The Foreign Investment Regulation Review

Editor
Calvin S Goldman QC

Law Business Research

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For further information please email
Adam.Sargent@lbresearch.com

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EDITOR'S PREFACE

This inaugural edition of *The Foreign Investment Regulation Review* aims to provide readers with a practical and comprehensive guide to foreign investment laws, regulations, policies and practices in key jurisdictions around the world. The topic of foreign investment has garnered significant attention in recent years, and is likely to become increasingly important as market barriers continue to fall, cross-border acquisitions continue to increase and national governments continue to regulate – or consider regulating – foreign investment in their jurisdictions. It is of particular interest to multinational companies seeking to expand the geographical scope of their operations through an acquisition, joint venture or other type of foreign investment. The number of foreign investment reviews of major transactions has grown in recent years, and this trend is expected to continue as the global economy becomes more integrated.

This book includes contributions from leading experts around the world from some of the most widely recognised law firms in their respective jurisdictions. It provides relevant information on and insights into the framework of laws and regulations governing foreign investment in each of the 23 featured jurisdictions, including the timing and mechanics of any required foreign investment approvals, and other practices that are specific to each jurisdiction. In describing the laws, regulations and policies related to foreign investment reviews, the focus is on practical and strategic considerations, including the key steps for foreign investors planning a major acquisition or otherwise seeking to do business in a particular jurisdiction. Recent trends and emerging issues include the growing role of national security considerations in the review of foreign investment, as well as the increasing scrutiny of foreign investments made by state-owned enterprises. In addition, given the fact that parallel regulatory reviews may indeed take place in a number of jurisdictions, the interface between foreign investment review and competition and other sectoral reviews is also discussed.

Foreign investment regimes face the difficult challenge of striking the right balance between, on one hand, maintaining the flexibility required to reach an appropriate decision in any given case and, on the other, creating rules that are sufficiently clear and predictable to ensure that the home jurisdiction offers the benefits of an attractive

investment climate. The reality faced by foreign investors is that without sufficient advanced planning, foreign investment reviews, which sometimes takes place in a politicised environment and under close media scrutiny, can potentially result in delay, increased costs and even the blocking or unwinding of a transaction. Given these risks, parties to a proposed investment are well advised to gain a thorough understanding of the regulatory regimes in each jurisdiction – particularly given the significant variation in the foreign investment review regimes in place in various countries – and to engage with regulatory counsel early in the planning process so that deal risk can be properly assessed and managed.

We hope this publication will provide a valuable guide for parties considering a transaction that may trigger a foreign investment review.

I would like to personally express my appreciation to each of the chapter authors and their firms for the time and expertise that they have contributed to this book, and also thank Law Business Research for its ongoing support and for taking the initiative to launch this publication.

Please note that the views expressed in this book are those of the authors, and not those of their firms, any specific clients, the editor or the publisher.

Calvin S Goldman QC
Blake, Cassels & Graydon LLP
Toronto
August 2013

Chapter 18

POLAND

Krzysztof Cichocki, Sławomir Uss and Radosław Waszkiewicz[1]

I INTRODUCTION

Foreign investment has been at the centre of Poland's economic transformation since 1989. It is broadly welcomed not only as a source of finance, but also as a means of technology transfer, human resource development and Polish integration into global supply chains and research and development (R&D). Since 1990, according to National Bank of Poland data, Poland has attracted an estimated $200 billion in foreign direct investment (FDI). Foreign companies invest largely, though not exclusively, to service Poland's dynamic local market and the considerably larger European market.

UNCTAD's 2011 World Investment Report shows that surveyed transnational corporations ranked Poland as the sixth most-mentioned country as a top FDI priority, behind China, the United States, India, Brazil and Russia. In an effort to improve the climate for foreign and domestic investment, Poland has introduced a series of reforms in recent years. In July 2011, the Act Limiting Administrative Barriers for Citizens and Businesses came into effect, introducing a series of measures designed to diminish the burden of Poland's state bureaucracy. In the period between 2007 and 2010, telecommunication regulations were relaxed, foreign exchange law was simplified, the overall tax burden was reduced, new acts shaping public-private partnerships came into force, starting and closing a business and registering property became easier, and positive changes appeared on the labour market. Work to improve bankruptcy law and the administration of real estate registers continues, while national and local governments are working to implement a 'zero-stop shop' process of enabling online new business registration.

