

Green Buildings – From Buckminster Fuller to Norman Foster

**Commissions in charge of the Workshop:
Real Estate Commission and Public Law Commission**

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National Report of Poland

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A. INTRODUCTION

1. Objectives

Our workshop in Munich on Green Buildings shall cover all legal aspects of the eco-life cycle of buildings, from design, construction, operation, maintenance, renovation, to demolition. We would like to analyse and discuss current legal developments and standards. The National Reports will help us greatly in setting up our workshop.

2. Approach

We are looking for contributions from all over the world, in order to compare the standards and developments made in the various jurisdictions. Since we are holding a joint workshop, we look for contributions from both commissions, i.e. from Real Estate Law practitioners as well as from Public Law practitioners.

3. Guidelines for answers

Your time is valuable. You are very welcome to answer the questions in a concise fashion. We appreciate your effort and enthusiasm very much. Please send your document by e-mail to the general reporters (see cover sheet) before **31 January 2016**.

B. QUESTIONNAIRE

These questions might help you in drafting your National Report

1. Please shortly describe yourself (what sort of practitioner are you, in which jurisdiction, particularities of that jurisdiction?).

I am advocate at WKB Wierciński, Kwieciński, Baehr, Polish law firm, with over 10 years of experience in real estate & construction law, corporate governance, M&A and commercial litigation. I am mostly engaged in advising clients from the real property and energy market, as well as coordinating due diligence processes and conducting various M&A transactions.

2. How do you define Green Buildings in your jurisdiction?

Polish law does not define Green Buildings, but we have some regulations which are related with energy-efficient buildings which use energy from renewable sources.

Certain provisions which may be applied for green buildings are set out in Renewable Energy Sources Act from February 20, 2015. The reason to proclaim this act was to increase the share of the renewable energy sources (RES) (compared to other 'conventional energy' sources) in the overall energy production in Poland and to diversify energy production for more producers. The RES Act regulates a support scheme for RES in Poland, including photovoltaic installations, which can be used in the green buildings. Scope and range on the support is dependent on the scale of investment and installed capacity of the installation. It is also crucial whether the investor is a natural (private) entity or an entrepreneur. Currently Poland is in a transition period between an 'old' and 'new' support system for renewable energy. Therefore whether the investor:

- a) will be entitled to a guaranteed beneficial price for electricity generated in photovoltaic installations ("feed-in tariff");
- b) would be allowed to apply for so called green certificates (which are a tradable commodity and may create a separate source of income); or
- c) would need to participate in an auction for a contract for the sales of electricity,

will be highly dependent on the investment's time-frame and the size of the installation.

Other legislation related to the green buildings is the Energy Characteristic of Buildings Act, from August 29, 2014. This Act regulates, among others, issuance of the "energy characteristic certificate". In particular, such, certificate specifies energy demand of individual buildings, emission of CO2 and contribution of the renewable sources in the overall production of

energy. Higher use of renewable sources and lower emission of CO₂ may increase the total value of the building.

According to the provisions of this act, a person who intends to sell or lease a building is obligated to deliver an energy characteristic certificate, regardless of the type of right *in rem* to the building.

The energy characteristic certificate is not required for construction of a residential house for personal use. However, such certificate is required in case of construction of a residential houses intended for sale.

3. Can you shortly describe the development within the last decades? What percentage of new construction qualifies as green buildings?

The number of certified buildings, based on the international standards - American LEED and British BREEAM, is increasing yearly in Poland. According to the data published by Colliers International, in 2015 we had 249 certified objects in Poland (126 in Warsaw, 26 in Cracow, 17 in Poznań, 12 in Wroclaw and 68 in other cities). 202 certificates were allowed on BREEAM system, and 47 were based on LEED standard. Comparing to 2014, it means an increase of 60% (in 2014 in Poland there was 152 certified buildings).

4. Are there national and/or local objectives with regard to green building?

Poland as a member of the European Union is obligated to implement the European standards.

In September 2012 the Polish Government adopted the National Development Strategy 2020 (“NDS”), which designates the most important tasks to achieve until 2020. One section of the NDS is dedicated to energy security and environment protection. Document sets out target for development of distributed power engineering and relation of renewable sources in Polish production of energy mix. Similar targets have been set out

in the Polish Energy Policy for 2030 (policy released by Ministry of Economy, contains national energy targets) and were implemented into Energy Efficiency Act from April 15, 2011. It proclaims a national target for efficient energy management, to be achieved by 2016. Target presupposes final energy savings in the amount of not less than 9 % of the national average consumption of energy. Minister of Energy is obligated to submit to the Council of the Ministers the National Plan for the Energy Efficiency every three years. The Minister shall also report on the execution of such plans. These obligations are the part of the “Polish Energy Policy until 2030”, including long-term targets connected with the energy efficiency. In future, more ambitious objectives in this area are expected, in particular greater support for the green buildings.

