Global Public M&A Guide - Poland

General Legal Framework

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# 2. General Legal Framework

[Last updated: 1 January 2025, unless otherwise noted]

**2.1 Main legal framework**

The main rules and principles of Polish law relating to public takeover bids can be found in:

The Act of 29 July 2005 on Public Offerings, the Listing of Financial Instruments and Public Companies (as amended) ("**Public Offering Act**"); and

The Regulation of the Minister of Finance of 23 May 2022 on Forms of Documents for Tender Offers for the Sale or Exchange of Shares of a Public Company, the Manner and Procedure for Submitting and Accepting Subscriptions under Tender Offers and Permitted Types of Collateral ("**Tender Offer Regulation**").

The provisions of the Public Offering Act relating to public takeover bids were significantly amended with effect from 30 May 2022. Following this amendment, a single threshold of 50% of the total number of votes at the target company has been introduced and it is no longer possible under Polish law to announce a takeover bid (whether voluntary or mandatory) in respect of less than 100% of the remaining shares of the target company (i.e., shares not held by a bidder).

The main body of the Polish takeover legislation is based on Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids ("**Takeover Directive**"). The Takeover Directive was aimed at harmonizing the rules on public takeover bids in the different Member States of the European Economic Area (EEA). However, the Takeover Directive still allows Member States to apply different approaches in connection with some important features of public takeover bids (such as the percentage of votes that, upon acquisition, triggers a mandatory public takeover bid in respect of the remaining shares of the target company, and management board powers). Consequently, salient differences remain in the national rules of EEA Member States applicable to public takeover bids.

**2.2 Other rules and principles**

While the aforementioned legislation forms the main legal framework for public takeover bids in Poland, there are a number of additional rules and principles that need to be taken into account when preparing or staging a public takeover bid, such as:

The rules relating to the disclosure of major shareholdings in listed companies (transparency rules) included in the Public Offerings Act. These rules are based on Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonization of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC and related EU legislation. For further information, see 3.4 below.

The rules relating to insider dealing and market manipulation (the so-called market abuse rules) included in the EU Market Abuse Regulation (Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse ("**Market Abuse Regulation**"). For further information, see 6.3 below.

The rules relating to the public offer of securities and the admission of these securities to trading on a regulated market are mainly contained in Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC, other related EU legal acts and in the Public Offering Act. These rules could be relevant if the consideration that is offered in the public takeover bid consists of securities.

The general rules on the exercise of supervision and control over the financial markets contained in the Polish Act of 29 July 2005 on Capital Market Oversight.

The rules and regulations regarding merger control.

There are also some further rules that need to be observed when preparing and implementing a public takeover bid, such as the listing rules in force on the stock exchange concerned and Polish corporate law rules.

**2.3 Takeover rules applicable to foreign target companies**

In the case of foreign targets, certain foreign laws may apply, such as those which impose disclosure and notification obligations. Each cross-border transaction should be analyzed on a case-by-case basis to establish which laws apply to which matters with a view to avoiding contradictions and to maintaining shareholder protection.

**2.4 Key regulatory authority**

Public takeover bids are subject to the supervision and control of the PFSA. The PFSA is the principal securities regulator in Poland. The PFSA has a number of legal tools that it can use to exercise oversight and enforce compliance with the public takeover bid rules, including the imposition of administrative fines. In addition, the ordinary courts can also apply criminal penalties for non-compliance. The PFSA also has the power (in certain cases) to grant exemptions from the rules that would otherwise apply to a public takeover bid.

