

POLAND



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1.	Relevant legislation (foreign investment legislation in force)
	<p>National regulation with regard to the review of foreign direct investments (“FDI”) on national security and public order is contained in the Act of 24 July 2015 on the Control of Certain Investments (“Act on control of certain investments” or the “Act”; consolidated text: Journal of Laws of 2023, item 415; Polish only).</p> <p>The Act provides the rules and procedures for the control of certain investments resulting in the acquisition or achievement of significant participations or the acquisition of a dominant position over Polish entities operating in strategic sectors.</p> <p>The Act was amended in 2020 (by the Act on interest rate subsidies for bank loans granted to entrepreneurs affected by COVID-19 and on simplified proceedings for approval of an arrangement in connection with the occurrence of COVID-19, dated 19 June 2020, consolidated text: Journal of Laws of 2022, item 2141; the “Amendment”), citing the COVID-19 pandemic-related crisis as a reason. The Amendment has substantially extended the sectors of strategic companies covered by the FDI rules. The Amendment was initially planned to be temporal and remain in force for two years, i.e. until 2022. However, in July 2022, due to the “an international situation distorting the market or competition” the Amendment was prolonged for next three years, i.e. until July 2025 (the Act Amending the Law on Value Added Tax and Certain Other Laws, dated 12 May 2022, Journal of Laws of 2022, item 1137).</p> <p>Therefore, there are <u>two</u> similar <u>FDI regime options</u> under the Act:</p> <ul style="list-style-type: none"> • <u>regular</u>, protecting key sectors and entities <u>under the Act</u>, supplemented with a list of certain entities set out in the Regulation of the Council of Ministers of 16 December 2022 on the list of protected entities and their competent control bodies (“Regulation”; Journal of Laws of 2022, item 2838, as amended by an amending Regulation of 17 March 2023, Journal of Laws of 2023, item 604; Polish only), and • <u>additional</u> FDI protection <u>under the Amendment</u>. <p>The detailed requirements concerning FDI notification (applicable in both options) are set out in Regulation of the Council of Ministers of 25 February 2016 on documents to be enclosed with notifications of an intention to acquire, or achieve a significant participation in, or to acquire dominance in a protected entity (“Notification Regulation”; Journal of Laws 2016, item 324; Polish only).</p>
2.	Relevant authority (foreign investment regulator)
	<p><u>In relation to the companies covered by the Amendment</u>, the President of the Office for the Protection of Competition and Consumers (the “PCA”) is the respective FDI control authority.</p>

In the regular FDI control system based on the same Act and aimed at certain strategic companies listed in the Regulation, the minister responsible for state assets, the Minister of Defense and the minister responsible for maritime affairs are the control authorities (depending on a respective sector). Currently, the Regulation lists 17 protected Polish companies ("Baltchem" S.A., Centrum Rozwojowo-Wdrożeniowe "Telesystem-Mesko" Sp. z o.o., Emitel S.A., Gaspol S.A., Grupa Azoty S.A., Hawe Telekom S.A. w restrukturyzacji, KGHM Polska Miedź S.A., "Oktan Energy & V/L Service" Sp. z o.o., Orange Polska S.A., PKP Energetyka S.A., Polkomtel Sp. z o.o., PKN ORLEN S.A., Rafineria Gdańska Sp. z o.o., Stoen Operator Sp. z o.o., Tauron Polska Energia S.A., "TK Telekom" Sp. z o.o. and UNIMOT S.A.), active in energy, gas, fuel, telecommunication, chemical and copper mining sectors. In relation to these strategic companies, the respective FDI control authorities under the Regulation are: the minister responsible for state assets and, with respect to Centrum Rozwojowo-Wdrożeniowe "Telesystem-Mesko" Sp. z o.o., Minister of Defence.

3.

