

## POTENTIALLY SIGNIFICANT CHANGES COMING TO SPATIAL PLANNING

In September 2017, the Ministry of Infrastructure and Development announced a project with the goal of modifying specific laws concerning the real estate investment process (project no. UD300). The bill is currently being evaluated by different committees of the Council of Ministers. The most impactful changes are those regarding the law on spatial planning and development.

The first significant change is that zoning decisions will be issued only for developments planned within a built-up area. The term built-up area means a fully formed, compact, functional and spatial structure, having a prevalent number of developed properties, with a dominant function, public roads, utility access, public transport and social infrastructure, to be specified by the local councils in special resolutions. Outside of those areas, if there is no binding local master plan, only specified building works will be allowed, such as refurbishment, alteration (without changing function of the building) or reconstruction, with some exceptions regarding development of farmstead buildings.

The rules governing zoning decisions themselves will be changed, as well. They will be issued only to the owner or perpetual usufructuary of land with a 3 year validity term. Moreover, there will be a possibility to suspend the administrative proceedings on issuance of zoning decisions for up to 18 months due to planned/ongoing proceedings regarding adoption of a local master plan. Currently, zoning decisions may be issued indefinitely to any entity, for example tenants or potential investors, with a suspension possibility only up to 9 months.

The bill also introduces a new planning procedure where the community and investor negotiate a development program for a specific area known as an "area of structured investments" (Polish "*OZI*" – *obszar zorganizowanego inwestowania*). The boundaries of the area will be drawn at the request of the investor holding ownership or perpetual usufruct of real estate located within the OZI by local councils in resolutions on commencing preparation or modification of a local master plan. Together with the motion for establishing the OZI, the investor will be obliged to file an urban concept of development for that OZI area. An urban concept may also be prepared by a mayor, and potential investors may be notified and invited to start negotiations regarding the establishment of an OZI area. The rules of an OZI's implementation are to be agreed upon by the parties. It should be noted that, in contrast to usual procedure, a project of the local master plan, together with other required analyses, may be prepared by and at the expense of the investor. The public authorities must, of course, still approve the master plan.

Following the adoption of a local master plan, the parties are to conclude an urban agreement concerning the development process and other implementation matters (e.g., further usage of buildings and structures). The urban agreement may specify, in particular, public investments to be financed or performed by the investor, and/or other "gratifications" to be provided to the community. This could be, for example, the gratuitous transfer of a part of developed premises, or of specified real estate designated for public investments or the establishment of limited real estate rights. It may also indicate the order and detailed method for performance of construction works, how the investment is to be used, and impose maintenance obligations for public infrastructure on the investor.

Another change proposed by the bill worth mentioning is that the development of investments which may consistently and significantly threaten the environment will be possible only on the basis of local master plans. Currently, such developments are also possible on the basis of zoning decisions.

The bill is still in the consultation stage and its final form may change significantly. However, from the information presently available, legislators are generally planning to impose further limitations on investors and give more control to public authorities throughout the development process. Nevertheless, the OZI negotiable development program seems to be a worthwhile idea that if properly implemented could further the interests of all participants in the Polish real estate market.

About WOLF THEISS

Wolf Theiss is one of the leading law firms in Central, Eastern and Southeastern Europe (CEE/SEE). We have built our reputation on a combination of unrivalled local knowledge and strong international capability. We opened our first office in Vienna almost 60 years ago. Our team now brings together over 340 lawyers from a diverse range of backgrounds, working in offices in 13 countries throughout the CEE/SEE region.

For more information about our services, please contact:



**Tomasz Stasiak**  
Partner  
[tomasz.stasiak@wolftheiss.com](mailto:tomasz.stasiak@wolftheiss.com)  
T: +48 22 378 89 00



**Robert Gorbaszewicz vel Gabrylewicz**  
Attorney-at-law  
[robert.gorbaszewicz@wolftheiss.com](mailto:robert.gorbaszewicz@wolftheiss.com)  
T: +48 22 378 89 00

This memorandum has been prepared solely for the purpose of general information and is not a substitute for legal advice.

Therefore, WOLF THEISS accepts no responsibility if – in reliance on the information contained in this memorandum – you act, or fail to act, in any particular way.

If you would like to know more about the topics covered in this memorandum or our services in general, please get in touch with your usual WOLF THEISS contact or with:

Wolf Theiss  
Schubertring 6  
AT – 1010 Vienna  
[www.wolftheiss.com](http://www.wolftheiss.com)