Despite these reforms, many foreign investors complain of an overly burdensome regulatory environment. Even so, Poland offers an attractive combination of incentives

1 Krzysztof Cichocki, Sławomir Uss and Radosław Waszkiewicz are partners at Sołtysiński Kawecki & Szlęzak.

for foreign investors, including a number of tax breaks and direct grants. Numerous industrial and technology parks, and 14 special economic zones, mean there are plenty of attractive locations with the right mix of transportation, potential partners and resources. Poland was a strong performer in 2012, attracting 22.3 per cent more projects than in 2011. Within the Central and Eastern Europe (CEE) region, Poland outpaced Russia to become the leading destination for FDI projects last year. With 13,111 jobs created by FDI (up 67.3 per cent), Poland ranked third in terms of job creation for the whole of the continent (after the UK and Russia), up from seventh place in 2011. US investments rose sharply, notably in services projects, while German companies increased their presence in the automotive and logistics sectors. Poland is also creating business process outsourcing centres, developed by companies such as WNS, which plans to set up a finance, accounting, contact and research centre. Poland was the top improver globally in the past year, according to the World Bank's Doing Business 2013 report. It has gained attention as the fastest-growing EU member since 2008, and benefits from a skilled native workforce, and an extensive and able migrant workforce.

Even during the global economic turmoil, the automotive industry has significantly contributed to the continuous growth of Poland's economy. Poland's automotive industry has continued to attract foreign investors: Japan-based Boshoku Automotive Poland has increased its production capacity in Tomaszów Mazowiecki (a new €13 million production line), while the Japanese tyre manufacturer Bridgestone Corporation has increased its production capacity in Poznań (in a €120 million project). With an excellent cost-to-quality ratio, Poland offers the biggest pool of highly qualified workers in the CEE region.

Poland's aviation sector is strongly connected to global industry. However, the turbulent situation in the global market surprisingly led to the growth of demand for aviation parts produced in Poland (total turnover in 2011 was about €1 billion). Companies that have recently invested in Poland (e.g., Hamilton Sundstrand, Hispano-Suiza, EADS, Agusta Westland, Sikorsky, Goodrich and MTU) are already planning further expansion. Aviation is one of the most innovative industries in the Polish economy due to companies' large expenditure on R&D, cooperation with research centres, participation in international projects, human potential and strongly developing clusters. The future of the Polish aviation sector looks promising even in light of global economic tensions, and is set to see further growth in future years.

Poland is the largest producer of LCD sets and household appliances in the EU. According to Business Monitor International, the value of the Polish electronics market will gradually increase, reaching approximately US$7.6 billion in 2013. Poland's strong position is a result of foreign investment. Many international companies, such as the LG group, Dell, Sharp, Funai, Toshiba, Bosch, Electrolux, Indesit and Whirlpool, have decided to establish their manufacturing bases in Poland.

Finally, the electronics market is one of the fastest-growing segments in Poland. More than 37 per cent of the Polish population is aged between 20 and 44, and people in this age bracket are most likely to purchase new electronic products. Recent investment by Indesit shows that Poland is very successful in attracting new investors and strengthening its position as a white goods manufacturing centre in the EU.

II FOREIGN INVESTMENT REGIME

Upon entering the EU, Poland adopted EU legislation. Therefore, the general rules of conducting business activity do not differ greatly from those in force in other EU countries, and the lack of trade barriers within the EU allows companies located in Poland to move freely across the whole European market. With few exceptions, foreign investors are guaranteed to be treated in the same manner as domestic investors. The most important laws and regulations that govern foreign investments in Poland are described below.

The basic legal framework for establishing and operating companies in Poland, including companies with foreign investors, is found in the Economic Freedom Act (the EFA).

i Setting up business in Poland

As a general rule, there are no major restrictions regarding requirements for a foreign person to run its business in Poland. There is, however, a distinction among foreign actors. According to the EFA, foreign persons from the EU and the European Economic Area (the EEA), and other foreign persons whose country of origin is not a party to EEA but by virtue of bilateral agreements have the right of freedom of entrepreneurship, may undertake and run a business on the basis of the same rules applicable to Polish entrepreneurs.