Specific sectors covered (foreign investment regime involving specific sectors of the economy / business activities)

In relation to the companies covered by the Amendment, the provisions of the Act relate to any company incorporated in Poland, which fulfills one of the criteria mentioned below:

- is public company;
- holds property included in the consolidated list of facilities, installations, equipment and services deemed to be critical infrastructure (according to article 5b item 7 point 1 of the Act on Crisis management dated 26 April 2007 – uniform text: Journal of Laws 2023, item 122); this list is confidential;
- is active within the following business areas:
 - ✓ electric power generation,
 - ✓ production of motor gasoline or diesel fuel, or
 - ✓ pipeline transportation of crude oil, motor gasoline, or diesel fuel, or
 - ✓ storage and warehousing of motor gasoline, diesel fuel, or natural gas, or
 - ✓ underground storage of crude oil or natural gas, or
 - ✓ manufacture of chemicals, fertilisers, and chemical products, or
 - ✓ manufacture and trade in explosives, weapons and ammunition, as well as goods and technology for military or police use, or
 - ✓ regasification or liquefaction of natural gas, or
 - ✓ transshipment of crude oil and its products in sea ports, or
 - ✓ distribution of natural gas or electricity, or
 - ✓ trans-shipment in ports of primary importance to the national economy, or
 - ✓ telecommunications, or
 - ✓ transmission of gaseous fuels, or
 - ✓ production of rhenium, or
 - ✓ mining and processing of metals used in the manufacture of explosives, weapons and ammunition, as well as products and technology for military or police use, or
 - ✓ manufacture of medical equipment, instruments and products, or
 - ✓ manufacture of medicines and other pharmaceutical products, or
 - ✓ trading in gaseous fuels and gas abroad, or
 - ✓ generation or transmission or distribution of heat, or
 - ✓ transshipment in inland ports, or
 - ✓ processing of meat, milk, cereals and fruit and vegetables, or
 - ✓ developing or modifying software for:
 - controlling power plants, networks, operating facilities or systems supplying electricity, gas, fuel, fuel oil or heating, or
 - managing, controlling and automation of drinking water supplies or sewage treatment plants, or

- using equipment or systems used for transmitting voice or data, or for data storage and processing, or
- operating facilities or systems used for cash supply, card payments, conventional transactions, for settling or managing securities and derivative transactions, or for providing insurance services, or
- operating hospital information systems, facilities and systems used for the sale of prescription medication, and for operating laboratory information systems or conducting laboratory tests, or
- operating equipment or systems used in the transport of passengers and goods by air, rail, sea or inland waterway, road, public transport or in logistics, or
- operating equipment or systems used in the supply of food.

The regular FDI protection under the Act concerns entities active in:

- the electric power generation or
- the production of motor gasoline or diesel fuel, or
- the pipeline transportation of crude oil, motor gasoline, or diesel fuel, or
- storage and warehousing of motor gasoline, diesel fuel, natural gas, or
- underground storage of crude oil or natural gas, or
- manufacture of chemicals, fertilisers and chemical products, or
- manufacture of and trade in explosives, arms and ammunition, as well as goods and technology for military or police use, or
- regasification or liquefaction of natural gas, or
- transshipment of crude oil and its products in sea ports, or
- distribution of natural gas or electricity, or
- trans-shipment in ports of primary importance for the national economy within the meaning of Article 2 item 3 of the Act of 20 December 1996 on maritime ports and harbours (Journal of Laws of 2022, item 1624), or
- telecommunications, or
- transmission of gaseous fuels, or
- production of rhenium, or
- mining and processing of metal ores used in the manufacture of explosives, weapons and ammunition as well as products and technologies of military or police use

However, the Act and the implementing Regulation provide a specific list of strategic companies directly covered by the notification procedure, i.e. 17 Polish private and public companies active in the energy, gas, fuel, telecommunication, chemical and copper mining sectors (the detailed list of these strategic companies is presented in point 2 above), to which the protection under the regular FDI screening option is strictly limited.

4.

Types of transactions caught and notification thresholds (definition of a foreign investor / activities / turnover / assets subject to foreign investment assessment / investment threshold - e.g. % of votes in the target triggering the notification)

In relation to the companies covered by the Amendment, the FDI control rules apply only to foreign investors (natural persons or legal entities) domiciled (directly or indirectly) outside the EU/EEA/OECD. Additionally, the Amendment states that subsidiaries of foreign entities (i.e., of entities not having a domicile or registered address within the EU, EEA or OECD), even if seated in the EU, EEA or OECD, are qualified as foreign entities. The domicile/seat prerequisite applies to the ultimate beneficial owner of the investor. Therefore, if the ultimate indirect foreign investor is domiciled or has registered address in an EU/EEA/OECD state, and the transaction in question is carried out by its subsidiary seated outside the EU/EEA/OECD, it is considered to be carried out by the parent and therefore does not fall within the FDI control regime.