**2.5 General principles**

Foreign investments are generally not subject to any restrictions in Poland. Under constitutional guarantees and foreign investment regulations, foreign investment is treated in the same way as any investment undertaken by Polish and EU-nationals. In general, there are no foreign exchange controls or rules that create specific requirements in respect of foreign exchange controls or of foreign investments in Polish companies. Restrictions on foreign ownership have generally been lifted except for a very limited number of specific areas of business:

Competition law

The notification of a transaction to the president of the Office of Competition and Consumer Protection is required if:

the combined worldwide turnover of all the undertakings involved in the concentration exceeds the equivalent of EUR 1 billion in the financial year preceding the year in which the notification is made; or

the combined turnover in Poland of all the undertakings involved in the concentration exceeds the equivalent of EUR 50 million in the financial year preceding the year in which the notification is submitted;

unless, in either case, the target company's turnover in any of the two financial years preceding the year in which the notification is submitted did not exceed the equivalent of EUR 10 million in Poland. If the transaction has a Community dimension, this has to be notified to the European Commission (notification to the president of the Office of Competition and Consumer Protection is not required then).

A Polish merger notification is suspensory, meaning that approval must be obtained prior to closing. In a public takeover bid, shares may be acquired before a decision is issued provided that the bidder does not exercise the voting rights attached to those shares, or exercises those rights only with a view to maintaining the full value of its capital investment or to avoiding serious harm to the undertakings involved in the concentration.

Similar regulations also apply in the case of the EU rules, with the exception that the acquirer may only exercise such voting rights to maintain the full value of its investment on the basis of a derogation granted by the European Commission. In general, the notification is submitted after the announcement of a takeover bid.

Polish law provides for two-phase proceedings. If the transaction does not give rise to competition law concerns, a decision is issued within one month of the date of notification. However, this deadline may be extended by four months if: (i) the case is complicated; (ii) there is a justified probability of a significant restriction of competition on the market; or (iii) a market investigation is required.

The scope of information to be provided, i.e., whether a short or long form version of the merger notification is needed, depends on whether any of the affected markets identified cover the territory of Poland or a part of it, i.e.: (i) the parties are competitors and their joint market shares exceed 20% of the relevant market identified; or (ii) there is an actual and/or potential vertical relationship between the parties (supplier-buyer relationship) and at least one party exceeds 30% on the relevant market identified as being a vertically related market.

Under rules introduced in response to COVID-19, among other things, all Polish public companies (i.e., where at least one share is admitted to trading on a regulated market or introduced to trading on a multilateral trading facility ("**MTF**") in Poland) are subject to the foreign direct investment ("**FDI**") requirement and to an additional notification obligation in relation to the president of the Office of Competition and Consumer Protection, provided that: (i) in any of the two financial years preceding the year in which the notification is made, the Polish company's revenue from sales and services exceeded in Poland the equivalent of EUR 10 million; and (ii) the acquirer has its seat outside the EU, EEA or OECD. The current FDI provisions are valid until 24 July 2025.

Permit for the acquisition of real property or shares in a company holding real property

The purchase of real property by foreigners is governed by the provisions of the Act on the Purchase of Real Estate by Foreigners. With certain exceptions, e.g., a company's transformation, a permit is required for each purchase of real property, i.e., acquiring the ownership title or the perpetual usufruct right to a real property or purchase, or taking up shares in a company which has a registered place of business in Poland and is the legal owner or perpetual usufructuary of real property. A permit is required if, by purchasing shares in a company which is the legal owner or perpetual usufructuary of real property, a foreigner takes control of such company. A permit is also required if the shares in an already-controlled company are acquired or taken up by a foreigner who is not a shareholder of the company. The Minister of Internal Affairs may grant a foreigner a permit to purchase real property or shares in a company owning real property if no objection is raised by the Minister of National Defense and there is no probability of a threat to national security, public safety or public order, and if the foreigner can demonstrate the existence of circumstances confirming their ties with Poland.

Specific limitations also apply to the sale of real property located in "Special Economic Zones" (*Specjalne Strefy Ekonomiczne*). In this case, the Special Economic Zone's managing entity has a pre-emptive right to acquire the land.

