

Control of certain investments

On 24 July 2015 the Polish Parliament adopted new legislation concerning control of certain investments. The legislation will become binding after merely 30 days from being officially published.

Key issues

- Scope of the regulation: potential investors and protected sectors.
- New powers of the Minister of State Treasury: procedure and objection.
- Severe non-compliance sanctions.

Scope of the regulation

The law is to cover almost all material acquisitions of companies in strategic sectors. The scope of transactions subject to control is very broad, and it can be expected that this legislation will apply to all methods of acquisition.

Potential investors

Practically all of the potential investors should be concerned by the legislation, as it intends to cover all possible scenarios of acquisition of a dominant or a material stake. Therefore, not only achieving or exceeding a threshold of 50% is subject to control, but even a threshold of only 20% of votes or shares is considered a qualified threshold and imposes obligations on a potential investor.

Protected sectors

The restrictions are to apply only to certain companies in certain strategic sectors, such as energy, chemical and telecommunication. The detailed list of affected companies will be issued by the Polish Government (it has not been published yet). It is likely that not only State Treasury-controlled companies will fall into the scope of this legislation; regardless of ownership, both public and private companies may be covered.

New powers of the minister of state treasury

The aim of the Act is to empower the Minister of the State Treasury to reject investors interested in buying shares in the companies covered by the scope of the Act. The procedure will be similar to clearances in the financial sector, i.e. the Minister may raise an objection to the proposed transaction. In case no objection is issued within the statutory deadline (90 days), the investor is free to close the acquisition.

Procedure

The potential investor is obliged to make a prior notification to the Minister of the State Treasury of its intention to acquire a qualified threshold. Simply concluding a transaction or acquiring a qualified threshold in any of the protected companies is prohibited.

The legislation also imposes numerous information obligations on the potential investor. The detailed list of the documents will be set out by the Polish Government. One may expect that this procedure will be time-consuming and complex.

Objection

The Minister of the State Treasury has 90 days to decide whether to object. Theoretically, his objection cannot be entirely arbitrary. The Act sets out a catalogue of reasons justifying an objection, consisting mainly of reasons of public policy and security. However, the catalogue is so broad and vague that there is a high risk of arbitrary objections that would be difficult to contest.

Severe non-compliance sanctions

Irrespective of the obligations, the legislation introduces also a list of sanctions for failing to comply with the obligations. The sanctions are particularly severe and may have both civil and penal nature. Firstly, any unlawful

material acquisition is null and void. Secondly, a failure to comply with the obligations is punishable with a fine of up to PLN 100,000,000 or with a term of imprisonment of six months to five years, or both.

Conclusion

The introduction of the new legislation to the Polish legal system may not only seriously complicate investments in certain companies in strategic sectors, but also significantly elongate the time required to conclude the transaction.

Moreover, because of the severe non-compliance sanctions, potential investors are advised to be particularly vigilant with regard to new obligations.

Authors



Agnieszka Janicka

Partner

T: +48 22 627 11 77

E: agnieszka.janicka@cliffordchance.com



Jarosław Lorenc

Counsel

T: +48 22 627 11 77

E: jaroslaw.lorenc@cliffordchance.com

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

www.cliffordchance.com

Norway House, ul. Lwowska 19, 00-660 Warsaw, Poland

© Clifford Chance 2015

Clifford Chance, Janicka, Krużewski, Namiotkiewicz i wspólnicy spółka komandytowa

Abu Dhabi ■ Amsterdam ■ Bangkok ■ Barcelona ■ Beijing ■ Brussels ■ Bucharest ■ Casablanca ■ Doha ■ Dubai ■ Düsseldorf ■ Frankfurt ■ Hong Kong ■ Istanbul ■ Jakarta* ■ Kyiv ■ London ■ Luxembourg ■ Madrid ■ Milan ■ Moscow ■ Munich ■ New York ■ Paris ■ Perth ■ Prague ■ Riyadh ■ Rome ■ São Paulo ■ Seoul ■ Shanghai ■ Singapore ■ Sydney ■ Tokyo ■ Warsaw ■ Washington, D.C.

*Linda Widyati & Partners in association with Clifford Chance.