In relation to the companies covered by the Amendment, the Act on control of certain

investments applies to any of the following transactions:

- obtaining the dominant status over a Polish company - which means the ability to decide on the directions of activities of the protected entity;
- acquisition of significant participation in the target company - which means achieving or exceeding respectively the threshold of 20% or 40% of the total number of votes in the decision-making body of the protected entity, acquisition of right to 20% or 40% of profits of the protected entity, or 20% or 40% of the capital in a protected entity that is a partnership.

Dominant entity should be understood as an entity:

- holding, directly or indirectly through other entities, a majority of the total number of votes in the governing bodies of another entity, also under agreements with other persons; or
- having the power to appoint or dismiss the majority of members of management or supervisory bodies of another entity; or
- in the case of which more than half of the members of the management board of another entity are also members of the management board, proxies or persons holding managerial positions in the first entity or in another entity with which the first entity has a relationship of dependence; or
- having a capital interest in a partnership with a value of at least 50% of the value of all contributions made to the partnership; or
- otherwise having the power to determine the course of action of another entity, in particular pursuant to an agreement providing for the management of that entity or the distribution of profits by that entity.

In relation to the companies covered by the Amendment, the requirement of pre-merger FDI notification applies only to transactions in which the aggregate turnover generated by the target Polish company (the protected entity) in Poland exceeded EUR 10 million in either of the two financial years preceding notification.

In relation to the strategic companies as listed in the Regulation (see point 2 above), there is no concept of a foreign or domestic purchaser - transactions regarding any target company covered by the Regulation fall under the FDI screening procedure.

Moreover, the FDI screening applies only to Polish target entities, i.e. entrepreneurs having registered seat in Poland, i.e. only Polish targets are caught by the Act.

In relation to the strategic companies as listed in the Regulation (see point 2 above), the consent of the relevant Minister is required in the case of acquiring dominance, i.e. reaching or exceeding 50% of the total number of votes in the target company's shareholder meeting or in the target's share capital, and in the case of acquiring or achieving a significant participation – i.e. when the purchaser acquires shares or rights that reach to exceed 20%, 25% or 33% of the total number of votes at the shareholders' meeting or in the share capital, respectively, or when the purchaser buys the target's enterprise or the organised part thereof. No turnover threshold applies.

5.

Parties to be included in the foreign investment assessment (notifying parties and protected entities)

In relation to the companies covered by the Amendment, obligation to notify the acquisition of significant participation or dominant status in the target company lies on the foreign investor, who/which is also responsible for providing respective information to the PCA.

<p>Please note that indirect acquisitions are also covered by the Act on control of certain investments, including acquisitions concluded through the subsidiary or on a higher level of corporate structure.</p> <p>The protected entities are companies meeting the prerequisites listed in point 2 above, whose aggregate turnover generated by the target Polish company (the protected entity) in Poland exceeded EUR 10 million in either of the two financial years preceding notification.</p> <p><u>In relation to the strategic companies as listed in the Regulation</u> (see point 2 above - only the companies listed in the Regulation are protected), there is no concept of a foreign or domestic purchaser - any transaction regarding any target company covered by the Regulation fall under the FDI screening procedure.</p>	
6.	Exceptions
<p>There is no exemptions applying to the strategic companies listed in the Regulation (see point 2 above), i.e. in the regular FDI screening option.</p> <p>Under the Amendment (i.e. in the additional FDI screening option), a transaction arising from the acquisition of significant participation or dominant status is exempted from the notification obligation if the turnover in Poland of the target did not exceed the equivalent of EUR 10 million in either of the two financial years preceding the planned transaction.</p>	
7.	Notification / review type (e.g. mandatory, pre-closing, suspensory)
<p>If the conditions / thresholds specified in the Act are fulfilled, the filing is mandatory, must be made before closing (as a rule) and is suspensory (see point 10 below).</p>	
8.	Possibility for third parties to be involved in the review process (requirements, procedural rights etc.)
<p>According to the Act, the only a party to the FDI review proceedings is the notifying party and is involved in the process.</p> <p>The Act on control of certain investments does not grant any specific rights to third parties. Such parties are not involved in the review procedure.</p>	
9.	Filing fee
<p>N/A. There is no filing fee for the FDI screening procedure.</p>	
10.	Submission deadline / stand-still obligation
<p>According to the FDI rules, there is no specific deadline for filing. In general, the intention of significant participation or dominant status' acquisition should be reported to the relevant authority (pre-transaction notification).</p> <p>The notification should be submitted by the purchaser before undertaking any legal act that leads to acquiring or achieving significant participation or acquiring dominance in a protected entity. The notification can be made on the basis of a letter of intent or of an agreement conditional upon the authority's clearance. Anyway, the clearance needs to be obtained prior to closing.</p> <p>There is a stand-still obligation under the Act. If a transaction is concluded without clearance from the authority, it is invalid by virtue of law. Additionally, other severe sanctions may apply as specified in point 17 below.</p>	