Foreign persons that do not fall within the above categories have the right, unless international agreements provide otherwise, to undertake and run a business activity only in the following legal forms: limited partnership, limited joint stock partnership, limited liability company and joint stock company. Furthermore, foreign entrepreneurs may run a business activity in the form of a branch office, and also set up representative offices on the territory of Poland. The branch office is frequently associated with the creation of the permanent establishment of a foreign entrepreneur, which in turn might bring some significant tax implications.

Polish law recognises categories of entrepreneurs of particular economic and defence importance that ought to perform tasks for defence purposes. A list of such entrepreneurs is published by the Council of Ministers and includes entities running businesses within the following sectors:

a operation of airports and seaports;
b distribution;
c broadcast radio and television programmes;
d production, transportation and storage of petroleum products;
e construction, repair and modernisation of armament and military equipment;
f implementation of special trade, transport, postal service and telecommunications services; and
g generation, distribution and transmission of natural gas, liquid fuels and electricity.

Additionally, the Minister of Treasury holds special rights in companies that operate in the electricity, oil and gas fuels sectors whose properties are disclosed in a uniform list of facilities, installations, equipment and services, including in 'critical infrastructure'.

ii Public aid

The rules and procedure for financial support for foreign investments are determined in the Act of April, 2004 on proceedings in cases concerning state aid. State aid is defined as aid that:

a is granted by the state or from the state's funds;
b is granted on more attractive terms than market terms;
c is selective in nature (it privileges a selected business entity or entities, or production of specific goods); and
d threatens or distorts competition and affects trade among EU Member States.

The EU Commission is the sole competent authority to determine compliance under EU law. Any type of aid granted to business entities by central and local government agencies on the basis of individual applications or aid schemes must be notified to the EU Commission. Until the approval of the Commission is procured, aid may not be granted. In the period between 2007 and 2013, Poland has received more than €67 billion of financial support (by the end of December 2012, Poland had spent and settled more than 84 per cent of EU funds). Analogously, in the period between 2014 and 2020 Poland will receive a larger injection of investment funds. The EU has granted Poland more than €100 billion in financial support. Business entities may apply for support through a variety of programmes.

iii Foreign Exchange Law (the FEL)

Provisions of the FEL regulate general transfers of funds and apply a distinction between non-residents from EU Member States and non-residents from third countries. In the case of transactions with non-residents from EU Member States, as well as non-residents from countries that are members of the OECD or European Free Trade Agreement zones belonging to the EEA, restrictions are more lenient than in the case of transactions with non-residents from third countries.

iv Unfair competition

Polish law provides for the protection of business entities from unfair competition. The Unfair Competition Act (the UCA) defines unfair competition as any activity in violation of law or good practice if it threatens or impairs the interest of another business entity or customer. In addition to the general definition, the UCA provides a list of activities that will be deemed acts of unfair competition (e.g., misleading identification of the enterprise, false or fraudulent identification of geographical origin of goods or services, violation of business secrets of an enterprise). Foreign natural and legal persons may benefit from the protection granted by the UCA under international agreements binding Poland, such as the Paris Convention for the Protection of Industrial Property, or based on the principle of reciprocity. A company with foreign participation that has its registered office in Poland will be deemed a Polish entity.

III TYPICAL TRANSACTIONAL STRUCTURES

i Overview

Investors interested in investing in or acquiring a Polish company can achieve this goal in different ways. Polish civil law provides the possibility to acquire a company's enterprise or its selected assets, or to buy the company's shares. Polish company law enables a merger between companies, which may take place through the acquisition of a company by the acquiring company or by the formation of a new company by the merging companies.

In practice, the transactional structure is usually tax-driven, and the investment is usually made through a company domiciled in a jurisdiction with which Poland has a favourable treaty on avoidance of double taxation (in the case of a share deal) or through a Polish subsidiary (in the case of an asset deal). Sometimes, an investor decides to set up a new business through its corporate branch with its seat in Poland (see Section V, *infra*).

ii Asset deal versus share deal

By acquiring an enterprise pursuant to civil law, a buyer is able to obtain an organised complex of tangible and intangible assets enabling them to conduct business activities, consisting in particular of:

a naming the enterprise;
b ownership as well as other proprietary rights of immoveable and moveable property;
c contractual rights arising from the lease and tenancy agreements concerning immoveable and moveable property;
d receivables;
e rights arising from securities and funds;
f concessions, licences and permits; and
g patents and other industrial property rights or economic rights arising from copyright, trade secrets, books and documents related to conducting a business activity.

