence and storing particularly.

There is no limitation in time for the obligation of protecting professional secrecy.

Avoiding conflict of interests and unacceptable activities – it is a wide rule including two areas:

1. Avoiding conflict of interests – legal adviser is prohibited to take part in any activity which may cause conflict of interests or break the confidence or trust between a lawyer and his or her client. Following actions are strictly forbidden:
 - a) acting in the interest of two or more clients in the same or related cases, when his/her obligations are contradictory or there is a significant risk that they could be contradictory,
 - b) acting in a given case in the interest of the client, and the said obligation is in contradiction, or there is a significant risk that it could be in contradiction with the interest of the legal adviser in a given case or in a case related therewith.

The legal adviser may not plead a cause neither provides legal assistance in any form, if:

- a) he/she provided legal assistance to the opposing party in the same or related case;
- b) he/she took participated in the proceedings as a representative of public authorities or institutions of the public law;
- c) he/she is personally or materially interested in the outcome of a case, unless he/she is a party in that case or the case concerns a member of his/her family, a close person, or the claim concerns both him/her and the client.
- d) he/she maintained or maintains familiar relationships with the adversary of his/her principal or with a person interested in an unfavorable outcome of the case for the principal;
- e) the case concerns a legal adviser or advocate who in parallel provides legal assistance to the same party;
- f) he/she testified as a witness in the case or appeared before the court as an expert;
- g) the opposite party's proxy is his/her spouse or other close person;
- h) he/she participated in the case or in the related case as an arbitrator, member of other settlement bodies or a mediator.

The legal adviser is also obliged to refrain from representing a new client if there is a risk of breaching the obligation to maintain confidentiality with respect to previous clients, or if the adviser's knowledge concerning affairs of the previous client would give the new one an unjustified advantage, particularly if:

- a) the legal adviser acting as advisor to several clients is unable to give them full and fair advice without disclosing interests of his/her one or more clients;
 - b) the legal adviser acting as a plenipotentiary of several clients would have to present reasoning or conclusions different from those he/she would have presented if he had acted for the benefit of one of those clients;
 - c) the adviser's knowledge concerning affairs of a client could give another one any advantages;
 - d) legal adviser, upon written consent of his/her clients, acts as a mediator or arbitrator in a dispute between them.
2. Prohibition of any unacceptable activity – this means, that legal adviser must avoid any activity or situation, which may degrade him or her or the legal profession in public.

II. Financing of the Law Societies

1. Do the lawyers have to adhere to a Law Society (or similar professional organisation) in your country?

Yes. There is a mandatory membership in bar of advocates and bar of legal advisers

Article 40 (Act on legal advisers)

(...)

2. Affiliation with the self-government is mandatory for the legal advisers and trainee legal advisers.

2. Have you noticed that lawyers and Law Societies suffer from the current financial crisis and economic situation?

There were no polls or surveys conducted on that field or any other signals from members of our bar concerning current economic situation, but the National Council of Legal Advisers observes the situation in following areas:

1. Number of clients who decide to use legal services

If financial crisis rises, we may expect lower number of people asking lawyers for legal assistance. Companies may cut their budgets on legal services, which could affect both legal firms co-operating with these companies and lawyers employed by business.

2. Level of lawyer's fees

The clients suffering from the crisis may attempt to negotiate existing contracts or agreed fees may be negotiated to achieve more favourable financial terms of legal services.

3. Problem of unemployment among lawyers.

Our bar have not noticed such problem yet, however deepening crisis may affect Polish lawyers; companies may reduce employment in their legal departments or decide for outsourcing of legal services; lower number of clients may use legal services.

3. What is the budget of your Law Society and, in general, of the Law Societies (or Bar Associations) in your country?

Contributions from members are more than 90% of income of our bar. Members' fees are paid to the Regional Chambers of Legal Advisers which transfer part of contributions to the National Council of Legal Advisers.

Monthly fee: 85 polish zloty (app. 19 euro – standard fee)

- part for the Regional Chamber of Legal Advisers: 36 polish zloty (app. 8 euro)
- part for the National Council of Legal Advisers: 27 polish zloty (app. 6 euro)
- professional insurance: : 22 polish zloty (app. 5 euro)

There are also special fees for retired lawyers (53,5 polish zloty – app. 12 euro) and trainees (16 polish zloty – app. 3,5 euro)

Total income from membership fees is app. 3 800 000 euro (expected in 2009). It is divided between Regional Chambers of Legal Advisers – the amount of 2 200 000 euro and National Council of Legal Advisers – the amount of 1 600 000 euro.

There are also fees paid directly to the Regional Chambers of Legal Advisers by trainees (5 104 polish zloty per year (app. 1 135 euro)) for training, 638 polish zloty (app. 140 euro) for an entry exam and 957 polish zloty (app. 210 euro) for a bar exam. All income from these fees covers cost of exams and traineeship.

Other minor sources come mainly from advertisements placed in our professional magazine "Legal Adviser", as well as from sponsors.

4. What are the resources of the Law Societies in your country:

Almost all income comes from the contributions of members and fees paid by trainees for traineeship and entry and bar exams.

Article 63.

The activities of the self-government shall be financed: 1) from contributions paid by the legal advisers and trainee legal advisers, from fees relative to the proceedings on entering new members into the register of legal advisers and trainee legal advisers and fines, 2) from income from other sources, and in particular from grants and subsidies as well as donations and inheritance.

5. What are the main expenses of the Law Societies?

The main expenses of our bar are: training of legal advisers, publishing the professional magazine "Legal Adviser" and administration.

6. Do you think about finding new resources for financing your activities?

We are trying to search new sources of income for our bar, particularly:

- Finding a way to increase number of advertisements in our professional magazine "Legal Adviser";
- Our bar have already started a co-operation with external companies to reduce costs – e.g. outsourcing of accountant's services;
- The current activity is to find possible sponsors, who could participate in financing events organized by our bar;
- We also search for EU funds and grants open for lawyers and law societies.

7. Are the Law Societies in your country under some sort of danger (disappearance, control by the state)?

The main concern of the National Council of Legal Advisers is that in January 2009, the Commissioner for Civil Rights Protection submitted provisions of 20 acts, including the Act on Legal Advisers, to Constitutional Tribunal's review. In the application, he questioned mandatory membership of professional self-governments, including the Bars. The National Council of Legal Advisers treats this initiative as an attempt to prevent our self-government from fulfilling its mission consisting in protecting core values and rule of law including professional independence and secrecy, training of lawyers and providing high standards of our profession.

There are also some other problems in drafts, e.g. draft law on State Law Examination, which creates third legal profession – legal counselors – with similar competences and rights to legal advisers and advocates but without similar obligations (discipline, deontology, insurance).

For more information on this subject please see attached country report from February 2009.