<p>In the case of some types of indirect acquisitions or follow-up acquisitions, the notification should be made after the acquisition (post-transaction notification), within 7 or 30 days (depending on situation).</p>	
11.	Availability of pre-notification / informal consultation
<p>The Act on control of certain investments does not provide for any guidance procedure and pre-notification contacts. It is possible to apply for informal interpretations according to the general rules of administrative procedure.</p> <p>The PCA published its procedural explanations in relation to the notifications and proceedings covered by the provisions of the Amendment to the Act on control of certain investments in July 2022. However, there is only Polish language version available (please see the link to these explanations in point 20 below).</p>	
12.	Scope of information / documents required for filing
<p>There is no specific notification form for filing.</p> <p>Investors are obliged to provide the authority with very detailed information and documents regarding all entities involved in the transaction, including the target company and investor itself, its capital group and its management board members.</p> <p>The entire list of information and documents for the FDI filing is included in the Notification Regulation.</p> <p>For example, the investor should provide the authority, inter alia, with the following information and documents:</p> <ul style="list-style-type: none"> • the investor's intentions towards the target company (long and short term), • the scope of investor's business activity, • the structure of the transaction covered by the filing, • financial resources dedicated to the transaction, • certified copy of the investor's deed of association or company's agreement, • graphic structure of the entire capital group to which investor belongs, including names, addresses, scopes of business and information on corporate links between all the entities involved, • copies of the approved financial statements of the investor together with the opinions and reports of the statutory auditor for the last 3 years preceding the notification (in addition the same documents, i.e. the consolidated financial statements and auditors reports of dominant entity for the investor), • the investor economic and financial standing, • any criminal convictions regarding the investor and any criminal, administrative, economic and tax proceedings in progress in relation to the investor. <p>The notification and all the documents must be submitted in Polish. Any documents in a foreign language must be submitted with a sworn translation into Polish.</p>	
13.	Proceedings timetable (timing for review)
<p><u>In relation to the companies covered by the Amendment</u>, the Act provides a two-stage approval procedure for investment control investigation. The procedure before the PCA is divided into a preliminary stage and a controlling stage. The preliminary stage should be finalised within 30 business days. If second-stage control proceedings are conducted, the deadline for an investment control decision is 120 days from initiation of this second stage proceedings.</p>	

