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Non-EU foreign investment screening rules in Poland

In July 2020 the new Polish foreign direct investment control act entered into force (the "FDI Law"). The FDI Law includes a new approach towards foreign direct investments in Poland by Non-EU and Non-OECD investors, therefore, it might apply to acquisitions conducted directly or indirectly in Poland by Chinese investors. Under the FDI Law certain acquisitions are subject to FDI screening and require a prior consent of the competent authority (Polish Office for Competition and Consumer Protection).



As a rule, the FDI Law applies to M&A transactions which involve companies conducting business activity in sectors regarded by Poland as strategic. The prior FDI consent is required in case of acquisitions of targets active in, inter alia, following sectors: Energy, Medicine, IT software, Transport, Food processing which are greatly attractive for Chinese Investors. The said consent is also required in case of publicly listed companies regardless of their business activity.

In general, the following requirements must be met for an acquisition to fall under the FDI Law:

- the target should achieve revenues for the sale of goods and services in Poland with a value exceeding the equivalent of EUR 10m in at least one of two financial years preceding the potential submission of the notification;
- as a result of acquisition, the Chinese Investor should achieve at least a certain, specified in the FDI Law, level of shareholding or of participation in the target;
- the target should be active in one of the above specified sectors or be a publicly listed company.



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