Goodwill and clientele may also be part of an enterprise; however, the transfer of an enterprise or some of its assets may be restricted. A transfer of some assets may depend on the previous consent of a third party, or the assets may be non-transferable.

According to Polish law, a buyer of an enterprise may bear a risk of liability for the undisclosed debts of the acquired enterprise. Civil law stipulates the joint and several liability of a buyer and a seller of an enterprise for all debts connected with the running of the enterprise that arose prior to the transfer, unless the buyer was not and could not have been aware of their existence, despite having exercised due care. The buyer's liability cannot exceed the value of the acquired enterprise at the time of its acquisition, and the buyer's liability cannot be precluded or limited in any way without a creditor's consent. As a result, a sale of assets transaction can in some cases be viewed as more favourable for the buyer, as such a sale, in principle, does not entail the risk of liability for undisclosed liabilities of the transferred enterprise.

The liability of the seller of an enterprise, an organised part thereof or of the assets may be subject to statutory liability for defects, or the contracting parties are free to modify, exclude or replace the statutory liability with contractual liability for breach

of representations and warranties. In particular, the contractual liability may oblige the seller to put the buyer into a position that would exist if the contract had not been breached, or to redress the damage suffered by the buyer as an effect of such breach.

In turn, in the case of an agreement on a sale of shares (in a limited liability company or a joint stock company), the Civil Code expressly stipulates only statutory liability for defects of the acquired shares, and not for the target company's assets. However, the contracting parties may decide to expand, modify or exclude the statutory liability of the seller, or implement a contractual system of liability for breach of representations and warranties, or both, which may cover not only the liability for defects of the shares, but also the liability for defects of the company's assets.

iii Merger issues

A company's merger with another company may also take place pursuant to the Commercial Companies Code. The acquisition of a company may be executed by way of transferring all the assets and liabilities of a company (the acquired or target company) to another company (the acquiring company) in exchange for shares of the acquiring company issued to the shareholders of the target company (merger by acquisition). A merger may also be effected when a new company is established via the contribution of the assets and liabilities of all merging companies in exchange for shares in such new company (merger by the formation of a new company).

As a result of the merger, by operation of law, all rights and duties of the acquired company or the merged company pass to the acquiring company (rule of general legal succession). In particular, rights arising under permits, concessions and licences pass to the acquiring company or a new company, unless the law or terms and conditions of a given administrative law decision provide otherwise.

Following the implementation of Directive 2005/56/EC of 26 October 2005, cross-border mergers are also allowed under Polish law.

iv Joint ventures

There is no legal requirement to conduct business with a domestic partner. Even though there is a considerable number of joint ventures, at a certain point a vast number end up in litigation. This is primarily caused by an absence of sufficient documentation (such as a shareholders' agreement), which would precisely determine the division of obligations between the joint venture partners, as well as exit and dispute resolution mechanisms.

All of the above transactions may require an antimonopoly clearance by the competition authorities (Poland's UOKiK or the European Commission).

IV REVIEW PROCEDURE

i Restrictions in business activity

Poland does not have a general screening mechanism for the entry of foreign firms and the establishment of business activity. Authorisation requirements and foreign equity limits do exist for a limited number of sectors. For instance, pursuant to aviation law, an operating licence may be granted provided that EU Member States or nationals of EU Member States, or both, own more than 50 per cent of the undertaking and effectively

control it, whether directly or indirectly, through one or more intermediate undertakings, except as provided for in an agreement with a third country to which the Community is a party. This creates an obstacle for non-European actors. There are also some restrictions within the process of obtaining permission to manage an airport or a licence to operate scheduled or non-scheduled air transport services using aircraft.