<p><u>In relation to the strategic companies as listed in the Regulation</u> (see point 2 above), approval or prohibiting decision should be issued by the relevant Minister specified for each protected company within 90 days from initiation of proceedings (delivery of a notification or institution of the proceeding <i>ex officio</i>).</p> <p>If the PCA/relevant Minister requests the notifying party to supplement the notification or issues any request for information the abovementioned statutory deadlines are extended by the time from the receipt of the respective request by the notifying party until the delivery of all requested information and documents to the PCA/the Minister.</p>	
14.	Outcome of the review process (clearance, conditional authorisation, possible commitments etc.)
<p>As mentioned in point 13 above, the preliminary stage of the proceedings <u>under the Amendment</u> should be finalised within 30 business days. If a case does not require additional checking, the PCA will then issue a decision on the absence of objection regarding the intention to obtain dominant status or significant participation in a protected entity, or decision denying the procedure (if the transaction does not require investigation by FDI rules).</p> <p>If second-stage control proceedings are conducted, the PCA can approve or object to the intention to achieve the status of significant participation or dominance over the protected entity if there is at least a potential threat to public order, security or health. An objection may also be raised if the relevant legal acts are likely to have a negative impact on projects and programmes of European Union interest.</p> <p><u>In relation to the strategic companies as listed in the Regulation</u> (see point 2 above), the respective Minister issued a decision on a refusal to institute the proceedings (if a case is not subject to the Act), a decision on approval of the transaction or a decision prohibiting the transaction.</p> <p>Neither the FDI screening under the Amendment nor under the Regulation includes a possibility of conditional clearance or of commitments.</p>	
15.	Publicity of the decision and confidentiality of the information provided
<p>The decision is published on the PCA's website. The confidential information included in the notification, documents and the decision is protected upon a respective motion by the notifying party.</p>	
16.	Can a decision be challenged or appealed (by whom, on what basis, in which timeframe)
<p>With respect to both the decision to refuse to initiate a control procedure and not to raise an objection, and the decision to raise an objection under the Amendment and the decision to object to the transaction under the regular FDI screening under the Act:</p> <ul style="list-style-type: none"> • a party may, within 14 days from the date of delivery of the decision, apply to the PCA for reconsideration of the case; • a party may file a complaint against the decision of the PCA to the Regional Administrative Court in Warsaw, through the PCA, within 30 days from the date of delivery of the decision; a party may file the aforementioned complaint without exercising its right to request the PCA to reconsider the case (see (i) above). 	

17.	Sanctions for failure to notify (administrative fines or other administrative sanctions, criminal sanctions, civil law consequences)
<p><u>Civil law sanctions</u></p> <p>According to the Act on the control of certain investments, the acquisition or achievement of significant participation or the acquisition of dominance made without notification or despite the issuance of a decision of objection <u>is null and void</u> by virtue of law.</p> <p>In case of some types of indirect acquisitions (eg. foreign-to-foreign transactions), the purchaser is obliged to not execute its voting or other rights resulting from the shares of the protected entity that was acquired indirectly, with the exception of the right to dispose of such shares.</p> <p>Moreover, resolutions of the shareholders' or general meeting of the target company adopted in breach of the provisions of the Act on the control of certain investments are invalid null and void unless they meet the requirements of a quorum and a majority of the votes cast without taking into account the invalid votes. The relevant authority also has a right to appeal the resolution. Moreover, in some cases, the relevant authority may impose to the investor an obligation to dispose (sell) the shares within a specified deadline (such obligation is issued in the form of an administrative decision).</p> <p>If the obliged entity fails to dispose of the shares of the protected entity within the time limit, the authority may appoint a share administrator who shall be obliged to take steps to dispose of the shares or to cancel them.</p> <p><u>Fines and criminal sanctions</u></p> <p>In addition to the above civil law sanctions, a person or entity that acquires or achieves significant participation or acquires dominance without notification is subject to a financial penalty of up to:</p> <ul style="list-style-type: none"> • PLN 100 million (approx. EUR 22 million – <u>in relation to the strategic companies as listed in the Regulation</u> (see point 2 above), or • PLN 50 million (approx. EUR 11 million) – <u>in relation to the companies covered by the Amendment.</u> <p>Additionally, such person may be imprisoned for a period from six months up to five years. The same penalties may be imposed on a person representing the investor.</p> <p>Additionally, a person obliged to represent the subsidiary, who knows about the transaction (indirect acquisition) that has already taken place and who does not notify the relevant authority about the transaction, may be subject to a financial penalty of up to:</p> <ul style="list-style-type: none"> • PLN 10 million (approx. EUR 2.2 million – <u>in relation to the strategic companies as listed in the Regulation</u> (see point 2 above), or • PLN 5 million (approx. EUR 1.1 million) – <u>in relation to the companies covered by the Amendment.</u> <p>Such person may be also imprisoned for a period from six months up to five years.</p> <p>The same penalties may be imposed on a person who represents the investor on a shareholders' meeting of the protected company and executes share rights on behalf of an entity that has not notified the transaction to the relevant authority, under condition that such person knew or might have known about such circumstances.</p> <p>In each case, the financial penalty and the sentence of imprisonment can be imposed together.</p>	

