

FINN – a Polish REIT

The Polish government is planning a yet another – and maybe successful this time – attempt to adopt in Poland an institution similar to the one popular in western Europe, a so-called REIT (real estate investment trust) – a company whose purpose is to invest in real property. The first draft of the law was published already in October 2016, but it was rejected and the government prepared a completely new proposal of the regulations.

The bill on companies investing in rental properties contains both new legislation envisaging a new legal entity and provisions amending other legal acts, in particular related to the tax law. In accordance with the bill, an entity investing in rental properties (the use of the abbreviation FINN, standing for the Polish name of the institution, will also be accepted) may only be a joint-stock company which will meet certain criteria and whose core business will be the rental of residential properties located in Poland. The activities of Polish REITs will therefore have to be limited to residential properties. This is a complete reversal of the original assumptions, which allowed investing only in non-residential properties. The fact that at this stage a FINN will not be able to invest in commercial properties is something of a disappointment and will most surely discourage some potential investors from using this legal form. In other countries of western Europe, REITs also invest in commercial properties, such as offices, warehouses and shopping centres. The bill includes a definition of residential property – buildings with at least 70% of their total floor area used for the purpose of meeting housing needs. These also include facilities where 24/7 care is provided to the elderly and disabled, as well as halls of residence or dormitories, which forms a kind of a gap, which in fact will allow Polish REITs to participate, albeit to a limited extent, in the market for seemingly residential properties, with a rather commercial profile.

An entity that may qualify to become a Polish REIT will be a joint-stock company, whose management and registered office must be located in Poland and which will meet a number of specific conditions allowing it to be considered a FINN. The key criteria relate to the share capital, which must amount to PLN 50m (€12m) at least. Although the relatively high share capital requirement seems justified due to the nature of the business, the amount, which is even high-

er than the minimum share capital required for banks, may discourage potential investors. Other requirements concern, for example, shares – there may be only bearer shares and the issue of preference shares is prohibited. In addition, company shares must be admitted to trading on an official listing market. To become a FINN, a company will also have to be entered in the register of companies investing in rental properties maintained by the Polish Financial Supervision Authority. As provided for in the draft law, the register is to be public and accessible through a communication and information system.

The bill also imposes strict requirements for members of the management board of a FINN or its subsidiary. The president of the management board and at least one other management board member must have a university degree and at least five years of experience in property management.

FINN will be able to conduct business independently or through its subsidiaries, which may only be limited liability companies (spółka z ograniczoną odpowiedzialnością) or joint-stock limited partnerships (spółka komandytowo-akcyjna). FINN must be a significant majority shareholder in such a subsidiary (95%), and almost all of its revenue – as much as 90% – must be generated by rental or sale of owned property (with sale restricted to cases where the property has been rented out for at least a year). All or nearly all profit of such a subsidiary must be distributed to a FINN in the form of dividend. Fulfilment of these conditions is to be evaluated *post-factum* in the auditor's report.

FINN's subsidiaries will also be subject to other restrictions specified in the act, similarly to FINN itself. Both FINN and its subsidiaries should generate almost all of their revenue from rental of or trade in properties, and the earned profit should be first distributed to shareholders. Subject to their consent, some amounts may be used for further investment. FINN's revenue should be generated from at

least five properties, including those owned by its subsidiaries.

It is assumed that FINNs will also be subject to separate tax regulations, under which – in accordance with the Act – they should not enjoy any preferential treatment. The legislator would like FINN not to be subject to double taxation, which would encourage investors to use this legal form. FINN's revenue will be subject to corporate income tax at the rate of 8.5%, which in conjunction with a separate regulation on amortisation and depreciation charges would effectively allow FINN to be subject to corporate income tax on the terms similar to those applicable to other market participants. The payment of corporate income tax would also be deferred until the payment of dividend. FINN's subsidiaries would be exempt from corporate income tax, provided that they distribute dividend. The legislator proposes that investors in FINN be exempt from both corporate and personal income tax.

This article presents only a very general description of the proposed regulations concerning the introduction of Polish REITs. It is a disappointment that the scope of FINN's business has been restricted only to residential property. The assumption that FINNs will be subject to a single taxation regime will certainly be welcomed by potential investors. The bill contains a number of solutions which may add positive momentum to the property market in Poland and enable individual and institutional investors to invest more in properties. However, what may hinder the popularisation of FINN is the share capital requirement, providing for an amount which is very high in the market reality, as well as the exclusion of commercial properties from REITs' permitted investments.

The bill reached the Sejm only recently, so it may still be subject to some modifications, if it is passed and adopted at all. The draft law on Polish REITs was adopted by the Council of Ministers at the end of September 2018 and submitted to the Sejm for debate. The Act is planned to become effective as of 1 January 2019, so it should be expected that the bill will be proceeded smoothly. Maybe the first Polish REITs will be set up as soon as next year.

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