According to the EFA, a permit from the Treasury Ministry is required for certain major capital transactions (e.g., to establish a company when a wholly or partially domestically owned enterprise is contributed in kind to a company with foreign ownership). A permit from the Treasury Ministry is also required to lease assets to or from a state-owned enterprise. Licences and concessions for defence production and management of seaports are granted on the basis of national treatment for investors from OECD countries. Under the Act of 29 December 1992 on Broadcasting, a broadcasting licence may be granted to a natural person of Polish nationality with a permanent residence in Poland, or to business entities with a registered seat in Poland. Polish law limits non-EU citizens to 49 per cent ownership of a company's capital shares in the air transport and radio and television broadcasting sectors. Waivers of this restriction are not available. In the insurance sector, at least two members of the management board (including the chair) must speak Polish, while in the broadcasting sector, the number of Polish citizens on supervisory and management boards must be greater than the number of foreigners.

Polish law also provides for some exceptions to the freedom of economic activity conducted by foreign investors. Under the Act of 19 November 2009 on Gambling, activity in the areas of cylindrical, card and dice games, cash bingo, mutual betting and machine games can be conducted exclusively by a company with its registered office in Poland, and shares in such company can be purchased or taken up by an entity with its registered office in an EEA Member State or by a natural person who is a citizen of such Member State.

National security interests may require that permission must be obtained by both Polish nationals and foreign investors for some activities, or involve a ban on trading of some goods with certain countries.

A particular case in which the Polish legislator decided to introduce a legal definition of 'national safety' is the definition of fuel safety of the state. This was introduced by the Act of 16 February 2007 on oil reserves, oil products and natural gas, as well as rules for proceeding in situations of a threat to the state's fuel safety and interruptions on the oil market. The state's fuel safety means that it is possible to cover the need for customers of oil, oil products and natural gas, in a specific volume and time, to a degree making possible the correct functioning of the economy. Thus, an obligation was imposed on energy enterprises carrying out a business activity in the scope of importing natural gas for the purpose of subsequent resale to customers to maintain obligatory reserves of natural gas. Supervision of the fulfilment of this obligation was entrusted to the President of the Energy Regulation Office, and in the event of the appearance of a threat to the fuel safety of the state, the reserves of natural gas are at the disposal of the Minister in charge of economic matters.

ii Labour regulations

The rules regarding permission for foreigners to enter and reside in Poland are set out in the Act of 13 June 2003 on Foreigners. Foreigners who wish to undertake a salaried activity in Poland and who do not fall under the group of foreigners entitled to work (such as citizens of EU Member States, citizens of EEA Member States and others) need one of the following documents:

a a visa to perform work, issued for a specified period of no longer than one year; or

b permission to reside for a definitive period of time, granted for a specified period of no longer than two years, if the circumstances giving rise to the application for permission justifies the need to reside in Poland for more than three months.

The law does not require the level of employment of local employees but, as a general rule, permission for foreigners to work are granted after considering the situation of the local labour market. The law also provides for some indirect obstacles in hiring foreign employees in Poland, in that at least two members of the management board of a bank or insurance company should speak Polish.

iii Ownership of real properties

Citizens from countries outside the EU are allowed to own an apartment, 0.4 hectares (4,000m^2) of urban land, or up to one hectare of agricultural land classified in the bottom four tiers[2] without a permit.

For large commercial purchases, citizens from countries other than the EU and the European Free Trade Association must obtain a permit from the Ministry of Administration (with the consent of the Defence and Agriculture Ministries) pursuant to the Act on the Acquisition of Real Estate by Foreigners. A foreign business intending to buy real property in Poland may apply for a provisional permit from the Ministry of Administration, which is valid for one year from the date of issue, during which time the company is expected to assemble documents demonstrating that it is a viable business. Permits may be refused for reasons of social policy or public security.

iv Bankruptcy law

Insolvency proceedings in Poland are governed by the Bankruptcy and Rehabilitation Law of 28 February 2003 (the BRL). The BRL comprehensively regulates two procedures that constitute insolvency proceedings within the meaning of Article 2(a) of Council Regulation (EC) No. 1346/2000 on Insolvency Proceedings (the EIR).

The ability of Polish courts to recognise foreign insolvency proceedings differs in respect to Member States of the EU (except for Denmark) and other jurisdictions.