18.	Other national security review distinct from FDI rules
<p>In addition to the FDI regime(s), there are also other regulations limiting acquisition of companies by foreign entities in Poland.</p> <p><u>Agricultural acquisitions</u></p> <p>The most important is Act on the Structuring of the Agricultural System, dated 11 April 2003 (consolidated text Journal of Laws 2022, item 2569, as amended) setting forth a priority right of the State Treasury to purchase the shares in an entity holding the title to the agricultural lands and render such acquisition invalid independent of whether the acquirer is a Polish, EU or non/EU entity.</p> <p><u>Acquisition of real estate</u></p> <p><u>An acquisition of an entity owning a real estate in Poland by a purchaser domiciled/seated outside the EEA and Switzerland requires a consent of the Minister for Internal Affairs and Administration (under the Act on the Acquisition of Real Estate by Foreigners, dated 24 March 1920, consolidated text: Journal of Laws of 2017, item 2278).</u></p> <p><u>Polish merger control rules</u></p> <p>The rules are contained in the Act on the Protection of Competition and Consumers dated 16 February 2007 (uniform text Journal of Laws 2021, item 275). The PCA is also responsible for enforcing the Polish merger control rules. Under these rules there is an obligation to submit the pre-merger notifications to the PCA in relation to the significant concentrations between entrepreneurs (turnover test) even for foreign-to-foreign transactions.</p> <p><u>EU Screening Regulation</u></p> <p>In addition to the national (Polish) FDI rules, institutions of the EU (European Parliament and the Council) enacted Regulation (EU) 2019/452 of 19 March 2019 establishing a framework for screening of foreign direct investments into the Union (OJ L 79 I/1 dated 21.03.2019) (“EU Screening Regulation”). This Regulation came into force on 11 October 2020.</p> <p>Pursuant to art. 1 of the EU Screening Regulation, it establishes a framework for the screening by Member States of foreign direct investments into the Union on the grounds of security or public order and for a mechanism for cooperation between Member States, and between Member States and the Commission, with regard to foreign direct investment likely to affect security or public order. It includes the possibility for the Commission to issue opinions on such investments.</p> <p>According to the EU Screening Regulation – a foreign direct investment – means an investment of any kind by foreign investor (i.e. non-EU investor) aiming to establish or to maintain lasting and direct links between the foreign investor and the undertaking to whom or the undertaking to which the capital is made available in order to carry on an economic activity in a Member State, including investments which enable effective participation in the management or control of any company carrying out an economic activity.</p> <p>Screening means a procedure allowing to assess, investigate, authorise, condition, prohibit or unwind foreign direct investments by the Member State in cooperation with the Commission. Based on the above definition the Transaction planned by the Purchaser in Poland will be covered by the provisions of the EU Screening Regulation.</p>	
19.	Significant legislative/regulatory developments in the past year and possible proposals for reform
<p>The most significant legislative change in the past was the adoption of the Amendment to the Act in 2020 and a further amendment thereof in 2022 (please see point 1 and further</p>	

points above). The current provisions of the Act on control of certain investments are in force until July 2025.

20.

Helpful links

https://uokik.gov.pl/wyjasnienia_i_wytyczne.php

(PCA's explanations in relation to the notifications and proceedings covered by the provisions of the Act on control of certain investments – *Wyjaśnienia proceduralne w sprawie składania Prezesowi UOKiK zawiadomień oraz prowadzenia postępowań objętych zakresem ustawy o kontroli inwestycji* – only in Polish).

<https://codozasady.pl/en/p/control-of-certain-investments-new-protective-provisions> (an article on the first iteration of the FDI regime (under the Amendment) described above).

https://uokik.gov.pl/news.php?news_id=17989 (a PCA's press release regarding the 2021 decision to not object to the acquisition of Odlewnia Zawiercie by Meide Group).

More detailed information on investments in Poland may be found at the website of the Polish Information and Foreign Investments Agency (http://www.paiz.gov.pl/polish_law), also with respect to approval and restrictions on foreign investments in some specific sectors of the economy.