Unfortunately these documents do not relate directly to the green buildings.

5. Please describe the applicable green buildings standards in your country (insulation, efficiency, water and electricity consumption, waste reduction and recycling, sustainable materials, sustainable alterations and replacement of equipment, management of the building, global environmental impact...).

Poland does not have any specific green buildings standards. In general, buildings located in Poland obtain certificates based on the international standards – American LEED and British BREEAM. It is possible to apply also for the EU Green Building attestation, but it is not very common in Poland. Moreover, according to our research there have been no EU Green Buildings certificates issued for investment in Poland so far.

6. Is there a certification for green buildings in your jurisdiction? What is the process?

As mentioned above, Poland has not developed its own certification system and uses the British BREEAM and the American LEED certification systems. Currently in Poland there are 249 certified buildings and several further applications await decision. In 2015 we had 249 certified buildings, 202 in BREEAM standard and 47 in LEED standard.

7. Are there differences for residential and non-residential (e.g. hotels, office buildings, schools/hospitals, industry) buildings?

Since, Polish law does not recognize any national standards or certification systems, consequently there is no difference between the residential or non-residential buildings. However residential buildings, built for own use, are exempted from the requirement of having the Energy Characteristic Certificate, described above.

8. Does it cost more to build a green building?

According to our research a green building in Poland is about 5% more expensive than regular house. Extra costs are generated mostly by the specialized technical documentation (costs of certification), building materials and technology (more sealed ventilation system, heating technology etc.). Expenses may be reduced when the subsidy described below is granted.

9. Are there any public financial incentives (subsidies) for green construction?

There is no support system dedicated directly to green buildings, but the State undertakes certain actions to support energy saving initiatives. Subsidy programme dedicated to this kind of initiatives is managed by the National Fund for Environmental Protection and Water Management. Individual buildings and apartments projects can obtain financial support for the partial repayment of the bank loan, spent for increase of energy efficiency.

The subsidy is paid after completion of the investment and its amount depends on the building's energy use and achieved savings. The subsidies may be obtained by the developers or buyers of the residential buildings.

10. Does green construction give any advantage in the permit process (faster process, exceptions such as higher utilisation etc.)? Or are there even obligations (stick and carrot)?

The investments in the green buildings, in accordance with the Polish administrative law, are treated just like any other investments.

11. Do green buildings offer other advantages (such as long-term economic benefits, better chances on the market, higher rent, public image...)?

There is no support system dedicated directly to the green buildings. The only advantage (apart from the public image and growing popularity of the green buildings) is a limited subsidy program.

One type of the subsidy is granted by the National Fund for Environmental Protection and Water Management (*NFOŚiGW, Narodowy Fundusz Ochrony Środowiska i Gospodarki Wodnej*).

Local Governments which plan certain green innovation investments may apply for support from “Kawka Program” which is dedicated, among others, for support of the energy efficiency. Program focuses on extension of heating network, reduction of local, non – ecological heat sources and popularization of RES.

NFOŚiGW has also a program called “Ryś”, which is intended for thermo-modernization of existing family houses. The funds could be used for thermo-modernization works, eg. insulation of walls and exchange of heat sources or internal installations. Subsidy is granted in a form of preferential loans.

12. Can you think of contractual issues on green building (in contracts between owners/developers and design professionals and general contractors, in lease agreements, in hotel-management contracts...)?

Do you have any recommendations to make such clauses effective?

We have not observed any particularities in relation of the green buildings from the point of view of contracts. There are no special provisions dedicated to these type of investments.

We may only indicate that, according to the Energy Characteristic of Buildings Act, in case of sale of a building (or more properly in case of sale of land together with the building) the buyer shall remember that the seller is obliged to provide him with the Energy Characteristic Certificate. In case such certificate is not handed out at the moment of the sale and the seller does not deliver it within a particular time, the buyer may apply for certificate on its own at the seller expense. When selling a building, it is important to remember about the legal obligation to hand out the Energy Performance Certificate. Failure to comply with this obligation is subject to a fine.

13. Do you have an example of litigation in relation with green buildings (e.g. water performance issues for the project owner/the design professional/the prime contractor, and third-party claims)?

We have no litigation experience in this respect.

14. Do you want to tell us a personal story or achievement in relation to green buildings?

I have worked for OKRE DEVELOPMENT which constructed one of the first office building with a BREEAM certificate in 2009 called Green Wings Offices, awarded the Best Office Project by Eurobuild in 2015.

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