Pursuant to Article 16 of the EIR, any judgment opening insolvency proceedings handed down by a court of a Member State in which the centre of a debtor's main

2 Agricultural land in Poland is divided into six tiers (according to the quality of the soil).

interests is situated[3] is recognised in all other Member States from the time that it becomes effective in the state of the opening of proceedings.

In turn, recognition of foreign bankruptcy proceedings from jurisdictions outside of the EU is regulated in the BRL, which, in that part, is based on the UNICTRAL Model Law on Cross-Border Insolvency. A foreign insolvency official needs to file a motion with a Polish court to recognise a foreign insolvency judgment. The foreign insolvency proceedings will not be recognised if the case belongs to the exclusive jurisdiction of the Polish courts (this is the case when a debtor's main centre of interests is located in Poland) or it would be in contradiction of the fundamental principles of Polish public policy (*ordre public*).

V FOREIGN INVESTOR PROTECTION

Poland is a signatory of double taxation treaties with all EU Member States and 89 other countries. Poland is a party to the OECD, NATO and the Energy Charter Treaty. Poland has also entered into 61 bilateral investment treaties that provide for the arbitration of disputes between an investor and the host state (although the treaty with Russia has never entered into force).

VI OTHER STRATEGIC CONSIDERATIONS

Currently, Poland is a country where the maintenance of good relations between state bodies and private parties is improving, and is not automatically treated as corruption-inducing behaviour. However, one can still encounter allegations of a lack of transparency in communications between business and public bodies. A large part of the process of convincing civil servants to cooperate more actively with investors was achieved at the time of adoption of the Act of 19 December 2008 on public-private partnership. Currently, the majority of representatives of municipal local governments is favourably disposed towards foreign investors and open to maintaining good relations with them, because they are aware that the fate of the local community depends on the placement of new investment in a given municipality (new jobs, revenue from local and national taxes, the possibility of sponsorship of local events, etc.). In Poland, apart from the Act of 7 July 2005 on lobbying activity in the legislative process, there is no dedicated legal statute concerning the rules of communication between investors and state bodies (mainly representatives of territorial local government).

Despite having a close link to democracy, lobbying has a bad reputation in Poland, where it is commonly associated with corruption and nepotism. This image has not been altered by the professional lobbying firms that appeared in Poland after 1989, or by the introduction of the exercising of influence in educational programmes in schools. Poland has no tradition of lobbying; as such, apart from the Act of 7 July 2005, there are no legal regulations in this respect, nor is there any practical knowledge about it. As

3 In the absence of proof to the contrary, the place of the registered office shall be presumed to be the centre of the debtor's main interests.

a result, decisions concerning the most important public issues are officially the effect of negotiations conducted exclusively between politicians, whereas the influence of other interest groups remains outside of public and legal control (something that is often not accepted by society). In practice, true lobbying does not take place in the corridors of the House of Parliament, but, *inter alia*, in sub-committees to which registered lobbyists have no access, but where, in turn, 'experts' come in great numbers to lobby.

In 2012, only 52 lobbyists representing 30 registered entities attempted to reach members of Parliament, lobbyists took part in only 39 sessions of Parliament committees (most often (24 times) the health committee) and – importantly – just nine people registered at the House of Parliament as lobbyists attended committee meetings. During the sessions of these committees, only three took the floor. Most of the lobbying activity concerned protection of the environment, protection of health and pharmaceutical law. The latest report by the Group of States against Corruption (the Council of Europe's anti-corruption agency) assessed Poland quite critically in this respect. It pointed out that, in Poland, lobbying is above all a sphere of unofficial contacts, and that the country still lacks clear rules for communication between members of Parliament, senators and lobbyists.

VII CURRENT DEVELOPMENTS

i Special economic zones (SEZs)

Poland imports capital, and one of the means to attract investments are SEZs. The main incentive attracting investors to SEZs is a corporate income tax exemption. The exemption depends on the location of the investment and the amount of eligible costs (investment outlays or two-year labour expenditures). Companies may use the exemption only after obtaining a permit to operate within the zone; such permit is subject to certain conditions. The simplicity of the SEZ model is its major advantage. All of the SEZ managing companies reported profits in 2012, with the largest profit of 14.2 million zlotys achieved by Wałbrzych SEZ in the Lower Silesia region of south-west Poland. Wałbrzych SEZ also attracted the largest nominal value of investments in 2012 (over 1.5 billion zlotys), while Legnica SEZ enjoyed the highest annual increase in investments within the zones thanks to new projects by Volkswagen, Lear Corporation and Sitech.

