

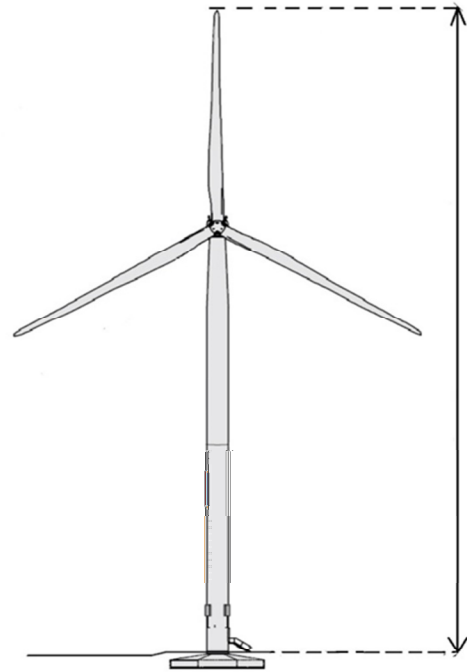
## RESTRICTIONS TO THE DEVELOPMENT OF THE ONSHORE WIND POWER PLANTS IN POLAND

On 16 July 2016 the Act of 20 May 2016 on investments in wind power plants (hereinafter: “the WFA”) entered into force.

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.**

**[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 allowed exclusively if such repair and/or modernization does not result in increase of technical parameters and/or increase of the environmental impact of the wind turbine.**



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.

[www.skslegal.pl](http://www.skslegal.pl)



**[New definition of the “structure”]** The WFA extends definition of the “structure” so that it will 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 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 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 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.

#### **Amendments to the WFA proposed in the Governmental Amendments:**

The WFA provisions are going to be rearranged by way of the governmental bill of amendments to the RES Act and WFA announced and directed to public consultations on 28 June 2017 (“**Governmental Amendments**”) which was initially expected to enter into force in September 2017 but actual entry into force may be postponed. Below are described basic directions of the changes to the WFA.

**[The return of real estate tax regime as before 2017]** The Governmental Amendments as defined above would restore the former (i.e. existing prior to adoption of the WFA) understanding of *structure* in the Polish Construction Law, which effectively means that the technical components of the wind power plant, such as rotor, blades, main shafts and bearings, generator, control system, nacelle housing and rotating mechanism should not be considered as a part of the structure. **Such an amendment should have effect on the calculation of the real estate tax base.**

**[More flexibility as regards extension of the wind power plants]** The Governmental Amendments would confirm that the building permits applied for before 16 July 2016 may be altered after the Draft enters into force, without specific limitations resulting from the WFA, to the extent that the alteration does not increase the investment’s impact on the environment. The Governmental Amendments would also allow for modification of the windfarm parameters existing as of the date of entry into force of the Governmental Amendments, unless it increases investment’s impact on the environment. Effectively, it should allow for modernization of the windfarm if only such modernization does not increase.

**[Possibility of locating residential premises in vicinity of the wind farms]** Although under the Governmental Amendments the new wind power plants still cannot be located in the distance less than 10-



times height of the wind power plant from the residential buildings, the Governmental Amendments would allow for location of the residential buildings in the distance less than 10-times height of the wind power plant from the power plant – if only the noise standards for residential premises are met.



In case the real estate is used by the investor for the purposes of development the wind power plant under the agreement other than lease or tenancy (i.e. for instance: cooperation agreements, or tenancy agreements [Pol. *dzierżawa*] for the purpose of erection/operation of the windfarm which have been considered by the Supreme Court as non-named agreement to which provisions on lease [Pol. *najem*] shall apply), the investor / windfarm operator will be obliged to return the real estate without any deterioration after the termination of the agreement. Under the Governmental Amendments the landlords would have the right to request adjustment of the existing non-lease / non-tenancy agreements to the said requirement (i.e. inclusion of the obligation to return the real estate without any deterioration upon termination of the agreement) and terminate those agreement if the investor does not consent to such adjustment. This may require re-negotiations and adjustment of the already executed agreements under which the operator uses the land for the purpose of existing windfarms in order to avoid termination of those agreements by the landlords.

The Governmental Amendments has not been adopted yet and is still under discussions in Sejm but the original intention of Polish government was that the Governmental Amendments enter into force on 1 September 2017. This assumption is very unlikely to happen as the bill of the Draft has not been even submitted to the Parliament before the Parliamentary holidays and it will be most likely proceeded in Sejm not earlier than 12 September 2017 (the nearest appointed session).



**Krzysztof Cichocki**  
Partner, attorney-at-law  
+48 22 608 70 51  
krzysztof.cichocki@skslegal.pl



**Tomasz Młodawski**  
Associate, attorney-at-law  
+48 22 608 73 27  
tomasz.mlodawski@skslegal.pl



**Maciej Lewicki**  
Junior associate, trainee attorney-at-law  
+48 22 608 73 03  
maciej.lewicki@skslegal.pl