Revitalisation Act – selected aspects

The Revitalisation Act of 9 October 2015 (the "Act"), which entered into force on 18 November 2015, sets forth a comprehensive range of legal solutions which will exert an increasing effect on trading in real estate and conditions of their development in areas that will be governed by the provisions of the Act. The article presents selected regulations of the Act that are likely to have the greatest bearing on investors.

The Act creates a harmonised legal framework for revitalisation operations conducted mostly by municipalities and communes as optional public tasks, and it also supplies them with legal tools to perform such tasks. Revitalisation is a process of regeneration of degraded areas through comprehensive actions taken by communes, municipalities and other interested parties (stakeholders) for the benefit of local communities, space and economy. In addition to local government units and government and administration bodies, revitalisation the category of stakeholders also includes citizens living in areas being subject to revitalisation, owners and users of real estate located in the area in question, entrepreneurs conducting or intending to conduct business activities in such area as well as entities conducting or intending to conduct social activities there.

Areas which can be subject to revitalisation include degraded areas, i.e. sites which have fallen into a crisis state in the wake of a concentration of adverse social, economic, environmental phenomena or other developments. A revitalisation area (RA) should be determined within the degraded area, it can comprise the entire degraded area or a selected part thereof affected by an extraordinary concentration of adverse conditions, with a proviso that it may not be larger than 20% of the municipality's/commune's area and may not be inhabited by more than 30% of its population. The degraded area and the revitalisation area are determined by a resolution passed by the municipal/communal council being an act of local law. The next step for the council is to prepare and adopt the municipal/communal revitalisation plan (RP) for the RA. The RP specifies objectives for the revitalisation process, guidelines for actions to be taken, including specific projects that need to be implemented to achieve the set objectives, rules for project monitoring as well as funding sources. If the RP allows, a special revitalisation zone (SRZ) can be established in the revitalisation area for a period of up to 10 years pursuant to another resolution (a local law act) adopted by the council. The SRZ will be governed by special regulations facilitating revitalisation processes. The Act stipulates that a local revitalisation plan (LRP) can be adopted for an RA or its part. The local revitalisation plan is a special type of local zoning (master) plan focused on revitalisation activities. However, revitalisation processes can also be conducted pursuant to a "regular" zoning plan adopted for the RA or specifically amended in accordance with the provisions of the RP.

The Act stipulates that a resolution on establishment of the RA may impose a ban on issuing outline planning decisions for all or selected changes in land use, including changes in use of existing facilities. The ban will cease if an SRZ is not established for the site in question within two years since its imposing. A similar ban on outline planning decisions may subsequently be imposed in a resolution on the SRZ. To impose such a ban means that all, or selected, construction projects may not be pursued in a revitalisation area which has no local zoning plan in place yet until an LRP or a "regular" local zoning (master) plan is adopted for the area or until the ban expires; it should also be noted that the terms and conditions for development will often be less favourable for investors that those that could have be obtained pursuant to the procedure for issuing an outline planning decision.

The resolution on the RA passed by the municipal/communal council may provide the municipality/commune with the right of first refusal for the acquisition of all real estate (developed, non-developed, housing or commercial properties) located in the revitalisation area; if an SRZ is established, the municipality/commune will always have such right with respect to the whole zone. The right of first refusal referred to above is the statutory right of first refusal set forth in Art. 109.1 of the Property Management Act, so the municipality/commune may not waive the right in advance, and it has one month to decide whether it wishes to exercise the right or not of the date of a relevant sale agreement. As a result, *inter alia* that in case of sale of property two agreements need to be executed – first, a conditional sale agreement, then, after the municipality/commune refuses to exercise its right of first refusal, an agreement transferring the ownership, which also applies to the sale of units located within buildings. However, it appears that the right of first refusal does not apply to the sale of the right of perpetual usufruct to developed real estate. A tangible effect of the new regulations is that it has become a common practice to double-check prior to purchasing any real estate that there is no first-refusal right to the property by requesting from the municipality/commune a certificate confirming that the property is not located in the RA or the SRZ.

In an LRP, but not in a regular local zoning plan – even if it concerns an RA – the municipality/commune may determine that, prior to pursuing the main project in an area covered by such LRP, private investors are required to build at their own cost specific complementary facilities, i.e. technical or social infrastructure, residential units or non-residential units, and transfer them to the municipality/commune free of charge. The scope of the obligation imposed on the private investor is defined in the LRP and it should be commensurate with the increase of value of the property resulting from the adoption or change of the LRP. Moreover, this obligation waives the obligations to pay the so-called zoning fee and betterment levies related to participating in construction costs borne by the municipality/commune to build technical infrastructure. To assume the obligation, the investor and the municipality/commune execute so called urban development agreement in the form of a notarial deed, which defines the scope, detailed description and dates for completing the required construction works and transferring the completed facilities to the municipality/commune. The agreement is the condition for issu-

ing a building permit for the main project. Copy of the agreement should be attached to the application for the permit. Free-of-charge transfer of complementary facilities to the municipality/commune by the investor is a condition which must be met to start using buildings or other structures of the main project, including issuance of the occupancy permit for them, should such permit be required.

The Act creates legal incentives for revitalisation activities, and also sanctions in the absence of revitalisation actions. The main incentive for private investors, which, however, is not regulated by the Act itself, is the possibility to use EU funds for the implementation of projects recognised as revitalisation schemes in the municipal/communal revitalisation plan (RP) or any other revitalisation plan. Owners or users of buildings or other structures located in special revitalisation zones (SRZ) are also entitled to apply for a grant of up to 50% of expenditure required to carry out construction work involving renovation or alteration of the structure or restoration and maintenance work on properties not entered into the register of historic monuments if they are used to complete revitalisation projects provided for in the municipal/communal revitalisation plan. Buyers of properties owned by the local authorities or the State Treasury which are located in the RA and are intended for revitalisation purposes provided for in the municipal/communal revitalisation plan (RP) can purchase them at a discounted price. At the same time, the Act introduces a "penalty" property tax rate (PLN 3 per m^2), which will apply to properties covered by the revitalisation area regime and located in an area where the local zoning plan in place stipulates that the properties can be developed for residential, service or residential-service development use if four years have passed of the entry into force of such plan for the land in question and the relevant construction has not been completed during that time.

Wojciech Langowski, Legal Adviser
Kancelaria Adwokatów i Radców Prawnych
Miller Canfield, W. Babicki, A. Chełchowski
i Wspólnicy sp. k.
langowski@pl.millercanfield.com