The SEZ framework continues to contribute to the country's investment attractiveness; most FDI in Central Europe in 2012 was located in Poland, which is the only EU Member State to offer such an investment tool. Each investor operating within a SEZ must maintain its investment for three to five years after its completion; otherwise it will have to pay tax with interest. Another advantage is the commitment of local governments to attract investors. The attractiveness of SEZs depends significantly on prolonging the period of their operation to ensure that investors feel certain about the profitability of their potential investments in an SEZ. In this regard, the Polish Council of Ministers recently adopted ordinance prolonging the functioning of the SEZ until 2026.

ii Programme to support investments of key importance to Polish economy 2011–2020 (the programme)

On 5 July 2011, the Council of Ministers adopted the programme, under which support from the state budget is granted to investors. Support takes the form of a grant for creating

new jobs or new investments, or both. The programme's budget is approximately 727 million zlotys. Under the amended programme, support in the form of a grant under the programme cannot, as a rule, be combined with other regional support (direct grants from the state budget, EU co-financed programmes or tax exemptions within SEZs) if the value of support under the programme exceeds 3 million zlotys or 10 per cent of the total support amount under the programme together with regional support granted in the form of direct grants from the state budget, EU co-financed programmes or tax exemptions within SEZs. This ban, however, does not apply:

a in priority sectors specified in the programme, if the value of an investor's investment outlays constituting support eligible costs is at least 350 million zlotys;

b in the modern service industry, if the investor creates at least 500 new jobs;

c in the R&D sector; and

d for investments defined as 'significant' (e.g., for new production investments), in sectors other than the priority sectors specified in the programme, with minimum eligible costs of 1 billion zlotys, and creating at least 500 new jobs.

The compromise reached on exceptions to the ban on combining various forms of support should be considered a success, mainly because the criteria determining when such combination would be possible have been clearly defined, and arbitrariness in this regard has been eliminated.

Appendix 1

ABOUT THE AUTHORS

KRZYSZTOF CICHOCKI

Sołtysiński Kawecki & Szlęzak

Krzysztof Cichocki has been with SK&S since 1998, and became a partner in 2009. Mr Cichocki specialises in real estate law, construction law, infrastructural projects and energy law. He has acquired particularly broad experience while carrying out industrial projects (greenfield) in special economic zones and infrastructural projects.

SŁAWOMIR USS

Sołtysiński Kawecki & Szlęzak

Sławomir Uss joined SK&S in 1998 and became a partner in 2012. He specialises in commercial and civil law and international arbitration. In his transactional practice, Mr Uss regularly advises clients on merger and acquisition transactions, restructuring projects and company reorganisations. He has represented clients in a number of high-stake international commercial and investment arbitrations under Vienna, LCIA, UNCITRAL and ICC Rules sited in Vienna, London, Paris and Geneva.

RADOSŁAW WASZKIEWICZ

Sołtysiński Kawecki & Szlęzak

Radosław Waszkiewicz joined SK&S in 1998. Mr Waszkiewicz specialises in real estate law, construction investments, commercial law and environmental protection law. He deals with transactions related to acquiring, selling and leasing commercial and industrial real estate, including developer projects, as well as transactions related to acquiring and selling enterprises and companies. Mr Waszkiewicz advises on construction contracts (FIDIC and non-FIDIC), including in proceedings for public procurement, as well as administrative proceedings involving construction investments and environmental protection law. He has broad experience in handling greenfield-type investment projects, including projects carried out in special economic zones.

SOŁTYSIŃSKI KAWECKI & SZLĘZAK
ul Wawelska 15B
02-034 Warsaw
Poland
Tel: +48 22 608 7000
Fax: +48 22 608 7070
slawomir.uss@skslegal.pl
krzysztof.cichocki@skslegal.pl
radoslaw.waszkiewicz@skslegal.pl
www.skslegal.pl