The acquisition of agricultural real property or shares in a company holding agricultural real property

The Act on Shaping the Agricultural System introduced several limitations on transferring the legal title to agricultural real property, transferring shares in companies holding agricultural property or reorganizations of companies holding ownership or perpetual usufruct rights to agricultural real property.

In principle, agricultural land may only be acquired by persons meeting certain criteria (such as individual farmers). Other entities are obliged to obtain the consent of the Head of National Agricultural Support Centre (NASC) before the effective transfer of the title to the land. There are several exceptions to this. Among others, the limitations do not apply to agricultural real property of a specific size or that are located on areas designated in local zoning plans for non-agricultural purposes. The NASC also has a pre-emptive right in relation to the purchase of shares in companies which hold the ownership title to agricultural real property. However, this pre-emptive right does not apply to the sale of shares on the stock exchange. The NASC also has various other rights relating to mergers, divisions, transformations and acquisitions of shares in companies holding agricultural real property. These limitations are taken into account when structuring a transaction, most commonly as conditions for closing.

Additionally, other state agencies, e.g., State Forests and communes, may be granted a pre-emptive right on the basis of other regulations, depending on the status and location of the real property. Therefore, it is important to verify the status of the real property prior to the transaction.

Transaction permits

Under the Act of Control of Certain Investments, transactions resulting in the acquisition or achievement of a significant interest or a dominant position in a company that is an entity subject to protection, are subject to the purview of the controlling authority, i.e., the competent minister for energy matters or the Prime Minister (in particular, transactions regarding strategic companies – however, this should be understood as strategic from a security angle, rather than an economic one). A dominant position is understood as the acquisition of 50% or more of the total number of votes in the governing body or shares in the share capital, while acquisition or achievement of significant participation is defined as achieving or exceeding, respectively, 20%, 25%, 33% of share capital or the total number of votes at the general meeting as well as the acquisition from a protected entity of an enterprise or an organized part thereof. The controlling authority can submit an objection to the transaction.

Protection against expropriation

The rules of protection against expropriation are the same for both Polish and foreign entities. Thus, according to the Polish Constitution, the State protects ownership, and expropriation is admissible only for public purposes and in exchange for just compensation. Expropriation may only take place in relation to public purposes projects such as are provided for by acts of Parliament.

Other regulatory requirements

For acquisitions of control of financial institutions, e.g., banks, insurance companies, investment and pension funds, investment firms, and of companies operating in specific sectors, such as telecommunications, energy, the media, airway and railway transport sectors, the approval of the relevant industry regulator is usually required before a share sale transaction due to the change of control. The definition of control and the rules for the issuance of this regulatory approval vary according to the rules of the specific regulatory authority and depending on the specific sector or industry. These regulations are applied equally to foreign and domestic investors. In asset transactions in a regulated industry or sector, it is usually required to obtain new permits and approvals for operation.

**2.6 General principles**

The following general principles apply to public takeovers in Poland. These rules are based on the Takeover Directive:

all holders of the securities of a target company of the same class must be treated equally. Moreover, if a person acquires control of a company, the other holders of securities must be protected;

the holders of the securities of a target company must have sufficient time and information to enable them to reach a properly informed decision on the bid. This results in the duty to announce a takeover bid and publish a takeover bid circular and the duty to publish an opinion by the board of the target company giving its views on the effects of implementation of the bid on employment, conditions of employment and the locations of the company's places of business;

the board of a target company must act in the interests of the company as a whole and must not deny the holders of securities the opportunity to decide on the merits of the bid;

false markets must not be created in the securities of the target company, the bidder or any other company concerned by the bid in such a way that the rise or fall of the prices of the securities becomes artificial and the normal functioning of the markets is distorted;

a bidder must announce a bid only after ensuring that it can fulfil any cash consideration in full, if such is offered, and after taking all reasonable measures to secure the implementation of any other type of consideration; and

a target company must not be hindered in the conduct of its affairs for longer than is reasonable by a bid for its securities.

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