

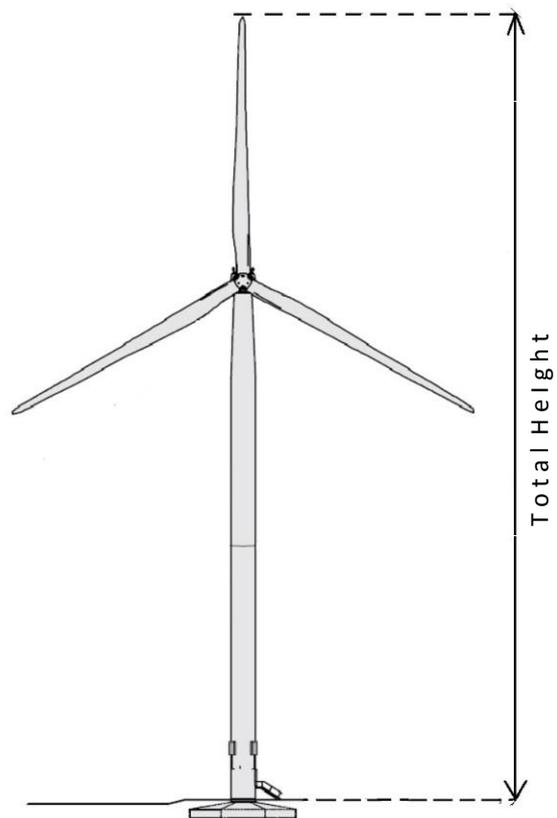
New proposal for regulation of wind farms in Poland.

The Act of 20 May 2016 on investments in wind power plants (hereinafter: “the WFA”) was signed by the President on 22 June 2016 and will enter into force on 16 July 2016.

WFA

The WFA provides for the following regulations affecting costs related to the investments in new wind farms as well as operation of the existing wind farms:

[Location requirements] Under the WFA, new wind turbines may be located no closer to the households, forests and/or landscape parks (and/or the zones dedicated for such purposes under the local zoning plans, zoning decisions and/or building permits) than the distance equal to 10 times the total height of the specific wind turbine (the total height of the wind turbine would be measured from the ground level up to the highest point of the installation, including the length of rotor blades). Moreover, location of each new wind turbine must be provided under the local zoning plan, it being also specified that the local zoning plan allowing for development of the wind turbine might be challenged to the administrative court by the owner of any plot adjacent to the proposed location of the wind turbine (located not further than 10 times the total height of the specific wind turbine). Such requirements will not only limit development of the new wind power plants, but also restrict the possible modernizations of the existing wind turbines (including replacing them with new and more efficient equipment) in case the wind project is situated closer to the protected area than the minimum distance requirement. The location requirements will also restrict development of the household areas situated closer to the existing wind turbines than the minimum distance required by the WFA.



This information was prepared to advise the Firm's Clients of selected important changes in Polish law and does not represent a legal advice on a specific situation of any Client and should not be treated by Clients as such. Should you have any questions concerning the legal matters outlined above as they may apply to your business in Poland, please contact the partner in charge of your account.



[Operational projects] Under the WFA, the existing wind turbines not meeting the location requirements can still be operated. Nevertheless, the potential repairs and/or modernizations of such wind turbines would be allowed exclusively if such repair and/or modernization does not result in an increase of technical parameters and/or increase of the environmental impact of the wind turbine.

[Projects under development] In case of a project under development the following main scenarios are possible:

1. The wind farm projects meeting the location requirements may be completed (unless subsequent location of a new household / environmental protection area before issuance of the construction permit for the wind farm project results in a situation where such project does not meet the location requirements and thus must be discontinued).
2. The wind farm project which does not meet the location requirements but, at the same time, is covered by the valid construction permit or submitted an application for the construction permit by 16 July 2016 might be completed, including obtaining of the use permit, by 16 July 2019 at the latest (if a use permit for the project is not obtained by 16 July 2019, the validity term of the construction permit expires and the structures developed under such permit must be re-assembled at the cost of the investor).
3. The wind farm project which does not meet the location requirements and is not covered by the valid construction permit may not be continued in practice.

[New definition of the "structure"] The WFA is to extend the definition of the "structure" so that it would cover not only the foundation and tower (as it is now) but also all the technical components of the wind turbine such as rotor, blades, main shafts and bearings, generator, control system, nacelle housing and rotating mechanism. The foregoing change will result in a substantial increase of the property tax determined based on the value of the "structure".

Please note that the property tax on "structures" used for the purpose of business activity (such as electricity generation) is regulated in the Act on local taxes and duties and it is calculated annually as a product of: (a) value of the "structure" and (b) the tax rate set forth by the competent local council but in any case not exceeding 2%. The extended definition of the "structure" under the WFA (if adopted) will operate so that the value of the "structure" for the purpose of the property tax calculation will *expressis verbis* include not only the foundations, towers and interconnection structures (as it is now) but also other technical components of the WT such as rotor, blades, main shafts and bearings, generator, control system, nacelle housing and rotating mechanism. It is said that such amendment may result in an even fourfold increase of the tax.

According to the final provisions, the property tax for the period ending on 31 December 2016 shall be calculated based on the hitherto rules, i.e. the new extended definition of the "structure" should not apply to calculation of the property tax for this period.



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